



Fort Myers Beach Town Council

**Diamondhead Beach Resort
2000 Estero Blvd.
Fort Myers Beach, FL 33931**

Agenda

Monday, May 1, 2023

9:00 AM

ORDER OF BUSINESS

- I. CALL TO ORDER**
- II. INVOCATION**
- III. PLEDGE OF ALLEGIANCE**
- IV. APPROVAL OF FINAL AGENDA**
- V. PUBLIC COMMENT**
- VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS**
 - A. Proclamation: Safe Boating Week 2023
- VII. ADVISORY COMMITTEES ITEMS / REPORTS / APPOINTMENTS**
- VIII. APPROVAL OF MINUTES**
 - A. Town Council April 17, 2023
- IX. PRESENTATION**
 - A. Presentation: Florida Power & Light (FPL)
- X. CONSENT AGENDA**
 - A. FL Sea Grant letter of support
 - B. Resolutions 23-37 through 23-43; Extension of State of Local Emergency
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING AND EXTENDING THE PROCLAMATION THAT A STATE OF LOCAL EMERGENCY EXISTS BECAUSE OF THE CATASTROPHIC IMPACTS CAUSED BY HURRICANE IAN; PROVIDING FOR CONFLICTS; PROVIDING FOR SCRIVENER ERRORS, PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

- C. Resolution 23-41 Matanzas Pass Bridge Maintenance Agreement
A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING A MAINTENANCE AGREEMENT FOR THE MATANZAS PASS BRIDGE BETWEEN THE FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT) AND THE TOWN; AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT ON BEHALF OF THE TOWN AND AUTHORIZING THE TOWN MANAGER TO TAKE ALL NECESSARY STEPS TO IMPLEMENT THE AGREEMENT; PROVIDING FOR SEVERABILITY; AND AN EFFECTIVE DATE.
- D. FMB Elementary Spring Music Performance
Special Event - FMB Elementary Spring Music Performance

XI. PUBLIC HEARINGS

- A. Ordinance 23-05; Temporary Housing
1st Reading and public hearing for proposed Ordinance 23-05 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AUTHORIZING THE PLACEMENT OF TEMPORARY HOUSING AND TEMPORARY GOVERNMENTAL USE FACILITIES IN SPECIFIED ZONING DISTRICTS OF THE TOWN, PROVIDING FOR CONFLICT OF LAW, SCRIVENER'S ERRORS, SEVERABILITY, SUNSETTING OF THIS ORDINANCE, AND PROVIDING FOR AN EFFECTIVE DATE. Open the first public hearing and schedule for second reading and final adoption on May 15, 2023 at 9:00 AM

XII. ADMINISTRATIVE AGENDA

- A. Community Development Staffing and Related Budget Adjustment
Approve Resolution Number 23-44 entitled: A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING BUDGET AMENDMENT #1 TO THE TOWN'S ADOPTED FISCAL YEAR 2022-2023 BUDGET, ATTACHED AS EXHIBIT "A"; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.
- B. Resolution 23-33; Florida Department of Economic Opportunity (DEO) Emergency Bridge Loan
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AUTHORIZING THE EXECUTION AND DELIVERY OF THE FORM OF ATTACHED LOAN DOCUMENTS BETWEEN THE LOCAL GOVERNMENT AND THE STATE OF FLORIDA, DEPARTMENT OF ECONOMIC OPPORTUNITY FOR A PRINCIPAL AMOUNT OF \$11,900,000 TO FUND GOVERNMENTAL OPERATIONS; MAKING CERTAIN FINDINGS OF PARAMOUNT PUBLIC PURPOSE; COVENANTING TO BUDGET AND APPROPRIATE LEGALLY AVAILABLE NON-AD VALOREM REVENUES TO PAY THE INDEBTEDNESS; PROVIDING FOR THE RIGHTS, SECURITIES AND REMEDIES FOR THE OWNER OF THE PROMISSORY NOTE; MAKING CERTAIN COVENANTS AND AGREEMENTS IN CONNECTION THEREWITH; DESIGNATING AN OFFICIAL WITH AUTHORITY TO

**EXECUTE DOCUMENTS WITH RESPECT TO THE LOAN; AND
PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.**

C. RFQ-22-25-AD; Ongoing Misc. Professional Services

Approve and authorize the Town Manager to execute contracts with the top ranked firms under each category for Ongoing Miscellaneous Professional Services.

XIII. FINAL PUBLIC COMMENT

XIV. TOWN MANAGER'S ITEMS

XV. TOWN ATTORNEY'S ITEMS

XVI. COUNCILMEMBERS ITEMS AND REPORTS

XVII. ADJOURNMENT

NOTE: THIS MEETING IS STREAMED LIVE ON YOUTUBE.

IF A PERSON DECIDES TO APPEAL A DECISION MADE BY THE COUNCIL IN ANY MATTER CONSIDERED AT THIS MEETING/HEARING, SUCH PERSONS MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDING IS MADE, TO INCLUDE THE TESTIMONY AND EVIDENCE UPON WHICH ANY SUCH APPEAL IS TO BE BASED.



For special accommodation, please notify the Town Clerk's Office at least 72 hours in advance. (239) 765-0202

In accordance with the Americans with Disabilities Act (ADA), persons needing a special accommodation to participate in the Board's proceedings should contact the Town Clerk's Office not later than three days prior to the proceedings.

1. **Requested Motion:**

Meeting Date: May 1, 2023

Safe Boating Week

Why the action is necessary:

What the action accomplishes:

Honors the request of the local Flotilla Commander of the U.S. Coast Guard Auxiliary to bring awareness to boating safety.

2. **Agenda:**

LOCAL ACHIEVEMENTS AND
RECOGNITIONS

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

5. **Background:**

According to the United States Coast Guard Auxiliary, recreational boating is a wonderful way to enjoy our local waterways, but as the popularity of boating increases, so do the risks involved. The waterways can become congested, leading to chaos and confusion, and without proper preparation, boating can be a dangerous sport. Human error or a lack of proper judgment, such as not knowing or obeying Navigation Rules, drinking alcohol or taking drugs while operating a boat, or failing to wear a life jacket, can all contribute to accidents.

One simple behavior that can reduce the number of boaters who drown by approximately 85% is wearing a life jacket. It is a small effort that can make a big difference in preventing tragic loss of life.

To promote boating safety and reduce accidents, it is essential to educate people about the risks involved and the importance of taking precautions. This message should be spread not just during National safe Boating Week but throughout the year. By increasing awareness, we can encourage more people to take the necessary steps to protect themselves, their friends, and their families.

Attachments:

1. Safe Boating Week 2023

Financial Impact:

None

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

Amy Baker, Town Clerk
John R Herin Jr, Town Attorney
Amy Baker, Town Clerk
Keith Wilkins , Interim Town Manager

Created/Initiated - 4/7/2023
Approved - 4/12/2023
Approved - 4/24/2023
Final Approval - 4/24/2023

Town of Fort Myers Beach PROCLAMATION

WHEREAS, The Town of Ft. Myers Beach, in Lee County, Florida, with its great year-round weather and salt water resources, provides special water-related recreational activities to its residents, and people from around the world; and

WHEREAS, this area's miles of saltwater tidal coastline, rivers, bays, ponds and canals provide many of the needed outlets for recreation and relaxation; and

WHEREAS, recreational boating is one of Florida's leading outdoor activities with more than 50,000 registered boats in Lee county alone, distinguishing Florida as the "Boating Capital of the World"; and

WHEREAS, every year lives are lost in boating accidents in spite of the educational efforts of the U.S. Coast Guard, the U.S. Coast Guard Auxiliary, the U.S. Power Squadrons, the Florida Fish and Wildlife Commission, and local agencies; and

WHEREAS, federal state and local agencies and private companies and groups have combined their efforts to reduce boating accidents by developing and executing safety training programs, such as, "Boat Smart – Boat Safe", and "You're in Command"; and

WHEREAS, the sponsors of these programs have focused their efforts toward youth and the general public of Lee County, Florida, urging them to enhance boating pleasure and avoid possible loss of life, while reducing the loss of property, and marine accidents; and

WHEREAS on average, 600 people die each year in boating-related accidents in the U.S.; where cause of death was known, 81% of fatal boating accident victims drowned. Of those drowning victims with reported life jacket usage, 83% were not wearing a life jacket.

NOW, therefore, be it proclaimed that the Town Council of the Town of Fort Myers Beach, Florida proclaims **May 20 – 26, 2023** as

SAFE BOATING WEEK

and urges all citizens to join in learning and practicing safe boating by wearing a life jacket, taking boating education courses, getting a vessel safety check, operating their vessels responsibly, safely, soberly, and obeying Coast Guard regulations.

Given under my hand and the seal of the office of the Mayor this 1st day of May 2022.

Dan Allers, Mayor



Fort Myers Beach Town Council

Diamondhead Beach Resort
2000 Estero Blvd.
Fort Myers Beach, FL 33931

Minutes

Monday, April 17, 2023

9:00 AM

ORDER OF BUSINESS

DRAFT

I. CALL TO ORDER

Members present: Mayor Allers, Vice Mayor Atterholt, Council Member King, Council Member Veach and Council Member Woodson.

II. INVOCATION

Town Clerk Baker.

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF FINAL AGENDA

Mayor Allers stated that item A under Public Hearings had been pulled from the agenda at the applicants request.

Council Member King moved to approve the agenda; second by Mayor Allers. Motion carried unanimously.

V. PUBLIC COMMENT

No public comment.

VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Vice Mayor Atterholt thanked the CFO's office for the insurance village event being held at DiamondHead on Tuesday, April 18, 2023, from 9:00-5:00. He encouraged property owners to attend if they had issues with insurance companies. He noted that a list of insurance companies attending was posted on the town's website.

Council Member Veach thanked crews who were cleaning the mangroves.

Council Member Woodson noted that The Whale opened over the weekend and thanked Matt Caldwell for his presentation at the Chamber lunch last week.

Council Member King thanked Mom's Restaurant for the cinnamon rolls at the reopening of the Mound House and thanked MoJoe's Coffee Bar for the coffee and bagels. He added that residents that could not use their property as intended, should contact the Lee County Tax Appraiser's Office regarding the refund/rebate and taxes.

VII. ADVISORY COMMITTEES ITEMS / REPORTS / APPOINTMENTS

Chair of the Marine and Environmental Resources Task Force (MERTF) Steve Johnson provided a report. He noted that MERTF requested permission to proceed and complete the three projects they were working on before Hurricane Ian. Mayor Allers questioned whether the town had a fire restriction ordinance. Town Attorney Herin, Jr. was unaware of an ordinance and interim Town Manager Wilkins felt an ordinance would probably help the code enforcement authorities. Chair Johnson questioned whether sewer pipes could be checked for leaks and whether the Town Council wanted MERTF to follow up. Council Member Veach indicated that Key West had an ordinance concerning sewer pipes and wondered whether a similar ordinance would work for the town. Vice Mayor Atterholt recommended that the town's utility director discuss inspecting lines with Lee County. Chair Johnson commented that he saw Lee County inspecting the lines on Estero Blvd. but not on other streets.

Chair Johnson reported that the pop-up tent events were running again, and he thanked the Beach Talk Radio listeners for contributing to the Amazon wish list for the events. He singled out Jason Ingram from Mango Rita's. He stated that the dark skies model ordinance was pending and the MERTF pamphlet was not a priority. The rubble from the Big Carlos Pass Bridge used to create a new offshore artificial reef is now complete.

Chair Johnson questioned who was addressing rebuilding the beach accesses and the scours issue. He commented that unpermitted activities on the beach, like tearing out the mangroves and box-blading the beach, occurred. Vice Mayor Atterholt questioned whether FEMA funds were available to give away trees and native vegetation like the town had in the past. Interim Town Manager Wilkins replied that he was unsure about FEMA, but grants were available. Chair Johnson commented that MERTF was involved with the last tree donation. He agreed that MERTF would make recommendations concerning where the town needed vegetation. Vice Mayor Atterholt wondered whether the town had funds left over from Lee County to maintain the right-of-way on Estero Blvd. Mayor Allers added that the amount was \$800,000.00.

VIII. PRESENTATION

A. Crowder Gulf

Debris recovery, future debris collection and the condition of Bay Oaks Recreational Campus.

Crowder Gulf Regional Manager, Barton Holmes, utilized PowerPoint for his presentation. He explained that Crowder Gulf was a private company and the town already had a contract in place to remove debris, which helped speed up the recovery and FEMA reimbursement processes.

Slides included: Bay Oaks Recreation Complex on October 2, 2022, October 31, 2022, and November 28, 2022. He explained why they had to create a debris pile on the Bay Oaks property before moving it to the final destination. Slides continued with Bay Oaks Recreational Complex on April 16, 2023. He noted that Thompson Engineering took a soil sample and Mr. Holmes was waiting for the results. He displayed slides with various data regarding debris removal so far and stated he had never seen a similar concentration of debris and destruction in his eight years of experience. Mr. Holmes will provide the data in his presentation to the town for their website.

Mr. Holmes indicated that the state extended right-of-way debris pickup and Crowder Gulf still had trucks collecting debris. He noted that another contractor was taking care of private property debris removal. He clarified that his company would remove any debris pushed to the right-of-way, although Lee County instructed them not to collect any more debris on Estero Blvd. He stated that his contract with the town initially expired last week, but it was extended for 60 days. He asked property owners on side streets to be patient and indicated the debris would be removed soon. He was working with Lee County DOT (Department of Transportation) concerning asphalt removal. He explained that the eligible debris was any debris generated by Ian and pushed to the town-maintained right-of-way. He requested that owners not put debris in bags because workers had to cut open the bags to identify the contents.

IX. APPROVAL OF MINUTES

A. Town Council - April 3, 2023

Council Member King moved to approve the minutes; second by Council Member Woodson.

Motion carried unanimously.

B. Management & Planning Session - April 6, 2023

Council Member King moved to approve the minutes; second by Council Member Woodson.

Motion carried unanimously.

X. CONSENT AGENDA

Council Member King moved to approve the consent agenda; second by Council Member Woodson.

Motion carried unanimously.

A. Special Event - Mother's Day 5K Run in Times Square

Special Event - Mother's Day 5K Run in Times Square

Council Member King moved to approve the event; second by Council Member Woodson.

Motion carried unanimously.

B. Resolution 23-34; Lee County Beach Cleanup

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING AN INTERLOCAL AGREEMENT BETWEEN THE TOWN AND LEE COUNTY, FLORIDA, FOR THE PURPOSE OF REIMBURSEMENT FOR THE CLEANUP OF FISH AND MARINE LIFE WASHING UP ON BEACHES CAUSED BY RED TIDE; AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

Council Member King moved to approve the resolution; second by Council Member Woodson.

Motion carried unanimously.

C. Resolution 23-35 Fee Schedule Amendment

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA, ADOPTING AND IMPLEMENTING, BY REFERENCE, THE FY2022-2023 TOWN WIDE FEE SCHEDULE. UNLESS PROHIBITED BY STATE LAW OR THE TOWN CHARTER, PROVIDING FOR CODIFICATION, CONFLICT OF LAW, SCRIVENER'S ERRORS, SEVERABILITY, PROVIDING FOR AN EFFECTIVE DATE.

Council Member King moved to approve the resolution; second by Council Member Woodson.

Motion carried unanimously.

XI. PUBLIC HEARINGS

A. Ordinance 23-07; Rezoning of 2545 and 2555 Estero Boulevard

1st Reading and Public Hearing on proposed Ordinance 23-07 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA PERMITTING REZONING FROM CPD, COMMERCIAL PLANNED DEVELOPMENT TO IN, INSTITUTIONAL FOR A PROPERTY LOCATED AT 2545 AND 2555 ESTERO BOULEVARD FORT MYERS BEACH, PROVIDING FOR REVISIONS TO CONDITIONS OF APPROVAL, AND OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE. Open the first public hearing and schedule for second reading and final adoption on May 3, 2023 at 9:00 am. This requires a supermajority vote.

Pulled from agenda at request of the applicant.

XII. ADMINISTRATIVE AGENDA

A. Resolution 23-36; Andrew Hyatt Employment Agreement

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING AND AUTHORIZING THE EXECUTION OF THE EMPLOYMENT AGREEMENT BETWEEN THE TOWN AND ANDREW HYATT AS TOWN MANAGER, ATTACHED AS EXHIBIT "A;" AUTHORIZING AND DIRECTING THE APPROPRIATE TOWN OFFICIALS TO TAKE ALL ACTIONS NECESSARY TO EFFECTUATE THE INTENT OF THIS RESOLUTION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution.

Interim Town Manager Wilkins noted the contract was extended to two years. Town Attorney Herin, Jr. spoke about the notice provisions being standardized for 120 days regarding Mr. Hyatt renegotiating and extending his contract and tendering his resignation to give the Council time to extend and negotiate or to accept the resignation and look for a replacement. Interim Town Manager Wilkins added that the provision did not affect severance. Town Attorney Herin, Jr. explained the compensation calculation per the State of Florida for salaried employees at a certain executive level.

Mr. Hyatt commented that he was not a clock watcher. He intended this position to be his last and would live on the beach.

Council Member Veach moved to approve the resolution; second by Council Member Woodson.

Motion carried unanimously.

Mr. Hyatt will start on May 1, 2023, and Interim Town Manager Wilkins will assist with the transition until May 15, 2023.

B. RFQ-22-25-AD; Ongoing Misc. Professional Services

Approve and authorize the Town Manager to execute contracts with the top ranked firms under each category for Ongoing Miscellaneous Professional Services.

Town Attorney Herin, Jr. explained the procurement process and stated this step had to be followed under state law. The item will be tabled to the next meeting because the information was not included in the packet or published.

XIII. FINAL PUBLIC COMMENT

Terry Persaud, resident, thanked everyone for the job they were doing to put the town back together. He requested that they try to resolve their differences regarding ongoing legal matters. He noted he would forward a settlement agreement to the town attorney, and he distributed a letter to Council members.

XIV. TOWN MANAGER'S ITEMS

Interim Town Manager Wilkins expected the Town Hall to be demolished within the next week or two. An RFP (Request for Proposal) will be sent out soon for Bayside Park. Town Attorney Herin, Jr. stated that the contractor hired for Bay Oaks decided to negotiate modifications to the contract, although they knew the terms when they accepted the offer. He explained the legal process if Gleeson chooses not to sign the contract, but he did not think it would come to that. All members of the Council agreed not to negotiate with the contractor.

The stormwater project was approximately 50% complete and expected to be finished by the end of May. FEMA will reimburse for the project.

XV. TOWN ATTORNEY'S ITEMS

Town Attorney Herin, Jr. noted that the Adam LaCroix litigation had been resolved. The League of Cities paid Mr. LaCroix's attorney's fees as part of the settlement and Mr. LaCroix dismissed all claims against the Town. Town Attorney Herin, Jr. will send the settlement terms to Council members.

An appeal to the beach dune walkover matter was filed and the town was coordinating its defense with attorneys for Mr. Kroemer and Mr. Rood. Town Attorney Herin, Jr. will keep the Council posted.

Town Attorney Herin, Jr. reported that the town received a claim regarding a stormwater construction project that may have damaged private property. The League of Cities was covering the matter and researching the claim. The issue will be resolved as soon as possible to avoid further costs.

Town Attorney Herin, Jr. thanked the Council and community for supporting the proposed draft interlocal agreement to rebuild the elementary school. He has a conference call tomorrow with the Lee County School Board's general counsel to attempt to finalize the draft. He hoped to bring the document back next week for approval.

XVI. COUNCILMEMBERS ITEMS AND REPORTS

Council Member King questioned the status of rebuilding Times Square. Council Member Veach noted that he was part of the Resilient Lee group and they recommended creating a master plan for downtown and San Carlos Island. He indicated that the town had to work with Lee County regarding Times Square. He commented that Resilient Lee was meeting on May 4, 2023, after the M&P session. Council Member Woodson, liaison to the Horizon Council, commented that Commissioner Sandelli supported the county and town's involvement with the ULI (Urban Land Institute) for planning. Mayor Allers added that he met with county staff to discuss visioning and moving forward with ULI. Council Member Veach received support to add ULI to a future M&P. Interim Town Manager Wilkins questioned whether they were interested in inviting Haggerty to present at an M&P regarding CDBG-DR funds and how to coalesce all the activities. He also invited FEMA to attend the May 4, 2023, M&P to hear their input.

Council Member Woodson questioned whether the Council was interested in a 4th of July parade. Mayor Allers received support to add it to an M&P. Council Member Woodson noted that there were no signs regarding parking along Palermo and people were parking on both sides of the street for The Whale event. She thanked a beach patrol member who did a great job directing people to move their cars without issuing any tickets. She commented that the town had to install signs on at least one side of the street.

Council Member Veach noted that projects needed to be entered into the Resilient Lee portal and an action plan had to be developed. He received support to add workforce housing proposals to the next M&P. Mayor Allers supported creating an action plan. Council Member Veach questioned whether there was interest in creating a marina zoning district. Mayor Allers replied that the Corradino Group and Sarah were given directions regarding marina zoning at the joint meeting with the LPA. Council Member Veach suggested codifying the water ordinance at a future meeting. He received support to add a discussion to an M&P concerning requiring an inspection of sewer lines when rebuilding houses. He thought the town could raise money for a tree giveaway if funds were unavailable. He questioned what happened to the right-of-way on part of Caroline St. Mayor Allers suggested contacting the fire department for assistance.

Vice Mayor Atterholt shared information from an interview with Anita Cereceda regarding the history of the Town Hall. He stated that the mural was not salvageable, but the artist was still in the area.

Mayor Allers stated that the parking app was still causing issues and questioned whether they were interested in inviting the software company to a meeting to answer questions. He received support.

XVII. ADJOURNMENT

Council Member King moved to adjourn; second by Council Member Woodson. Motion carried unanimously.

The meeting was adjourned at 11:30 a.m.

1. **Requested Motion:**

Meeting Date: May 1, 2023

The Water School is asking the Town for our support for research funding.

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

5. **Background:**

The coastal geology and resilience group at The Water School has been mapping and characterizing the geomorphologic damage caused by Hurricane Ian along our outer coast. They have been talking with three municipalities, Sanibel, Fort Myers Beach, and Naples, about making this effort accessible and helpful to our current and future planning. They have a lot of data to share, and would like to pursue further funding for the research. The Water School currently has a "letter of intent" (LOI) in review at Florida Sea Grant; and is expecting to be invited to submit a full proposal. Reviews will be returned in late April with the full proposal due in early June. They intend to focus the application of their efforts to the three coastal communities.

The LOI outlines 6 tasks. If funded, they would continue to monitor the geomorphologic recovery of the entire Collier and Lee County coasts by mapping the area using drone-flown LiDAR. All communities would benefit from this. The latter tasks (3 through 5) would be customized for each jurisdiction. The XBEACH geomorphologic modeling that will result would provide municipalities with predictions of the coast's behavior if and when future storms make land fall and under worsening conditions caused by climate change. Assuming the proposal is successful, and they are funded, they would work cooperatively with each municipality to customize the questions we'd like asked of the modeling.

Attachments:

1. Letter of support Sea Grant Collaboration

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

Amy Baker, Town Clerk
John R Herin Jr, Town Attorney
Keith Wilkins , Interim Town Manager

Created/Initiated - 4/26/2023
Approved - 4/26/2023
Final Approval - 4/26/2023



May 1, 2023

Professor of Coastal Resilience & Climate Change Preparation, The Water School
Department of Marine & Earth Sciences
College of Arts & Sciences
Florida Gulf Coast University
10501 FGCU Blvd South
Ft. Myers, FL 33965-6565

The Town of Fort Myers Beach supports Florida Gulf Coast University on their proposal: Increasing Resilience Capacity within Southwest Florida Coastal Communities in the wake of Hurricane Ian.

With additional funding they will be able to continue mapping and characterizing the geomorphologic damage caused by Hurricane Ian along our outer coast.

If funded, they would continue to monitor the geomorphologic recovery of the entire Lee County and Collier County coasts by mapping the area using drone-flown LiDAR. All communities would benefit from this.

The XBEACH geomorphologic modeling that will result would provide us with predictions of the coast's behavior, when future storms make land fall, and under worsening conditions caused by climate change.

FGCU staff members would collaborate with the staff on the customization of the coastal monitoring / mapping to be conducted, and on the development of the most informative modeling scenarios to assist us in the Town's long-range planning.

Thank you for your support in providing sufficient funding to continue this valuable research and data collection process.

We appreciate your support for our island, beaches, and coast as we build to be stronger and more resilient than ever before.

Sincerely, on behalf of the Fort Myers Beach Town Council,

Dan Allers, Mayor

1. **Requested Motion:**

Meeting Date: May 1, 2023

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING AND EXTENDING THE PROCLAMATION THAT A STATE OF LOCAL EMERGENCY EXISTS BECAUSE OF THE CATASTROPHIC IMPACTS CAUSED BY HURRICANE IAN; PROVIDING FOR CONFLICTS; PROVIDING FOR SCRIVENER ERRORS, PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

Extending the local state of emergency provides the Town with the needed flexibility to respond to the catastrophic disaster caused by Hurricane Ian and maintains the Town's eligibility for federal and state reimbursement funding for the costs of recovery.

What the action accomplishes:

Extends the Town's Declaration of state of local emergency.

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

5. **Background:**

Hurricane Ian has caused a catastrophic disaster in the Town, causing extensive damage to public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas. Approving and ratifying these Resolutions will maintain in place the Town Declaration of State of Local Emergency originally adopted via Resolution 22-34.

Attachments:

1. 23-37, Extending Declaration of Local Emergency 4.17.23-4.23.23
2. 23-38, Extending Declaration of Local Emergency 4.24.23-4.30.23
3. 23-39, Extending Declaration of Local Emergency 5.1.23-5.7.23
4. 23-40, Extending Declaration of Local Emergency 5.8.23-5.14.23
5. 23-42, Extending Declaration of Local Emergency 5.22.23-5.28.23
6. 23-43, Extending Declaration of Local Emergency 5.15.23-5.21.23

Financial Impact:

6. **Alternative Action**

Not adopt resolutions and the end the Local State of Emergency for Fort Myers Beach

7. **Management Recommendations:**

8. **Recommended Approval:**

Amy Baker, Town Clerk
John R Herin Jr, Town Attorney
Amy Baker, Town Clerk
Keith Wilkins , Interim Town Manager

Created/Initiated - 4/20/2023
Approved - 4/26/2023
Approved - 4/26/2023
Final Approval - 4/26/2023

RESOLUTION 23-37

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING AND EXTENDING THE PROCLAMATION THAT A STATE OF LOCAL EMERGENCY EXISTS BECAUSE OF THE CATASTROPHIC IMPACTS CAUSED BY HURRICANE IAN; PROVIDING FOR CONFLICTS; PROVIDING FOR SCRIVENER ERRORS, PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Chapter 252, *Florida Statutes*, authorizes the waiver of procedures and formalities, otherwise required of municipalities, and to take whatever prudent action is necessary to ensure the health, safety, and welfare of the community in the event of a state of emergency; and

WHEREAS, Section 252.38 *Florida Statutes*, specifically authorizes municipalities to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions required by law pertaining to performance of public work and taking whatever action is necessary to ensure the health, safety, and welfare of the community such as but not limited to entering into contracts; incurring obligations; employing permanent and temporary workers; utilizing volunteer workers; renting of equipment; acquiring and distributing supplies, materials and facilities with or without compensation, and appropriating and expending public funds; and

WHEREAS, the Town of Fort Myers Beach, Florida (Town), pursuant to its inherent home rule powers under Florida Constitution and otherwise has adopted certain emergency procedures set forth in Chapter 12, Article II – “Emergency and Disaster Planning” of the Code of Ordinances, Town of Fort Myers Beach, Florida (“Code”), and is otherwise authorized to activate the Town’s emergency plan; and

WHEREAS, the State of Florida and Lee County have declared a state of local emergency due to the catastrophic impacts of Hurricane Ian to Lee County; and

WHEREAS, as defined in the Code, Hurricane Ian has caused a catastrophic disaster in the Town causing extensive damage to public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas; and

WHEREAS, Section 12-21 of the Code provides that where it is not possible to obtain a quorum to convene an emergency meeting to proclaim a state of local emergency, or extend or rescind such a proclamation, the Mayor, Vice-Mayor, or Town Manager are authorized to proclaim, extend, or rescind a local state of emergency.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

Section 1. The foregoing whereas clauses are true and correct and hereby adopted as the legislative and administrative findings of the Town Council and made a specific part of this Resolution; all exhibits attached hereto are incorporated herein and made a specific part of this Resolution.

Section 2. Hurricane Ian has caused a catastrophic disaster in the Town, damaging, or destroying over ninety percent (90%) of the Town's public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas and continues to pose a serious threat to the health, lives, property, and safety of the business owners and residents of the Town. Accordingly, the state of local emergency is hereby extended for seven (7) additional days *nun pro tunc* from 9:00 AM on the 17th day of April 2023.

Section 3. The amendment and extension of the proclamation of a state of local emergency set forth in Resolution 22-35 is an emergency measure necessary for the protection of the public safety, due to the catastrophic disaster caused by Hurricane Ian.

Section 4. As provided in Section 252.38(3)(a), *Florida Statutes* and Chapter 12, Article II of the Code, the Town hereby waives the procedures and formalities otherwise required by law of a municipality as set forth in said State law and the Code.

Section 5. The Town Manager or designee is hereby designated as the declaring official for purposes of implementing the emergency and disaster regulations of the Town. The Town Manager or designee will exercise all powers necessary to protect the health and safety of the public set forth in any Executive Order that may be issued by the Governor, Chapter 252, Fla. Stat., and Chapter 12, Article II of the Code. This proclamation also authorizes the Town Manager or designee to utilize government employees and volunteers to assist in securing private property to minimize the overall damage to the Town.

Section 6. The state of local emergency shall remain in effect until terminated as provided in Section 12-21 of the Code. However, the mandatory curfew and prohibition regarding the use of fresh water supplied by the County or local water company for any purpose other than cooking, drinking, or bathing set forth in Section 12-24 of the Code are hereby waived at this time.

Section 7. As provided in Section 12-21(a) of the Code, the Mayor, Vice-Mayor, or Town Manager may extend the proclamation of a state of local emergency as the "responsible official" of the Town.

Section 8. All resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

Section 9. Any scrivener or typographical errors that do not affect intent of this Resolution may be corrected with notice to and authorization of the Town Attorney and Town Manager without further process.

Section 10. If any clause, section, other part, or application of this Resolution is held by any court of competent jurisdiction to be unconstitutional or invalid, in part or application, it shall not affect the validity of the remaining portions or applications of this Resolution.

Section 11. This Resolution shall become effective upon the signature of the Mayor.

This Resolution was ADOPTED this 1st day of May 2023 upon the signature of the Mayor at 9:00 a.m.

TOWN OF FORT MYERS BEACH

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:

John R. Herin, Jr., Town Attorney

This Resolution was filed in the Office of the Town Clerk on this _____ day of May 2023.

RESOLUTION 23-38

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING AND EXTENDING THE PROCLAMATION THAT A STATE OF LOCAL EMERGENCY EXISTS BECAUSE OF THE CATASTROPHIC IMPACTS CAUSED BY HURRICANE IAN; PROVIDING FOR CONFLICTS; PROVIDING FOR SCRIVENER ERRORS, PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Chapter 252, *Florida Statutes*, authorizes the waiver of procedures and formalities, otherwise required of municipalities, and to take whatever prudent action is necessary to ensure the health, safety, and welfare of the community in the event of a state of emergency; and

WHEREAS, Section 252.38 *Florida Statutes*, specifically authorizes municipalities to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions required by law pertaining to performance of public work and taking whatever action is necessary to ensure the health, safety, and welfare of the community such as but not limited to entering into contracts; incurring obligations; employing permanent and temporary workers; utilizing volunteer workers; renting of equipment; acquiring and distributing supplies, materials and facilities with or without compensation, and appropriating and expending public funds; and

WHEREAS, the Town of Fort Myers Beach, Florida (Town), pursuant to its inherent home rule powers under Florida Constitution and otherwise has adopted certain emergency procedures set forth in Chapter 12, Article II – “Emergency and Disaster Planning” of the Code of Ordinances, Town of Fort Myers Beach, Florida (“Code”), and is otherwise authorized to activate the Town’s emergency plan; and

WHEREAS, the State of Florida and Lee County have declared a state of local emergency due to the catastrophic impacts of Hurricane Ian to Lee County; and

WHEREAS, as defined in the Code, Hurricane Ian has caused a catastrophic disaster in the Town causing extensive damage to public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas; and

WHEREAS, Section 12-21 of the Code provides that where it is not possible to obtain a quorum to convene an emergency meeting to proclaim a state of local emergency, or extend or rescind such a proclamation, the Mayor, Vice-Mayor, or Town Manager are authorized to proclaim, extend, or rescind a local state of emergency.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

Section 1. The foregoing whereas clauses are true and correct and hereby adopted as the legislative and administrative findings of the Town Council and made a specific part of this Resolution; all exhibits attached hereto are incorporated herein and made a specific part of this Resolution.

Section 2. Hurricane Ian has caused a catastrophic disaster in the Town, damaging, or destroying over ninety percent (90%) of the Town's public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas and continues to pose a serious threat to the health, lives, property, and safety of the business owners and residents of the Town. Accordingly, the state of local emergency is hereby extended for seven (7) additional days *nun pro tunc* from 9:00 AM on the 24th day of April 2023.

Section 3. The amendment and extension of the proclamation of a state of local emergency set forth in Resolution 22-35 is an emergency measure necessary for the protection of the public safety, due to the catastrophic disaster caused by Hurricane Ian.

Section 4. As provided in Section 252.38(3)(a), *Florida Statutes* and Chapter 12, Article II of the Code, the Town hereby waives the procedures and formalities otherwise required by law of a municipality as set forth in said State law and the Code.

Section 5. The Town Manager or designee is hereby designated as the declaring official for purposes of implementing the emergency and disaster regulations of the Town. The Town Manager or designee will exercise all powers necessary to protect the health and safety of the public set forth in any Executive Order that may be issued by the Governor, Chapter 252, Fla. Stat., and Chapter 12, Article II of the Code. This proclamation also authorizes the Town Manager or designee to utilize government employees and volunteers to assist in securing private property to minimize the overall damage to the Town.

Section 6. The state of local emergency shall remain in effect until terminated as provided in Section 12-21 of the Code. However, the mandatory curfew and prohibition regarding the use of fresh water supplied by the County or local water company for any purpose other than cooking, drinking, or bathing set forth in Section 12-24 of the Code are hereby waived at this time.

Section 7. As provided in Section 12-21(a) of the Code, the Mayor, Vice-Mayor, or Town Manager may extend the proclamation of a state of local emergency as the "responsible official" of the Town.

Section 8. All resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

Section 9. Any scrivener or typographical errors that do not affect intent of this Resolution may be corrected with notice to and authorization of the Town Attorney and Town Manager without further process.

Section 10. If any clause, section, other part, or application of this Resolution is held by any court of competent jurisdiction to be unconstitutional or invalid, in part or application, it shall not affect the validity of the remaining portions or applications of this Resolution.

Section 11. This Resolution shall become effective upon the signature of the Mayor.

This Resolution was ADOPTED this 1st day of May 2023 upon the signature of the Mayor at 9:00 a.m.

TOWN OF FORT MYERS BEACH

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:

John R. Herin, Jr., Town Attorney

This Resolution was filed in the Office of the Town Clerk on this _____ day of May 2023.

RESOLUTION 23-39

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING AND EXTENDING THE PROCLAMATION THAT A STATE OF LOCAL EMERGENCY EXISTS BECAUSE OF THE CATASTROPHIC IMPACTS CAUSED BY HURRICANE IAN; PROVIDING FOR CONFLICTS; PROVIDING FOR SCRIVENER ERRORS, PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Chapter 252, *Florida Statutes*, authorizes the waiver of procedures and formalities, otherwise required of municipalities, and to take whatever prudent action is necessary to ensure the health, safety, and welfare of the community in the event of a state of emergency; and

WHEREAS, Section 252.38 *Florida Statutes*, specifically authorizes municipalities to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions required by law pertaining to performance of public work and taking whatever action is necessary to ensure the health, safety, and welfare of the community such as but not limited to entering into contracts; incurring obligations; employing permanent and temporary workers; utilizing volunteer workers; renting of equipment; acquiring and distributing supplies, materials and facilities with or without compensation, and appropriating and expending public funds; and

WHEREAS, the Town of Fort Myers Beach, Florida (Town), pursuant to its inherent home rule powers under Florida Constitution and otherwise has adopted certain emergency procedures set forth in Chapter 12, Article II – “Emergency and Disaster Planning” of the Code of Ordinances, Town of Fort Myers Beach, Florida (“Code”), and is otherwise authorized to activate the Town’s emergency plan; and

WHEREAS, the State of Florida and Lee County have declared a state of local emergency due to the catastrophic impacts of Hurricane Ian to Lee County; and

WHEREAS, as defined in the Code, Hurricane Ian has caused a catastrophic disaster in the Town causing extensive damage to public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas; and

WHEREAS, Section 12-21 of the Code provides that where it is not possible to obtain a quorum to convene an emergency meeting to proclaim a state of local emergency, or extend or rescind such a proclamation, the Mayor, Vice-Mayor, or Town Manager are authorized to proclaim, extend, or rescind a local state of emergency.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

Section 1. The foregoing whereas clauses are true and correct and hereby adopted as the legislative and administrative findings of the Town Council and made a specific part of this Resolution; all exhibits attached hereto are incorporated herein and made a specific part of this Resolution.

Section 2. Hurricane Ian has caused a catastrophic disaster in the Town, damaging, or destroying over ninety percent (90%) of the Town's public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas and continues to pose a serious threat to the health, lives, property, and safety of the business owners and residents of the Town. Accordingly, the state of local emergency is hereby extended for seven (7) additional days *nun pro tunc* from 9:00 AM on the 1st day of May 2023.

Section 3. The amendment and extension of the proclamation of a state of local emergency set forth in Resolution 22-35 is an emergency measure necessary for the protection of the public safety, due to the catastrophic disaster caused by Hurricane Ian.

Section 4. As provided in Section 252.38(3)(a), *Florida Statutes* and Chapter 12, Article II of the Code, the Town hereby waives the procedures and formalities otherwise required by law of a municipality as set forth in said State law and the Code.

Section 5. The Town Manager or designee is hereby designated as the declaring official for purposes of implementing the emergency and disaster regulations of the Town. The Town Manager or designee will exercise all powers necessary to protect the health and safety of the public set forth in any Executive Order that may be issued by the Governor, Chapter 252, Fla. Stat., and Chapter 12, Article II of the Code. This proclamation also authorizes the Town Manager or designee to utilize government employees and volunteers to assist in securing private property to minimize the overall damage to the Town.

Section 6. The state of local emergency shall remain in effect until terminated as provided in Section 12-21 of the Code. However, the mandatory curfew and prohibition regarding the use of fresh water supplied by the County or local water company for any purpose other than cooking, drinking, or bathing set forth in Section 12-24 of the Code are hereby waived at this time.

Section 7. As provided in Section 12-21(a) of the Code, the Mayor, Vice-Mayor, or Town Manager may extend the proclamation of a state of local emergency as the "responsible official" of the Town.

Section 8. All resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

Section 9. Any scrivener or typographical errors that do not affect intent of this Resolution may be corrected with notice to and authorization of the Town Attorney and Town Manager without further process.

Section 10. If any clause, section, other part, or application of this Resolution is held by any court of competent jurisdiction to be unconstitutional or invalid, in part or application, it shall not affect the validity of the remaining portions or applications of this Resolution.

Section 11. This Resolution shall become effective upon the signature of the Mayor.

This Resolution was ADOPTED this 1st day of May 2023 upon the signature of the Mayor at 9:00 a.m.

TOWN OF FORT MYERS BEACH

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:

John R. Herin, Jr., Town Attorney

This Resolution was filed in the Office of the Town Clerk on this _____ day of May 2023.

RESOLUTION 23-40

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING AND EXTENDING THE PROCLAMATION THAT A STATE OF LOCAL EMERGENCY EXISTS BECAUSE OF THE CATASTROPHIC IMPACTS CAUSED BY HURRICANE IAN; PROVIDING FOR CONFLICTS; PROVIDING FOR SCRIVENER ERRORS, PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Chapter 252, *Florida Statutes*, authorizes the waiver of procedures and formalities, otherwise required of municipalities, and to take whatever prudent action is necessary to ensure the health, safety, and welfare of the community in the event of a state of emergency; and

WHEREAS, Section 252.38 *Florida Statutes*, specifically authorizes municipalities to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions required by law pertaining to performance of public work and taking whatever action is necessary to ensure the health, safety, and welfare of the community such as but not limited to entering into contracts; incurring obligations; employing permanent and temporary workers; utilizing volunteer workers; renting of equipment; acquiring and distributing supplies, materials and facilities with or without compensation, and appropriating and expending public funds; and

WHEREAS, the Town of Fort Myers Beach, Florida (Town), pursuant to its inherent home rule powers under Florida Constitution and otherwise has adopted certain emergency procedures set forth in Chapter 12, Article II – “Emergency and Disaster Planning” of the Code of Ordinances, Town of Fort Myers Beach, Florida (“Code”), and is otherwise authorized to activate the Town’s emergency plan; and

WHEREAS, the State of Florida and Lee County have declared a state of local emergency due to the catastrophic impacts of Hurricane Ian to Lee County; and

WHEREAS, as defined in the Code, Hurricane Ian has caused a catastrophic disaster in the Town causing extensive damage to public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas; and

WHEREAS, Section 12-21 of the Code provides that where it is not possible to obtain a quorum to convene an emergency meeting to proclaim a state of local emergency, or extend or rescind such a proclamation, the Mayor, Vice-Mayor, or Town Manager are authorized to proclaim, extend, or rescind a local state of emergency.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

Section 1. The foregoing whereas clauses are true and correct and hereby adopted as the legislative and administrative findings of the Town Council and made a specific part of this Resolution; all exhibits attached hereto are incorporated herein and made a specific part of this Resolution.

Section 2. Hurricane Ian has caused a catastrophic disaster in the Town, damaging, or destroying over ninety percent (90%) of the Town's public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas and continues to pose a serious threat to the health, lives, property, and safety of the business owners and residents of the Town. Accordingly, the state of local emergency is hereby extended for seven (7) additional days *nun pro tunc* from 9:00 AM on the 8th day of May 2023.

Section 3. The amendment and extension of the proclamation of a state of local emergency set forth in Resolution 22-35 is an emergency measure necessary for the protection of the public safety, due to the catastrophic disaster caused by Hurricane Ian.

Section 4. As provided in Section 252.38(3)(a), *Florida Statutes* and Chapter 12, Article II of the Code, the Town hereby waives the procedures and formalities otherwise required by law of a municipality as set forth in said State law and the Code.

Section 5. The Town Manager or designee is hereby designated as the declaring official for purposes of implementing the emergency and disaster regulations of the Town. The Town Manager or designee will exercise all powers necessary to protect the health and safety of the public set forth in any Executive Order that may be issued by the Governor, Chapter 252, Fla. Stat., and Chapter 12, Article II of the Code. This proclamation also authorizes the Town Manager or designee to utilize government employees and volunteers to assist in securing private property to minimize the overall damage to the Town.

Section 6. The state of local emergency shall remain in effect until terminated as provided in Section 12-21 of the Code. However, the mandatory curfew and prohibition regarding the use of fresh water supplied by the County or local water company for any purpose other than cooking, drinking, or bathing set forth in Section 12-24 of the Code are hereby waived at this time.

Section 7. As provided in Section 12-21(a) of the Code, the Mayor, Vice-Mayor, or Town Manager may extend the proclamation of a state of local emergency as the "responsible official" of the Town.

Section 8. All resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

Section 9. Any scrivener or typographical errors that do not affect intent of this Resolution may be corrected with notice to and authorization of the Town Attorney and Town Manager without further process.

Section 10. If any clause, section, other part, or application of this Resolution is held by any court of competent jurisdiction to be unconstitutional or invalid, in part or application, it shall not affect the validity of the remaining portions or applications of this Resolution.

Section 11. This Resolution shall become effective upon the signature of the Mayor.

This Resolution was ADOPTED this 1st day of May 2023 upon the signature of the Mayor at 9:00 a.m.

TOWN OF FORT MYERS BEACH

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:

John R. Herin, Jr., Town Attorney

This Resolution was filed in the Office of the Town Clerk on this _____ day of May 2023.

RESOLUTION 23-42

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING AND EXTENDING THE PROCLAMATION THAT A STATE OF LOCAL EMERGENCY EXISTS BECAUSE OF THE CATASTROPHIC IMPACTS CAUSED BY HURRICANE IAN; PROVIDING FOR CONFLICTS; PROVIDING FOR SCRIVENER ERRORS, PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Chapter 252, *Florida Statutes*, authorizes the waiver of procedures and formalities, otherwise required of municipalities, and to take whatever prudent action is necessary to ensure the health, safety, and welfare of the community in the event of a state of emergency; and

WHEREAS, Section 252.38 *Florida Statutes*, specifically authorizes municipalities to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions required by law pertaining to performance of public work and taking whatever action is necessary to ensure the health, safety, and welfare of the community such as but not limited to entering into contracts; incurring obligations; employing permanent and temporary workers; utilizing volunteer workers; renting of equipment; acquiring and distributing supplies, materials and facilities with or without compensation, and appropriating and expending public funds; and

WHEREAS, the Town of Fort Myers Beach, Florida (Town), pursuant to its inherent home rule powers under Florida Constitution and otherwise has adopted certain emergency procedures set forth in Chapter 12, Article II – “Emergency and Disaster Planning” of the Code of Ordinances, Town of Fort Myers Beach, Florida (“Code”), and is otherwise authorized to activate the Town’s emergency plan; and

WHEREAS, the State of Florida and Lee County have declared a state of local emergency due to the catastrophic impacts of Hurricane Ian to Lee County; and

WHEREAS, as defined in the Code, Hurricane Ian has caused a catastrophic disaster in the Town causing extensive damage to public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas; and

WHEREAS, Section 12-21 of the Code provides that where it is not possible to obtain a quorum to convene an emergency meeting to proclaim a state of local emergency, or extend or rescind such a proclamation, the Mayor, Vice-Mayor, or Town Manager are authorized to proclaim, extend, or rescind a local state of emergency.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

Section 1. The foregoing whereas clauses are true and correct and hereby adopted as the legislative and administrative findings of the Town Council and made a specific part of this Resolution; all exhibits attached hereto are incorporated herein and made a specific part of this Resolution.

Section 2. Hurricane Ian has caused a catastrophic disaster in the Town, damaging, or destroying over ninety percent (90%) of the Town's public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas and continues to pose a serious threat to the health, lives, property, and safety of the business owners and residents of the Town. Accordingly, the state of local emergency is hereby extended for seven (7) additional days *nun pro tunc* from 9:00 AM on the 22nd day of May 2023.

Section 3. The amendment and extension of the proclamation of a state of local emergency set forth in Resolution 22-35 is an emergency measure necessary for the protection of the public safety, due to the catastrophic disaster caused by Hurricane Ian.

Section 4. As provided in Section 252.38(3)(a), *Florida Statutes* and Chapter 12, Article II of the Code, the Town hereby waives the procedures and formalities otherwise required by law of a municipality as set forth in said State law and the Code.

Section 5. The Town Manager or designee is hereby designated as the declaring official for purposes of implementing the emergency and disaster regulations of the Town. The Town Manager or designee will exercise all powers necessary to protect the health and safety of the public set forth in any Executive Order that may be issued by the Governor, Chapter 252, Fla. Stat., and Chapter 12, Article II of the Code. This proclamation also authorizes the Town Manager or designee to utilize government employees and volunteers to assist in securing private property to minimize the overall damage to the Town.

Section 6. The state of local emergency shall remain in effect until terminated as provided in Section 12-21 of the Code. However, the mandatory curfew and prohibition regarding the use of fresh water supplied by the County or local water company for any purpose other than cooking, drinking, or bathing set forth in Section 12-24 of the Code are hereby waived at this time.

Section 7. As provided in Section 12-21(a) of the Code, the Mayor, Vice-Mayor, or Town Manager may extend the proclamation of a state of local emergency as the "responsible official" of the Town.

Section 8. All resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

Section 9. Any scrivener or typographical errors that do not affect intent of this Resolution may be corrected with notice to and authorization of the Town Attorney and Town Manager without further process.

Section 10. If any clause, section, other part, or application of this Resolution is held by any court of competent jurisdiction to be unconstitutional or invalid, in part or application, it shall not affect the validity of the remaining portions or applications of this Resolution.

Section 11. This Resolution shall become effective upon the signature of the Mayor.

This Resolution was ADOPTED this 1st day of May 2023 upon the signature of the Mayor at 9:00 a.m.

TOWN OF FORT MYERS BEACH

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:

John R. Herin, Jr., Town Attorney

This Resolution was filed in the Office of the Town Clerk on this _____ day of May 2023.

RESOLUTION 23-43

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING AND EXTENDING THE PROCLAMATION THAT A STATE OF LOCAL EMERGENCY EXISTS BECAUSE OF THE CATASTROPHIC IMPACTS CAUSED BY HURRICANE IAN; PROVIDING FOR CONFLICTS; PROVIDING FOR SCRIVENER ERRORS, PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Chapter 252, *Florida Statutes*, authorizes the waiver of procedures and formalities, otherwise required of municipalities, and to take whatever prudent action is necessary to ensure the health, safety, and welfare of the community in the event of a state of emergency; and

WHEREAS, Section 252.38 *Florida Statutes*, specifically authorizes municipalities to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions required by law pertaining to performance of public work and taking whatever action is necessary to ensure the health, safety, and welfare of the community such as but not limited to entering into contracts; incurring obligations; employing permanent and temporary workers; utilizing volunteer workers; renting of equipment; acquiring and distributing supplies, materials and facilities with or without compensation, and appropriating and expending public funds; and

WHEREAS, the Town of Fort Myers Beach, Florida (Town), pursuant to its inherent home rule powers under Florida Constitution and otherwise has adopted certain emergency procedures set forth in Chapter 12, Article II – “Emergency and Disaster Planning” of the Code of Ordinances, Town of Fort Myers Beach, Florida (“Code”), and is otherwise authorized to activate the Town’s emergency plan; and

WHEREAS, the State of Florida and Lee County have declared a state of local emergency due to the catastrophic impacts of Hurricane Ian to Lee County; and

WHEREAS, as defined in the Code, Hurricane Ian has caused a catastrophic disaster in the Town causing extensive damage to public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas; and

WHEREAS, Section 12-21 of the Code provides that where it is not possible to obtain a quorum to convene an emergency meeting to proclaim a state of local emergency, or extend or rescind such a proclamation, the Mayor, Vice-Mayor, or Town Manager are authorized to proclaim, extend, or rescind a local state of emergency.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

Section 1. The foregoing whereas clauses are true and correct and hereby adopted as the legislative and administrative findings of the Town Council and made a specific part of this Resolution; all exhibits attached hereto are incorporated herein and made a specific part of this Resolution.

Section 2. Hurricane Ian has caused a catastrophic disaster in the Town, damaging, or destroying over ninety percent (90%) of the Town's public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas and continues to pose a serious threat to the health, lives, property, and safety of the business owners and residents of the Town. Accordingly, the state of local emergency is hereby extended for seven (7) additional days *nun pro tunc* from 9:00 AM on the 15th day of May 2023.

Section 3. The amendment and extension of the proclamation of a state of local emergency set forth in Resolution 22-35 is an emergency measure necessary for the protection of the public safety, due to the catastrophic disaster caused by Hurricane Ian.

Section 4. As provided in Section 252.38(3)(a), *Florida Statutes* and Chapter 12, Article II of the Code, the Town hereby waives the procedures and formalities otherwise required by law of a municipality as set forth in said State law and the Code.

Section 5. The Town Manager or designee is hereby designated as the declaring official for purposes of implementing the emergency and disaster regulations of the Town. The Town Manager or designee will exercise all powers necessary to protect the health and safety of the public set forth in any Executive Order that may be issued by the Governor, Chapter 252, Fla. Stat., and Chapter 12, Article II of the Code. This proclamation also authorizes the Town Manager or designee to utilize government employees and volunteers to assist in securing private property to minimize the overall damage to the Town.

Section 6. The state of local emergency shall remain in effect until terminated as provided in Section 12-21 of the Code. However, the mandatory curfew and prohibition regarding the use of fresh water supplied by the County or local water company for any purpose other than cooking, drinking, or bathing set forth in Section 12-24 of the Code are hereby waived at this time.

Section 7. As provided in Section 12-21(a) of the Code, the Mayor, Vice-Mayor, or Town Manager may extend the proclamation of a state of local emergency as the "responsible official" of the Town.

Section 8. All resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

Section 9. Any scrivener or typographical errors that do not affect intent of this Resolution may be corrected with notice to and authorization of the Town Attorney and Town Manager without further process.

Section 10. If any clause, section, other part, or application of this Resolution is held by any court of competent jurisdiction to be unconstitutional or invalid, in part or application, it shall not affect the validity of the remaining portions or applications of this Resolution.

Section 11. This Resolution shall become effective upon the signature of the Mayor.

This Resolution was ADOPTED this 1st day of May 2023 upon the signature of the Mayor at 9:00 a.m.

TOWN OF FORT MYERS BEACH

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:

John R. Herin, Jr., Town Attorney

This Resolution was filed in the Office of the Town Clerk on this _____ day of May 2023.

1. **Requested Motion:**

Meeting Date: May 1, 2023

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING A MAINTENANCE AGREEMENT FOR THE MATANZAS PASS BRIDGE BETWEEN THE FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT) AND THE TOWN; AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT ON BEHALF OF THE TOWN AND AUTHORIZING THE TOWN MANAGER TO TAKE ALL NECESSARY STEPS TO IMPLEMENT THE AGREEMENT; PROVIDING FOR SEVERABILITY; AND AN EFFECTIVE DATE.

Why the action is necessary:

Ensures the Matanzas Pass Bridge is well maintained in collaboration with Town staff and FDOT.

What the action accomplishes:

Provides reimbursement for the Town for performing regular maintenance activities on the Matanzas Pass Bridge.

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

5. **Background:**

The Town has continued to execute ongoing agreements since incorporation with the Florida Department of Transportation for regular maintenance activities on the Matanzas Pass Bridge including sweeping, manual weed control, liter removal, and mowing.

This agreement, if executed, will be in place for three years. The total contract amount, unless amended, for all three (3) years is \$23,996.52.

Attachments:

1. 23-41 FDOT Bridge Maintenance Agreement-C
2. Proposed BEF42 Town of Fort Myers Beach MOA Agreement

Financial Impact:

The proposed agreement will provide an annual cost allocation of four (4) quarterly lump sum payments will be made in the amount of \$1,999.71. The total annual contract/expenditure amount is \$7,998.84 unless the contract is amended.

The total contract amount, unless amended, for all three (3) years is \$23,996.52.

6. **Alternative Action**

Do not approve the Agreement and reconsider maintenance of the bridge area with FDOT.

7. **Management Recommendations:**

Adopt Resolution 23-41 and execute the Agreement with FDOT.

8. **Recommended Approval:**

Jason Freeman, Public Works Director
Jason Freeman, Public Works Director

Created/Initiated - 4/19/2023
Approved - 4/19/2023

John R Herin Jr, Town Attorney
Amy Baker, Town Clerk
Keith Wilkins , Interim Town Manager

Approved - 4/26/2023
Approved - 4/26/2023
Final Approval - 4/26/2023

RESOLUTION NUMBER 23-41

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING A MAINTENANCE AGREEMENT FOR THE MATANZAS PASS BRIDGE BETWEEN THE FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT) AND THE TOWN; AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT ON BEHALF OF THE TOWN AND AUTHORIZING THE TOWN MANAGER TO TAKE ALL NECESSARY STEPS TO IMPLEMENT THE AGREEMENT; PROVIDING FOR SEVERABILITY; AND AN EFFECTIVE DATE.

WHEREAS, Article VIII, Section 2 of the State Constitution and Chapter 166 of the Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Article X of the Town Charter empowers the Town Council to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town of Fort Myers Beach, Florida (“Town”); and

WHEREAS, the Town has the authority to enter into an Agreement with FDOT for the Town to perform litter removal, manual weed control, graffiti removal, mowing, and mechanical sweeping of the Matanzas Pass Bridge, as further described in Contract Number BEF42 (“Agreement”); and

WHEREAS, it is in the best interest of health, safety, and welfare of the business owners, residents, and visitors of the Town that the Town enter into the Agreement with FDOT.

NOW, THEREFORE, BE IT HEREBY RESOLVED, BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AS FOLLOWS:

Section 1. The above recitals are true and correct, and incorporated herein by this reference and are hereby adopted as the legislative and administrative findings of the Town Council.

Section 2. The Agreement between the Town and FDOT attached as Exhibit “A” is approved and the Mayor is authorized to execute the Agreement on behalf of the Town and the Town Manager or designee is authorized to take all necessary actions to implement the Agreement.

Section 3. If any section or portion of a section of this Resolution proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other section or part of this Resolution.

Section 4. This Resolution shall become effective upon adoption by the Town Council.

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member _____ and seconded by Council Member _____, and upon being put to a vote, the result was as follows:

Dan Allers, Mayor	_____	
Jim Atterholt, Vice Mayor	_____	
Bill Veach, Council Member	_____	_____
John King, Council Member	_____	
Karen Woodson, Council Member	_____	

ADOPTED this 1st day of May 2023, by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:**

John R. Herin, Jr., Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ____ day of May 2023.

**STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
MEMORANDUM OF AGREEMENT**

This is an Agreement by and between the **STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**, an Agency of the State of Florida, (hereinafter, "**DEPARTMENT**") and the **TOWN OF FORT MYERS BEACH** (hereinafter, "**AGENCY**") for the **AGENCY** to provide maintenance services.

WITNESSETH

1. WHEREAS, the **AGENCY** has the authority to enter into said Agreement and to undertake the project hereinafter described, and the **DEPARTMENT** has been granted the authority to function adequately in all areas of appropriate jurisdiction and is authorized under Fla. Stat. §334.044 to enter into this Agreement; and
2. WHEREAS, the **AGENCY** by Resolution No. _____ dated the _____ day of _____, _____, a copy of which is attached hereto and made a part hereof, has authorized its officers to enter into this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations contained herein, the parties agree as follows:

I. SERVICES AND PERFORMANCE

1. The **AGENCY** shall furnish certain services as described in ATTACHMENTS A and B, attached hereto and made a part hereof.
2. Locations, activities, quantities, cycles, and unit costs to be performed are listed in ATTACHMENT A.
3. Descriptions of how the activities are to be performed are included in ATTACHMENT B.
4. A Supplemental Agreement shall be executed by both parties for any additions or deletions to the work described in ATTACHMENTS A and/or ATTACHMENT B. No work may commence without an executed Supplemental Agreement involving any such changes or revisions required to be covered in a Supplemental Agreement. Performance of any such services prior to the execution of a Supplemental Agreement will result in nonpayment of those services.
5. The **DEPARTMENT** will be entitled at all times to be advised, at its request, as to the status of work being done by the **AGENCY** and of the details thereof. Coordination shall be maintained by the **AGENCY** with representatives of the **DEPARTMENT**.
6. All services shall be performed by the **AGENCY** to the satisfaction of the Director who shall decide all questions, difficulties and disputes of any nature whatsoever that may arise under or by reason of this Agreement. The Director's decision upon all claims, questions and disputes shall be final and binding upon all parties. Adjustments of compensation and contract time because of any major changes in the work that may become necessary or desirable shall be left to the absolute discretion of the Director.

7. The work specified in this Agreement is governed by ATTACHMENT A and ATTACHMENT B.
8. Reference herein to Director shall mean the **DEPARTMENT'S** District Secretary for District One, or authorized designee.
9. Upon execution of the Agreement, the NOTICE TO PROCEED signed by the District Secretary, or designee, will be sent to the **AGENCY**. The NOTICE TO PROCEED must be issued to the **AGENCY** within sixty (60) days after Agreement execution.

II. TERM

1. This Agreement shall take effect on the execution date listed on page 7. The term for providing service under this Agreement shall be a period of three (3) years ("INITIAL SERVICE TERM"). Calculation for the INITIAL SERVICE TERM shall begin on the fourteenth (14th) calendar day after issuance of the NOTICE TO PROCEED, or on the day the **AGENCY** begins work after receipt of the NOTICE TO PROCEED, whichever date is earlier.
2. Prior to expiration of the INITIAL SERVICE TERM, and subject to mutual agreement of the parties, this Agreement may be renewed ("RENEWAL TERM") for an additional three (3) years. Renewals shall be contingent upon satisfactory performance evaluations by the **DEPARTMENT**. The **DEPARTMENT'S** performance and obligation to pay under any such renewal is contingent upon an annual appropriation by the Legislature. Any renewal or extension shall be in writing and executed by both parties and shall be subject to the same terms and conditions set forth in this Agreement.
3. The **AGENCY** shall provide services unless terminated in accordance with Section VI below of this Agreement.

III. COMPENSATION AND PAYMENT

1. The **DEPARTMENT** shall pay the **AGENCY** for services rendered in accordance with this Agreement annually, as follows:

Four (4) quarterly lump sum payments will be made in the amount of **One Thousand Nine Hundred Ninety-Nine and Seventy-One Cents (\$1,999.71)**. The total annual contract/expenditure amount is **Seven Thousand Nine Hundred Ninety-Eight Dollars and Eighty-Four Cents (\$7,998.84)** unless the contract is amended.

The total contract amount, unless amended, for all three (3) years is **Twenty-Three Thousand Nine Hundred Ninety-Six Dollars and Fifty-Two Cents (\$23,996.52)**.

2. The lump sum payment above is based on the unit price for services that are listed in ATTACHMENT A.

3. The **DEPARTMENT** shall have the right to retain out of any payment due the **AGENCY** under this Agreement an amount sufficient to satisfy any amount due and owing to the **DEPARTMENT** by the **AGENCY** on any other Agreement between the **AGENCY** and the **DEPARTMENT**.
4. Payment shall be made only after receipt and approval of goods and services unless advance payments are authorized by the Chief Financial Officer of the State of Florida under Chapters 215 and 216, Florida Statutes. Deliverable(s) must be received and accepted in writing by the Contract Manager on the **DEPARTMENT's** invoice transmittal forms prior to payment. If the **DEPARTMENT** determines that the performance of the **AGENCY** is unsatisfactory, the **DEPARTMENT** shall notify the **AGENCY** for the deficiency to be corrected, which the correction shall be made within a time frame to be specified by the **DEPARTMENT**. The **AGENCY** shall, within five days after notice from the **DEPARTMENT**, provide the **DEPARTMENT** with a corrective action plan describing how the **AGENCY** will address all issues of contract non-performance, unacceptable performance, failure to meet the minimum performance levels, deliverable deficiencies, or non-compliance with the Agreement. If the corrective action plan is unacceptable to the **DEPARTMENT**, the **AGENCY** shall be assessed a non-performance retainage equivalent to 10% of the total invoice amount. The retainage shall be applied to the invoice for the then-current billing period. The retainage shall be withheld until the **AGENCY** resolves the deficiency. If the deficiency is subsequently resolved, the **AGENCY** may bill the **DEPARTMENT** for the retained amount during the next billing period. If the **AGENCY** is unable to resolve the deficiency, the funds retained may be forfeited at the end of the Agreement term.
5. If this Agreement involves units of deliverables, then such units must be received and accepted in writing by the **DEPARTMENT'S** Project Manager prior to payments.
6. Bills for fees or other compensation for services or expenses shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof.
7. **AGENCY** providing goods and services to the **DEPARTMENT** should be aware of the following time frames. Upon receipt, the **DEPARTMENT** has five (5) working days to inspect and approve the goods and services, unless the Agreement specifies otherwise. The **DEPARTMENT** has twenty (20) days to deliver a request for payment (voucher) to the **DEPARTMENT** of Banking and Finance. The twenty (20) days are measured from the latter of the date the invoice is received or the goods or services are received, inspected and approved.
8. If a payment is not available within forty (40) days, a separate interest penalty in accordance with Fla. Stat. §215.422(3)(b), will be due and payable, in addition to the invoice amount, to the **AGENCY**. Interest penalties of less than one (1) dollar will not be enforced unless the **AGENCY** requests payment. Invoices which have to be returned to an **AGENCY** because of **AGENCY** preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the **DEPARTMENT**.

9. A Vendor Ombudsman has been established within the **DEPARTMENT** of Banking and Finance. The duties of this individual include acting as an advocate for contractors/vendors who may be experiencing problems in obtaining timely payment(s) from a state **AGENCY**. The Vendor Ombudsman may be contacted at (850) 413-5516.
10. Records of costs incurred under terms of this Agreement shall be maintained and made available upon request to the **DEPARTMENT** at all times during the period of this Agreement and for three (3) years after final payment is made. Copies of these documents and records shall be furnished to the **DEPARTMENT** upon request. Records of costs incurred include the **AGENCY'S** general accounting records and the project records, together with supporting documents and records of the **AGENCY** and all subcontractors performing work on the project, and all other records of the **AGENCY** and subcontractors considered necessary by the **DEPARTMENT** for a proper audit of costs.
11. The **DEPARTMENT**, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The **DEPARTMENT** shall require a statement from the Comptroller of the **DEPARTMENT** that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding one year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years. Accordingly, the State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature.
12. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity and may not transact business with any public entity in excess of the threshold amount provided in Fla. Stat. §287.017, for Category Two for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

IV. INDEMNITY AND INSURANCE

1. **LIABILITY INSURANCE.** The **AGENCY** shall carry and keep in force during the period of this Agreement a general liability insurance policy or policies with a company or companies authorized to do business in Florida, affording public liability insurance with combined bodily injury limits of at least \$250,000 per person and \$500,000 each occurrence, and property damage insurance of at least \$50,000 each occurrence, for the services to be rendered in accordance with this Agreement. In the alternative, the **AGENCY** may satisfy the requirements of this paragraph by providing to the **DEPARTMENT** written evidence of being self-insured.

2. **WORKER'S COMPENSATION.** The **AGENCY** shall also carry and keep in force Worker's Compensation insurance as required for the State of Florida under the Worker's Compensation Law. In the alternative, the **AGENCY** may satisfy the requirements of this paragraph by providing to the **DEPARTMENT** written evidence of being self-insured.
3. To the extent permitted by law, **AGENCY** shall indemnify, defend and hold harmless **DEPARTMENT** against any actions, claims, or damages arising out of, relating to, or resulting from negligent or wrongful act(s) of **AGENCY**, or any of its officers, agents or employees, acting within the scope of their office or employment, in connection with the obligations and rights granted to or exercised by **AGENCY** hereunder, to the extent and within the limitations of Section 768.28, Florida Statutes. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Florida Statutes, Section 768.28, nor shall the same be construed to constitute agreement by **AGENCY** to indemnify **DEPARTMENT** for the negligent acts or omissions of **DEPARTMENT**, its officers, agents, or employees, or for the acts of third parties. Nothing herein shall be construed as consent by **AGENCY** to be sued by third parties in any manner arising out of this agreement. The **AGENCY** shall also require all contractors and subcontractors who conduct operations within the Project to indemnify and hold **DEPARTMENT** harmless against any actions, claims, or damages arising out of, relating to, or resulting from negligent or wrongful act(s) of said Contractor or Subcontractor or any of their officers, agents, or employees, acting within the scope of their office or employment. The indemnities assumed by the **AGENCY** shall survive termination of this agreement.

V. COMPLIANCE WITH LAWS

1. The **AGENCY** shall allow public access to all documents, papers, letters, or other material subject to the provisions of Fla. Stat. §119, and made or received by the **AGENCY** in conjunction with this Agreement. Failure by the **AGENCY** to grant such public access shall be grounds for immediate unilateral cancellation of this Agreement by the **DEPARTMENT**.
2. The **AGENCY** shall comply with all federal, state, and local laws and ordinances applicable to the work or payment for work thereof, and shall not discriminate on the grounds of race, color, religion, sex, or national origin in the performance of work under this Agreement.
3. E-Verify. The Agency shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Agency during the term of the Agreement and shall expressly require any subcontractors performing work or providing services pursuant to the Agreement to likewise utilize the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of all new employees hired by the subcontractor during the Agreement term.

VI. TERMINATION AND DEFAULT

1. This Agreement may be canceled by the **DEPARTMENT** in whole or in part at any time the interest of the **DEPARTMENT** requires such termination. The **DEPARTMENT** also reserves the right to seek termination or cancellation of this Agreement in the event the **AGENCY** shall be placed in either voluntary or involuntary bankruptcy. The **DEPARTMENT** further reserves the right to terminate or cancel this Agreement in the event an assignment is made for the benefit of creditors. This Agreement may be canceled by the **AGENCY** upon sixty (60) days written notice to the **DEPARTMENT**.
2. If the **DEPARTMENT** determines that the performance of the **AGENCY** is not satisfactory, the **DEPARTMENT** shall have the option of (a) immediately terminating the Agreement, or (b) notifying the **AGENCY** of the deficiency with a requirement that the deficiency be corrected within a specified time, otherwise the Agreement will be terminated at the end of such time, or (c) take whatever action is deemed appropriate by the **DEPARTMENT**.
3. If the **DEPARTMENT** requires termination of the Agreement for reasons other than unsatisfactory performance of the **AGENCY**, the **DEPARTMENT** shall notify the **AGENCY** of such termination, with instructions to the effective date of termination or specify the stage of work at which the Agreement is to be terminated.

If the Agreement is terminated before performance is completed, the **AGENCY** shall be paid only for that work satisfactorily performed for which costs can be substantiated. Such payment, however, may not exceed an amount which is the same percentage of the contract price as the amount of work satisfactorily completed is a percentage of the total work called for by this Agreement. All work in progress will become the property of the **DEPARTMENT** and will be turned over promptly by the **AGENCY**.

VII. MISCELLANEOUS

1. The **AGENCY** and the **DEPARTMENT** agree that the **AGENCY**, its employees, and subcontractors are not agents of the **DEPARTMENT** as a result of this Agreement for purposes other than those set out in Fla. Stat. §337.274.
2. All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.
3. This Agreement embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein, and this Agreement shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties hereto.
4. It is understood and agreed by the parties hereto that if any part, term or provision of this Agreement is by the courts held to be illegal or in conflict with any law of the State of Florida, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term or provision held to be invalid.

5. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

VIII. ATTACHMENTS

1. All ATTACHMENTS referenced in this Agreement are incorporated and made a part of this Agreement.

ATTACHMENT A – Location and Cost Breakdown

ATTACHMENT B – Description of Maintenance Activities

IX. EXECUTION

In witness whereof, the TOWN OF FORT MYERS BEACH has caused this Agreement to be executed in its behalf, by the _____ or its designee, as authorized by its Resolution, and the FLORIDA DEPARTMENT OF TRANSPORTATION has caused this agreement to be executed in its behalf through its District Secretary or authorized designee. The execution date of this Agreement shall be this _____ day of _____, _____.
FDOT to enter effective date.

FORT MYERS BEACH, FLORIDA

ATTEST:

CLERK NAME

SIGNATURE

(SEAL)

TITLE

DATE

PRINT NAME

DATE

LEGAL REVIEW:

DATE

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

DS


DISTRICT MAINTENANCE ENGINEER

DISTRICT ONE SECRETARY OR DESIGNEE

Amarilys Alfonso-Perez, P.E.

PRINT NAME

Keith Slater, P.E.

PRINT NAME

DATE

DATE

DS


LEGAL REVIEW:

AVAILABILITY OF FUNDS APPROVAL:

April 4, 2023

DATE

DATE

MAINTENANCE AGREEMENT NO.: BEF42

FM NO.: 432729-1-78-15

Page 1 of 1

ATTACHMENT "A"
LOCATIONS AND PRICES FOR TOWN OF FORT MYERS BEACH

Location: 1					
Section:		12004000		Mile Post:	0.000 - 0.659
State Road:		SR 685 Main Street to Estero Boulevard			
Activity	Quantity	Units	Cycles	Unit Cost	Location Cost
Large Machine Mowing	0.965	Acres	11	\$17.00	\$180.46
Small Machine Mowing	0.258	Acres	11	\$54.00	\$153.25
Manual Weed Control	3	Acres	3	\$295.17	\$2,656.53
Litter Removal	20	Acres	14	\$9.40	\$2,632.00
Mechanical Sweeping	5	Miles	12	\$39.61	\$2,376.60

SUMMARY			
Activity	Quantity	Units Cost	Cycles
Large Machine Mowing	0.965	\$17.00	11
Small Machine Mowing	0.258	\$54.00	11
Manual Weed Control	3	\$295.17	3
Litter Removal	20	\$9.40	14
Mechanical Sweeping	5	\$39.61	12

Total Annual Cost	\$7,998.84
Four Quarterly Payments	\$1,999.71

Attachment "B"
SPECIFICATIONS

AWARD AND EXECUTION OF CONTRACT – PUBLIC RECORDS.
(REV 10-17-16) (FA 10-24-16) (7-22)

ARTICLE 3-9 is expanded by the following:

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

District 1

863-519-2623

D1prcustodian@dot.state.fl.us

Florida Department of Transportation

District 1 – Office of General Counsel

801 N. Broadway Avenue

Bartow, FL 33830

SECTION 102

MAINTENANCE OF TRAFFIC

102-1 Description.

Maintain traffic within the limits of the project for the duration of the construction period, including any temporary suspensions of the work. Construct and maintain detours. Provide facilities for access to residences, businesses, etc., along the project. Furnish, install and maintain traffic control and safety devices during construction. Furnish and install work zone pavement markings for maintenance of traffic (MOT) in construction areas. Provide any other special requirements for safe and expeditious movement of traffic specified in the Plans. MOT includes all facilities, devices and operations as required for safety and convenience of the public within the work zone.

Do not maintain traffic over those portions of the project where no work is to be accomplished or where construction operations will not affect existing roads. Do not obstruct or create a hazard to any traffic during the performance of the work, and repair any damage to existing pavement open to traffic.

102-2 Materials.

Meet the following requirements:

Bituminous Adhesive.....	Section 970J\$
Temporary Raised Pavement Markers.....	Section 990
Paint.....	Section 971
Removable Tape	Section 990
Glass Spheres	Section 971
Temporary Traffic Control Device Materials	Section 990
Retroreflective and Nonreflective Sheeting for Temporary Traffic Control Devices.....	Section 994

102-2.1 Temporary Traffic Control Devices: Use only the materials meeting the requirements of Section 990, Section 994, Standard Plans and the Manual on Uniform Traffic Control Devices (MUTCD).

102-2.2 Detour: Provide all materials for the construction and maintenance of all detours.

102-2.3 Commercial Materials for Driveway Maintenance: Provide materials of the type typically used for base, including reclaimed asphalt pavement (RAP) material, and having stability and drainage properties that will provide a firm surface under wet conditions.

102-3 Specific Requirements.

102-3.1 Beginning Date of Contractor's Responsibility: Maintain traffic starting the day work begins on the project or on the first day Contract Time is charged, whichever is earlier.

102-3.2 Worksite Traffic Supervisor: Provide a Worksite Traffic Supervisor who is responsible for initiating, installing, and maintaining all temporary traffic control devices as described in this Section and the Contract Documents. Provide all equipment and materials needed to set up, take down, maintain traffic control, and handle traffic-related situations. Use approved alternate Worksite Traffic Supervisors when necessary.

The Worksite Traffic Supervisor must meet the personnel qualifications specified in Section 105.

The Worksite Traffic Supervisor is to perform the following duties:

1. On site direction of all temporary traffic control on the project.
2. Is on site during all set up and take down, and performs a drive through inspection immediately after set up.
3. Is on site during all nighttime operations ensuring proper temporary traffic control.

4. Immediately corrects all safety deficiencies and corrects minor deficiencies that are not immediate safety hazards within 24 hours.

5. Is available on a 24 hour per day basis and present at the site within 45 minutes after notification of an emergency situation and is prepared to respond to maintain temporary traffic control or to provide alternate traffic arrangements.

6. Conducts daily daytime and weekly nighttime inspections of projects with predominately daytime work activities, and daily nighttime and weekly daytime inspections of projects with predominantly nighttime work activities of all traffic control devices, traffic flow, pedestrian, bicyclist, and business accommodations.

Advise the project personnel of the schedule of these inspections and give them the opportunity to join in the inspection as deemed necessary. Pedestrians are to be accommodated with a safe, accessible travel path around work sites separated from mainline traffic in compliance with the Americans with Disabilities Act (ADA) Standards for Transportation Facilities. Maintain existing or detour bicycle facilities satisfactorily throughout the project limits. Existing businesses in work areas are to be provided with adequate entrances for vehicular and pedestrian traffic during business hours.

The Department may disqualify and remove from the project a Worksite Traffic Supervisor who fails to comply with the provisions of this Section. The Department may temporarily suspend all activities, except traffic, erosion control and such other activities that are necessary for project maintenance and safety, for failure to comply with these provisions.

102-3.3 Lane Closures: Approval for all lane closures, mobile operations, and traffic pacing operations is required. Submit routine requests to the Engineer fourteen calendar days in advance of planned lane closures, mobile operations, and traffic pacing operations. For unforeseen events that require cancelling or rescheduling lane closures, mobile operations, and traffic pacing operations, revise the lane closure request as soon as possible.

102-4 Alternative Traffic Control Plan.

The Contractor may propose an alternative traffic control plan (TCP) to the plan presented in the Contract Documents. The Contractor's Engineer of Record must sign and seal the alternative plan and submit to the Engineer. Prepare the TCP in conformance with and in the form outlined in the current version of the FDOT Design Manual. Indicate in the plan a TCP for each phase of activities. Take responsibility for identifying and assessing any potential impacts to a utility that may be caused by the alternate TCP proposed by the Contractor, and notify the Department in writing of any such potential impacts to utilities.

For projects with nighttime lane closure restrictions where paving is expected to extend into the winter months, the Contractor may propose an alternative TCP allowing for daytime lane closures for friction course paving. The alternative TCP must be a lane closure analysis based on actual traffic counts and prepared in accordance with the FDOT Design Manual.

Engineer's approval of the alternate TCP does not relieve the Contractor of sole responsibility for all utility impacts, costs, delays or damages, whether direct or indirect, resulting from Contractor initiated changes in the design or construction activities from those in the original Contract Specifications, Design Plans (including TCPs) or other Contract Documents

and which effect a change in utility work different from that shown in the Utility Plans, joint project agreements or utility relocation schedules.

The Department reserves the right to reject any alternative TCP. Obtain the Engineer's written approval before beginning work using an alternate TCP. The Engineer's written approval is required for all modifications to the TCP. The Engineer will only allow changes to the TCP in an emergency without the proper documentation.

102-5 Traffic Control.

102-5.1 Standards: FDOT Standard Plans are the minimum standards for the use in the development of all TCPs. The MUTCD, Part VI is the minimum national standard for traffic control for highway construction, maintenance, and utility operations. Follow the basic principles and minimum standards contained in these documents for the design, application, installation, maintenance, and removal of all traffic control devices, warning devices and barriers which are necessary to protect the public and workers from hazards within the project limits.

102-5.2 Maintenance of Roadway Surfaces: Maintain all lanes that are being used for the MOT, including those on detours and temporary facilities, under all weather conditions. Keep the lanes reasonably free of dust, potholes and rutting. Provide the lanes with the drainage facilities necessary to maintain a smooth riding surface under all weather conditions.

102-5.3 Number of Traffic Lanes: Maintain one lane of traffic in each direction. Maintain two lanes of traffic in each direction at existing four (or more) lane cross roads, where necessary to avoid undue traffic congestion. Construct each lane used for MOT at least as wide as the traffic lanes existing in the area before commencement of construction. Do not allow traffic control and warning devices to encroach on lanes used for MOT.

The Engineer may allow the Contractor to restrict traffic to one-way operation for short periods of time provided that the Contractor employs adequate means of traffic control and does not unreasonably delay traffic. When a construction activity requires restricting traffic to one-way operations, locate the flaggers within view of each other when possible. When visual contact between flaggers is not possible, equip them with 2-way radios, official, or pilot vehicles, or use traffic signals.

102-5.4 Crossings and Intersections: Provide and maintain adequate accommodations for intersecting and crossing traffic. Do not block or unduly restrict any median opening, road or street crossing the project unless approved by the Engineer. Before beginning any construction, submit to the Engineer the names and phone numbers of persons that can be contacted when signal operation malfunctions.

102-5.5 Access for Residences and Businesses: Provide continuous access to all residences and all places of business.

102-5.6 Protection of the Work from Injury by Traffic: Where traffic would be injurious to a base, surface course, or structure constructed as a part of the work, maintain all traffic outside the limits of such areas until the potential for injury no longer exists.

102-5.7 Flagger: Provide flaggers to control traffic when traffic in both directions must use a single lane and in other situations as required. All flaggers must meet the personnel qualifications specified in Section 105.

102-5.8 Conflicting Pavement Markings: Where the lane use or where normal vehicle or pedestrian paths are altered during construction, remove all pavement markings (paint, tape, thermoplastic, raised pavement markers, etc.) that will conflict with the adjusted vehicle or pedestrian paths. Use of paint to cover conflicting pavement markings is prohibited. Remove conflicting pavement markings using a method that will not damage the surface texture of the pavement and which will eliminate the previous marking pattern regardless of weather and light conditions.

Remove all pavement markings that will be in conflict with “next phase of operation” vehicle pedestrian paths as described above, before opening to vehicle traffic or use by pedestrians.

Cost for removing conflicting pavement markings (paint, tape, thermoplastic, raised pavement markers, etc.) to be included in Maintenance of Traffic, lump sum.

102-5.9 Vehicle and Equipment Visibility: Equip all pickups and automobiles used on the project with a minimum of one Class 2 warning light that meets the Society of Automotive Engineers Recommended Practice SAE J595, dated November 1, 2008, or SAE J845, dated December 1, 2007, and incorporated herein by reference. Existing lights that meet SAE J845, dated March, 1992, or SAE J1318, dated April, 1986, may be used to their end of service life. The warning lights must be a high intensity amber or white rotating, flashing, oscillating or strobe light. Lights must be unobstructed by ancillary vehicle equipment such as ladders, racks or booms and be visible 360 degrees around the vehicle. If the light is obstructed, additional lights will be required. The lights must be operating when the vehicle is in a work area where a potential hazard exists, when operating at less than the average speed for the facility while performing work activities, making frequent stops or called for in the Plans or Standard Plans.

Equip all other vehicles and equipment with a minimum of 4 square feet of retroreflective sheeting or warning lights.

102-5.10 No Waiver of Liability: Conduct operations in such a manner that no undue hazard results due to the requirements of this Article. The procedures and policies described herein in no way acts as a waiver of any terms of the liability of the Contractor or his surety.

102-6 Detours.

102-6.1 General: Construct and maintain detour facilities wherever it becomes necessary to divert traffic, including pedestrians and bicyclists, from any existing facility, or wherever construction operations block the flow of traffic.

102-6.2 Construction: Plan, construct, and maintain detours for the safe passage of traffic in all conditions of weather. Provide the detour with all facilities necessary to meet this requirement.

Where pedestrian facilities are detoured, blocked or closed during the work, provide safe alternate accessible routes through or around the work zone meeting the

requirements of the ADA Standards for Transportation Facilities. When temporary walkway surfaces and ramps are required to be constructed, ensure surfaces are stable, firm, slip resistant, and kept free of any obstructions and hazards such as holes, debris, mud, construction equipment and stored materials.

When the Plans call for the Department to furnish detour bridge components, construct the pile bents in accordance with the Plans, unless otherwise authorized by the Engineer.

Provide two Contractor representatives, who will be directly involved in the erection of Department-owned temporary bridging, to attend a mandatory one-day training session to be conducted at the Department's storage facility. No bridging will be released to the Contractor prior to the completion of this training.

Submit the following: company name, phone number, office address, project contact person, names of the representatives who will attend the training described above, project number, detour bridge type, bridge length, span length, location and usage time frames, to the Engineer at least 30 calendar days before the intended pick-up date, to obtain the storage facility location and list of components for the project. Upon receipt, the Engineer will, within 10 calendar days submit an approved material list to the Contractor and the appropriate Department storage yard.

Submit the name of the representative with authority to pick up components, to the Engineer at least 10 calendar days before the proposed pick-up date. The Department is not obligated to load the bridge components without this notice. Take responsibility and sign for each item loaded at the time of issuance.

Provide timber dunnage, and transport the bridge components from the designated storage facility to the job site. Unload, erect, and maintain the bridge, then dismantle the bridge and load and return the components to the designated storage facility.

Notify the Engineer in writing at least 10 calendar days before returning the components. Include in this notice the name of the Contractor's representative authorized to sign for return of the bridge components. The yard supervisor is not obligated to unload the bridge components without this notice.

The Department will provide equipment and an operator at the Department's storage facility to assist in loading and unloading the bridge components. Furnish all other labor and equipment required for loading and unloading the components.

The Department's representative will record all bridge components issued or returned on the Detour Bridge Issue and Credit Ticket. The tickets must be signed by a Department and a Contractor representative, after loading or unloading each truck to document the quantity and type of bridging issued or returned.

Bind together all bridge components to be returned in accordance with the instructions given by the storage facility. The yard supervisor will repack components that are not packed in compliance with these instructions. Upon request, written packing instructions will

be made available to the Contractor, before dismantling of the bridge for return to the Department's storage facility.

Assume responsibility for any shortage or damage to the bridge components. Monies due the Contractor will be reduced at the rate of \$35.00 per hour plus materials for repacking, repairs or replacement of bridge components.

The skid resistance of open steel grid decking on the detour bridge may decrease gradually after opening the bridge to traffic. The Department will furnish a pneumatic floor scabbler machine for roughening the roadway surface of the detour bridge decking. Provide an air compressor at the job site with 200 cubic feet per minute capacity, 90 psi air pressure for the power supply of the machine, and an operator. Transport the scabbler machine to and from the Department's structures shop. Repair any damage to the scabbler machine caused by operations at no expense to the Department. Perform scabbling when determined necessary by the Engineer. The Department will pay for the cost of scabbling as Unforeseeable Work in accordance with 4-4.

Return the bridge components to the designated storage facility beginning no later than 10 calendar days after the date the detour bridge is no longer needed, the date the new bridge is placed in service, or the date Contract Time expires, whichever is earliest. Return the detour bridging at an average of not less than 200 feet per week. Upon failure to return the bridge components to the Department within the time specified, compensate the Department for the bridge components not returned at the rate of \$5.00 per 10 feet, per day, per bridge, for single lane; and \$10.00 per 10 feet, per day, per bridge, for dual lane until the bridge components are returned to the Department.

102-6.3 Construction Methods: Select and use construction methods and materials that provide a stable and safe detour facility. Construct the detour facility to have sufficient durability to remain in good condition, supplemented by maintenance, for the entire period that the detour is required.

102-6.4 Removal of Detours: Remove detours when they are no longer needed and before the Contract is completed. Take ownership of all materials from the detour and dispose of them, except for the materials on loan from the Department with the stipulation that they are returned.

102-6.5 Detours Over Existing Roads and Streets: When the Department specifies that traffic be detoured over roads or streets outside the project area, do not maintain such roads or streets. However, maintain all signs and other devices placed for the purpose of the detour.

102-6.6 Operation of Existing Movable Bridges: The Department will maintain and operate existing moveable bridges that are to be removed by the Contractor until such time as they are closed to traffic. During this period, make immediate repairs of any damage to such structures caused by use or operations related to the work at no expense to the Department, but do not provide routine repairs or maintenance. In the event that use or operations result in damage to a bridge requiring repairs, give such repairs top priority to any equipment, material, or labor available.

102-6.7 Special Detour: A special detour is defined as a diversion or lane shift for vehicular traffic that requires temporary pavement.

102-6.8 Pedestrian Special Detour: A pedestrian special detour is defined as a temporary pedestrian way that requires temporary pavement or other stable, firm, slip-resistant surface.

102-7 Traffic Control Officer.

Provide uniformed law enforcement officers, including marked law enforcement vehicles, to assist in controlling and directing traffic in the work zone when the following types of work is necessary on projects:

1. When directing traffic/overriding the signal in a signalized intersection.
2. When Standard Plans, Index 102-619 is used on freeway facilities (interstates, toll roads, and expressways) at nighttime for work within the travel lane.
3. When Standard Plans, Index 102-655 Traffic Pacing is called for in the Plans or approved by the Engineer.
4. When pulling conductor/cable above an open traffic lane on limited access facilities, when called for in the Plans or approved by the Engineer.
5. When Standard Plans, Index 102-625 Temporary Road Closure 5 Minutes or Less is used.
6. When performing lane closures during nighttime operations on roadways with posted speed limits 55 mph or greater.

At the Contractor's option, traffic control officers may be used for operations other than those listed above.

Cost for traffic control officers will be paid for as described in 102-11.2.

The Department will not consider any claim arising from the failure of a traffic control officer to be present or available on the project. A noncompensable time extension may be granted when a state or local emergency requires all area law enforcement officers to be on-duty and not available for hire.

102-8 Driveway Maintenance.

102-8.1 General: Ensure that each residence and business has safe, stable, and reasonable access.

102-8.2 Construction Methods: Place, level, manipulate, compact, and maintain the material, to the extent appropriate for the intended use.

As permanent driveway construction is accomplished at a particular location, the Contractor may salvage and reuse previously placed materials that are suitable for reuse on other driveways.

102-9 Temporary Traffic Control Devices.

102-9.1 General: Use only devices that are listed on the APL. Immediately remove or cover, using any method of covering approved by the Engineer, any existing or temporary devices that do not apply to current conditions.

The use of NCHRP Report 350 Recommended Procedures for the Safety Performance Evaluation of Highway Features devices purchased prior to January 1, 2020 is permitted on projects let prior to January 1, 2030. All devices manufactured or purchased on or after January 1, 2020 must be MASH compliant in accordance with Section 990.

The APL number is to be permanently marked on the device at a readily visible location. Sheeting used on devices and pavement markings are exempt from this requirement.

Notify the Engineer in writing of any scheduled operation that will affect traffic patterns or safety sufficiently in advance of commencing such operation to permit review of the plan for the proposed installation of temporary traffic control devices.

Assign an employee the responsibility of maintaining the position and condition of all temporary traffic control devices throughout the duration of the Contract. Keep the Engineer advised at all times of the identification and means of contacting this employee on a 24 hour basis.

Maintain temporary traffic control devices in the correct position, properly oriented, clearly visible and clean, at all times. All applicable temporary traffic control devices must meet the classification category of Acceptable as defined in the American Traffic Safety Services Association (ATSSA) Quality Guidelines for Temporary Traffic Control Devices and Features. Temporary concrete barriers must meet the classification category of Acceptable defined in the Department's Temporary Concrete Barrier Evaluation Guide, which may be viewed at the following URL: https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/programmanagement/implemented/urlinspecs/files/docs/default-source/content-docs/programmanagement/implemented/urlinspecs/files/temporaryconcretebarrierguide.pdf.pdf?sfvrsn=343b4c97_10.

Pedestrian longitudinal channelizing devices (LCDs) must meet the classification category of Acceptable as defined in the Pedestrian LCD Evaluation Guide, which may be viewed at the following URL: https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/programmanagement/implemented/urlinspecs/files/lcdevaluationguide.pdf?sfvrsn=166e0f16_2.

Immediately repair, replace or clean damaged, defaced or dirty devices. Traffic control devices must not be cleaned while installed/used. Use of warning lights on any temporary traffic control device is prohibited, with the exception of the trailer mounted portable regulatory signs.

Employ an approved independent Channelizing Device Supplier (CDS) to provide and maintain the condition of the following non-fixed channelizing devices: drums, cones, vertical panels, barricades, tubular markers, and longitudinal channelizing devices. Cones may be provided and maintained by the Contractor.

The CDS shall not be affiliated with the Contractor and shall be approved by the Engineer in accordance with 102-9.1.1. The CDS shall submit a monthly certification on letterhead that the channelizing devices mentioned above installed/used within the work zone meet classification category of Acceptable as defined in the Pedestrian LCD Evaluation Guide and the ATSSA Quality Guidelines for Temporary Traffic Control Devices and Features. The CDS shall submit the monthly certification on letterhead for channelizing devices installed/used within the work zone. The CDS certification shall include the following statement, "I certify that I have provided and maintained the following devices <list devices covered under the certification> in accordance with Pedestrian LCD Evaluation Guide and the ATSSA Quality Guidelines for Temporary Traffic Control Devices and Features." If the Contractor chooses to provide and maintain cones, the Contractor must submit a monthly Contractor certification on letterhead that all cones installed/used within the work zone meet acceptable standards as outlined in the ATSSA Quality Guidelines for Temporary Traffic Control Devices and Features. The Contractor certification shall include the following statement, "I certify that I have provided and maintained cones in accordance with the ATSSA Quality Guidelines for Temporary Traffic Control Devices and Features."

102-9.1.1 Approved Independent Channelizing Device Supplier (CDS)

Requirements: Submit the following documents to the Engineer for independent CDS approval at the preconstruction conference. A CDS may elect to provide a one-time submittal of this information to the State Construction Office for review and pre-approval. Department approved CDSs are listed on the State Construction Office website. Inform the Engineer at the preconstruction conference of this approval.

1. A letter on company letterhead signed and dated by the owner of the company or company officer with the following information and statements:

a. The company's owners, stockholders, and officers.
b. A statement declaring that the company will not perform as a CDS on any project where there is common ownership, directly or indirectly, between the company and the Contractor.

c. A statement declaring that the company will furnish and maintain the condition of all channelizing devices with the exception of cones as required in 1029.1 with its own forces.

d. A statement declaring at least five years of experience in providing channelizing device supplier services, with its own inventory of channelizing devices.

e. On a separate sheet, list a sample project history of the company's experience as a channelizing device supplier for the five years declared in item 1(d) above including the following information:

1. Project name and number and a brief description of CDS work performed,

3. Beginning and ending date of CDS project activities,

4. Location of project (city, state),

5. Monetary amount of CDS work on project,

6. Owner of project, contact person and phone number
with area code,

7. Name of Contractor (client) that the work was
performed for and phone number with area code.

2. A maintenance plan for approval by the Department that outlines the frequency and methods for maintaining the condition of all channelizing devices, except cones owned and maintained by the Contractor, installed/used in the work zone.

102-9.2 Work Zone Signs: Furnish, install, maintain, remove and relocate signs in accordance with the Plans and Standard Plans, Index 102-600.

102-9.2.1 Post Mounted Signs: Meet the requirements of 990-8.

102-9.2.2 Portable Signs: Use only approved systems, which includes sign stands and attachment hardware (nuts, bolts, clamps, brackets, braces, etc.), meeting the vendor requirements specified on the APL drawings.

102-9.2.3 Barrier Mounted Signs: If post mounting criteria cannot be achieved in accordance with Standard Plans, Index 102-600 and a barrier or traffic railing exists, use temporary sign criteria provided in Standard Plans, Index 700-013.

102-9.3 Business Signs: Provide and place signs in accordance with the Plans and Standard Plans, Index 102 series. Furnish signs having retroreflective sheeting meeting the requirements of Section 990.

102-9.4 Project Information Signs: Provide and place signs in accordance with the Plans and Standard Plans, Index 102 series. Furnish signs having retroreflective sheeting meeting the requirements of Section 990.

102-9.5 Channelizing Devices: Furnish, install, maintain, remove and relocate channelizing devices in accordance with the Plans and Standard Plans.

102-9.5.1 Retroreflective Collars for Traffic Cones: Use collars for traffic cones listed on the APL that meet the requirements of Section 990. Use cone collars at night designed to properly fit the taper of the cone when installed. Place the upper 6 inch collar a uniform 3-1/2 inches distance from the top of the cone and the lower 4 inch collar a uniform 2 inches distance below the bottom of the upper 6 inch collar.

Collars must be capable of being removed for temporary use or attached permanently to the cone in accordance with the manufacturer's recommendations. Provide a white sheeting having a smooth outer surface and that has the property of a retroreflector over its entire surface.

102-9.5.2 Longitudinal Channelizing Devices (LCDs): Use LCDs listed on the APL and meeting the requirements of Section 990 and the Standard Plans. LCDs must be interlocked except for the stand-alone unit placed perpendicular to a sidewalk. For LCDs requiring internal ballasting, an indicator that clearly identifies the proper ballast level will be required. For LCDs requiring external ballasting, the ballasting methods must be detailed in the APL drawings including ballasting type and minimum weight.

Ensure that joints on the pedestrian LCDs are free of sharp edges and have a maximum offset of 1/2 inch in any plane.

Use alternating orange and white solid color vehicular LCDs. Vehicular LCDs may be substituted for drums, vertical panels, or barricades.

102-9.6 Temporary Barrier: Furnish, install, maintain, remove and relocate temporary barrier in accordance with the Plans and Standard Plans. Obtain and use precast temporary concrete barrier from a manufacturing plant that is on the Department's Production Facility Listing. Temporary concrete barrier must meet the material and construction requirements of Section 521 unless noted otherwise in the Standard Plans. Proprietary temporary concrete, steel, or water filled barrier used must be listed on the APL.

The maximum allowable height increase between consecutive temporary barrier units in the direction of traffic is 1 inch.

Temporary barrier must comply with Standard Plans, Index 102-100 or 102-120. Install temporary barriers as either anchored or freestanding as shown in the Plans or the Standard Plans. An anchored unit is defined as having at least one stake or bolt into the underlying pavement or bridge deck. All other units, including those with keeper pins, are considered freestanding.

Remove temporary asphalt pads and repair all attachment scars to permanent structures and pavements after barrier removal. Make necessary repairs due to defective material, work, or Contractor operations at no cost to the Department. Restore barrier damaged by the traveling public within 24 hours after notification as authorized by the Engineer.

Trailer mounted barriers listed on the APL may be used at the option of the Contractor. Trailer mounted barriers listed on the APL must have an FHWA eligibility letter and be successfully crash tested in accordance with MASH TL-3 criteria. All trailer mounted barriers must be equipped with an APL listed truck mounted attenuator, an APL listed vehicle mounted arrow board and vehicle warning lights in accordance with this Section.

102-9.6.2.1 Temporary Barrier Meeting the Requirements of Standard Plans, Index 102-120 and 102-110: Ensure the marking requirements of the respective Index are met.

102-9.6.2.2: Proprietary Precast Temporary Concrete Barrier Fabricated prior to 2005: Submit a certification stating that all unmarked barrier units meet the requirements of the Specifications and the Standard Plans. Certifications will be project specific and non-transferable.

102-9.6.2.3 Proprietary Precast Temporary Concrete Barrier Fabricated in 2005 or later: Ensure each barrier unit has permanent clear markings, showing the manufacture date, serial number, manufacturer's name or symbol, and the APL number. Label the markings on a plate, plaque, or cast in the unit. Proprietary barrier fabricated prior to 2016 and marked with the "INDX 521" in lieu of the APL number will be permitted.

102-9.6.2.4 Temporary Concrete Barrier Repair: Before beginning the repair, remove all laitance, loose material, and any other deleterious matter to sound concrete or a minimum depth of one inch. Additionally, when reinforcing bars, inserts or weldments are exposed, remove the concrete to provide a minimum one inch clearance all around. Fill the repair area with an approved high performance concrete repair material in accordance with 930-5 and the manufacturer's recommendations. Restore surfaces and edges to the original dimensions and shape of the barrier.

Repairs are not allowed on barrier units that have one or more of the following deficiencies: structural cracking or cracks that exist through the entire cross-section; unit-to-unit connection assemblies or anchor slots are broken or no longer in a fixed position.

Do not paint repaired barriers.

102-9.7 Barrier Delineators: Install barrier delineators on top of temporary barrier and vehicular LCDs meeting the requirements of Section 705.

102-9.8 Temporary Glare Screen: Use temporary glare screens listed on the APL that meet the requirements of Section 990. Furnish, install, maintain, remove and relocate glare screen systems in conjunction with temporary barrier at locations identified in the Plans.

The anchorage of the glare screen to the barrier must be capable of safely resisting an equivalent tensile load of 600 pounds per foot of glare screen, with a requirement to use a minimum of three fasteners per barrier section.

When glare screen is utilized on temporary barrier, barrier delineators will not be required.

102-9.9 Temporary Crash Cushion (Redirective or Gating): Furnish, install, maintain and subsequently remove temporary crash cushions in accordance with the details and notes shown in the Plans, Standard Plans, and requirements of the pre-approved alternatives listed on the APL.

Temporary crash cushions can be either new or used functionally sound refurbished devices. Performance of intended function is the only condition for acceptance. All metallic components must be galvanized in accordance with Section 967.

Anchor abutting temporary barrier in accordance the Standard Plans or APL drawings, as required. Bidirectional installations must have a transition panel installed between the crash cushion and the abutting barrier. Delineate the crash cushion in accordance with Section 544. Maintain the crash cushions until their authorized removal. Do not place any materials or equipment within the length of the crash cushion.

Remove temporary asphalt or concrete pads and repair all attachment scars to permanent structures and pavements after crash cushion removal. Make necessary repairs due to defective material, work, or Contractor operations at no cost to the Department. Restore crash cushions damaged by the traveling public within 24 hours after notification as authorized by the Engineer.

102-9.10 Temporary Guardrail: Furnish temporary guardrail in accordance with the Plans and Standard Plans. Meet the requirements of Section 536.

102-9.11 Arrow Board: Furnish arrow boards that meet the requirements of Section 990 as required by the Plans and Standard Plans to advise approaching traffic of lane closures or shoulder work. Ensure that the arrow board display panel is raised to a fully upright position and is fully visible to motorists. Type B arrow boards may be used on low to intermediate speed (0 mph to 50 mph) facilities or for maintenance or moving operations on any speed facility. Type C arrow boards must be used for all other operations on high-speed (50 mph and greater) facilities and may be substituted for Type B arrow boards on any speed facility.

102-9.12 Portable Changeable Message Sign (PCMS): Furnish PCMSs or truck mounted changeable message signs that meet the requirements of Section 990 as required by the Plans and Standard Plans to supplement other temporary traffic control devices used in work zones. Ensure that the PCMS display panel is raised to a fully upright position and is fully visible to motorists.

Messages must have no more than two phases. The display time for each phase must be at least two seconds but no more than three seconds. The sum of the display time must be a maximum of six seconds.

102-9.13 Portable Regulatory Signs (PRS): Furnish PRSs that meet the requirements of Section 990 as required by the Plans and Standard Plans. Ensure that the PRS sign panel is raised to a fully upright position and is fully visible to motorists.

Activate portable regulatory signs only during active work activities and deactivate when no work is being performed.

102-9.14 Radar Speed Display Unit (RSDU): Furnish RSDUs that meet the requirements of Section 990 as required by the Plans and Standard Plans to inform motorists of the posted speed and their actual speed. Ensure that the RSDU display panel is mounted in accordance with the manufacturer's recommendations.

Activate the radar speed display unit only during active work activities and deactivate when no work is being performed.

102-9.15 Temporary Signalization and Maintenance: Provide temporary signalization and maintenance at existing, temporary, and new intersections including but not limited to the following:

1. Installation of temporary poles and span wire assemblies as shown in the Plans,

2. Temporary portable traffic signals as shown in the Plans,

3. Adding or shifting signal heads,

4. Trouble calls,

5. Maintaining intersection and coordination timing and preemption devices. Coordination timing will require maintaining functionality of system communications.

Restore any loss of operation within 12 hours after notification. Provide alternate temporary traffic control until the signalization is restored.

Provide traffic signal equipment that meets the requirements of the Standard Plans and 603-2. The Engineer may approve used signal equipment if it is in acceptable condition. Replacement components for traffic signal cabinet assemblies will be provided by the maintaining agency. For temporary signals used for lane closure operations on two-lane, two-way roadways meet the requirements in 102-9.21.

102-9.16 Temporary Traffic Detection and Maintenance: Provide temporary traffic detection and maintenance at existing, temporary, and new signalized intersections. Provide temporary traffic detection equipment listed on the APL. Restore any loss of detection within 12 hours. Ensure 90% accuracy per signal phase, measured at the initial installation and after any lane shifts, by comparing sample data collected from the detection system with ground truth data collected by human observation. Collect the sample and ground truth data for a minimum of five minutes during a peak and five minutes during an off-peak period with a minimum three detections for each signal phase. Perform the test in the presence of the Engineer.

102-9.17 Truck Mounted Attenuators and Trailer Mounted Attenuators: Furnish, operate and maintain APL listed truck mounted and trailer mounted attenuators in accordance with the manufacturer's recommendations.

For posted speeds of 50 mph or greater, use either truck mounted attenuators or trailer mounted attenuators that meet TL-3 criteria. For posted speeds of 45 mph or less, use either truck mounted attenuators or trailer mounted attenuators that meet TL-2 or TL-3 criteria.

Attenuators will not be paid for separately. Include the cost of the truck with either a truck mounted attenuator or a trailer mounted attenuator in Maintenance of Traffic, lump sum. Payment includes all costs, including furnishing, operating maintaining and removal when no longer required, and all materials, labor, tools, equipment and incidentals required for attenuator maintenance.

102-9.18 Temporary Raised Rumble Strip Set: Furnish, install, maintain, remove, and reinstall temporary raised rumble strips per the manufacturer's recommendations and in accordance with Standard Plans, Index 102-603.

The temporary raised rumble strip may be either a removable polymer striping tape or a molded engineered polymer material.

102-9.19 Automated Flagging Assistance Devices (AFAD): Furnish, install, maintain, remove, and relocate AFADs in accordance with the Plans, Standard Plans, Index 102-603, and APL vendor drawings.

Position AFADs where they are clearly visible to oncoming traffic. AFADs may be placed on the centerline if they have been successfully crash tested in accordance with MASH TL-3 criteria. A gate arm is required in accordance with Section 990 if a single AFAD is used on the shoulder to control one direction of traffic.

The devices may be operated either by a single flagger at one end of the traffic control zone, from a central location, or by a separate flagger near each device location. Use only flaggers trained in accordance with Section 105 and in the operation of the AFAD. When in use, each AFAD must be in view of, and attended at all times by, the flagger operating the device.

Provide two flaggers on-site and use one of the following methods in the deployment of AFADs:

1. Place an AFAD at each end of the temporary traffic control zone, or
2. Place an AFAD at one end of the temporary traffic control zone and a flagger at the opposite end.

A single flagger may simultaneously operate two AFADs as described in (1) or a single AFAD as described in (2) if all of the following conditions are met:

1. The flagger has an unobstructed view of the AFAD(s),
2. The flagger has an unobstructed view of approaching traffic in both directions,
3. For two AFADs, the AFADs are less than 800 feet apart. For one AFAD, the AFAD and the flagger are less than 800 feet apart.
4. Two flaggers are available on-site to provide normal flagging operations should an AFAD malfunction.

AFADs may be either a remotely controlled Stop/Slow AFAD mounted on either a trailer or a movable cart system, or a remotely controlled Red/Yellow Lens AFAD.

Illuminate the flagging station when the AFAD is used at night. When the AFAD is not in use, remove or cover signs and move the AFAD device outside the clear zone or shield it with a barrier.

AFADs will not be paid for separately. AFADs may be used as a supplement or an alternate to flaggers in accordance with the Plans, Standard Plans, Index 102-603, and the APL vendor drawings. Include the cost for AFADs in Maintenance of Traffic, Lump Sum.

102-9.20 Temporary Lane Separator: Furnish, install, maintain, remove and relocate temporary lane separator in accordance with the Plans and Standard Plans, Index 102-600. Anchor the portable temporary lane separator with a removable anchor bolt. Use epoxy on bridge decks where anchoring is not allowed. Remove the epoxy from the bridge deck by hydroblasting or other method approved by the Engineer.

102-9.21 Temporary Signals for Lane Closures on Two-Lane, Two-Way Roadways: Furnish, install, maintain, remove, and relocate temporary signals for lane closure operations on two-lane, two-way roadways at the locations shown in the Plans. Temporary signals may be used, at the Contractor's option, as an alternate to flaggers for lane closure operations on two-lane, two-way roadways in accordance with Standard Plans, Index 102-606. Temporary signals can either be portable signals or span wire signals and must be listed on the APL.

102-10 Work Zone Pavement Marking.

102-10.1 Description: Furnish and install work zone pavement markings for MOT in construction areas and in close conformity with the lines and details shown in the Plans and Standard Plans.

Centerlines, lane lines, edge lines, stop bars, standard crosswalks, and turn arrows will be required in work zones prior to opening the road to traffic.

102.10.2 Painted Pavement Markings:

102-10.2.1 General: Use painted pavement markings meeting the requirements of Section 710. Use standard paint unless otherwise identified in the Plans or approved by the Engineer.

102-10.3 Removable Tape:

102-10.3.1 General: Use removable tape listed on the APL as shown in the Plans and meeting the requirements of 990-4.

102-10.3.2 Application: Apply removable tape with a mechanical applicator to provide pavement lines that are neat, accurate and uniform. Equip the mechanical applicator with a film cut-off device and with measuring devices that automatically and accumulatively measure the length of each line placed within an accuracy tolerance of plus or minus 2%. Ensure removable tape adheres to the road surface. Removable tape may be placed by hand on short sections, 500 feet or less, if it is done in a neat accurate manner.

102-10.3.3 Retroreflectivity: Apply white and yellow pavement markings that will attain an initial retroreflectivity of not less than 300 mcd/lx·m² for white and contrast markings and not less than 250 mcd/lx·m² for yellow markings. Black portions of contrast tapes and black masking tapes must be non-reflective and have a reflectance of less than 5 mcd/lx m². At the end of the six month service life, the retroreflectance of white and yellow removable tape shall not be less than 150 mcd/lx·m².

102-10.3.4 Removability: Provide removable tape capable of being removed from bituminous concrete and portland cement concrete pavement intact or in substantially large strips, either manually or by a mechanical roll-up device, at temperatures above 40°F, without the use of heat, solvents, grinding or blasting.

102-10.4 Temporary Raised Pavement Markers (RPMs): Use Class B RPMs except for work that consists of ground-in rumble strips at centerline locations. For ground-in rumble strips at centerline locations, use temporary RPMs in accordance with Section 710. Provide only temporary RPMs listed on the APL. Install all markers in accordance with the manufacturer's recommendations, the Standard Plans, and Section 706. After initial installation, replace broken or missing temporary RPMs in locations where more than three consecutive temporary RPMs are broken or missing at no expense to the Department.

102-11 Method of Measurement.

102-11.1 General: Devices installed/used on the project on any calendar day or portion thereof, within the Contract Time, including time extensions which may be granted, will be paid for at the Contract unit price for the applicable pay item. Include the cost of any work that is necessary to meet the requirements of the Contract Documents for MOT under Maintenance of Traffic, lump sum when separate payment is not provided.

102-11.2 Traffic Control Officers: The quantity to be paid for traffic control officers as specified in 102-7(1) through (5) will be at the Contract unit price per hour (4 hour minimum)

for the actual number of officers certified to be on the project site, including any law enforcement vehicles and all other direct and indirect costs. Payment will be made only for those traffic control officers specified in the Plans and authorized by the Engineer.

Cost for traffic control officers as specified in 102-7(6) or used at the Contractor's option will be paid for under Maintenance of Traffic, lump sum.

102-11.3 Special Detours: When a special detour is shown in the Plans, the work of constructing, maintaining, and subsequently removing such detour facilities will be paid for under Special Detour, lump sum. However, traffic control devices, warning devices, barriers, signing, pavement markings, and restoration to final configuration will be paid for under their respective pay items.

When the Plans show more than one special detour, each special detour will be paid for separately, at the Contract lump sum price for each.

102-11.4 Commercial Material for Driveway Maintenance: The quantity to be paid for will be the certified volume, in cubic yards, of all materials authorized by the Engineer, acceptably placed and maintained for driveway maintenance. The volume, which is authorized to be reused, and which is acceptably salvaged, placed, and maintained in other designated driveways will be included again for payment.

102-11.5 Work Zone Signs: The number of temporary post-mounted signs (temporary regulatory, warning and guide) certified as installed/used on the project will be paid for at the Contract unit price for work zone signs. When multiple signs are located on single or multiple posts, each sign panel will be paid individually. Signs greater than 20 square feet and detailed in the Plans will be paid for under Maintenance of Traffic, lump sum.

Temporary portable signs (excluding mesh signs) and vehicular mounted signs will be included for payment under work zone signs, only if used in accordance with the Standard Plans.

The number of temporary barrier mounted signs (temporary regulatory, warning and guide) certified as installed/used on the project will be paid for at the Contract unit price for barrier mounted work zone signs.

Work zone signs may be installed fourteen days prior to the start of Contract Time with the approval of the Engineer and at no additional cost to the Department.

102-11.6. Business Signs: The number of business signs certified as installed/used on the project will be paid for at the Contract unit price for business signs.

102-11.7 Project Information Signs: No separate payment will be made for project information signs. Payment will be included under Maintenance of Traffic, lump sum.

102-11.8 Channelizing Devices: The number of drums, vertical panels, and Type I, Type II, Type III, or direction indicator barricades, certified as installed/used on the project meeting the requirements of Standard Plans, Index 102-600 and have been properly maintained will be paid for at the Contract unit prices for channelizing device.

Payment for drums, vertical panels, and Type I, Type II, Type III, and direction indicator barricades will be paid per each per day.

Payment for vehicular LCDs will be paid as the length in feet installed divided by the device spacing for barricades, vertical panels, and drums and certified as installed/used on the project meeting the requirements of Standard Plans, Index 102-600 and have been properly maintained will be paid for at the Contract unit price for channelizing device.

Payment for pedestrian LCDs will be paid as the plan quantity length in feet, in place and accepted. For sidewalk closures, the plan quantity length will be based on the width of the sidewalk. The quantity of pedestrian LCDs will be paid for regardless of whether materials are new, used, or relocated from a previous installation on the project. Placement of pedestrian LCDs at locations not shown in the Plans, or not authorized by the Engineer, will be at the Contractor's expense. Payment for pedestrian LCD mounted signs will be made under Work Zone Signs, per each per day.

Payment will not be made for channelizing devices unsatisfactorily maintained, as determined by the Engineer. Payment will be made for each channelizing device that is used to delineate trailer mounted devices. Payment will be made for channelizing devices delineating portable changeable message signs during the period beginning 14 working days before Contract Time begins as authorized by the Engineer.

102-11.9 Temporary Barrier: The quantity to be paid for will be the length, in feet, of freestanding units or anchored units certified as installed/used on the project. The quantity to be paid for relocating barrier will be based on the relocated installation type. No separate payment will be made for the asphalt pad. For freestanding units transitioned to a crash cushion, the cost of anchoring the transition units will be included in the cost of the temporary crash cushion in accordance with 102-11.12.

102-11.10 Barrier Delineators: No separate payment will be made for barrier delineators installed on top of temporary barrier and vehicular LCDs. Include the cost for barrier delineators in the cost of the barrier or vehicular LCD.

102-11.11 Temporary Glare Screen: The certified quantity to be paid for will be determined by the number of sections times the nominal length of each section.

102-11.12 Temporary Crash Cushions: No separate payment will be made for the concrete or asphalt pad.

102-11.12.1 Redirective: The quantity to be paid for will be the number of temporary crash cushions (redirective) certified as installed/used and maintained on the project, including anchoring of temporary barrier necessary for transition to the crash cushion and delineation.

102-11.12.2 Gating: The quantity to be paid for will be the number of temporary crash cushions (gating) certified as installed/used and maintained on the project, including anchoring of temporary barrier necessary for transition to the crash cushion and delineation.

102-11.13 Temporary Guardrail: The quantity to be paid for will be the length, in feet, of temporary guardrail constructed and certified as installed/used on the project. The length of a run of guardrail will be determined as a multiple of the nominal panel lengths.

102-11.14 Arrow Board: The quantity to be paid at the contract unit price will be for the number of arrow boards certified as installed/used on the project on any calendar day or portion thereof within the Contract Time.

102-11.15 Portable Changeable Message Sign: The quantity to be paid at the Contract unit price will be for the number of PCMSs or truck mounted changeable message signs certified as installed/used on the project on any calendar day or portion thereof within the Contract Time. Payment will be made for each portable changeable message sign that is used during the period beginning fourteen working days before Contract Time begins as authorized by the Engineer.

102-11.16 Portable Regulatory Signs: The quantity to be paid for will be the number of portable regulatory signs certified as installed/used on the project on any calendar day or portion thereof within the Contract Time, will be paid for the Contract unit price for portable regulatory sign.

102-11.17 Radar Speed Display Unit: The quantity to be paid for will be the number of radar speed display units certified as installed/used on the project on any calendar day or portion thereof within the Contract Time, will be paid for the Contract unit price for radar speed display unit.

102-11.18 Temporary Signalization and Maintenance: For existing intersections, the certified quantity to be paid for will be the number of signalized intersections per day for the full duration of the Contract. For temporary intersections, the certified quantity to be paid for will be the number of signalized intersections per day for the duration of the temporary intersection. No separate payment will be made for temporary signalization and maintenance at new intersections.

102-11.19 Temporary Traffic Detection and Maintenance: For existing intersections, the certified quantity to be paid for will be the number of signalized intersections per day beginning the day Contract Time begins and ending the day the permanent detection is operational and the final lane configuration is in place. For temporary and new intersections, the certified quantity to be paid for will be the number of signalized intersections per day beginning the day the temporary detection is functional and ending the day the permanent detection is operational and the final lane configuration is in place for a new intersection; or, when the detection is removed for a temporary intersection.

102-11.20 Work Zone Pavement Markings: Painted pavement markings will be paid as specified in 710-10. The quantity of removable tape to be paid for solid, 10'-30' skip, 3'-9' dotted, 6'-10' dotted, and 2'-4' dotted lines will be the length, in gross miles, authorized and acceptably applied under this Section and certified as installed/used on the project. The quantity of removable tape to be paid for transverse lines will be the length, in linear feet, authorized and acceptably applied under this Section and certified as installed/used on the project. The quantity of removable tape to be paid for pavement messages, symbols, and arrows will be per each, authorized and acceptably applied under this Section and certified as installed/used on the project. The quantity of temporary RPMs to be paid will be the number of RPMs authorized and acceptably applied.

102-11.21 Temporary Raised Rumble Strips: The quantity to be paid for will be the number of calendar days, or portions thereof, that temporary raised rumble strips are certified as installed/used on the project within the Contract Time. The number of strips used must meet the requirements of Standard Plans, Index 102-603. No adjustment will be made to the per day measurement for the number of strips or sets used, or for the number of times the sets are relocated.

102-11.22 Temporary Lane Separator: The quantity to be paid for will be the field measure, in feet, of temporary lane separator certified as installed/used on the project, including drainage gaps, completed and accepted.

102-11.23 Temporary Signals for Lane Closures on Two-Lane, Two-Way Roadways: The quantity to be paid for will be the number of temporary signals per day installed/used at the locations shown in the Plans. Temporary signals installed/used at the Contractor's option as an alternative to flaggers will be included in Maintenance of Traffic, lump sum.

102-11.24 Temporary Highway Lighting: When temporary highway lighting is required by the Plans, the work of constructing, maintaining, and removing the temporary highway lighting, including all materials and any necessary design work, will be paid for under temporary highway lighting, lump sum.

102-11.25 Pedestrian Special Detours: When a pedestrian special detour is shown in the Plans, the work of constructing, maintaining, and subsequently removing such detour facilities will be paid for under pedestrian special detour, lump sum. However, traffic control devices, warning devices, barriers, signing, pavement markings, and restoration to final configuration will be paid for under their respective pay items.

102-12 Submittals.

102-12.1 Submittal Instructions: Prepare a certification of quantities, using the Department's current approved form, for certified MOT payment items for each project in the Contract. Submit the certification of quantities to the Engineer. The Department will not pay for any disputed items until the Engineer approves the certification of quantities.

102-12.2 Contractor's Certification of Quantities: Request payment by submitting a certification of quantities no later than Twelve O'clock noon Monday after the estimate cut-off date or as directed by the Engineer, based on the amount of work done or completed. Ensure the certification consists of the following:

1. Contract Number, FPID Number, Certification Number, Certification Date and the period that the certification represents.

2. The basis for arriving at the amount of the progress certification, less payments previously made and less an amount previously retained or withheld. The basis will include a detail breakdown provided on the certification of items of payment in accordance with 102-13. After the initial setup of the MOT items and counts, the interval for recording the counts will be made weekly on the certification sheet unless there is a change. This change will be documented on the day of occurrence. Some items may necessitate a daily interval of recording the counts.

102-13 Basis of Payment.

102-13.1 Maintenance of Traffic (General Work): When an item of work is included in the proposal, price and payment will be full compensation for all work and costs specified under this Section except as may be specifically covered for payment under other items.

102-13.2 Traffic Control Officers: Price and payment will be full compensation for the services of the traffic control officers.

102-13.3 Special Detours: Price and payment will be full compensation for providing all detour facilities shown in the Plans and all costs incurred in carrying out all requirements of this Section for general MOT within the limits of the detour, as shown in the Plans.

102-13.4 Commercial Materials for Driveway Maintenance: Price and payment will be full compensation for all work and materials specified for this item, including specifically all required shaping and maintaining of driveways.

102-13.5 Work Zone Signs: Price and payment will be full compensation for all work and materials for furnishing signs, supports and necessary hardware, installation, relocating, maintaining and removing signs.

102-13.6. Business Signs: Price and payment will be full compensation for all materials and labor required for furnishing, installing, relocating, maintaining, and removing the signs as well as the cost of installing any logos provided by business owners.

102-13.7 Project Information Signs: Price and payment will be full compensation for all materials and labor for furnishing, installing, relocating, maintaining and removing signs.

102-13.8 Channelizing Devices: Prices and payment will be full compensation for furnishing, installing, relocating, maintaining and removing the channelizing devices.

102-13.9 Temporary Barrier: Price and payment will be full compensation for furnishing, installing, maintaining, and removing the barrier and asphalt pad. When called for, temporary barrier (relocate) will be full compensation for relocating the barrier.

102-13.10 Temporary Glare Screen: Price and payment will be full compensation for furnishing, installing, maintaining, and removing the glare screen certified as installed/used on the project. When called for, glare screen (relocate) will be full compensation for relocating the glare screen.

102-13.11 Temporary Crash Cushion (Redirective or Gating): Price and payment will be full compensation for furnishing, installing, maintaining, and removing crash cushions and concrete or asphalt pads.

102-13.12 Temporary Guardrail: Price and payment will be full compensation for furnishing all materials required for a complete installation, including end anchorage assemblies and any end connections to other structures and for installing, maintaining and removing guardrail.

102-13.13 Arrow Board: Price and payment will be full compensation for furnishing, installing, operating, relocating, maintaining and removing arrow boards.

102-13.14 Portable Changeable Message Sign: Price and payment will be full compensation for furnishing, installing, operating, relocating, maintaining and removing portable changeable message signs.

102-13.15 Portable Regulatory Signs: Price and payment will be full compensation for furnishing, installing, relocating, operating, maintaining and removing a completely functioning system as described in these Specifications.

Payment will include all labor, materials, incidentals, repairs and any actions necessary to operate and maintain the unit at all times that work is being performed or traffic is being affected by construction and/or MOT operations.

102-13.16 Radar Speed Display Unit: Price and payment will be made only for a completely functioning system as described in these Specifications. Payment will include all labor, hardware, accessories, signs, and incidental items necessary for a complete system. Payment will include any measurements needed to ensure that the unit conforms to all Specification requirements.

Payment will include all labor, materials, incidentals, repairs and any actions necessary to operate and maintain the unit at all times that work is being performed or traffic is being affected by construction and MOT operations. Price and payment will be full compensation for furnishing, installing, operating, relocating, maintaining and removing radar speed display unit.

102-13.17 Temporary Signalization and Maintenance: Price and payment will constitute full compensation for furnishing, installing, operating, maintaining and removing temporary traffic control signals including all equipment and components necessary to provide an operable traffic signal. Payment will be withheld for each day at each intersection where the temporary signalization is not operational within 12 hours after notification.

102-13.18 Temporary Traffic Detection and Maintenance: Price and payment will constitute full compensation for furnishing, installing, operating, maintaining and removing temporary traffic detection including all equipment and components necessary to provide an acceptable signalized intersection. Take ownership of all equipment and components. Payment will be withheld for each day at each intersection where the temporary detection is not operational within 12 hours after notification.

102-13.19 Work Zone Pavement Markings: Price and payment will be full compensation for all work specified including, all cleaning and preparing of surfaces, furnishing of all materials, application, curing and protection of all items, protection of traffic, furnishing of all tools, machines and equipment, and all incidentals necessary to complete the work. Final payment will be withheld until all deficiencies are corrected.

Removable tape or durable paint may be substituted for standard paint at no additional cost to the Department.

Payment for temporary RPMs used to supplement line markings will be paid for under temporary raised pavement markers. Install these RPMs as detailed in the Standard Plans.

102-13.20 Temporary Raised Rumble Strips: Price and payment will be full compensation for all work and materials described in this Section, including all cleaning and preparing of surfaces, disposal of all debris, furnishing of all materials, application, curing, removal, reinstalling and protection of all items, protection of traffic, furnishing of all tools, machines and equipment, and all incidentals necessary to complete the work.

102-13.21 Temporary Lane Separator: Price and payment will be full compensation for all work specified in this Section.

102-13.22 Temporary Signals for Lane Closures on Two-Lane, Two-Way Roadways: Price and payment will be full compensation for furnishing, installing, operating, maintaining and removing temporary traffic signal including all equipment and components necessary to provide an operable portable traffic signal.

102-13.23 Temporary Highway Lighting: Price and payment will be full compensation for providing all temporary highway lighting shown in the Plans.

102-13.24 Pedestrian Special Detours: Price and payment will be full compensation for providing all pedestrian special detours shown in the Plans.

102-13.25 Payment Items: Payment will be made under:

Item No. 102- 1-	Maintenance of Traffic - lump sum.
Item No. 102- 2-	Special Detour - lump sum.
Item No. 102- 3-	Commercial Material for Driveway Maintenance - per cubic yard.
Item No. 102- 4-	Pedestrian Special Detour - lump sum.
Item No. 102- 14-	Traffic Control Officer - per hour.
Item No. 102- 30-	Temporary Highway Lighting - lump sum.
Item No. 102- 60-	Work Zone Sign - per each per day.
Item No. 102- 61-	Business Sign - each.
Item No. 102- 62-	Barrier Mounted Work Zone Sign – per each per day
Item No. 102- 71-	Temporary Barrier - per foot.
Item No. 102- 75-	Temporary Lane Separator - per foot
Item No. 102- 73-	Temporary Guardrail - per foot.
Item No. 102- 74-	Channelizing Devices
Item No. 102- 76-	Arrow Board - per each per day.
Item No. 102- 78-	Temporary Raised Pavement Markers - each.
Item No. 102- 81-	Temporary Crash Cushion, Gating - per location.

Item No. 102- 89-	Temporary Crash Cushion, Redirective - per location.
Item No. 102- 94-	Glare Screen - per foot.
Item No. 102- 99-	Portable Changeable Message Sign - per each per day.
Item No. 102-104-	Temporary Signalization and Maintenance - per intersection per day.
Item No. 102-107-	Temporary Traffic Detection and Maintenance - per intersection per day.
Item No. 102-120-	Temporary Signal for Lane Closures on Two-Lane, Two-Way Roadways – per each per day.
Item No. 102-150-	Portable Regulatory Sign - per each per day.
Item No. 102-150-	Radar Speed Display Unit - per each per day.
Item No. 102-909-	Temporary Raised Rumble Strips - per day.
Item No. 102-913-	Removable Tape.
Item No. 710-	Painted Pavement Markings.
Item No. 711-	Thermoplastic Pavement Markings.

MAINTENANCE OF TRAFFIC.

(REV 3-2-20) (7-22)

SUBARTICLE 102-3.1 is deleted and the following substituted:

102-3.1 Contractor's Responsibility: Time begins when the Engineer is notified that setup is complete and flagging operations and maintenance of all temporary traffic control devices are ready for work to begin. Time ends when work has been completed. Notify the Engineer immediately when work has been completed. Travel time to and from the work site, as well as installation and removal of temporary traffic control devices is not included as compensable time. Provide only one person for the maintenance of devices unless otherwise directed by the Engineer.

SUBARTICLE 102-3.3 is deleted.

SUBARTICLE 102-5.4 is deleted and the following substituted:

102-5.4 Crossings and Intersections: Provide and maintain adequate accommodations for intersecting and crossing traffic. Do not block or unduly restrict any median opening, road or street crossing the project unless approved by the Engineer. Maintain all existing actuated or traffic responsive mode signal operations for main and side street movements for the duration of the work. Restore any loss of detection within 12 hours. Use only detection technology listed on the Department's Approved Products List (APL) and approved by the Engineer to restore

detection capabilities. Before beginning any construction, submit to the Engineer the names and phone numbers of persons that can be contacted when signal operation malfunctions.

ARTICLE 102-7 is expanded by the following:

Provide off-duty law enforcement officer when required by the Work Document or as directed by the Engineer.

SUBARTICLE 102-9.1 is deleted and the following substituted:

102-9 Temporary Traffic Control Devices.

102-9.1 General: Use only devices that are listed on the APL and use in conformance with the APL drawings. Immediately remove or cover, using any method of covering approved by the Engineer, any existing or temporary devices (e.g. signs) that do not apply to current conditions. When in use, place a channelizing device at each corner of arrow boards, portable changeable message signs, radar speed display trailers, and any other trailer-mounted device. When not in use, move arrow boards, portable changeable message signs, radar speed display trailers, and any other trailer-mounted device outside of the clear zone or place them at the appropriate setback distance behind an existing barrier or temporary barrier that is present for shielding other items.

The use of NCHRP Report 350 Recommended Procedures for the Safety Performance Evaluation of Highway Features devices purchased prior to January 1, 2020 is permitted on projects let prior to January 1, 2030. All devices manufactured or purchased on or after January 1, 2020 must be MASH compliant in accordance with Section 990.

The APL number is to be permanently marked on the device at a readily visible location. Sheeting used on devices and pavement markings are exempt from this requirement.

Notify the Engineer in writing of any scheduled operation that will affect traffic patterns or safety sufficiently in advance of commencing such operation to allow adequate time to review the plan for the proposed installation of temporary traffic control devices.

Assign an employee the responsibility of maintaining the position and condition of all temporary traffic control devices throughout the duration of the Contract. Keep the Engineer advised of the identification and means of contacting this employee on a 24 hour basis.

Maintain temporary traffic control devices in the correct position, properly oriented, clearly visible, and clean. All applicable temporary traffic control devices must meet the classification category of Acceptable as defined in the American Traffic Safety Services Association (ATSSA) Quality Guidelines for Temporary Traffic Control Devices and Features. Temporary concrete barriers must meet the classification category of Acceptable defined in the Department's Temporary Concrete Barrier Evaluation Guide, which may be viewed at the following URL: https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/programmanagement/implemented/urlinspecs/files/docs/default-source/content-docs/programmanagement/implemented/urlinspecs/files/temporaryconcretebarrierguide.pdf.pdf?sfvrsn=343b4c97_10.

Pedestrian longitudinal channelizing devices (LCDs) must meet the classification category of Acceptable as defined in the Pedestrian LCD Evaluation Guide, which may be viewed at the following URL: https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/programmanagement/implemented/urlinspecs/files/lcdevaluationguide.pdf?sfvrsn=166e0f16_2.

Immediately repair, replace or clean damaged, defaced or dirty devices. Traffic control devices must not be cleaned while installed/used. Use of warning lights on any temporary traffic control device is prohibited, with the exception of the trailer mounted portable regulatory signs.

SUBARTICLE 102-9.1.1 is deleted.

SUBARTICLE 102-9.16 is deleted and the following substituted:

102-9.16 Truck Mounted Attenuators and Trailer Mounted Attenuators: Furnish, install and maintain only those attenuators that meet the requirements of NCHRP 350 or the MASH.

Use truck mounted attenuators or trailer mounted attenuators, when called for in the Design Standards. Use attenuators listed on the APL.

When attenuators are called for, use either a truck mounted attenuator or a trailer mounted attenuator system designed and installed in accordance with the manufacturers recommendations.

Equip the attenuator cartridge with lights and reflectors in compliance with applicable Florida motor vehicle laws, including turn signals, dual tail lights, and brake lights. Ensure that lights are visible in both the raised and lowered positions if the unit is capable of being raised.

Install either alternating black with yellow or white with orange sheeting on the rear of trailer mounted attenuators and on truck mounted attenuators, in both the operating and raised position. Use Type III (work zone) or Type IV sheeting consisting of 4 or 6 inch wide stripes installed to form chevrons that point upward. All sheeting except black shall be retroreflective.

Payment will be made per day when included in the Work Document or as directed by the Engineer. Payment includes all costs for materials, labor, tools, equipment and incidentals required for performing the work described in this Section.

SUBARTICLE 102-11.1 is deleted and the following substituted:

102-11.1 General: Devices installed/used on the project on any calendar day or portion thereof, within the Contract Time, including time extensions which may be granted, will be paid for at the Contract unit price for the applicable pay item.

For this Contract, all pay items with unit "Each Day (ED)" and "Hour (HR)" will be defined as follows:

1. Time for "Each Day" will be calculated in 24 hour increments starting at the time specified in the Work Document.

2. "Hour" rates will be paid in increments of 1 hour, rounded up to the hour.

ARTICLE 102-11 is expanded by the following new Subarticles:

102-11.27 MOT Maintenance Services: The quantity to be paid will be the number of hours that MOT duties are performed, beginning when setup is complete to the initiation of takedown.

102-11.28 Truck Mounted Attenuator: The quantity to be paid will be the number of days, per day, regardless of the number of locations work is performed at each site.

ARTICLE 102-12 is deleted.

ARTICLE 102-13.1 is deleted and the following substituted:

102-13 Basis of Payment.

102-13.1 Maintenance of Traffic (General Work): When an item of work is included in the proposal, price and payment will be full compensation for all work and costs specified under this Section except as may be specifically covered for payment under other items.

When the proposal does not include a separate item for Maintenance of Traffic, all work and incidental costs specified as being covered under this Section will be included for payment under the several scheduled items of the overall Contract and no separate payment will be made therefore.

SUBARTICLE 13.25 is deleted and the following substituted:

102-13.25 MOT Maintenance Services: Price and payment will be full compensation for work performed.

102-13.26 Truck Mounted Attenuator: Price and payment will be full compensation for providing truck mounted attenuators each day regardless of the number of locations work is performed at each site.

102-13.27 Payment Items: Payment will be made under the items shown in the Bid Price Proposal.

LITTER REMOVAL AND MOWING.

(REV 8-19-21) (7-22)

SECTION 107 is deleted and the following substituted:

107-1 Description.

107.1.1 Litter Removal: Provide pickup, removal, and disposal of litter and debris within the maintained limits from the outside edge of travel way to the right of way line, including the median on divided highways from the inside edge of travel way to the inside edge of travel way, ponds, and remote areas as specified in the Contract Documents. Litter or debris includes but is not limited to varied sizes of bottles, cans, paper, tires, tire pieces, lumber, vehicle parts, metal junk, small outdoor advertisement signs, brush, tree limbs, and other items to be removed under this work.

107-1.2 Mowing: Mow grass or vegetation within the project limits at locations identified in the Contract Documents. Locations may consist of roadside areas, ponds, ditches,

or other areas as specified. Where landscaping has been established or natural landscaping has been preserved, mow conforming to the established mowing contours. Mow up to the limits maintained by the Department and around existing appurtenances located within the project limits as directed by the Engineer. Use specialized equipment or hand labor when required to perform specified work in certain areas or situations. Vegetation consists of planted and/or natural grasses, weeds, and other vegetation within the area to be mowed. Comply with the current edition of the Department's "A Guide to Roadside Vegetation Management".

107-1.2.1 Large Machine Mowing: Provide large machine mowing in areas conducive to large machine mowing equipment with a 3 horizontal to 1 vertical or less slope.

107-1.2.2 Slope Mowing: Provide slope mowing on slopes with a greater or steeper than 3 horizontal to 1 vertical slope or other areas that are relatively inaccessible to the use of conventional style equipment.

107-1.2.3 Intermediate Machine Mowing: Provide intermediate machine mowing in areas of 3 horizontal to 1 vertical slope or less that are not accessible by large machine mowing equipment but not conducive to the use of small machine mowing equipment.

107-1.2.4 Small Machine Mowing: Provide small machine mowing in areas of 3 horizontal to 1 vertical slope or less that are not accessible by large and intermediate machine mowing equipment.

107-1.2.5 Manual Weed Control: For areas with densely planted trees and steep slopes that are not accessible to mowing equipment, when directed by the Work Document, remove grasses, weeds, vines, and other underbrush using hand or power tools.

Unless otherwise specified, manual labor required to perform work around appurtenances will be incidental to the type of mowing being performed. Appurtenances may consist of signpost and bases, delineator post, fences, guardrail, barrier walls, end walls, retaining walls, pipes, drainage structures, poles, guys, mailboxes, handrails, landscaped areas, and trees.

107-2 Frequency.

107-2.1 Litter Removal: The number of litter removal cycles maybe increased or decreased based on litter conditions or special events, as directed by the Engineer. Areas or portions of areas within the project limits may be increased or decreased. The estimated number of litter removal cycles is approximately **14**.

Complete each litter removal cycle within **(to be determined by the engineer)** calendar days of beginning the cycle when the litter removal cycle is concurrent with a mowing cycle. When litter pick up is issued concurrently with a mowing cycle, remove litter prior to and in conjunction with mowing operations in all areas.

Complete each independent litter removal cycle within **(to be determined by the engineer)** calendar days of beginning the cycle.

107-2.2 Mowing: The Engineer will determine the type of mowing, the estimated number of acres to be accomplished within a specified number of calendar days (cycle), when to begin each mowing cycle, and the total number of mowing cycles to be completed.

The number of acres to be completed per cycle may vary depending upon soil conditions. The number of acres to be completed will vary per cycle when wildflowers are in bloom or are re-seeding. Complete each mowing cycle within **(to be determined by the engineer)** calendar days of beginning the cycle. The approximate number of cycles for each type of mowing will be as follows:

Large Machine Mowing	<u>11</u> cycles (<u>N/A</u> <u>minimum</u> cycles)
Slope Mowing	<u>6</u> cycles (<u>N/A</u> <u>minimum</u> cycles)
Intermediate Machine Mowing	<u>11</u> cycles (<u>N/A</u> <u>minimum</u> cycles)
Small Machine Mowing	<u>11</u> cycles (<u>N/A</u> <u>minimum</u> cycles)
Mow Wildflower plots approximately	<u>N/A</u> times per year
Manual Weed Control	<u>3</u> cycles (<u>N/A</u> <u>minimum</u> cycles)

Notify the Engineer prior to beginning work in areas with questionable mowing capabilities. Adjustments to quantities will not be made once work begins.

107-3 Equipment.

107-3.1 Litter Removal: Transport litter using equipment capable of preventing further distribution or loss of litter along the roadway. Cover and secure all open top carriers with tarpaulins.

Specialized mechanical equipment capable of successfully removing litter and debris may be used upon written approval by the Engineer. Additional safety devices or precautions may be required when using unique equipment.

Provide equipment that does not damage curbs, pavement, or turf.

107-3.2 Mowing: Provide mowing equipment with a slow-moving vehicle sign located on the rear of the tractor, amber flashing light or white strobe light mounted on the tractor, 18-inch X 18-inch fluorescent orange warning flags mounted on each side of the rear of the mower, protective devices on the mower to prevent objects from being thrown into traffic, and safety devices installed by the manufacturer. Properly install and maintain safety devices at all times when the equipment is in use.

Maintain mowing equipment to produce a clean, sharp cut and uniform distribution of the cuttings at all times. Provide mowing equipment with the capability of cutting a height from 4 inches to 12 inches.

Provide equipment of a type and quantity to perform the work satisfactorily within the specified time periods.

Immediately remove equipment deficient in safety devices and keep the equipment out of service until the deficiency is corrected.

The Engineer's inspection of equipment will not relieve the Contractor of responsibility or liability for injury to persons or damage to property caused by the operation of the equipment, nor will it relieve the Contractor of the responsibility to meet the established time for the completion of the mowing cycle.

107-4 Method of Operation.

107-4.1 Litter Removal: Store equipment to remain on the project right of way while not in use outside the clear zone. Do not park or store equipment or supply vehicles in median areas. Conduct all service and supply operations between the travel-way and the right-of-way line and outside of the clear zone. Do not allow supply vehicles to enter the median. Do not allow service vehicles to enter the median except when necessary to repair or remove inoperable equipment.

Perform all litter removal during daylight hours.

Worksite personnel must wear high visibility apparel that meets the standards for High-Visibility Safety Apparel as established by The American National Standards Institute (ANSI) when performing litter removal activities.

107-4.2 Mowing: Perform all work operations in accordance with the appropriate temporary traffic control and lane closure requirements. Furnish, place, and maintain all traffic control devices throughout the duration of the work within the maintenance limits for the protection of the public and employees.

Operate the equipment in the same direction of the traffic unless the adjacent lane is closed to traffic when mowing within four feet of the travel-way (travel lane).

Perform all work during daylight hours.

Begin mowing cycles as directed by the Engineer in the Work Document.

Notify the Engineer when a cycle is started and when work is interrupted for any reason.

Prior to beginning work on the first cycle, provide a pattern or plan for mowing to the Engineer for approval. Follow the pattern adopted for the first cycle with subsequent mowing cycles.

Mow shoulders and medians concurrently within the limits of the area mowed so that not more than one mile will be left partially mowed at the conclusion of the working day. Mow grass and vegetation on slopes or around appurtenances concurrent with the mowing operation.

Complete each mowing cycle in its entirety prior to beginning another cycle. A complete cycle includes all manual labor around appurtenances.

If weather conditions or other situations of a temporary nature prevent the mowing of any areas, and such conditions are eliminated during the period designated for that mowing cycle, the adopted pattern for mowing may be altered to complete mowing of these areas during the mowing cycle.

Notify the Engineer of areas saturated with standing water to the point that standard mowing equipment would cause excessive damage to the turf. Mow the saturated areas during a subsequent cycle or cut to the surface of the water using hand labor or other specialized equipment as directed by the Engineer. Consult with the Engineer prior to beginning work in any questionable area.

Notify the Engineer when mowing areas or cycles have been completed. If any area does not meet the specified requirements, re-mow the areas at no additional cost to the Department.

107-5 Disposal.

107-5.1 Litter Removal: During each litter removal cycle, bag and remove all litter or piles at the end of each working day. Dispose of litter as necessary in accordance with applicable Federal, State, and Local Rules and Regulations. Do not store or stockpile litter within the project limits.

107.5.2 Mowing: In some areas it may be necessary to collect and remove grass clippings from the mowing operation, Dispose of vegetation cuttings in accordance with applicable Federal, State, and Local Rules and Regulations.

107-6 Requirements.

107-6.1 Litter Removal: Perform litter removal in a manner that results in areas being free of litter and debris.

107-6.2 Mowing: Mow all grass and vegetation to a height of 6 inches plus or minus 1/2 inch. Mow grass and vegetation to a height of 4 inches plus or minus 1/2 inch in specified areas as directed by the Engineer.

Perform mowing in a manner that will not result in streaking or scalping. Mow areas of different widths in a manner that will result in smooth flowing transitions. Do not allow accumulation or piling of cuttings as a result of cleaning the mowing equipment.

Mow all grass and vegetation on slopes or around appurtenances to the same height and quality as the surrounding mowed area when using hand tools.

Negligence that results in damage to turf, curbs, sidewalks, pavement, signs, or structures, mailboxes, appurtenances, etc. will be repaired or replaced at no additional cost to the Department. Complete repairs prior to submission of the invoice for work accomplished during the cycle.

Do not leave an accumulation of clippings in curb and gutters or on sidewalks. The use of blowers (away from traffic) to remove cuttings may be allowed unless prohibited by Federal, State, and Local Rules and Regulations.

107-7 Method of Measurement.

107.7.1 Litter Removal: The quantities to be paid for litter removal will be the number of acres of litter removal completed and accepted.

107.7.2 Mowing: Use of specialized equipment will be of no additional cost to the Department.

The quantities to be paid for mowing will be the area, in acres, of mowing completed and accepted.

The number of acres scheduled to be mowed per cycle will not be reduced for wildflower areas not mowed if the area is less than one acre.

The number of acres scheduled to be mowed per cycle will not be reduced for saturated areas that cannot be mowed when the area is less than one acre.

When alternate methods to mow saturated areas are required by the Engineer, payment will be based on the actual work performed.

107-8 Basis of Payment.

107-8.1 Litter Removal: Payment will be full compensation for furnishing all equipment, materials, labor, disposal, and incidentals necessary to complete litter and debris removal. Landfill receipts may be required with invoice submittals.

107-8.2 Mowing: Payment will be full compensation for furnishing all equipment, materials, labor, and incidentals necessary to complete all mowing operations specified. Compensation will be the unit price per acre for mowing for the number of acres completed and accepted.

Payment will be made under:

- Item No. E107 - 1-1 Litter Removal - per acre.
- Item No. E107 - 2-1 Large Machine Mowing - per acre
- Item No. E107 - 2-2 Slope Machine Mowing - per acre
- Item No. E107 - 2-3 Intermediate Machine Mowing - per acre
- Item No. E107 - 2-4 Small Machine Mowing - per acre
- Item No. E107 - 2-5 Manual Weed Control

110-31 ROAD AND BRIDGE SWEEPING.**(REV 8-1-13) (7-22)**

The following new Section is added at the end of Section 110:

**SECTION 110-31
ROAD AND BRIDGE SWEEPING**

110-31.1 Description.

Provide routine mechanized road and/or bridge sweeping to clean and remove sand, soil, paper, glass, cans, grass clippings, and other debris. Areas to be swept include but are not limited to; curb and gutters, valley gutters, bridge decks and curbs, inside and outside highway interchange ramps (with paved shoulders greater than 12 inches), outside and median paved shoulders, gore areas, toll plazas (when applicable), bi-directional lanes, areas adjacent to barrier walls, areas adjacent to median-noses and splitter islands, areas on top of inlet grates and other designated sites as determined by the Engineer.

110-31.2 Frequency of Sweeping.

Mechanically sweep specified areas approximately 12 times. The total number of sweeping cycles within the contract period may be increased or decreased as determined by the Engineer to meet field conditions.

Complete each sweeping cycle within (to be determined by the engineer) calendar days after issuance of the work document. Complete each sweeping cycle in its entirety prior to the beginning of another cycle. In assessing liquidated damages, the calendar days established in this Section will be used for determining delinquency of progress for each sweeping cycle.

No sweeping operations will be performed between the hours of (to be determined by the engineer) and (to be determined by the engineer).

Submit sweeping schedules to the Engineer for approval.

110-31.3 Safety.

Provide Maintenance of traffic in accordance with Section 102. The work vehicle (sweeping machine) will have an operating flashing beacon and the shadow vehicles will be equipped with an approved advance warning arrow panel, warning sign, and truck mounted attenuator (crash cushion system).

All sweeping will be accomplished with or in the same direction as the traffic, sweeping opposing the traffic will not be permitted.

The foregoing requirements are to be considered as minimum and the compliance will in no way relieve the Contractor of final responsibility for providing adequate traffic control devices for the protection of the public and employees throughout the work areas.

110-31.4 Equipment.

Furnish equipment of a type and quantity to perform the work satisfactorily within the time specified. The sweeping equipment will be capable of meeting the quality requirements of 110-31.8 in one pass and a maximum of two passes for areas determined unsatisfactory by the Engineer.

The mechanized road sweeper(s) will have a minimum capacity of four cubic yards.

The Engineer or his representative prior to being placed into service will inspect all safety devices on the sweeping operation equipment. Any deficient safety devices will be corrected or replaced immediately and service will not begin until the deficiency is corrected.

Inspection and approval of the equipment by the Engineer will not relieve the Contractor of responsibility or liability for injury to persons or damage to property caused by the Contractor's operations.

Equipment that damages pavement, curbs, or turf will not be allowed. Damages as a result of the operations will be repaired at no cost to the Department.

110-31.5 Dust Control Equipment.

The sweeping operation will not create excessive airborne dust or other particles, as determined by the Engineer. Equipment supplied with a functioning water spray system normal to the industry for dust control will satisfy this requirement.

110-31.6 Parked Vehicles.

Vehicles that are parked in the sweeping area are to be swept around. The area occupied by a parked vehicle will be considered as work accomplished.

110-31.7 Removal and Disposal of Debris.

Debris may be encountered that is larger than the mechanized sweeper can remove such as; tires, tire parts, hub caps, large stones, boxes, tree limbs, wood, cable, and other such materials. Remove all debris encountered using other means (hand or mechanized), regardless of the size.

Piles of soil may be encountered and vegetation that may require special removal methods during the sweeping operations. Furnish all labor, materials, and equipment required to accomplish removal of these built-up areas.

Stockpiling or disposal of debris on the Department's right-of-way shall not be permitted.

Provide areas for disposing of debris in accordance with all Federal, State, and Local Rules and Regulations in effect at the time of the disposal. Cost involved with the disposal of debris will be included in the contract unit price per mile of mechanized (mechanical) sweeping.

110-31.8 Quality.

Pick up and remove from the areas to be swept, any obstacle such as wood, tires, cans, etc. that can not be picked-up by the sweeper to include areas under guardrail on paved shoulders. Remove all items such as newspapers, magazines, large boxes, etc. that would be torn, ripped, or scattered by the sweeper and result in an objectionable appearance.

Completed work will be clean and free of all accumulated debris immediately after sweeping, as determined by the Engineer.

Areas determined unsatisfactory by the Engineer will be re-swept to the satisfaction of the Engineer within the time specified, at no additional cost to the Department.

110-31.9 Method of Measurement.

The quantities to be paid for under this Section will be the number of miles completed and accepted measured longitudinally to the travel lane to the nearest one hundredth of a mile. A second unit of measurement will be required from the Contractor. The cubic yards of material picked up, will be reported to the inspector for each sweeping cycle completed. If the contract is for more than one county, the number of cubic yards picked up will be prorated by county based on the number of miles swept in each county.

The width will be sufficient to cover the entire width of curb and gutters, valley gutters, bridge decks and curbs, inside and outside highway interchange ramps (with paved shoulders greater than 12 inches in width, outside and median paved shoulders, concrete barriers, gore areas, toll plazas (when applicable), and other designated sites. Areas requiring more than one sweeping pass to sufficiently remove the debris will not be compensated twice.

MAINTENANCE AGREEMENT NO.: BEF42

FM NO.: 432729-1-78-15

Page 35 of 35

110-31.10 Basis of Payment.

Payment will be full compensation for furnishing all equipment, materials, labor, and incidentals necessary to complete all sweeping operations, including hand work, as specified. Compensation will be at the unit price per mile times the actual miles completed and accepted.

Payment will be made under the items specified in the Bid Price Proposal.

1. **Requested Motion:**

Meeting Date: May 1, 2023

Special Event - FMB Elementary Spring Music Performance

Why the action is necessary:

ORD. 20-17

What the action accomplishes:

Allows event to happen

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

ORD. 20-17

4. **Submitter of Information:**

5. **Background:**

FMB Elementary is requesting permission to use Times Square for their Spring Music Performance with the expected attendance to be 225 people. The site plan shows 4 risers, a PTO table with audience seating.

Attachments:

1. 232607 FMB Spring Performance 2023

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

Patty Prevost, Code Supervisor/STR Coordinator
Steve Poposki, Community Development Director
John R Herin Jr, Town Attorney
Amy Baker, Town Clerk
Keith Wilkins , Interim Town Manager

Created/Initiated - 4/20/2023
Approved - 4/20/2023
Approved - 4/26/2023
Approved - 4/26/2023
Final Approval - 4/26/2023



Town of Fort Myers Beach

2525 Estero Boulevard, Fort Myers Beach, Florida 33931
Tel: (239) 765-0202 Fax: (239) 765-0909 Email: Specialevents@fmbgov.com

Rec'd
3-15-23

Name of event Fort Myers Beach Elementary Spring Music Performance grades K-5 232607
Attach separate sheet of paper with detailed description of event
Date(s) and times of event May 16, 2023 5:30pm
Address of event Times Square. 1000 Estero Fort Myers Beach, FL 33904
Expected # of participants/attendees 225
Sponsoring Organization Fort Myers Beach Elementary
Organization address 2751 Oak St, Fort Myers Beach, FL 33931, United States
Contact Person/Phone# 239-463-6356 | Kayln Ortega, Music Teacher FMBE
E-mail Ortega, Amanda <AmandaKHa@LeeSchools.net>
Amplified Music Y ☐ N ☒ 500 Ft Notifications Copy of Letter
Renting Town Property Y ☐ N ☒ Renting Parking Spaces Y ☐ N ☒
How many Spaces? How many hours
Extension of Premises? Y ☐ N ☒ ABT Form How many days? (Over 3 days needs to go to Council)
Letters of Permission to use Property
Letters of Permission to use Parking Parking Plan
Site Plan Insurance (Naming Town of FMB as Certificate Holder)
Requesting Water Y ☐ N ☒ Electric Y ☐ N ☒
Requires Council Approval:
Waiver of open container Y ☐ N ☐ Waiver of Town parking fees Y ☐ N ☐
Waiver of Noise Ordinance Y ☐ N ☐ Recurring Event Y ☐ N ☐
Applicant Signature 
Printed Name Erin Field

This permit is subject to the applicant meeting all requirements contained in Fort Myers Beach Code of Ordinance Book Part 2 Chapter 22 and in compliance with all items in the special event application.

Applicant to Complete:

Company managing trash removal: N/A

No. of dumpsters: _____ Type of dumpsters: _____

Who is responsible for clean-up and payment: applicant

City right-of-way Parking Use: _____ Number of spaces: _____

To be completed by Town Hall employees:

FMB Public Works:

Public Works remarks: _____

Approval: See attached Date: _____

FMB Environment Science: Tel (239)765-0202 Fax (239)765-0909

FMB Environmental Sciences remarks: See attached

Approval: _____ Date: _____



Date: 03/28/2023

Permit #: 232607

Permit Date: 03/22/2023

Review Date: 03/22/2023

Permit Type:

Review Type: SEP-Public Works Review

Target Date: 03/24/2023

Scheduled Time: 00:00

Completed Date:

Description:

Review Status: APPROVED

Assigned To: Martin Pitts

Time In: 00:00

Time Out: 00:00

Hours: 0.0

Property Information

Parcel#: ROW TOWN OF FORT MYERS BEACH

TOWN OF FORT MYERS BEACH

2525/2523 ESTERO BLVD

Zoning: Lot: Block:

TOWN OF FORT MYERS BEACH

2525/2523 ESTERO BLVD

FORT MYERS BEACH,



Date: 04/13/2023

Permit #: 232607

Permit Date: 03/22/2023

Review Date: 03/22/2023

Permit Type:

Review Type: SEP-Environmental

Target Date: 03/24/2023

Scheduled Time: 00:00

Completed Date: 03/28/2023

Description:

Review Status: REVIEWED W/CONDITIONS

Assigned To: Chadd Chustz

Time In: 00:00

Time Out: 00:00

Hours: 0.0

Notes

03/28/2023 BEACH EVENT PERMIT CONDITIONS

SEA TURTLE NESTING SEASON MAY 1 through OCTOBER 31

Event may commence after 9 a.m. or after completion of daily monitoring for turtle nesting activity by a FWC-authorized marine turtle permit holder, whichever occurs first.

EVENT LIGHTING VISIBLE FROM THE BEACH IS NOT AUTHORIZED

Lighting associated with a special event that may directly, indirectly, or cumulatively be visible from any portion of the beach IS NOT AUTHORIZED before sunrise nor after sunset.

No sky lanterns, floating lanterns, confetti bombs permitted. Any and all flower petals, rice, and any other litter shall be collected from the beach and disposed of properly in a garbage bin.

A 10 foot buffer shall be maintained between event activities and:

- any dune vegetation, and
- any listed species nesting habitat including sea turtles and shorebirds

In addition, it is prohibited for any person to:

- Harass, molest or disturb wildlife (Land Development Code Sec. 14-3);
- Destroy or harm a dune or remove dune vegetation (Land Development Code Sec. 14-3);
- Discard or leave litter, garbage, trash or refuse, vegetative clippings, or debris (Sec. 14-3)

Permitting from the Florida Department of Environmental Protection may be required. It is the responsibility of the applicant to obtain State authorization.

Special event permit holders are responsible for ensuring that the area where the event is held is free of all litter and debris within 24 hours of the time the special event ends. In the event this section is not complied with, the town manager has the authority to contract with a cleaning service and the cost of the cleanup will be the responsibility of the permit holder (Sec. 22-12).

No person shall make, continue or cause to be made or continued any noise disturbance in accordance with Land Development Code Sec. 14-23. Noises resulting from a special event authorized pursuant to chapter 22 of the Land Development Code are excepted; provided, such noises are in compliance with any specific limitations as set forth within the special event permit. If no specific limitations are set forth in the special event permit, the provisions of Land Development Code Sec. 14-23 shall fully apply.

Property Information

Parcel#: ROW TOWN OF FORT MYERS BEACH
TOWN OF FORT MYERS BEACH
2525/2523 ESTERO BLVD
Zoning: Lot: Block:

TOWN OF FORT MYERS BEACH
2525/2523 ESTERO BLVD
FORT MYERS BEACH,

Please forward the completed application and site plan along with the individual approval request to each identified agency below. Once complete return all to our office.

Florida DEP: DEP now provides an online application process for minor event approval

Self Certification for CCCL Permit Guidance Document: <http://www.dep.state.fl.us/beaches/>

FOR MAJOR EVENTS ONLY CONTACT

Kelly Cramer

Tel (239)770-7502 Fax(850)412-0590

Email: kelly.cramer@floridadep.gov

Florida DEP remarks: _____

Check list: Application _____ Site Plan _____ Description _____

Florida DEP approval: _____ **Date:** _____

Turtle Time Inc.: Eve Haverfield

Tel (239)481-5566 eve@turtletime.org

Turtle Season is May 1 through October 31

Turtle Time remarks: _____

Turtle Time approval: _____ **Date:** _____

FORT MYERS BEACH FIRE DEPT

17891 San Carlos Blvd – 3rd Floor, Fort Myers Beach, FL 33931

Tel (239) 590-4210

Fax (239) 463-6761

Fire Guards: (how many?) _____

Fee: _____

Flammable Vegetation: _____

First Aid Equipment: _____

Fire Extinguishing Equipment: _____

Special Arrangements: _____

Print Name

Approval Signature

Date

prevention@fmbfire.org – For Fire Department Handbook and additional application.

LEE COUNTY SHERIFF'S DEPT

15650 Pine Ridge Road, Fort Myers, FL 33908

Tel (239)477-1830

Fax (239)432-0268

Parking: _____

Deputies (how many?) _____

Traffic Control: _____

Fees: _____

Special Arrangements: _____

Print Name

Approval Signature

Date

Fort Myers Beach Elementary Performance Event

What: Fort Myers Beach Elementary Spring Music Performance grades K-5

When: May 16th, 2023 at 5:30pm

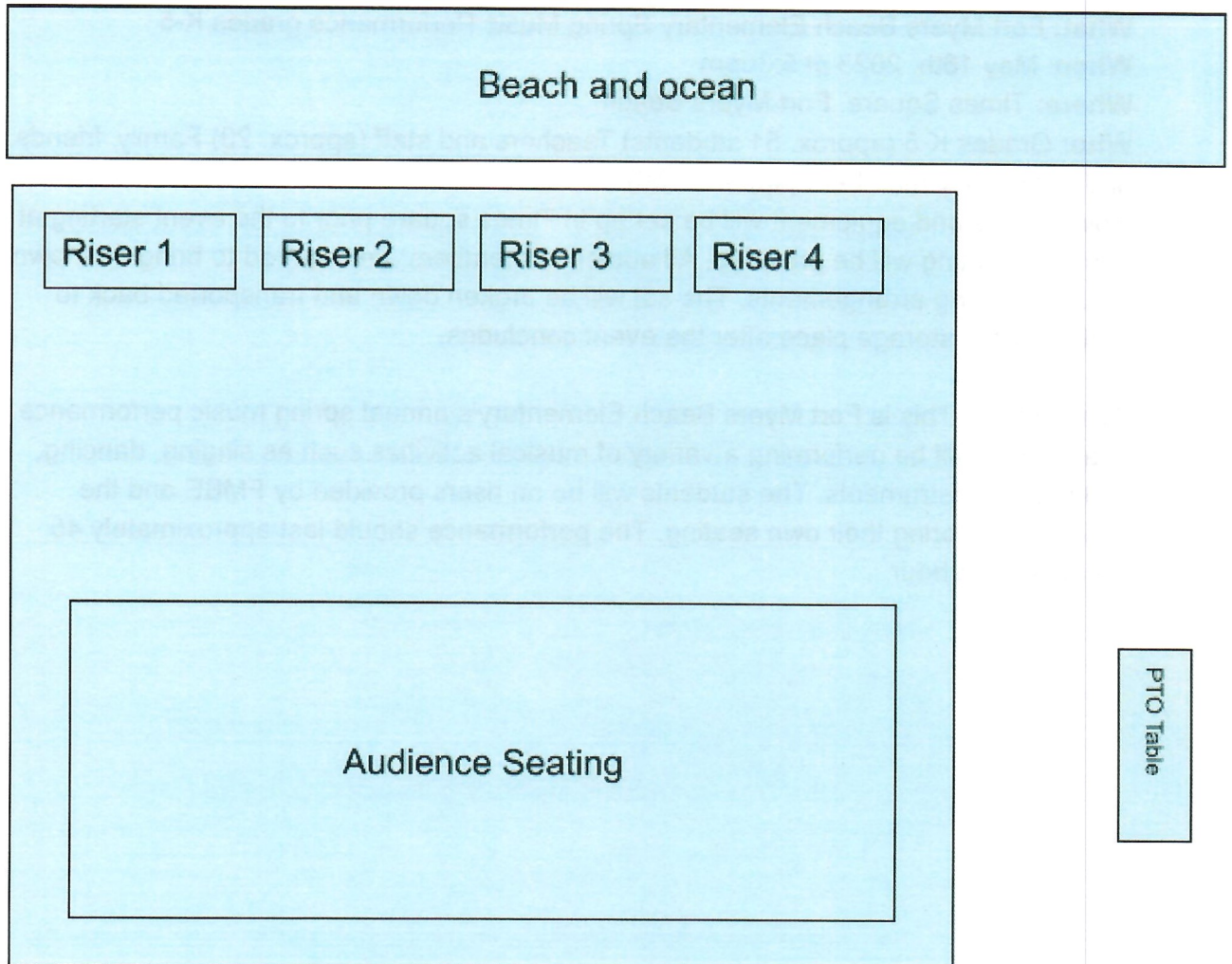
Where: Times Square, Fort Myers Beach

Who: Grades K-5 (approx. 51 students) Teachers and staff (approx. 20) Family, friends, and community members (approx. 150)

How: Risers and equipment will be set up in Times square prior to the event starting at 4pm. No seating will be provided. All audience members are required to bring their own chair or seating arrangements. The set will be broken down and transported back to FMBE official storage place after the event concludes.

Description: This is Fort Myers Beach Elementary's annual spring music performance. Grades K-5 will be performing a variety of musical activities such as singing, dancing, and playing instruments. The students will be on risers provided by FMBE and the audience will bring their own seating. The performance should last approximately 45 minutes to an hour.

Site Plan for FMBE Performance





CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

03/15/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION** IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER East Main Street Insurance Services, Inc. Will Maddux PO Box 1298 Grass Valley CA 95945	CONTACT NAME: Will Maddux PHONE (A/C, No, Ext): (530) 477-6521 E-MAIL ADDRESS: info@theeventhelper.com FAX (A/C, No): INSURER(S) AFFORDING COVERAGE INSURER A: Evanston Insurance Company INSURER B: INSURER C: INSURER D: INSURER E: INSURER F: NAIC # 35378
INSURED E LA FIELD INC Erin Field 338 Donora Blvd Fort Myers Beach FL 33931	

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR Host Liquor Liability Retail Liquor Liability GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PRO-JECT ☐ LOC OTHER:	Y	N	3DS5474-M3012112	05/16/2023 12:01 AM	05/17/2023 12:01 AM	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 Deductible \$ 1,000
	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ OWNED AUTOS ONLY ☐ HIRED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB EXCESS LIAB DED RETENTION \$ OCCUR CLAIMS-MADE						EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below Y/N N/A		N/A				PER STATUTE OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Certificate holder listed below is named as additional insured per attached MEGL 2217 01 19.

Attendance: 250, Event Type: Recital.

CERTIFICATE HOLDER**CANCELLATION**

Town of Fort Myers Beach 2525 Estero Blvd Fort Myers Beach FL 33931	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
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Town of Fort Myers Beach

Special Event Application Checklist

2525 Estero Boulevard, Fort Myers Beach, Florida 33931
Tel: (239) 765-0202 ext. 1303 * Fax: (239) 765-0909 Email: Specialevents@fmbgov.com

- ☐ All necessary department approvals – an application is not considered completed until all approvals have been turned in to Town Hall.
- ☐ Detailed description of entire event including set up and breakdown
- ☐ Liability Insurance (\$1 million each occurrence and \$2 million general aggregate) naming the Town of Fort Myers Beach as certificate holder
- ☐ Site plan – marked off with placement of objects (chairs, tables, tents, etc.)
- ☐ Parking Plan – if applicable
- ☐ A copy of the 500 foot notification letter for any amplification along with the mailing list
- ☐ Letters of permission if using someone else's property for event.
- ☐ A **completed** application is to be turned in 45 days **prior** to the event or a \$5.00 per day cost will be added to the permit cost.
- ☐ If Town Council action is required the **completed** application must be turned in 60 days prior to the event in order to get put on the Council agenda to be brought forth to Council, also any application turned in after the 60 days a 10% additional charge to the permit will be added.

1. **Requested Motion:**

Meeting Date: May 1, 2023

1st Reading and public hearing for proposed Ordinance 23-05 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AUTHORIZING THE PLACEMENT OF TEMPORARY HOUSING AND TEMPORARY GOVERNMENTAL USE FACILITIES IN SPECIFIED ZONING DISTRICTS OF THE TOWN, PROVIDING FOR CONFLICT OF LAW, SCRIVENER'S ERRORS, SEVERABILITY, SUNSETTING OF THIS ORDINANCE, AND PROVIDING FOR AN EFFECTIVE DATE. Open the first public hearing and schedule for second reading and final adoption on May 15, 2023 at 9:00 AM

Why the action is necessary:

Town Council directed staff to prepare an amendment to allow a temporary use for housing and governmental uses post-disaster.

What the action accomplishes:

Provide temporary housing options for property owners that wish to live on their property while they rebuild, as well as temporary governmental uses.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Ordinance

4. **Submitter of Information:**

5. **Background:**

The Town Council directed staff to prepare an Ordinance to permit recreational vehicles, travel trailers, and mobile homes as temporary housing post disaster, as well as temporary governmental uses post Hurricane Ian.

Attachments:

1. 23-05, Ordinance 23-05 re Temporary Placement of Governmental Uses and Mobile Homes in the Town(142395789.6)-C
2. Affidavit of Publication Ordinance 23-05

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

Approve

8. **Recommended Approval:**

Amy Baker, Town Clerk
Steve Poposki, Community Development Director
John R Herin Jr, Town Attorney
Amy Baker, Town Clerk
Keith Wilkins , Interim Town Manager

Created/Initiated - 4/19/2023
Approved - 4/19/2023
Approved - 4/26/2023
Approved - 4/26/2023
Final Approval - 4/26/2023

ORDINANCE 23-05

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AUTHORIZING THE PLACEMENT OF TEMPORARY HOUSING AND TEMPORARY GOVERNMENTAL USE FACILITIES IN SPECIFIED ZONING DISTRICTS OF THE TOWN, PROVIDING FOR CONFLICT OF LAW, SCRIVENER'S ERRORS, SEVERABILITY, SUNSETTING OF THIS ORDINANCE, AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Article X of the Town Charter of the Town of Fort Myers Beach empowers the Town to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

WHEREAS, the Town recognizes that redevelopment of the Town, following hurricane Ian requires evaluation and updates to the Town's Codes and Ordinances; and

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on January 18, 2023, at which the LPA gave full and complete consideration of the request, recommendations by staff, the documents in the record, and the testimony of all interested persons, and the LPA voted 7-0, to recommend approval of this Ordinance; and

WHEREAS, on March 6, 2023, the Town Council held a first reading of the proposed Ordinance and gave full and complete consideration to the recommendation of staff, and the testimony of all interested persons; and

WHEREAS, the Town Council set a second reading of the proposed Ordinance and a public hearing on this matter to be legally advertised and held before the Town Council on March 20, 2023; at which time the Town Council gave full and complete consideration to the recommendation of staff, and the testimony of all interested persons; and

WHEREAS, the Town finds that it is in the best interests of the health, safety, and welfare of the Town's business owners, residents, and visitors to allow for the placement of temporary housing and temporary governmental use facilities in specified zoning districts of the Town.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AS FOLLOWS:¹

Section 1. The above recitals are true and correct, and incorporated herein by this reference and are hereby adopted as the legislative and administrative findings of the Town

^{1/} Additions to existing text are shown by underline, changes to existing text on second reading are shown by double underline, and deletions are shown as strikethrough.

Council.

Section 2. The Town Council determines that adoption of the following interim regulations is in the best interests of the health, safety, and welfare of the Town's business owners, residents, and visitors, which regulations shall read as follows:

**Temporary Placement of Emergency Uses, Manufactured Homes, Mobile Homes, Motor Homes, Recreational Vehicles
Other Temporary Residential Dwelling or Temporary Moveable Commercial Units**

- (1) An emergency governmental use, manufactured home, mobile home, motor home, recreational vehicle, or other temporary unit, may be permitted on a limited basis by the issuance of a temporary placement permit (TPP) by the Town.
- (2) Unless otherwise provided in this Ordinance, an emergency governmental use, manufactured home, mobile home, motor home, recreational vehicle, or other temporary unit shall be removed from the site within thirty (30) days after issuance of a certificate of occupancy or certificate of use associated with the approved permit, or at the time of the expiration of the TPP, whichever is earlier.
 - A. A TPP may be granted as indicated below:
 - (i) Within any Commercial or Institutional Zoning District, a TPP may be issued for the purpose of providing an emergency governmental use to provide an essential governmental service adversely impacted due to adverse weather or other acts of God.
 - (ii) Within any Commercial, Institutional or Residential Zoning District, a TPP may be issued for the purposes of placing a manufactured home, mobile home, motor home, recreational vehicle, or other temporary unit for displaced owner-occupants or tenants if their existing living unit(s) has/have become uninhabitable due to adverse weather damage or other acts of God. Habitability of the existing residential unit(s) shall be determined by an inspection by the

City building official, Florida certified building inspector, architect, or engineer, and subject to the following requirements and restrictions:

- (a) No more than one (1) manufactured home, mobile home, motor home, recreational vehicle, or other temporary unit shall be allowed per living unit, for single family and two-family homes. Additional units may only be allowed with approval of a waiver by the Town Council.
 - (b) The TPP shall only be allowed while the damaged living unit is uninhabitable and in the process of repair or a replacement living unit is in the process of being constructed.
 - (c) Placement of a manufactured home, mobile home, motor home, recreational vehicle, or other temporary unit on a site must meet all State requirements for tie-downs. Mobile homes shall be installed by a licensed mobile home contractor and in accordance with requirements of Florida Statutes and the Florida Building Code.
 - (d) Only verified residents of Fort Myers Beach may be granted a TPP.
- (iii) The TPP shall be issued in increments of six (6) months by review of the Town and shall not be issued for a period exceeding eighteen (18) months from the date of this ordinance adoption. The Town may, however, grant extensions to a TPP permit exceeding eighteen (18) months if a TPP permit holder demonstrates that a significant hardship exists. The Town Manager or designee shall decide if a hardship exists based upon evidence provided by the permit holder that they have exercised all due diligence in obtaining permits either for repair or replacement of the affected structure. The Town Manager may consider whether the

applicant has had difficulties in completing insurance claims, obtaining an architect or engineer, obtaining construction materials, or obtaining a contractor, and if relevant, whether they have had difficulty in obtaining grants or loans to assist in repair or replacement of the affected structure.

- (iv) The holder of the TPP shall apply for a building permit for the damaged or destroyed dwelling unit no later than six (6) months after the date of this ordinance adoption. The Town Manager or designee may, however, grant extensions to this deadline requirement based upon evidence provided by the property owner that they have exercised all due diligence in obtaining permits either for repair or replacement of the affected structure. The Town Manager may consider whether the applicant has had difficulties in completing insurance claims, obtaining an architect or engineer, obtaining construction materials, or obtaining a contractor, and if relevant, whether they have had difficulty in obtaining grants or loans to assist in repair or replacement of the affected structure.
- (v) Noncompliance may result in revocation of the TPP.
- (vi) The occupants of the manufactured home, mobile home, motor home, recreational vehicle, or other temporary residential unit must comply with all mandatory hurricane evacuation requirements. Failure to do so may result in the revocation of the TPP.

3. Submission Requirements:

- A. A completed TPP application; and
- B. Map or other documentation indicating the proposed location of the manufactured home, mobile home, motor home, recreational vehicle, or other temporary residential unit; and

- C. State Department of Health, State Department of Environmental Protection, and Town permit(s) authorizing the connection of the manufactured home, mobile home, motor home, recreational vehicle, or other temporary residential unit to an on-site or existing community wastewater treatment system.

- 4. An appeal of any decision made under this Ordinance may be made pursuant to the provisions found in Section 34-86 of the Town's Land Development Code.

Section 3. Whenever the requirements or provisions of this Ordinance conflict with the requirements or provisions of any other lawfully adopted Town Code provision, ordinance, or statute, this Ordinance shall apply.

Section 4. Any typographical errors that do not affect the intent of this Ordinance may be corrected with notice to and authorization of the Town Manager without further process.

Section 5. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason, declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision will not affect the validity of the Ordinance as a whole, or any part thereof, other than the part so declared.

Section 6. Absent extension of this Ordinance in accordance with State law and the Town Code this Ordinance shall terminate effective eighteen months (18) from its effective date and shall be of no further force or effect after such date.

Section 7. This Ordinance shall become effective upon adoption by the Town Council.

The foregoing Ordinance was adopted by the Town Council upon a motion by Council Member _____ and seconded by _____, and upon being put to a roll call vote, the result was as follows:

Dan Allers, Mayor	_____
Jim Atterholt, Vice Mayor	_____
John R. King, Council Member	_____
Bill Veach, Council Member	_____
Karen Woodson, Council Member	_____

ADOPTED this ____ day of _____, 2023, by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:**

John R. Herin, Jr., Town Attorney

This Ordinance was filed in the Office of the Town Clerk on this ____ day of _____, 2023.

The News-Press media group

news-press.com A GANNETT COMPANY

TOWN OF FT MYERS BEACH LEGALS
2523 ESTERO BLVD
FORT MYERS BEACH, FL 33931
ATTN

STATE OF WISCONSIN COUNTY OF BROWN:

Before the undersigned authority personally appeared said legal clerk, who on oath says that he or she is a Legal Assistant of the News-Press, a daily newspaper published at Fort Myers in Lee County, Florida; that the attached copy of advertisement, being a Legal Ad in the matter of

PUBLIC NOTICE

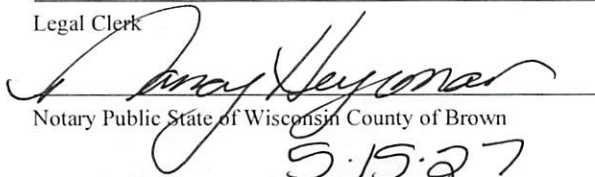
In the Twentieth Judicial Circuit Court was published in said newspaper in the issues of:

4/14/2023

Affiant further says that the said News-Press is a paper of general circulation daily in Lee, Charlotte, Collier, Glades and Hendry Counties and published at Fort Myers, in said Lee County, Florida, and that the said newspaper has heretofore been continuously published in said Lee County, Florida each day and has been entered as periodicals matter at the post office in Fort Myers, in said Lee County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that he or she has never paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

Sworn to and Subscribed before me this 14th of April, 2023

Legal Clerk


Notary Public State of Wisconsin County of Brown
5.15.27

My commission expires

Publication Cost: \$524.00
Ad No: GC11046471
Customer No: 863611
PO#: PUBLIC NOTICE
THIS IS NOT AN INVOICE

NANCY HEYRMAN
Notary Public
State of Wisconsin

Town of Fort Myers Beach

APR 21 2023

Received by: _____

NOTICE OF PUBLIC HEARINGS

Notice is hereby given that the Town Council of the Town of Fort Myers Beach will hold two public hearings at two separate meetings beginning at **9:00 AM** on **Monday, May 1, 2023** AND **Monday, May 15, 2023** regarding the ordinance listed below. These meetings and public hearings will take place at **Diamondhead Beach Resort, 2000 Estero Boulevard, Fort Myers Beach, FL 33931.**

ORDINANCE 23-05

**AN ORDINANCE OF THE TOWN
OF FORT MYERS BEACH,
FLORIDA, AUTHORIZING THE
PLACEMENT OF TEMPORARY
HOUSING AND TEMPORARY
GOVERNMENTAL USE
FACILITIES IN SPECIFIED ZONING
DISTRICTS OF THE TOWN,
PROVIDING FOR CONFLICT OF
LAW, SCRIVENER'S ERRORS,
SEVERABILITY, SUNSETTING
OF THIS ORDINANCE, AND
PROVIDING FOR AN EFFECTIVE
DATE.**

If any person should choose to appeal a decision made at this public hearing, such person would need a record of the proceedings, and for that purpose may need to ensure that a verbatim record of the proceedings is made, which record indicates the testimony and evidence upon which the appeal is to be based.

Copies of the full ordinance text are available at Fort Myers Beach temporary Town Hall. Call 239-765-0202 for more information. Town Hall is open between the hours of 8:30 AM and 4:30 PM. Reasonable accommodations will be made in accordance with the Americans with Disabilities Act. If you are in need of reasonable accommodation, contact Town Hall at 239-765-0202. Amy Baker, Town Clerk

NP-GC11046471-01

Shorebirds

Continued from Page 1A

cides with some of the busiest beach months of the year, which means human traffic can be high when the adults are trying to feed and rest.

There are five species of shorebirds that are prominent in Lee County, while four of the species can be found in Collier.

Lee County is home to black skimmers, least terns, Wilson's plover, snowy plover and the American oystercatcher, which does not regularly occur in Collier.

"We're just at the beginning of breeding season, so a lot of people will see the signs and string go up," said Rochelle Streker, Southwest Florida shorebird manager for Audubon Florida. "We have seen plover nests, and those guys are already on eggs. They get started nice and early."

Here's a closer look at Southwest Florida shorebirds and how their lives will unfold over the next several months.

These birds are tough

These shorebirds may be small; but once for once, they're some of the toughest species in the avian world.

"They're going to come for your head, and it's going to be very noisy," Streker said. "Your best bet is just to back away. They will also projectile poo at you, and it stains clothing and is gross and unpleasant."

Streker monitors shorebirds for Audubon in Lee and Collier and said the birds are naturally territorial as their nests and young are very exposed.

"This is an extremely vulnerable moment, and the eggs are hidden in the sand," Streker said.

"We're unnatural because we're not predators (but we're relatively large). We're not trying to eat them, but we just may step on them."

Streker said the safest place to walk when near shorebird territory is to walk along the low-tide line. No eggs or nests will be below the high tide line as they would get regularly flooded.

"All of our state protected will let you know if you've gotten too close," Streker said. "The divebombing is the least tern and the black skimmers."

Does that bird have a broken wing?

Some shorebirds are known for acting as though they are injured in hopes of luring away potential predators.

They dance around and drag one wing on the ground, as though they are hurt and can't fly.

"They feign an injury," Streker said. "If the bird had actually broke its wing it wouldn't make that much noise. It's trying to look vulnerable so you as a predator try to eat it instead of the chicks that aren't able to fly away."

Where are these birds?

Shorebirds like undeveloped patch of expansive beach like the area that's found at the south end of Fort Myers Beach.

They're also found at Cayo Costa State Park, on Sanibel Island, at Lovers Key State Park, on the north tip of Bonita Beach and on some Naples beaches as well as Marco Island.

"We're still expecting birds and we've had them at Cayo Cost and Lovers Key and Delnor-Wiggins (State Park)," Streker said. "We have a lot of plovers on Sanibel."

How can the public help?

The Florida Fish and Wildlife Conservation Commission is responsible for protecting listed species and recommends the following when in shorebird nesting territory:

Do the flock walk

Keep at least 300 feet from nesting birds and walk around flocks of birds and stay out of posted areas. Getting too close to nesting shorebirds, seabirds and wading birds can cause them to flush from their breeding sites, leaving vulnerable eggs and chicks exposed to the elements and predators. Egg temperatures can increase to lethal levels after just a few minutes of direct sun exposure. Shorebirds and seabirds nest in shallow scrapes in the sand and their eggs and chicks are well-camouflaged, making them vulnerable to being stepped on unless people look out for them and walk around flocks of birds.

Look for Critical Wildlife Area closures

Be on the lookout for signs designating Critical Wildlife Areas, or CWAs, on the beach or coastal islands — these areas are closed to public access to protect high concentrations of wading birds and shorebirds while they nest and raise their chicks. Boaters and beachgoers can help nesting birds by keeping distance and noise volumes low near CWAs.

Keep Fido at home

Even well-behaved dogs can frighten shorebirds, causing them to abandon their eggs and chicks. If you bring your dog with you to the shore, go to a beach where they're allowed and follow all leash laws.

Properly stash all trash

Trash and food scraps attract predators, such as raccoons and crows, that prey on shorebird eggs and chicks. Litter on beaches and in the water can entangle birds, turtles and other wildlife. Beachgoers can help beach-nesting birds and other native wildlife by properly disposing of all trash, filling in human-made holes in the sand, and removing all personal gear from the beach before sunset. Fishing line can be deadly to water birds, sea turtles and other wildlife, so be sure to dispose of it properly.

Connect with this reporter: Chad Gillis on Facebook.

NOTICE OF PUBLIC HEARINGS

Notice is hereby given that the Town Council of the Town of Fort Myers Beach will hold two public hearings at two separate meetings beginning at 9:00 AM on Monday, May 1, 2023 AND Monday, May 15, 2023 regarding the ordinance listed below. These meetings and public hearings will take place at **Diamondhead Beach Resort, 2000 Estero Boulevard, Fort Myers Beach, FL 33931.**

ORDINANCE 23-05

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AUTHORIZING THE PLACEMENT OF TEMPORARY HOUSING AND TEMPORARY GOVERNMENTAL USE FACILITIES IN SPECIFIED ZONING DISTRICTS OF THE TOWN, PROVIDING FOR CONFLICT OF LAW, SCRIVENER'S ERRORS, SEVERABILITY, SUNSETTING OF THIS ORDINANCE, AND PROVIDING FOR AN EFFECTIVE DATE.

If any person should choose to appeal a decision made at this public hearing, such person would need a record of the proceedings, and for that purpose may need to ensure that a verbatim record of the proceedings is made, which record indicates the testimony and evidence upon which the appeal is to be based.

Copies of the full ordinance text are available at Fort Myers Beach temporary Town Hall. Call 239-765-0202 for more information. Town Hall is open between the hours of 8:30 AM and 4:30 PM. Reasonable accommodations will be made in accordance with the Americans with Disabilities Act. If you are in need of reasonable accommodation, contact Town Hall at 239-765-0202. Amy Baker, Town Clerk



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YOUR HEARING PROFESSIONALS

1722 Del Prado Blvd S 2, Cape Coral
12361 Cleveland Ave Ste 405, Ft. Myers

1. **Requested Motion:**

Meeting Date: May 1, 2023

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING BUDGET AMENDMENT #1 TO THE TOWN'S ADOPTED FISCAL YEAR 2022-2023 BUDGET, ATTACHED AS EXHIBIT "A"; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

Why the action is necessary:

To maintain acceptable service levels for permitting, customer service, floodplain management, building code plan review and inspections, in a more cost effective manner.

What the action accomplishes:

Provides the ability to maintain acceptable service levels for permitting, customer service, floodplain management, building code plan review and inspections, in a more cost effective manner. By moving the Code Enforcement Department from the General Fund to the Building Fund, the General Fund will be relieved of funding its expense, while maximizing the benefit of the additional permit revenue. The savings in the General Fund can then be set aside to fund other personnel changes that have taken place in the General Fund.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Steve Poposki, Community Development Director, Joe Onzick, Finance Director

5. **Background:**

Due to the current and foreseeable workload, the Community Development Department is requesting a staff augmentation to maintain acceptable service levels. The recommendation is a balanced addition of staff in management, permitting, and code compliance. The most pressing issues are currently permitting, customer service, and floodplain management. However, as rebuilding activity continues to increase over the next several years, we will also begin to experience higher demands in building code plan review and inspections.

Attachments:

1. 23-44, Resolution 23-44 re Budget Amendment #1(145060491.1)-C
2. List of Additional Personnel
3. Summary

Financial Impact:

The projected increase in permit revenue is more than enough to cover the increase in expense for the additional permit related employees. According to Florida state statute, permit revenue may only be used for the funding of costs associated with the review of building plans, building inspections, reinspections, building permit processing, building code enforcement, and fire inspections associated with new construction. Since code enforcement is included as an allowable use of permit revenue, in order to maximize the benefit of the projected increase in permit revenue, we are proposing that the Code Enforcement Department be moved out of the General Fund and moved into the Building Fund in order to be funded by permit revenue, thereby relieving the General Fund of its expense. The reduction in General Fund expense will then be available for a future budget adjustment to fund the additional personnel changes that have taken place.

6. **Alternative Action**

To continue at existing staff level and supplement with contractual services as needed. This is a more costly and less efficient alternative.

7. Management Recommendations:

Approve the request for additional personnel and related budget adjustment.

8. Recommended Approval:

Danielle Felton,
Joe Onzick, Finance Director
John R Herin Jr, Town Attorney
Amy Baker, Town Clerk
Keith Wilkins , Interim Town Manager

Created/Initiated - 4/20/2023
Approved - 4/20/2023
Approved - 4/26/2023
Approved - 4/26/2023
Final Approval - 4/26/2023

RESOLUTION NUMBER 23-44

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING BUDGET AMENDMENT #1 TO THE TOWN'S ADOPTED FISCAL YEAR 2022-3023 BUDGET, ATTACHED AS EXHIBIT "A"; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, Section 200.065, Florida Statutes, establishes the method for adoption of a budget for all taxing authorities in the State and Section 166.241, Florida Statutes, requires the governing body of each municipality in Florida to adopt a budget via ordinance or resolution before the start of each fiscal year; and

WHEREAS, on September 22, 2022, the Town Council of the Town of Fort Myers Beach ("Town"), following due public notice, adopted a final operating budget for fiscal year 2022-23, as set forth in Town Resolution 22-33; and

WHEREAS, Section 11.05 of Article XI of the Charter of the Town provides that the Town Manager will report to Town Council regarding any anticipated excess revenues; any reduction of appropriations and any request for transfers for the Town operating budget, including the estimated amount of such increase, decrease, remedial action(s) taken, and recommendations as to any other steps to be taken; and

WHEREAS, the Town Manager has made various recommendations as set forth in Budget Amendment #1, attached as Exhibit "A", and it is in the best interest of the health, safety, and welfare of the business owners, residents, and visitors of the Town to approve Budget Amendment #1.

NOW, THEREFORE, BE IT HEREBY RESOLVED, BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AS FOLLOWS:

Section 1. The above recitals are true and correct, and incorporated herein by this reference and are hereby adopted as the legislative and administrative findings of the Town Council.

Section 2. The Town Council approves, adopts, and accepts Budget Amendment #1, attached as Exhibit "A", and finds that it is consistent with the requirements of Section 11.05 (a), (c) and (d) of Article XI of the Town Charter.

Section 3. If any section or portion of a section of this Resolution proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other section or part of this Resolution.

Section 4. This Resolution shall become effective upon adoption by the Town Council.

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member _____ and seconded by Council Member _____ and upon being put to a vote, the result was as follows:

Dan Allers, Mayor	_____
Jim Atterholt, Vice Mayor	_____
John R. King , Councilmember	_____
Bill Veach, Councilmember	_____
Karen Woodson, Councilmember	_____

ADOPTED this 1st day of May 2023 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:**

John R. Herin, Jr., Town Attorney

This Resolution was filed in the Office of the Town Clerk on this _____ day of _____ 2023.

Additional Position to Approve for Community Development
Planning and Zoning Manager

Additional Positions to Approve for Building Services
Code Compliance Manager
Code Compliance/BASE Officer
Building Official
Flood Plain Reviewer
Residential Inspector
Residential Inspector
Residential Inspector
Plans Examiner
Plans Examiner
Plans Examiner
Customer Service/Permitting Manager
Permitting Receptionist

Positions Previously Approved for Building Services, for which Budget Adjustment is Still Needed
Permitting Technician
Permitting Technician
Permitting Technician
Permitting Technician

Budget Adjustment Summary

	General Fund					Building Fund				
	Move Lien Search Revenue from Code Enforcement to Community Development	Adjust Community Development Personnel	Move Code Enforcement to Building Fund	Reserve Net Savings for Future Use	Net Change to General Fund	Original Building Fund Budget	Move Code Enforcement from General Fund	Adjust Code Enforcement and Building Services Personnel	Increase Permit Revenue And Add Excess to Reserve	Resulting Building Fund Budget
Community Development Code Enforcement Building Services	25,000 (25,000)				25,000 (25,000)	1,102,205				- -
Total Revenue	-	-	-	-	-	1,102,205	-	-	2,780,000	3,882,205
Expense										
Community Development Code Enforcement Building Services Add to Contingency Add to Building Reserve		53,515	(393,515)		53,515 (393,515)	1,102,205	393,515	44,485 942,000		- 438,000 2,044,205 -
Total Expense	-	53,515	(393,515)	340,000	-	1,102,205	393,515	986,485	1,400,000	3,882,205
Net Change	-	(53,515)	393,515	(340,000)	-	-	(393,515)	(986,485)	1,380,000	-

1. **Requested Motion:**

Meeting Date: May 1, 2023

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AUTHORIZING THE EXECUTION AND DELIVERY OF THE FORM OF ATTACHED LOAN DOCUMENTS BETWEEN THE LOCAL GOVERNMENT AND THE STATE OF FLORIDA, DEPARTMENT OF ECONOMIC OPPORTUNITY FOR A PRINCIPAL AMOUNT OF \$11,900,000 TO FUND GOVERNMENTAL OPERATIONS; MAKING CERTAIN FINDINGS OF PARAMOUNT PUBLIC PURPOSE; COVENANTING TO BUDGET AND APPROPRIATE LEGALLY AVAILABLE NON-AD VALOREM REVENUES TO PAY THE INDEBTEDNESS; PROVIDING FOR THE RIGHTS, SECURITIES AND REMEDIES FOR THE OWNER OF THE PROMISSORY NOTE; MAKING CERTAIN COVENANTS AND AGREEMENTS IN CONNECTION THEREWITH; DESIGNATING AN OFFICIAL WITH AUTHORITY TO EXECUTE DOCUMENTS WITH RESPECT TO THE LOAN; AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

Why the action is necessary:

Loan is necessary to ensure there is sufficient cash flow to fund operations despite the revenue shortfall attributable to Hurricane Ian.

What the action accomplishes:

Approval of the loan will ensure there is sufficient cash on hand to fund operations despite the revenue shortfall attributable to Hurricane Ian.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

This loan agreement requires that the proceeds be deposited in a separate bank account and that the non-Ad Valorem revenues that will be used to repay the loan be deposited in a fund that would be deemed a "trust fund".

4. **Submitter of Information:**

5. **Background:**

The Florida Department of Economic Opportunity (DEO) has awarded the Town of Fort Myers Beach a \$11.9 million emergency bridge loan to fund governmental operations. "Governmental operations" is defined as costs associated with continuing, expanding, or modifying local governmental operations to meet disaster-related needs, and includes costs such as, but not necessarily limited to, staff salaries and payroll. This does not include capital and equipment costs associated with the construction, repair, or renovation of damaged public facilities or infrastructure. The term of the loan is 12 months, with the possibility of a 6-month extension.

No interest shall be charged during the term of the loan. At the end of the term, interest will begin to accrue at the rate of 10% per annum on the unpaid principal balance, and repayments of principal and interest shall begin. Although the repayment schedule has not yet been determined, it is dependent upon how much non-Ad Valorem revenue will be available after funding essential government services. Please note that this is a conditional approval giving staff the authority to finalize the Loan Document and Promissory Note, which are currently marked as "DRAFT".

Attachments:

1. 23-33, Resolution 23-33 re DEO Bridge Loan Approval(144627532.1)-C (144627533)

2. DEO Bridge Loan Agreement
3. DEO Bridge Loan Single Audit
4. DEO Bridge Loan Promissory Note
5. DEO Bridge Loan Term Sheet
6. FMB Award Letter - Signed

Financial Impact:

If the loan is approved, we will be obligated to repay the \$11,900,000 plus 10% interest, which equates to \$1,190,000 per year on a \$11.9 million outstanding principal balance in the worst case scenario. Even though the repayment terms have not yet been determined, it is dependent upon how much non-Ad Valorem revenue will be available after funding essential government services. If we repay the loan on or before it's 12-month maturity date (or 18-month if a 6 month extension is requested and granted), no interest will be due.

6. Alternative Action

May choose not to authorize the loan

7. Management Recommendations:

To approve and accept

8. Recommended Approval:

Joe Onzick, Finance Director
Joe Onzick, Finance Director
John R Herin Jr, Town Attorney
Amy Baker, Town Clerk
Keith Wilkins , Interim Town Manager

Created/Initiated - 4/6/2023
Approved - 4/6/2023
Approved - 4/12/2023
Approved - 4/13/2023
Final Approval - 4/19/2023

RESOLUTION NO. 23-33

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, APPROVING A LOAN AGREEMENT BETWEEN THE TOWN AND THE STATE OF FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY IN THE PRINCIPAL AMOUNT OF \$11,900,000.00 TO FUND GOVERNMENTAL OPERATIONS; MAKING CERTAIN FINDINGS OF PARAMOUNT PUBLIC PURPOSE; COVENANTING TO BUDGET AND APPROPRIATE LEGALLY AVAILABLE NON-AD VALOREM REVENUES TO PAY THE INDEBTEDNESS; PROVIDING FOR THE RIGHTS, SECURITIES AND REMEDIES FOR THE OWNER OF THE PROMISSORY NOTE; MAKING CERTAIN COVENANTS AND AGREEMENTS IN CONNECTION THEREWITH; DESIGNATING AN OFFICIAL WITH AUTHORITY TO EXECUTE THE LOAN DOCUMENTS; AUTHORIZING THE EXECUTION AND DELIVERY OF THE LOAN DOCUMENTS ATTACHED AS EXHIBIT “A”; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Article X of the Town Charter of the Town of Fort Myers Beach (“Town”) empowers the Town to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

WHEREAS, on September 28, 2022, Hurricane Ian made landfall in Fort Myers Beach as a category four hurricane with 150-mph winds and a storm surge of approximately fifteen feet (15’) causing catastrophic damage to the Town’s beach, beach access facilities, public buildings, public communication systems, public drainage and utility systems, public streets and roads, and commercial and residential buildings and areas; and

WHEREAS, financial assistance from the State of Florida is going to essential to rebuilding of the Town and to the Town’s ability to provide essential services to its business owners, residents, and visitors; and

WHEREAS, the Town believes it is in the best interest for the health, safety and welfare of the Town’s business owners, residents, and visitors to the enter into the Loan Documents with the State of Florida Department of Economic Opportunity attached as Exhibit “A” (“Loan Agreement”).

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF FORT MYERS BEACH, FLORIDA AS FOLLOWS:

Section 1. The above recitals are true and correct, and incorporated herein by this reference and adopted as the legislative and administrative findings of the Town Council; all exhibits referenced and attached are incorporated herein and made a specific part of this Resolution.

Section 2. This Resolution is adopted pursuant to the provisions of the Constitution of the State of Florida, Chapter 166, *Florida Statutes*, as amended and other applicable provisions of law.

Section 2. The following words and phrases shall have the following meanings when used herein:

“Local Government” means The Town of Fort Myers Beach, Florida, a Florida municipal corporation established under the legal authority of the Constitution of the State of Florida.

“Debt” or *“Loan”* means the \$11,900,000 in loan funds applied for by the Local Government and awarded by the Department, and subject to the terms and conditions of the Loan Agreement and the Promissory Note.

“Debt Service Fund” means the Local Government’s “DEO Bridge Loan Debt Service” account created and held by the Finance Director of the Local Government.

“Department” means the Department of Economic Opportunity, with its principal office at 107 East Madison Street, MSC 160, The Caldwell Building, Tallahassee, Florida, 32399.

“Governmental Fund Revenues” means the total revenues of the Local Government derived from any source whatsoever and that are allocated and accounted for in the “governmental funds” as shown in the annual audited financial statements of the Local Government for the applicable fiscal year, excluding any ad valorem revenues, grants, and restricted gifts.

“Governmental Operations” means costs associated with continuing, expanding, or modifying local governmental operations to meet disaster-related needs, and includes costs such as, but not necessarily limited to, staff salaries and payroll. This term does not include capital and equipment costs associated with the construction, repair, or renovation of damaged public facilities or infrastructure.

“Loan Agreement” means the loan agreement entered into by and between the Local Government and the Department, a form of which is attached hereto as Exhibit A.

“Loan Documents” means collectively the Loan Agreement and the Promissory Note.

“Non-Ad Valorem Revenues” means all Governmental Fund Revenues, other than (1) revenues generated from ad valorem taxation on real or personal property, (2) grants, and (3) restricted gifts, which are legally available to make the payments required herein.

“Pledgeable Non-Ad Valorem Revenues” means all legally available Non-Ad Valorem Revenues of the Local Government, including any funds received from any federal programs for disaster-related expenses, which are legally available to make the payments required by the Resolution.

“Pledged Revenues” means the Pledgeable Non-Ad Valorem Revenues and the proceeds of any indebtedness incurred for the purpose of financing the Governmental Operations.

“Promissory Note” means the promissory note evidencing the indebtedness of the Local Government to the Department for the Loan amount, a form of which is attached hereto as Exhibit B.

“Resolution” means this Resolution, including any supplemental resolution(s) hereto.

“State” means the State of Florida.

Section 4. It is hereby ascertained, determined, and declared that:

(A) It is necessary and desirable for the benefit of its inhabitants and the continued preservation of the economic welfare, and the health, welfare, and safety of the Local Government and its inhabitants, to obtain a loan from the Department through the Local Government Emergency Bridge Loan Program, section 288.066, Florida Statutes, in the amount of \$11,900,000.00, to provide funds that the Local Government may use for Governmental Operations.

(B) It is necessary and desirable to provide for the execution and delivery of the Loan Documents to implement and deliver the Loan.

Section 5. *Repayment*

(A) The Local Government shall accept, subject to the terms and conditions of the Loan Documents, the Loan amount, for the purposes described above. The Loan amount shall bear interest not to exceed the maximum legal rate per annum, and shall be payable, mature, and be subject to redemption and such other characteristics as provided in the Loan Documents.

(B) Amounts due under the Loan Documents shall be payable from Pledgeable Non-Ad Valorem Revenues of the Local Government derived from the Local Government’s covenant to budget and appropriate from Pledgeable Non-Ad Valorem Revenues each year such monies sufficient to pay principal and interest on the Promissory Note.

(C) The Local Government shall ensure that sufficient Pledgeable Non-Ad Valorem Revenues will be available to pay the principal and interest due and payable on the Promissory Note as of the date such payment is due.

(D) The Local Government will maintain all unexpended Loan funds received from the Department in bank accounts separate from its other operating or other special purposes accounts. The Local Government will not commingle the Loan funds with any other funds, projects, or programs. Any interest earned on unexpended Loan funds remain State funds, pursuant to section 288.006, Florida Statutes.

(E) The Mayor, Vice Mayor, Town Clerk, Town Manager and Finance Director are hereby authorized to take such further actions and execute and deliver such further documents, certificates and agreements as are necessary to facilitate the purposes of this Resolution.

Section 6. *Covenant to Budget and Appropriate; Establish Debt Service Fund.*

(A) There is hereby created and established the Debt Service Fund, which fund shall be a trust fund held by the Finance Director, for the benefit of the Department and solely for the payment of the Debt. The Debt Service Fund shall be deemed to be held in trust for the purposes provided herein. The money in the Debt Service Fund shall be continuously secured in the same manner as state and municipal deposits are authorized to be secured by the laws of the State of Florida, and as evidenced and more completely described in the Loan Documents. The Local Government may at any time and from time to time appoint one or more depositaries to hold, for the benefit of the Department, the Debt Service Fund established hereby. Such depository or depositaries shall perform at the direction of the Local Government the duties of the Local Government in depositing, transferring and disbursing moneys to and from the Debt Service Fund as herein set forth, and all records of such depository in performing such duties shall be open at all reasonable times to inspection by the Local Government and its agents and employees. Any such depository shall be a bank or trust company duly authorized to exercise corporate trust powers and subject to examination by federal or state authority, of good standing, and having a combined capital, surplus and undivided profits aggregating not less than fifty million dollars (\$50,000,000). Notwithstanding anything herein to the contrary, the Local Government may invest amounts on deposit in the Debt Service Fund in accordance with the Investment of Local Government Surplus Funds Act, Florida Statutes 218.415, and the Local Government's investment policy.

(B) The Local Government covenants and agrees to appropriate in its annual budget, by amendment, if necessary, from Pledgeable Non-Ad Valorem Revenues, and to deposit into the Debt Service Fund hereinafter created Pledgeable Non-Ad Valorem Revenues sufficient to pay principal of and interest on the Promissory Note as the same shall become due. Such covenant and agreement on the part of the Local Government to budget, appropriate, and deposit such amounts of Pledgeable Non-Ad Valorem Revenues shall be cumulative to the extent not paid and shall continue until such Pledgeable Non-Ad Valorem Revenues or other legally available funds in amounts sufficient to make all such required payments shall have been budgeted, appropriated, deposited and actually paid. The Local Government hereby expressly pledges the Pledged Revenues for the repayment of the Debt until the Loan has been repaid in full. The Local Government further acknowledges that the obligations of the Local Government to include the

amount of any deficiency in payments in each of its annual budgets and to pay such deficiencies from Pledgeable Non-Ad Valorem Revenues may be enforced in a court of competent jurisdiction in accordance with the remedies set forth in the Loan Documents.

(C) The Local Government is not prohibited from pledging future Non-Ad Valorem Revenues, nor is the Local Government required to levy and collect any particular Non-Ad Valorem Revenues, nor does the Local Government give the Department a prior claim on the Non-Ad Valorem Revenues as opposed to claims of general secured creditors of the Local Government. All obligations of the Local Government hereunder shall be payable from the Pledgeable Non-Ad Valorem Revenues budgeted, appropriated, and deposited as provided herein and nothing herein shall be deemed to pledge ad valorem taxing power or ad valorem tax revenues, or to permit or constitute a mortgage or lien upon any assets owned by the Local Government. Neither the Department nor any other person may compel the levy of ad valorem taxes on real or personal property within the boundaries of the Local Government, or the use or application of ad valorem tax revenues to satisfy any payment obligations hereunder, or to maintain or continue any of the activities of the Local Government which generate user service charges, regulatory fees, or any other Non-Ad Valorem Revenues. The obligation of the Local Government to budget, appropriate, deposit, and make payments hereunder from its Pledgeable Non-Ad Valorem Revenues is subject to the availability of Pledgeable Non-Ad Valorem Revenues after the satisfaction of the funding requirements for obligations incurred prior to the effective date of the Loan Documents, and the funding requirements for essential governmental services of the Local Government or for essential public purposes affecting the health, welfare, and safety of the Local Government's inhabitants. The Debt shall be payable as provided herein and is subject in all respects to the provisions of Chapter 166, *Florida Statutes*.

Section 7. *Anti-Dilution Test.* During such time as the Loan is outstanding hereunder, the Local Government shall not incur any other new debt unless it demonstrates that Non-Ad Valorem Revenues shall cover maximum annual debt service on the Loan, any other existing debt, and such proposed new debt by at least 1.50x. The calculation required in the preceding sentence shall be determined using (a) the average of actual Non-Ad Valorem Revenues for the prior two Fiscal Years based on the Local Government's two most recent annual audited financial statements divided by (b) Maximum Annual Debt Service on Debt. For the purposes of the covenant contained in this Section 6, Maximum Annual Debt Service on Debt means, with respect to debt that bears interest at a fixed interest rate, the actual annual debt service, and, with respect to debt which bears interest at a variable interest rate, annual debt service on such debt shall be determined assuming that interest accrues on such debt at the greater of (i) 5% per annum, or (ii) current "Bond Buyer Revenue Bond Index" as published in *The Bond Buyer* no more than two weeks prior to any such calculation.

Section 8. *Budget, Financial, and Other Information.*

(A) The Local Government shall provide the Department with a copy of its annual budget, prepared in accordance with Florida law, within thirty (30) days of its adoption date by the Local Government's Town Council of the Town of Fort Myers Beach, Florida, and such other financial information regarding the Local Government as the Department may reasonably request.

(B) Not later than thirty (30) days following the Local Government Auditor's presentation of the Local Government's annual audited financial statements to the Local Government's Town Council, the Local Government shall provide the Department with its Audited Annual Financial Report including annual financial statements for each fiscal year of the Local Government, prepared in accordance with applicable law and generally accepted accounting principles and audited by an independent certified public accountant, including calculations detailing the financial covenant in Section 6.

Section 9. *Impairment of Contract.* The Local Government will not, without the written consent of the Department, amend this Resolution, or enact any ordinance or adopt any resolution which could reasonably be considered to repeal, impair, or amend in any manner the rights granted to the Department hereunder and under the Loan Documents.

Section 10. *Limitation of Rights.* With the exception of any rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Resolution or the Loan Documents is intended or shall be construed to give to any person other than the Local Government and the Department any legal or equitable right, remedy, or claim under or with respect to this Resolution, the Loan funds, the Loan Documents, or any covenants, conditions and provisions herein contained; this Resolution and all of the covenants, conditions, and provisions hereof being intended to be and being for the sole and exclusive benefit of the Local Government and the Department.

Section 11. If any section or portion of a section of this Resolution proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other section or part of this Resolution.

Section 12. This resolution shall take effect immediately upon its adoption.

The foregoing Resolution was _____ by the Town Council upon a motion by _____ and seconded by _____ and upon being put to a vote, the result was as follows:

Dan Allers, Mayor	_____
Jim Atterholt, Vice Mayor	_____
John R. King, Council Member	_____
Bill Veach, Council Member	_____
Karen Woodson, Council Member	_____

ADOPTED this 1st day of May 2023 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH SOLELY:

John R. Herin, Jr., Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ____ day of _____
2023.

FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY LOCAL GOVERNMENT EMERGENCY BRIDGE LOAN AGREEMENT

THIS LOAN AGREEMENT ("Agreement"), made by and between THE TOWN OF FORT MYERS BEACH (the "Local Government" or "Borrower"), and THE STATE OF FLORIDA, DEPARTMENT OF ECONOMIC OPPORTUNITY (the "Lender"). The Borrower and the Lender may be referred to individually each as a "Party" and collectively as the "Parties."

WHEREAS, the Borrower has applied to Lender for an extension of credit pursuant to section 288.066 of the Florida Statutes; and

WHEREAS, Lender has agreed to provide an extension of credit as set forth in section 288.066 of the Florida Statutes and in accordance with the terms hereof; and

WHEREAS, the Borrower has the authority to enter into this Agreement, as set forth in the Town Council of the Town of Fort Myers Beach Resolution No. 2023-~~33XX~~, attached hereto and incorporated herein by reference; and

WHEREAS, this agreement is not a general obligation of the State of Florida, nor is it backed by the full faith and credit of the State of Florida, and payment of funds hereunder is conditioned on and subject to appropriations by the Florida Legislature; and

WHEREAS, the Borrower has the authority to enter into this Agreement.

NOW THEREFORE, the Parties hereby agree as follows:

1. DEFINITIONS

- 1.1 "Agreement" means this instrument, as it may from time to time be amended.
- 1.2 "Debt" or "Loan" means the \$11,900,000.00 in loan funds applied for by the Borrower and awarded by the Department, and subject to the terms and conditions of the Loan Agreement and the Promissory Note.
- 1.3 "Debt Service Fund" means the Local Government's DEO Bridge Loan [NAME OF DEBT SERVICE FUND] held by the Finance Director of the Town Local Government Clerk's office.
- 1.4 "Default" means any of the events specified in Section 5 of this Agreement, whether any such requirement in connection with such event for the giving of notice or the lapse of time or the happening of any further condition, event, or act has been satisfied.
- 1.5 "Event of Default" means any of the events specified in Section 5 of this Agreement, provided there has been satisfied any requirements in connection with such event for the giving of notice or the lapse of time or the happening of any further condition, event, or act.
- 1.6 "Financial Statements" means a balance sheet and statement of income and surplus as of the end of and for the applicable period for the Borrower.
- 1.7 "Governmental Fund Revenues" means the total revenues of the Local Government derived from any source whatsoever and that are allocated and accounted for in the "governmental funds" as shown in the annual audited financial statements of the Local Government for the applicable fiscal year, excluding any ad valorem revenues, grants, and restricted gifts.
- 1.8 "Governmental Operations" means costs associated with continuing, expanding, or modifying local governmental operations to meet disaster-related needs, and includes costs such as, but not necessarily limited to, staff salaries and payroll. This term does not include capital and equipment costs associated with the construction, repair, or renovation of damaged public facilities or infrastructure.

- 1.9 “Indebtedness” means all amounts due from Borrower to Lender under the Loan Documents, including, without limitation, principal, interest, cost of collection, attorneys’ fees, and other expenses of the Lender which Borrower is obligated to pay and amounts advanced by Lender in discharge of obligations of the Borrower hereunder or other persons under the Loan Documents, whether such debts are now due or hereafter incurred, direct or indirect, and whether such debts are from time to time reduced and thereafter increased or entirely extinguished and thereafter reincurred.
- 1.10 “Loan Documents” means this Agreement, the Promissory Note, and Opinion of Borrower’s Counsel.
- 1.11 “Non-Ad Valorem Revenues” means all Governmental Fund Revenues, other than (1) revenues generated from ad valorem taxation on real or personal property, (2) grants, and (3) restricted gifts, which are legally available to make the payments required herein.
- 1.12 “Pledgeable Non-Ad Valorem Revenues” means all legally available Non-Ad Valorem Revenues of the Local Government, including any funds received from any federal programs for disaster-related expenses, which are legally available to make the payments required by the Resolution.
- 1.13 “Pledged Revenues” means the Pledgeable Non-Ad Valorem Revenues and the proceeds of any indebtedness incurred for the purpose of financing the Governmental Operations.
- 1.14 “Promissory Note” means that promissory note executed by the Borrower as maker to the Lender as payee in the original principal amount of \$11,900,000.00, or any subsequent renewals of the original promissory note.
- 1.15 “Obligation” means each and every obligation to pay money, whether direct, indirect, or contingent, however arising, including, without limitation, general accounts payable, payments under leases, installment purchase contracts, and debts for money borrowed.
- 1.16 “Opinion of Borrower’s Counsel” shall be an opinion letter written by the Borrower’s Counsel to the Lender, in a form acceptable to the Lender, which shall include, but is not limited to, a statement that all Loan Documents have been legally and properly executed and obligate the Borrower and are enforceable according to their terms.

2. BORROWING AND PAYMENTS

- 2.1 Note: The funds loaned hereunder will be evidenced by the Promissory Note indicating the aggregate principal amount; provided, however, that the amount actually due from Borrower to Lender from time to time will be evidenced by the Lender’s records.
- 2.2 Conditions Precedent to Lender’s Obligations: Prior to the Lender having any obligations hereunder, Lender in its sole discretion may require the following in form and content reasonably acceptable to Lender and its counsel (1) the Promissory Note; (2) the Opinion of Borrower’s Counsel; (3) Such other documents as Lender may reasonably request.
- 2.3 Interest: From the Maturity Date until the principal is paid interest shall accrue on the unpaid principal balance at a rate of 10% per annum. The interest shall be repaid as described in paragraph 2.4 below.
- 2.4 Repayment of Principal and Interest: The principal and interest shall be repaid as follows:
- 2.4.1 The Borrower shall repay principal of \$11,900,000.00 (the “Outstanding Principal”) on or before [DATE] (the “Maturity Date”). The Outstanding Principal may be repaid at any time without penalty.
- 2.4.2 No interest will accrue for the term of the loan. At the Maturity Date, simple interest will be computed on the basis of the actual number of days elapsed over an assumed 360-day year on the then outstanding principal balance. From the Maturity Date until the principal is paid the interest rate shall be based on a fixed rate of interest at 10% per annum.
- 2.4.3 The Borrower may request a six-month extension to the Maturity Date at any time before the Maturity Date. If approved by the Lender, the new date after the extension shall become the Maturity Date.

- 2.5 Application of Payments: All payments received on the Indebtedness shall be applied first to interest to the extent then accrued and then to principal.

3. AFFIRMATIVE COVENANTS

- 3.1 Amounts due under the Loan Documents shall be payable from Non-Ad Valorem Revenues of the Borrower derived from the Borrower's covenant to budget and appropriate from legally available Non-Ad Valorem Revenues each year such monies sufficient to pay principal and interest on the Promissory Note.
- 3.2 The Borrower shall ensure that sufficient Non-Ad Valorem revenues will be available to pay the principal and interest due and payable on the Promissory Note as of the date such payment is due.
- 3.3 The Borrower will maintain all unexpended Loan funds received from the Department in bank accounts separate from its other operating or other special purposes accounts. The Borrower will not commingle the Loan funds with any other funds, projects, or programs. Any interest earned on expended Loan funds remain State funds, pursuant to section 288.006, Florida Statutes.
- 3.4 There is hereby created and established the Debt Service Fund held by the Finance Director, of the ~~Local~~ Government/Town Clerk's office, held for the benefit of the Department and solely for the payment of the Debt. The Debt Service Fund shall be deemed to be held in trust for the purposes provided herein for such Fund. The money in such Fund shall be continuously secured in the same manner as state and municipal deposits are authorized to be secured by the laws of the State of Florida, and as evidenced and more completely described in the Loan Documents. The Local Government may at any time and from time to time appoint one or more depositaries to hold, for the benefit of the Department, the Debt Service Fund established hereby. Such depository or depositaries shall perform at the direction of the Local Government the duties of the Local Government in depositing, transferring and disbursing moneys to and from each such Fund as herein set forth, and all records of such depository in performing such duties shall be open at all reasonable times to inspection by the Local Government and its agents and employees. Any such depository shall be a bank or trust company duly authorized to exercise corporate trust powers and subject to examination by federal or state authority, of good standing, and having a combined capital, surplus and undivided profits aggregating not less than fifty million dollars (\$50,000,000). Notwithstanding anything herein to the contrary, the Local Government may invest amounts on deposit in the Debt Service Fund in accordance with the Act, Florida Statutes 218.415, and the Local Government's investment policy.
- 3.5 The Local Government covenants and agrees to appropriate in its annual budget, by amendment if necessary, from Pledgeable Non-Ad Valorem Revenues, and to deposit into the Debt Service Fund hereinafter created, Pledgeable Non-Ad Valorem Revenues sufficient to pay principal of and interest on the Promissory Note as the same shall become due. Such covenant and agreement on the part of the Borrower to budget, appropriate, and deposit such amounts of Pledgeable Non-Ad Valorem Revenues shall be cumulative to the extent not paid and shall continue until such Pledgeable Non-Ad Valorem Revenues or other legally available funds in amounts sufficient to make all such required payments shall have been budgeted, appropriated, deposited and actually paid. The Borrower hereby expressly pledges the Pledged Revenues for the repayment of the Debt until the Loan has been repaid in full. The Borrower further acknowledges that the obligations of the Borrower to include the amount of any deficiency in payments in each of its annual budgets and to pay such deficiencies from Pledgeable Non-Ad Valorem Revenues may be enforced in a court of competent jurisdiction in accordance with the remedies set forth in the Loan Documents.
- 3.6 The Borrower is not prohibited from pledging future Non-Ad Valorem Revenues, nor is the Borrower required to levy and collect any particular Non-Ad Valorem Revenues, nor does the Borrower give the Department a prior claim on the Non-Ad Valorem Revenues as opposed to claims of general secured creditors of the Borrower. All obligations of the Borrower hereunder shall be payable from the Pledgeable Non-Ad Valorem Revenues budgeted, appropriated, and deposited as provided herein and nothing herein shall be deemed to pledge ad valorem taxing power or ad valorem tax revenues, or to permit or constitute a mortgage or lien upon any assets owned by the Borrower. Neither the Department nor any other person may compel the levy of ad valorem taxes on real or personal property within the boundaries of

the Borrower, or the use or application of ad valorem tax revenues in order to satisfy any payment obligations hereunder, or to maintain or continue any of the activities of the Borrower which generate user service charges, regulatory fees, or any other Non-Ad Valorem Revenues. The obligation of the Borrower to budget, appropriate, deposit and make payments hereunder from its Pledgeable Non-Ad Valorem Revenues is subject to the availability of Pledgeable Non-Ad Valorem Revenues after the satisfaction of the funding requirements for obligations incurred prior to the effective date of the Loan Documents, and the funding requirement for essential governmental services of the Borrower or for essential public purposes affecting the health, welfare, and safety of the Borrower's inhabitants. The Debt shall be payable as provided herein and is subject in all respects to the provisions of Section 166.241, Florida Statutes.

- 3.7 Right of Inspection: Whenever Lender, in its sole discretion, deems it necessary, the Borrower will permit Lender or any agent designated by Lender to visit and inspect any of Borrower's properties and its organizational documents, bylaws, minute books and records, all at such reasonable times and as often as Lender may reasonably request.
- 3.8 Insurance: The Borrower will maintain adequate insurance (both casualty {if improved} and liability) with responsible insurers with coverage normally obtained by organizations similar to the Borrower and shall annually provide documentation of the insurance coverage and its payment to Lender so long as this Agreement is in force.
- 3.9 Taxes and Other Charges: The Borrower will pay and discharge or cause to be paid and discharged all taxes, charges, or claims of any type at any time assessed against the Borrower which could become a lien against the Borrower or any of its properties. The Borrower shall also pay all inspection costs. Nothing in this subsection shall require the payment of any sum so long as the Borrower shall, by appropriate proceedings, contest the same in good faith and so long as Borrower, if so requested by Lender, creates a funded reserve equal to the amount so claimed or assessed.
- 3.10 Further Assurances: If at any time Lender or its counsel is of the reasonable opinion that any additional documents or materials are required or appropriate to carry out the intentions of the parties hereto to perfect the liens, debts, or obligations, or complete the construction and improvements contemplated by this Agreement, then Borrower shall, within 10 days after written notice of such opinion from Lender, do or cause to be done all things and matters necessary (including, without limitation, obtaining any consents) to assure to the reasonable satisfaction of counsel for Lender that such intentions are properly carried out.
- 3.11 Compliance with Certain Requirements: The Borrower agrees that in its operations the Borrower will comply with all applicable rules and regulations of any federal, state or local governmental authorities which may be applicable to Borrower and/or any of its businesses.
- 3.12 Executive Officers: The Borrower agrees that at all times that it shall follow its rules, bylaws and requirements concerning the service of its officers and Commission members and that it shall notify the Lender (and provide a certified copy of the appropriate resolution) within five days of any change in its officers and within five days of notification of election or appointment of Commission members. The undersigned is the current authorized signatory authority or an authorized delegate of Borrower and has the right, power, and authority to execute and deliver documents, including but not limited to the Loan Documents, on behalf of the Borrower and thereby bind the Borrower to the terms thereof. This Agreement shall be executed by the Borrower's Board members and shall have the effect of a resolution as to all material stated herein. The above notwithstanding, no member of the Borrower's Board of Commissioners is individually liable as to the Loan Documents.
- 3.13 Maintenance of Existence, Rights: The Borrower will do or cause to be done all things necessary to preserve and keep in full force and effect its existence, franchises, rights and privileges under the laws of the State of Florida or any other jurisdiction where, in the opinion of counsel of Borrower, Borrower shall be qualified to operate and will do or cause to be done all things necessary to preserve and keep in full force and effect its rights to operate in a manner not less favorable to Borrower than those now in existence.
- 3.14 Use of Proceeds: Borrower agrees that the proceeds of any funds received from Lender shall be used for Governmental Operations.

- 3.15 Subordination of Debt: Any and all indebtedness of Borrower of more than 12 months duration, incurred while this Agreement is in effect, shall be subordinate and inferior to the indebtedness of Borrower to Lender hereunder unless specifically approved by Lender and said subordinated debt shall not be repaid without the written consent of Lender.
- 3.16 Reports: Borrower shall submit its annual audit or reviewed financial statements for each fiscal year in which this Agreement and any extensions are in effect. If neither audits nor reviewed financial statements are available, Borrower shall submit annual financial statements which have been prepared according to generally accepted accounting principles. Such statements shall be accompanied by a certification from the preparer that they have been prepared according to generally accepted accounting principles and by a certification by the Borrower's authorized signatory authority or authorized delegate that neither audited nor reviewed financial statements are available.
- 3.17 Single Audit Act Reports: In addition to the requirements set out in paragraph 6.12 of this Agreement, Borrower shall also comply with the applicable audit provisions contained in "Exhibit A," attached hereto and incorporated within.

4. NEGATIVE COVENANTS

- 4.1 Liens, Etc.: The Borrower will not create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, or other encumbrance of any nature whatsoever on any of the assets of Borrower, which are pledged to Lender, whether now owned or hereafter acquired, nor enter into or suffer to exist any conditional sale contracts except such as exist on the date hereof and as are reflected on the most recent financial statement of Borrower delivered to Lender. Capital leases are excluded from this paragraph.
- 4.2 Merger, Consolidation, Sale of Substantial Assets: The Borrower will not merge into, consolidate with, or sell all or a substantial part of its assets to any other person. Provided, however, that this negative covenant shall not prohibit a merger of Borrower with another entity so long as Borrower is a surviving entity.

5. EVENT OF DEFAULT

- 5.1 Each of the following constitute an Event of Default:
- 5.1.1 If the Borrower defaults in the payment of any principal or interest under the Promissory Note within 30 calendar days from when the same shall become due either by the terms thereof or otherwise; or
- 5.1.2 If the Borrower fails to comply with the non-monetary terms and conditions of any of the Loan Documents after 30 calendar days' notice from the Lender; or
- 5.1.3 If any material representation or warranty made by the Borrower herein or in any writing furnished in connection with or pursuant to the Loan Documents shall be false or breached in any material respect and shall remain so after 30 days' notice; or
- 5.1.4 If the Borrower makes an assignment for the benefit of creditors or petitions for appointment of a trustee or receiver of the Borrower, or of any substantial part of the assets of the Borrower, or commences any proceedings relating to the Borrower, under any bankruptcy, reorganization, arrangement, insolvency readjustment or debt, dissolution, or liquidation law of any jurisdiction, whether now or hereafter in effect; or
- 5.1.5 If any such petition or application is filed, or any such proceedings are commenced against the Borrower or any guarantor, and the Borrower or any guarantor by any act indicates its or his/her approval hereof, consent thereto, or acquiescence therein, or if an order is entered appointing a trustee or receiver of any portion of the assets of Borrower or any guarantor or adjudicate the Borrower or any guarantor bankrupt or insolvent or approving the petition in any such proceedings and any such order remains in effect for more than 30 days; or
- 5.1.6 If any order is entered in any proceedings against the Borrower decreeing the dissolution or split-up of the Borrower or any material judgment or attachment is entered against the Borrower, or any of its assets then there shall exist an Event of Default. When there shall exist an Event of Default, thereupon, Lender may, at its option, refuse to make any future advances to Borrower under the notes referenced in paragraph 1.5 above, and declare all of the Indebtedness of the Borrower with the Lender to be immediately mature, due and payable together with interest accrued thereon, and exercise any and all other remedies lawfully available to it; or
- 5.1.7 If the Borrower employs unauthorized aliens or commits a violation of Section 274(e) of the U.S. Immigration and Nationality Act; or
- 5.1.8 If the Borrower fails to enroll in and utilize the E-Verify system to verify the citizenship status of Borrower's new employees within 60 days of execution.

- 5.2 While there shall exist an Event of Default, Lender may, at its option, refuse to make any advances to Borrower under the Promissory Note and declare all the indebtedness to be immediately due and payable, together with interest accrued thereon, and exercise any and all other remedies lawfully available to it, including any remedies available under the Promissory Note.

6. MISCELLANEOUS

- 6.1 Expenses: The Borrower agrees, whether or not the transactions hereby contemplated shall be consummated, to pay and save Lender harmless against liability for the payment of all out-of-pocket expenses arising in connection with this transaction, including any state documentary stamp taxes or other taxes (including interest and penalties, if any) which may be determined to be payable in respect to the execution and delivery of any Loan Documents executed in connection with this Agreement. If an Event of Default shall occur, Borrower shall also pay all Lender's costs of collection, including Lender employee travel expenses, court costs, and attorney's fees whether incurred with collection efforts, trial, appeal, or bankruptcy proceedings. If an Event of Default shall occur, Borrower may not use proceeds of this loan to pay Lender's costs of collection enumerated above.
- 6.2 Limitation of Lender's Duties: While the Lender has the option to make certain inspections of the property of Borrower and to make certain determinations as to the purpose for which advances are requested hereunder, the Lender is under no obligation to do so. Moreover, Lender shall have no responsibility whatsoever for any aspect of any matter in which Borrower runs his business nor the reasons of any investment by Borrower.
- 6.3 Survival of Representation and Warranties: All representations and warranties contained herein or made in writing in connection herewith shall survive the execution and delivery of Loan Documents.
- 6.4 Successors and Assigns: All covenants and agreements in this Agreement contained by or on behalf of either of the parties hereto shall bind and insure to the benefit of the respective successors and assigns of the parties hereto whether so expressed or not.
- 6.5 Notices: All written communications provided for hereunder shall be sent by first class mail as follows or to such other address with respect to any party as such party shall notify the others in writing:

TO LENDER: Florida Department of Economic Opportunity
Strategic Business Development
107 East Madison Street, MSC80
The Caldwell Building
Tallahassee, Florida 32399

TO BORROWER: Chris Holley, Town Manager
Town of Fort Myers Beach
2525 Estero Boulevard
Fort Myers Beach, Florida 33931

- 6.6 Applicable Law: This Agreement is being delivered in the State of Florida and shall be construed and enforced in accordance with the laws of the State of Florida. The recitals of this Agreement are incorporated herein by reference and shall apply to the terms and provisions of this Agreement and the Parties.
- 6.7 Headings: The descriptive section headings herein have been inserted for convenience only and shall not be deemed to limit or otherwise affect the construction of any provisions hereof.
- 6.8 Counterparts: This Agreement may be executed simultaneously in several counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

- 6.9 Remedies Cumulative: All rights and remedies of Lender hereunder are cumulative and in addition to any rights and remedies which Lender may have under any applicable laws, and the exercise of any of one right or remedy by Lender against one party hereto will not deprive Lender of any right or remedy against that party or any other parties hereto.
- 6.10 Severability: If any portion of any Loan Document is found to be illegal, invalid, or unenforceable, such term shall be severed and the remainder of the Loan Document in question shall continue in full effect.
- 6.11 Waivers: No delay or omission by the Lender in exercising any right hereunder or under any Loan Document or with respect to the Indebtedness shall operate as a waiver of that or any other right, and no single or partial exercise of any right shall preclude the Lender from any other or further exercise of any other right or remedy. The Lender may cure any Event of Default in any reasonable manner without waiving that or any other prior or subsequent Event of Default by the Borrower.
- 6.12 Maintenance of Records: Borrower shall retain and maintain all records in connection with the Indebtedness and make such records available for financial audit as may be requested. Records shall include books, documents, and other evidence, including, but not limited to, vouchers, bills, and invoices, requests for payment and other supporting documentation, and independent auditors' working papers which, according to generally accepted accounting principles, procedures and practices, sufficiently and properly reflect all transactions related to this Indebtedness. Such records shall be retained by Borrower for a minimum period of five years after the repayment in full of the Indebtedness. The records shall be subject at all times to inspection, review, or audit by personnel of the Office of the Auditor General, Department of Financial Services, Office of the Chief Inspector General, or other personnel authorized by Lender and copies of the records shall be delivered to Lender upon request.
- 6.13 Small and Minority Business: Borrower is encouraged to use small businesses, including minority and women-owned businesses as subcontractors or sub-vendors under this Agreement. The directory of certified minority and women-owned businesses can be accessed from the website of the Department of Management Services, Office of Supplier Diversity.
- 6.14 Lobbying: Funds from this loan may not be used for lobbying the Florida Legislature, the Florida judicial branch, the Governor or the Executive Office of the Governor, or a State of Florida agency pursuant to Section 216.347, Florida Statutes.
- 6.15 Public Entity Crime: Borrower affirms that at no time has Borrower been convicted of a public entity crime pursuant to Section 287.133(2)(a), Florida Statutes, and agrees that it shall not violate any such law and further acknowledges and agrees that any such conviction during the term of this Agreement may result in the termination of this Agreement. Borrower shall place this provision in any executed agreements resulting from this Agreement.
- 6.16 Non-Discrimination:
- 6.16.1 Borrower will not discriminate against any employee employed in the performance of this agreement, or against any applicant for employment because of age, race, creed, color, handicap, national origin, or sex.
- 6.16.2 Borrower affirms that it is aware of the provisions of Section 287.134(2)(a), Florida Statutes, and that at no time has Borrower been placed on the Discriminatory Vendor List or conducted business with an entity listed. Borrower further agrees that it shall not violate such law and doing so during the term of the Agreement may result in the termination of this Agreement.
- 6.16.3 Borrower shall include similar provisions in any executed agreements resulting from this Indebtedness.
- 6.17 Subcontracts: Any and all contracts that Borrower executes with a person or organization under which such person or organization agrees to perform services on behalf of Borrower or Lender shall include provisions requiring that such person or organizations report on performance, account for proper use of funds provided under the contract including the provision of audit rights pursuant to paragraph 3.11 of this Agreement, avoid duplication of existing state and local services and activities, and agree to abide by all local, state, and federal laws.

- 6.18 Pledging Credit: Borrower shall not pledge the State of Florida's or Lender's credit or make the State of Florida or Lender a guarantor of payment or surety for any contract, debt, obligation, judgment lien, or any form of indebtedness. Any attempt shall be *void ab initio*.
- 6.19 Term of Agreement: This Agreement shall continue in effect so long as any part of the Indebtedness remains unpaid.
- 6.20 Jurisdiction; Venue: The laws of the State of Florida shall govern the construction, enforcement and interpretation of this Agreement, regardless of and without reference to whether any applicable conflicts of laws principles may point to the application of the laws of another jurisdiction. Each Party shall perform its obligations hereunder in accordance with the terms and conditions of this Agreement. The Parties hereby agree that the exclusive personal jurisdiction and venue to resolve any and all disputes between them including, without limitation, any disputes arising out of or relating to this Agreement shall be in the state courts of the State of Florida in the County of Leon. The Parties expressly consent to the exclusive personal jurisdiction and venue in any state court located in Leon County, Florida, and waive any defense of forum non conveniens, lack of personal jurisdiction, or like defense, and further agree that any and all disputes between them shall be solely in the State of Florida. IN ANY LEGAL OR EQUITABLE ACTION BETWEEN THE PARTIES, THE PARTIES HEREBY EXPRESSLY WAIVE TRIAL BY JURY TO THE FULLEST EXTENT PERMITTED BY LAW.

IN WITNESS WHEREOF, the Parties have caused this Agreement to become effective as of the date executed by the Lender ("Effective Date").

Town of Fort Myers Beach

By: _____
Name: _____
Title: _____
Date: _____

Florida Department of Economic Opportunity

By: _____
Name: _____
Title: _____
Date: _____

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY, SUBJECT ONLY TO FULL
AND PROPER EXECUTION OF THE
PARTIES.

OFFICE OF THE GENERAL COUNSEL
FLORIDA DEPARTMENT OF ECONOMIC
OPPORTUNITY

By _____
Approved Date: _____

Exhibit A

AUDIT REQUIREMENTS

The administration of resources awarded by the Department of Economic Opportunity (DEO) to the recipient (herein otherwise referred to as “Grantee”) may be subject to audits and/or monitoring by DEO as described in this Exhibit B.

MONITORING. In addition to reviews of audits conducted in accordance with 2 CFR 200, Subpart F - Audit Requirements, and section 215.97, Florida Statutes (F.S.), as revised (see AUDITS below), monitoring procedures may include, but not be limited to, on-site visits by DEO staff, limited scope audits as defined by 2 CFR §200.425, or other procedures. By entering into this agreement, the recipient agrees to comply and cooperate with any monitoring procedures or processes deemed appropriate by DEO. In the event the DEO determines that a limited scope audit of the recipient is appropriate, the recipient agrees to comply with any additional instructions provided by DEO staff to the recipient regarding such audit. The recipient further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Chief Financial Officer (CFO) or Auditor General.

AUDITS.

PART I: FEDERALLY FUNDED. This part is applicable if the recipient is a state or local government or a nonprofit organization as defined in 2 CFR §200.90, §200.64, and §200.70.

1. A recipient that expends \$750,000 or more in federal awards in its fiscal year must have a single or program-specific audit conducted in accordance with the provisions of 2 CFR 200, Subpart F - Audit Requirements. EXHIBIT 1 to this form lists the federal resources awarded through DEO by this agreement. In determining the federal awards expended in its fiscal year, the recipient shall consider all sources of federal awards, including federal resources received from DEO. The determination of amounts of federal awards expended should be in accordance with the guidelines established in 2 CFR §§200.502-503. An audit of the recipient conducted by the Auditor General in accordance with the provisions of 2 CFR §200.514 will meet the requirements of this Part.
2. For the audit requirements addressed in Part I, paragraph 1, the recipient shall fulfill the requirements relative to auditee responsibilities as provided in 2 CFR §§200.508-512.
3. A recipient that expends less than \$750,000 in federal awards in its fiscal year is not required to have an audit conducted in accordance with the provisions of 2 CFR 200, Subpart F - Audit Requirements. If the recipient expends less than \$750,000 in federal awards in its fiscal year and elects to have an audit conducted in accordance with the provisions of 2 CFR 200, Subpart F - Audit Requirements, the cost of the audit must be paid from non-federal resources (i.e., the cost of such an audit must be paid from recipient resources obtained from other than federal entities).

PART II: STATE FUNDED. This part is applicable if the recipient is a nonstate entity as defined by Section 215.97(2), Florida Statutes.

1. In the event that the recipient expends a total amount of state financial assistance equal to or in excess of \$750,000 in any fiscal year of such recipient (for fiscal years ending June 30, 2017, and thereafter), the recipient must have a state single or project-specific audit for such fiscal year in accordance with section 215.97, F.S.; Rule Chapter 69I-5, F.A.C., State Financial Assistance; and Chapters 10.550 (local governmental entities) and 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. EXHIBIT 1 to this form lists the state financial assistance awarded through DEO

by this agreement. In determining the state financial assistance expended in its fiscal year, the recipient shall consider all sources of state financial assistance, including state financial assistance received from DEO, other state agencies, and other nonstate entities. State financial assistance does not include federal direct or pass-through awards and resources received by a nonstate entity for federal program matching requirements.

2. For the audit requirements addressed in Part II, paragraph 1, the recipient shall ensure that the audit complies with the requirements of section 215.97(8), F.S. This includes submission of a financial reporting package as defined by section 215.97(2), F.S., and Chapters 10.550 (local governmental entities) and 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.
3. If the recipient expends less than \$750,000 in state financial assistance in its fiscal year (for fiscal years ending June 30, 2017, and thereafter), an audit conducted in accordance with the provisions of section 215.97, F.S., is not required. If the recipient expends less than \$750,000 in state financial assistance in its fiscal year and elects to have an audit conducted in accordance with the provisions of section 215.97, F.S., the cost of the audit must be paid from the nonstate entity's resources (i.e., the cost of such an audit must be paid from the recipient's resources obtained from other than state entities).

PART III: OTHER AUDIT REQUIREMENTS.

(NOTE: This part would be used to specify any additional audit requirements imposed by the State awarding entity that are solely a matter of that State awarding entity's policy (i.e., the audit is not required by Federal or State laws and is not in conflict with other Federal or State audit requirements). Pursuant to Section 215.97(8), Florida Statutes, State agencies may conduct or arrange for audits of state financial assistance that are in addition to audits conducted in accordance with Section 215.97, Florida Statutes. In such an event, the State awarding agency must arrange for funding the full cost of such additional audits.)

**INSERT ADDITIONAL AUDIT REQUIREMENTS, IF APPLICABLE, OTHERWISE
TYPE "N/A"**

PART IV: REPORT SUBMISSION.

1. Copies of reporting packages for audits conducted in accordance with 2 CFR 200, Subpart F - Audit Requirements, and required by Part I of this form shall be submitted, when required by 2 CFR §200.512, by or on behalf of the recipient directly to the Federal Audit Clearinghouse (FAC) as provided in 2 CFR §200.36 and §200.512.

The FAC's website provides a data entry system and required forms for submitting the single audit reporting package. Updates to the location of the FAC and data entry system may be found at the OMB website.

2. Copies of financial reporting packages required by Part II of this form shall be submitted by or on behalf of the recipient directly to each of the following:

- a. DEO at each of the following addresses:

Electronic copies (preferred):
Audit@deo.myflorida.com

or

Paper (hard copy):
Department of Economic Opportunity
MSC # 75, Caldwell Building
107 East Madison Street
Tallahassee, FL 32399-4126

- b. The Auditor General's Office at the following address:

Auditor General
Local Government Audits/342
Claude Pepper Building, Room
401 111 West Madison Street
Tallahassee, Florida 32399-1450

The Auditor General's website (<https://flauditor.gov/>) provides instructions for filing an electronic copy of a financial reporting package.

3. Copies of reports or the management letter required by Part III of this form shall be submitted by or on behalf of the recipient directly to:

Electronic copies (preferred):
Audit@deo.myflorida.com

or Paper (hard copy):
Department Economic Opportunity
MSC # 75, Caldwell Building
107 East Madison Street
Tallahassee, FL. 32399-4126

4. Any reports, management letters, or other information required to be submitted DEO pursuant to this agreement shall be submitted timely in accordance with 2 CFR §200.512, section 215.97, F.S., and Chapters 10.550 (local governmental entities) and 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.
5. Recipients, when submitting financial reporting packages to DEO for audits done in accordance with 2 CFR 200, Subpart F - Audit Requirements, or Chapters 10.550 (local governmental entities) and 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, should indicate the date that the reporting package was delivered to the recipient in correspondence accompanying the reporting package.

PART V: RECORD RETENTION. The recipient shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of five (5) years from the date the audit report is issued, or five (5) state fiscal years after all reporting requirements are satisfied and final payments have been received, whichever period is longer, and shall allow DEO, or its designee, CFO, or Auditor General access to such records upon request. The recipient shall ensure that audit working papers are made available to DEO, or its designee, CFO, or Auditor General upon request for a period of five (5) years from the date the audit report is issued, unless extended in writing by DEO. In addition, if any litigation, claim, negotiation, audit, or other action involving the records has been started prior to the expiration of the controlling period as identified above, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the controlling period as identified above, whichever is longer.

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Attachment 1 to Exhibit B

**STATE RESOURCES AWARDED TO THE RECIPIENT PURSUANT TO THIS AGREEMENT
CONSIST OF THE FOLLOWING:**

SUBJECT TO SECTION 215.97, FLORIDA STATUTES:

State Project *DEPARTMENT OF ECONOMIC OPPORTUNITY, CSFA NUMBER 40.041
ECONOMIC DEVELOPMENT LOAN PROGRAMS, AMOUNT*

**COMPLIANCE REQUIREMENTS APPLICABLE TO STATE RESOURCES AWARDED
PURSUANT TO THIS AGREEMENT ARE AS FOLLOWS:**

1. *ACTIVITIES ARE LIMITED TO LOAN ACTIVITIES PER THE TERM OF THE
AGREEMENT*
2. *N/A*
3. *N/A*

NOTE: List applicable compliance requirements

NOTE: Title 2 CFR 200.331, as revised, and section 215.97(5), F.S., require that the information about Federal Programs and State Projects included in Exhibit 1 be provided to the recipient.

- Remainder of Page Intentionally Left Blank -

Exhibit B

AUDIT COMPLIANCE CERTIFICATION

Grantee Name: _____
FEIN: _____ Grantee's Fiscal Year: _____
Contact Person Name and Phone Number: _____
Contact Person Email Address: _____

1. Did Grantee expend state financial assistance, during its fiscal year, that it received under any agreement (e.g., agreement, grant, memorandum of agreement, memorandum of understanding, economic incentive award agreement, etc.) between Grantee and the Department of Economic Opportunity (DEO)? ____ Yes ____ No

If the above answer is yes, also answer the following before proceeding to item 2:

Did Grantee expend \$750,000 or more of state financial assistance (from DEO and all other sources of state financial assistance combined) during its fiscal year? ____ Yes ____ No

If yes, Grantee certifies that it will timely comply with all applicable state single or project-specific audit requirements of section 215.97, Florida Statutes, and the applicable rules of the Department of Financial Services and the Auditor General.

2. Did Grantee expend federal awards, during its fiscal year that it received under any agreement (e.g., agreement, grant, memorandum of agreement, memorandum of understanding, economic incentive award agreement, etc.) between Grantee and DEO? ____ Yes ____ No

If the above answer is yes, also answer the following before proceeding to execution of this certification:

Did Grantee expend \$750,000 or more in federal awards (from DEO and all other sources of federal awards combined) during its fiscal year? ____ Yes ____ No

If yes, Grantee certifies that it will timely comply with all applicable single or program-specific audit requirements of 2 CFR Part 200, Subpart F, as revised.

By signing below, I certify, on behalf of Grantee, that the above representations for items 1 and 2 are true and correct.

Signature of Authorized Representative

Date

Printed Name of Authorized Representative

Title of Authorized Representative

PROMISSORY NOTE

U.S. \$11,900,000.00

Tallahassee, Florida

[DATE]

Maturity Date:

[DATE]

FOR VALUE RECEIVED, The Town of Fort Myers Beach ("Borrower"), promises to pay to the order of the State of Florida, Department of Economic Opportunity, ("Lender"), the sum of \$11,900,000.00, together with interest from the date hereof until maturity at the rate stated below.

1. **NOTE:** This is an interest-bearing Note and the principal sum shown above together with interest thereon from the date hereof calculated in accordance with the interest as calculated in Paragraph 2 shall be payable in accordance with the payment provision pursuant to Paragraph 3. All payments made hereunder shall be credited first to interest and lawful charges and the remainder to principal.
2. **INTEREST CALCULATION:** No interest will accrue for the term of the loan. At the Maturity Date, simple interest will be computed on the basis of the actual number of days elapsed over an assumed 360-day year on the then outstanding principal balance. From the Maturity Date until the principal is paid the interest rate shall be based on a fixed rate of interest at 10% per annum.
3. **PAYMENT:** The Borrower hereby agrees to repay principal of \$11,900,000.00 on or before [DATE] (the "Maturity Date"). This Note may be repaid at any time without penalty.
4. **ENABLING RESOLUTION:** The Borrower has adopted Local Government Emergency Bridge Loan, Florida Resolution No. ~~2023-33XX~~, a copy of which is attached hereto as "Exhibit A" and incorporated by reference herein (the "Resolution"). The Resolution authorizes Borrower to perform its obligations under this Note and the Loan Agreement of even date herewith (the "Loan Agreement") including, without limitation, the obligation to pay the amounts due under the Note and all other liabilities of the undersigned to Lender. A default under the terms and conditions of the Loan Agreement shall also be deemed a default under the terms and conditions of this Note.
5. **DEFAULT:** In the event of any default in the payment of any amount due hereunder or in the Loan Agreement, or the insolvency of the Borrower, or the filing by or against any of them of any bankruptcy, insolvency, or other proceedings for the relief of debtors under any state or federal law, or the making by any of them of any assignment for benefit of creditors, or the failure to pay or supersede within 30 days any judgment entered against any of them or the issuance of any writ of attachment or garnishment against any of the property of any of them, or the failure of any of the undersigned to observe or perform any agreement of any nature whatsoever with the lender, or if Lender deems itself insecure, this Note and all Obligations shall forthwith become immediately due and payable without demand or notice, at the option of Lender. After maturity, this Note shall bear interest at the rate stated above.
6. **ATTORNEYS' FEES:** If any amount payable hereunder is not paid when due or declared due, this Note may be placed in the hands of an attorney at law for collection, and in that event, the Borrower agrees to pay all costs of collection, including any reasonable attorneys' fees and costs. Such attorneys' fees and costs shall include, but not be limited to, fees and costs incurred in all matters of collection and enforcement, construction and interpretation, before, during, and after trial proceedings and appeals, as well as appearances in and connected with any bankruptcy proceedings, creditors' reorganization proceedings, or probate proceedings.
7. **RATE CHARGED:** In no event shall the interest charged hereunder be in excess of the legal maximum rate of interest (if any) allowed by applicable law as the law now exists or as the law may be changed in the future to allow higher rates of interest, and in the event that interest is charged at a rate in excess of the maximum rate allowed, any excess sums collected by the Lender shall be applied as reduction to principal, it being the intent of the undersigned hereof and the Lender that the undersigned pay no more and the Lender collect no more than the sums allowed using a lawful rate of interest.

8. **AUTHORITY:** The Borrower has the authority to execute this Note and has all authority to bind itself to the obligations set forth herein and in the Loan Agreement.
9. **AMENDMENT:** This Agreement may only be modified or amended by written instrument executed by both the Borrower and the Lender.
10. **GENERAL:** Each Party to this Note, whether maker, endorser or guarantor, hereby waives presentment for payment, demand, protest and notice of protest and assents to each and every extension or postponement of the time of payment or other indulgence, or to any substitution, addition, exchange or release of the security held by Lender. The undersigned hereby acknowledge that they have received a completed copy of this Note and agree to all the terms contained herein. Capitalized terms used but not defined herein shall carry the meaning ascribed in the Loan Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to become effective as of the date executed by the Lender (“Effective Date”).

Town of Fort Myers Beach

By: _____

Name: _____

Title: _____

Date: _____

Florida Department of Economic Opportunity

By: _____

Name: _____

Title: _____

Date: _____

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY, SUBJECT ONLY TO FULL
AND PROPER EXECUTION OF THE
PARTIES.

OFFICE OF THE GENERAL COUNSEL
FLORIDA DEPARTMENT OF ECONOMIC
OPPORTUNITY

By _____

Approved Date: _____

TERM SHEET

This loan facility (“Facility”) is provided by the Florida Department of Economic Opportunity (“DEO”), located at 107 East Madison Street, Tallahassee Florida, 32399, to The Town of Fort Myers Beach (“Borrower”) 2525 Estero Boulevard, Fort Myers Beach, Florida. 33931. DEO and the Borrower are collectively referred to as the “Parties” and each individually as a “Party.”

Background. This Term Sheet sets out the terms and conditions pursuant to which DEO will provide the Facility of up to \$11,900,000.00 to the Borrower for Governmental Operations, as that term is used in Section 288.066, Florida Statutes and Rule ER 73AER23-1.

Full Documents. This Term Sheet is not intended to create a legal obligation between the Parties, and is intended only to set forth the terms under which the Facility will be offered, subject to the terms and execution of definitive documents embodying all of the terms and conditions between the Parties with respect to the Facility (the “Loan Documents”).

Working Capital Facility	
Nature and Purpose of the Facility	DEO has agreed to provide the Borrower with a loan facility (the “Facility”) that is non-interest bearing for the term of the Facility.
Use of Funds	The use of funds will be limited to costs associated with continuing, expanding, or modifying local governmental operations to meet disaster-related needs, and includes costs such as, but not necessarily limited to, staff salaries and payroll. This term does not include capital and equipment costs associated with the construction, repair, or renovation of damaged public facilities or infrastructure.
Amount of Facility	\$11,900,000.00
Fee	There is no fee associated with this Facility.
Interest Rate	During the term of the Facility interest shall not accrue. Subject to the Repayment Term section below, simple interest will accrue on an annualized basis on the Outstanding Principal at a rate of 10% (the “Interest Rate”).
Preconditions to Availability of Facility	DEO is not obliged to provide the Facility to the Borrower until DEO: • has received a certified copy of one or more resolutions of the Borrower’s Town Council] authorizing the execution and delivery of the Loan Documents; • has received one or more signed copies of the Loan Documents from the Borrower; and • has countersigned and returned to the Borrower the Loan Documents.
Availability of Facility	The Facility is available for disbursement immediately after the execution of all Loan Documents.
Repayment Term	Amounts outstanding (the “Outstanding Principal”) under the Facility may be repaid at any time without any penalty. Within 12 months after disbursement the Borrower shall begin repayments of principal and interest, unless the Borrower has requested, and DEO has approved, an extension for 6 months. Amounts unpaid shall rollover each month and interest shall be accrued only on the Outstanding Principal. Any amount outstanding under the Facility becomes immediately repayable in full on the earlier of: • the termination of the Loan Documents (other than termination resulting from the conclusion of a formal agreement), or if a formal agreement was entered into incorporating the provisions of the Loan Documents, the formal agreement;

	the occurrence of an Event of Default (which is not remedied within the time period required to remedy such a default after notice to that effect from DEO).
Event of Default	The Borrower will be given five business days to remedy an event of default for failure to pay an amount owing to DEO and 10 business days to remedy any other default (other than insolvency type defaults). An event of default will occur where: - the Borrower fails to pay any amounts owing under the Facility as and when due; - the Borrower fails to perform or observe any obligation under the Facility and does not remedy the failure within five business days after receipt of a notice; - any warranty, representation, or statement by the Borrower is or becomes false, misleading, or incorrect when made or regarded as made under the Loan Documents; and - there is a material adverse change in the Borrower's assets, liabilities, financial position, or prospects.
Representations and Warranties	It is acknowledged that DEO may require additional warranties to be provided by the Borrower. The Borrower represents and warrants upon execution of the Loan Documents that: - it has consulted, and as appropriate obtained the review and opinions of, its legal counsel and accountants. - it has full power and authority to enter into and perform its obligations contemplated by Term Sheet and has taken all necessary action to authorize the execution, delivery, and performance thereof; - no event has occurred which constitutes an Event of Default; - it is solvent and able to pay its debts as and when they become due and payable; - all information furnished by the Borrower to the Lender in connection with this Term Sheet is true and correct in all respects and there are no other facts or circumstances of which it is aware that would render any such information misleading; - it has not violated any law or agreements which may have a material adverse effect on the business or financial condition of the Borrower; and - it has disclosed to DEO any information which might reasonably be expected to adversely influence the decision of a lender to make a general borrowings facility available to the Borrower on terms and conditions similar to those contained in this Term Sheet. - it will, in good faith, take all steps necessary to facilitate the execution the Loan Documents, and the transactions contemplated thereby.
Indemnity	The Borrower will indemnify DEO for all loss that it suffers occurring as a result of an Event of Default or DEO exercising its powers as a result of an Event of Default.
Costs and Expenses	Except as otherwise set forth herein, each Party bears its own costs and fees, including attorney's fees.
Confidentiality	This Term Sheet is a public record, subject to the public record disclosure requirements of Article I, Section 24 of the Florida Constitution and Chapter 119 of the Florida Statutes.
Formal Documents	DEO will prepare the Loan Documents incorporating the provisions set out above and other terms customarily found in a loan facility of this type.

Ron DeSantis
GOVERNOR



Meredith Ivey
ACTING SECRETARY

April 5, 2023

Mr. Chris Holley
Town Manager
Town of Fort Myers Beach
2525 Estero Boulevard
Fort Myers Beach, Florida 33931

Re: Local Government Emergency Bridge Loan Program

Dear Mr. Holley,

Thank you for your interest in the Florida Department of Economic Opportunity's (DEO) Local Government Emergency Bridge Loan Program. We are pleased to inform you that your loan application for Hurricane Ian was selected for funding in the amount of \$11,900,000.00.

Enclosed is a Term Sheet that sets out the terms and conditions pursuant to which DEO has agreed to provide funds to the Town of Fort Myers Beach for governmental operations, as defined in section 288.066, Florida Statutes and Rule 73AER23-1.

Receipt of funds is contingent upon the Town of Fort Myers Beach entering into a loan agreement with DEO. The loan agreement will specify the obligations to be met for payment of the funds and loan repayment. Also enclosed is the loan agreement, promissory note, and resolution templates for you to begin your review. Please note that this letter does not constitute an offer or agreement to loan your organization any funding or to enter into an agreement with respect to any funding, nor does this letter constitute a binding commitment on the part of either DEO or the state of Florida. Accordingly, nothing express or implied in this letter gives any person or entity any legal or equitable rights.

In order to ensure timely payments, recipients of state funds must understand and comply with all loan requirements and applicable laws and rules, including the payment requirements of the Florida Department of Financial Services.

If you have any questions, please do not hesitate to contact Casey Bruno, Program Manager, by telephone at 850-717-8976 or by email at Casey.Bruno@DEO.myflorida.com.

Sincerely,

A handwritten signature in blue ink, appearing to read "Meredith Ivey", is written over a printed name label.

Meredith Ivey

Florida Department of Economic Opportunity | Caldwell Building | 107 E. Madison Street | Tallahassee, FL 32399
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1. **Requested Motion:**

Meeting Date: May 1, 2023

Approve and authorize the Town Manager to execute contracts with the top ranked firms under each category for Ongoing Miscellaneous Professional Services.

Why the action is necessary:

This provides the Town a variety of firms to select from for any services the Town may deem necessary.

What the action accomplishes:

Finalizes the RFQ process per the Town's purchasing policy.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

Yadzia Roa, Deputy Town
Clerk/Contracts Manager

5. **Background:**

On August 24, 2022, the Town issued RFQ-22-25-AD "Ongoing Miscellaneous Professional Services." The deadline for receipt of qualifications closed on January 11, 2023 and the submittals were opened on the same day at 2:15 pm. RFQ-22-25-AD was for 19 categories; Water Resource, Architectural Design, Stormwater, Water Distribution, including lift and pump station design, Surveying Services, Landscape Architect, Community & Neighborhood Improvements, Electrical Systems, Geo Technical Analysis, Civil Engineering, Development and Building Services, Transportation Planning & Traffic Engineering Services, Planning/ Zoning, Historical Restoration, Archaeological Services, Environmental Services, Marine Engineering, Geographical Information System.

The Town received 31 proposals for this solicitation. The Selection Advisory Committee (SAC) met on February 28, 2023 and decided to divide the categories into three meetings. The SAC met to review the submittals on March 14, 2023, March 21, 2023 and March 23, 2023, recommending to the Town Manager the top 5 responding firms under each category to be awarded a "continuing services contract." The contract for each firm will be for a period of three (3) years with an option to renew for two (2) terms of one-year each by mutual agreement of the parties. Hourly rates and all other negotiated expenses will remain in effect throughout the duration of the contract period, and any subsequent renewal. The top firms under each category are shown below:

101 Water Resources- DRMP, Inc (DRMP).; Tetra Tech, Inc. (Tetra Tech) ; A.D.A. Engineering, Inc. (ADA); AIM Engineering & Surveying, Inc. (AIM); and Kimley-Horn and Associates, Inc. (Kimley-Horn)

102 Architectural Design- HDR Architecture, Inc (HDR); Wannemaker Jensen Architects, Inc. (Wannemacher) ; BSSW Architects, Inc. (BSSW) ; GMA Architects & Planners, LLC (GMA); and RG Architects, PA (RG Architects)

103 Stormwater- Tetra Tech.; ADA ; Kimley- Horn; CW3 Engineering, Inc.; and DRMP

104 Water Distribution- Tetra Tech; Weston & Sampson Engineers, Inc.(Weston & Sampson) ; Kimley-Horn; ADA; and Holes Montes, Inc. (Holes Montes)

105 Surveying Services- Coastal Engineering Consultants, Inc.; Tetra Tech; Tectonic Engineering & Surveying Consultants P.C. (Tectonic); DRMP; and AIM

106 Landsape Architect- HDR ; Holes Montes; DRMP; Grady Minor; and Kimley Horn.

107 Community & Neighborhood Improvements- HDR.; Kisinger Campo & Associates, Corp. (KCA); GMA. ; RWA, Inc; and K2M Design, Inc. (K2M)

108 Electrical Systems-Matern Professional Engineering,Inc.; Tetra Tech; ADA; DRMP and K2M

109 Structural Systems- DRMP; K2M; KCA; and Weston & Sampson

110 Geotechnical Analysis- Professional Services Industries, Inc.(Intertek PSI) and DRMP

111 Civil Engineering- DRMP; Tetra Tech; Kimley- Horn; CW3 Engineering, Inc. and AIM

112 Development & Building Services- DRMP; CAP Government, Inc.; ADA; and JR Evans Engineering, P.A. (JR Evans)

113 Transportation Planning & Traffic Engineering- McMahon Associates, Inc. ; DRMP; Kimley-Horn; HDR; and KCA

114 Planning/ Zoning- Kimley- Horn; Hole Montes; HDR ; Tetra Tech; and DRMP

115 Historical Restoration- BSSW; K2M; and DRMP

116 Archaeological Services- DRMP

117 Environmental Services- Hans Wilson & Associates, Inc (HWA); Intertek PSI; HDR ; DRMP; and KCA.

118 Marine Engineering- HWA; HDR ; Coastal Engineering Consultants, Inc.; JR Evans; and DRMP

119 Geographical Information System- Florida Technical Consultants, LLC; Tetra Tech; Weston & Sampson; Respec; and DRMP

Attachments:

1. Category Spreadsheet RFQ-22-25-AD
2. PSA example

Financial Impact:

N/A- contracts used as needed

6. Alternative Action

Do not approve the the contracts

7. Management Recommendations:

Approve and authorize the Town Manager to execute a contract with the top 5 firms under each category for Ongoing Miscellaneous Professional Services.

8. Recommended Approval:

Yadzia Roa, Deputy Town Clerk/Contracts Manager
 John R Herin Jr, Town Attorney
 Amy Baker, Town Clerk
 Keith Wilkins , Interim Town Manager

Created/Initiated - 4/17/2023
 Approved - 4/17/2023
 Approved - 4/19/2023
 Final Approval - 4/19/2023

RFQ-20-22-PW

Professional Services
Proposing Firm

Ongoing Misc.

Firm Name	101 - Water Resource	102 - Architectural Design	103 - Stormwater	104 - Water Distribution, Including Lift and Pump Station Design	105 - Surveying Services	106 - Landscape Architect	107 -Community & Neighborhood Improvements	108 - Electrical Systems	109 - Structural Systems	110 - Geo Technical Analysis	111 - Civil Engineering	112 - Development and Building Services	113 - Transportation Planning & Traffic Engineering Services	114 - Planning /Zoning	115 - Historical Restoration	116- Archaeological Services	117- Environmental Services	118- Marine Engineering	119- Geographical Information System
A.D.A Engineering, Inc	X		X	X			X	X			X	X	X						
A/R/C Associates Incorporated		X																	
ADG Architecture,LLC		X																	
AIM Engineering & Surveying, Inc	X		X	X	X						X		X						
BSSW Architects, Inc.		X					X								X				
C.A.P. Government, Inc.												X		X					
Coastal Engineering Consultants, Inc.					X													X	
CW3 Engineering, Inc.			X	X							X								
DRMP, Inc.	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Florida Technical Consultants, LLC																			X
GMA Architects & Planners, LLC.		X					X												
Q. Grady Minor & Associates, P.A.	X		X	X	X	X	X				X								
Hans, Wilson & Associates, Inc.																	X	X	
HDR Architecture, Inc.		X				X	X						X	X			X	X	
Hitcock Design Group						X													
Hole Montes, Inc.	X		X	X	X	X	X				X			X					
Hyatt Survey Services, Inc.					X														
Professional Services Industries (Intertek PSI)										X							X		
J.R. Evans Engineering, P.A.	X		X	X							X	X		X				X	X
K2M Design, Inc.		X					X	X	X						X				
Kimley-Horn and Associates, Inc.	X		X	X		X	X				X		X	X			X		
Kisinger Campo & Associates, Corp	X		X				X		X		X		X				X		X
Matern Professional Engineering, Inc.								X											
McMahon Associates, Inc.													X						
OCI Associates, Inc.			X																
RESPEC Company LLC	X		X	X							X	X							X
RG Architects, P.A.		X																	
RWA, Inc.	X		X	X	X	X	X				X								
Tectonic Engineering & Surveying Consultants P.C					X														
Tetra Tech, Inc.	X	X	X	X	X			X			X			X					X
Wannemacher Jensen Architects, Inc.		X																	
Weston & Sampson Engineers, Inc.			X	X					X		X								X

PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT is made and entered into this _____ day of _____ by and between the Town of Fort Myers Beach, Florida, a chartered municipality of the State of Florida, whose address is 2525 Estero Boulevard, Fort Myers Beach, Florida 33931 ("Town"), and _____ ("Consultant"), whose address is _____.

WHEREAS, the Town desires the Consultant to provide and perform professional services as further described hereinafter concerning Ongoing Miscellaneous Professional Services, ("Project"); and

WHEREAS, the selection and engagement of the Consultant has been made by the Town in accordance with the provisions of the Consultants' Competitive Negotiation Act, Chapter 287.055, Florida Statutes and applicable Town Ordinances, Rules, and Charter Provisions;

TIME OF CONTRACT: This contract will be for a period of three (3) years with an option to renew for two (2) terms of one-year each by mutual agreement of the parties. Hourly rates and all other negotiated expenses will remain in effect throughout the duration of the contract period, and any subsequent renewal.

NOW, THEREFORE, in consideration of the mutual covenants, terms and provisions contained herein, the parties hereto agree as follows:

ARTICLE 1.00 - SCOPE OF PROFESSIONAL SERVICES

1.01 SCOPE OF SERVICES. Consultant hereby agrees to provide and perform the professional services required and necessary to complete the work set forth on EXHIBIT "A", entitled "Scope of Professional Services", which is attached hereto and incorporated herein by reference. Such services shall be referred to hereunder as "Basic Services."

1.02 ADDITIONAL SERVICES. Should the Town request the Consultant to provide and perform professional services for this Project which are not set forth in EXHIBIT "A", the Consultant agrees to provide and perform such Additional Services as may be agreed to in a Supplemental Task Authorization to this Agreement.

1.03 SUPPLEMENTAL TASK AUTHORIZATION. All authorized changes to the scope of professional services, tasks, work or materials to be performed or provided by the Consultant; the compensation and method of payment; the schedule or time period for performance and completion; and/or the guidelines, criteria and requirements pertaining thereto, shall be (i) reduced to writing on the Town's standard form Supplemental Task Authorization and (ii) signed by both parties, to be effective. Notwithstanding anything to the contrary herein, the Town shall have the unilateral right to delete all, or portions, of the Scope of Services, set forth on EXHIBIT "A" and/or any Supplemental Task Authorization executed hereunder, by the unilateral issuance of a written Supplemental Task Authorization to the Consultant, which shall be effective with or without Consultant's execution thereof.

ARTICLE 2.00 - OBLIGATIONS OF THE CONSULTANT

The obligations of the Consultant shall include, but not be limited to, the following:

2.01. LICENSES: Consultant certifies that it possesses valid, current licenses to do business, including, but not limited to, licenses required by the respective State Boards and other governmental agencies responsible for regulating and licensing the professional services provided and performed by the Consultant pursuant to this Agreement. Consultant agrees to maintain such licenses throughout the period that this Agreement is in effect.

2.02 QUALIFIED, WILLING AND ABLE. Consultant certifies it is qualified, willing and able to provide and perform all services hereunder, in accordance with the requirements hereof.

2.03 PERSONNEL

- (1) **QUALIFIED PERSONNEL:** The Consultant shall employ and/or retain only qualified personnel for all services it provides hereunder. Such personnel shall have all license(s), certificate(s) of authorization and other legal qualifications to provide such services.

(2) CONSULTANT'S PROJECT DIRECTOR: The Consultant agrees to employ and designate, in writing, a qualified and properly licensed professional as the Consultant's Project Director. The Consultant's Project Director shall be authorized and responsible to act on behalf of the Consultant with respect to directing, coordinating and administering all aspects of the services to be provided and performed under this Agreement and all addenda hereto. The Consultant's Project Director shall have full authority to bind and obligate the Consultant on any matter arising hereunder unless the parties have previously agreed otherwise in writing. The Project Director shall devote whatever time is required to satisfactorily direct, supervise and manage the services provided and performed by the Consultant throughout the entire period this Agreement is in effect. The person selected by the Consultant to serve as the Consultant's Project Director shall be subject to the prior approval and acceptance by the Town.

(3) REMOVAL OF PERSONNEL: Within ten (10) days of receipt of the Town's written request, the Consultant shall remove and replace its Project Director, or any other personnel employed or retained by the Consultant, or personnel of the sub consultant(s) or subcontractor(s) engaged by the Consultant to provide and/or perform services and/or work pursuant to this Agreement, and any Addenda hereto. The Town shall have the ability to make such request with or without cause.

(4) SUB-CONSULTANT: The Consultant shall have the ability to engage the professional services of a Sub-consultant or Sub-consultants to assist the Consultant in providing and performing the professional services, work and materials for which the Consultant is contractually obligated to perform hereunder. The Town shall not be a party to, responsible or liable for, or assume any obligation whatever for any Agreement entered into between the Consultant and any Sub-consultant. Such engagement shall be with the prior written approval of Town, and is subject to the terms of ARTICLE 8 below.

(5) SUB-CONTRACTOR: The Consultant shall have the ability to engage the services of a Sub-contractor or Sub-contractors to assist the Consultant in providing and performing services, work and materials for which the Consultant is contractually obligated to perform hereunder. The Town shall not be a party to, responsible or liable for, or assume any obligation whatever for any Agreement entered into between the Consultant and any Subcontractor. Such engagement shall be with the prior written approval of Town, and is subject to the terms of ARTICLE 8 below.

2.04 TIMELY ACCOMPLISHMENT OF SERVICES: The timely performance and completion of the required services, work and materials is vitally important to the interests of the Town and time is of the essence for all of the duties and obligations contained in this Agreement. The Town may suffer damages in the event that the Consultant does not accomplish and complete the required services in a timely manner. The Consultant agrees to employ, engage, retain and/or assign an adequate number of personnel throughout the period of this Agreement so that all services will be provided, performed and completed in a timely and diligent manner throughout.

2.05 STANDARDS OF PROFESSIONAL SERVICE: The work and/or services to be provided and/or performed by the Consultant (and by any Sub-consultant(s) and/or Sub-contractor(s) engaged by the Consultant) as set forth in the Scope of Professional Services, EXHIBIT "A", shall be done in accordance with the generally accepted standards of professional practice and in accordance with the laws, rules, regulations, ordinances, codes, policies, standards or other guidelines issued by those governmental agencies which have jurisdiction over all or a portion of this project and which are in effect at the time the Town approves this Agreement, or which may subsequently be changed or revised.

2.06 CORRECTION OF ERRORS, OMISSIONS OR OTHER DEFICIENCIES

(1) RESPONSIBILITY TO CORRECT: The Consultant agrees to be responsible for the professional quality, technical adequacy and accuracy, timely completion, and the coordination of all data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents, photographs, reports, memoranda, other documents and instruments, and other services, work and materials performed, provided, and/or furnished by Consultant or by any Sub consultant(s) and/or Subcontractor(s) retained or engaged by the Consultant pursuant to this Agreement. The Consultant shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in such data, studies, surveys, designs, specifications, calculations,

estimates, plans, drawings, construction documents and instruments, and other services, work and materials resulting from the negligent act, errors or omissions or intentional misconduct of Consultant or any Sub consultant(s) or Subcontractor(s) engaged by the Consultant.

(2) TOWN'S APPROVAL NOT RELIEVING CONSULTANT OF RESPONSIBILITY: Neither review, approval, nor acceptance by the Town of data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents, photographs, reports, memoranda, other documents and instruments, and/or incidental professional services, work and materials furnished hereunder by the Consultant or any Sub consultant(s) or Subcontractor(s) engaged by the Consultant, shall in any way relieve Consultant of responsibility for the adequacy, completeness and accuracy of its services, work and materials and the services, work and materials of any and all Sub consultants and/or Subcontractors engaged by the Consultant to provide and perform services in connection with this Agreement. Neither the Town's review, approval or acceptance of, nor payment for, any of the Consultant's services, work and materials shall be construed to operate as a waiver of any of the Town's rights under this Agreement, or any cause of action it may have arising out of the performance of this Agreement.

2.07 LIABILITY/HOLD HARMLESS. The Consultant shall be liable and agrees to be liable for and shall indemnify and hold the Town harmless for any and all claims, suits, judgments or damages, losses and expenses including but not limited to court costs and attorney's fees (including but not limited to appellate attorney fees) arising out of, or resulting from, the Consultant's errors, omissions, and/or negligence, and/or willful and/or deliberate acts or failure to act, or those of any and all Sub consultants and/or Subcontractors engaged by the Consultant during the providing, performing and furnishing of services, work and materials pursuant to this Agreement and any and all Supplemental Task Authorizations hereto. The Consultant shall not be liable to nor indemnify the Town for any portions of damages arising out of any error, omission, and/or negligence of the Town, its employees, agents, or representatives or third parties. The Consultant hereby acknowledges that the compensation to be paid it by the Town hereunder includes compensation as consideration for the indemnification provided herein.

2.08 NOT TO DIVULGE CERTAIN INFORMATION: Consultant agrees, during the term of this Agreement, not to divulge, furnish or make available to any third person, firm, or organization, without Town's prior written consent, or unless incident to the proper performance of Consultant's obligations hereunder, or in the course of judicial or legislative proceedings where such information has been properly subpoenaed, any non-public information concerning the services to be rendered by Consultant or any sub consultant(s) or subcontractor(s) hereunder, subject to the requirements of the Florida Public Records Law. Consultant shall require all of its employees, Sub consultant(s) and Subcontractor(s) to comply with these provisions.

2.09 CONSULTANT TO REPAIR PROPERTY DAMAGE IT HAS CAUSED: Consultant agrees to promptly repair and/or replace, or cause to have repaired and/or replaced, at its sole cost and expense and in a manner acceptable to and approved by the Town, any property damage arising out of, or caused by, the willful or negligent acts of the Consultant, or of its Sub consultants and/or Subcontractors. The Consultant's obligation hereunder does not apply to property damage caused by any other Consultant or Contractor engaged directly by the Town. Should the Consultant fail to make such repairs and/or replacements within a reasonable time, the Town reserves the right to cause such repairs and/or replacement to be made by others and for all costs and expenses associated with having such repairs and/or replacement done to be paid for by the Consultant, or by the Consultant reimbursing the Town for all such costs and expenses.

2.10 PERMITS: The Consultant shall be responsible for preparing and submitting all required applications and other supportive information necessary to assist the Town in obtaining all reviews, approvals and permits, with respect to the Consultant's design, drawings and specifications required by any governmental body having authority over the Project. Any fees required for such reviews, approvals or permits will be paid via check issued by the Town and made payable to the respective governmental body, upon the Consultant furnishing the Town satisfactory documentation of such fees. The Consultant will be similarly responsible for preparing and submitting all required applications and other supportive information necessary to assist the Town in obtaining any renewals and/or extensions of reviews, approvals or permits that may be required while this Agreement is in effect. The Town shall, at the Consultant's request, assist in obtaining required signatures and provide the Consultant with all information known to be available to the Town so as to assist the Consultant in the preparation and submittal of

any original, renewal or extension of required reviews, approvals or permits.

2.11 TRUTH-IN-NEGOTIATIONS CERTIFICATE: The Consultant shall execute a Truth-in-Negotiations Certificate ("Certificate"), in a form attached as EXHIBIT "F" and incorporated herein by reference. The Certificate shall state that wage rates and other factual unit costs supporting the compensation are accurate, complete and current at the time this Agreement is executed. The original contract price and any additions thereto shall be adjusted to exclude any significant sums by which the Town determines the contract price was increased due to inaccurate, incomplete or non-current wage rates or other factual unit costs.

2.12 COMPLETION OF TASKS: Unless otherwise set forth herein, the Consultant shall be responsible for providing and performing whatever services, work, equipment, material, personnel, supplies, facilities, transportation and administrative support that are necessary and required to complete all of the tasks set forth in EXHIBIT "A" entitled "Scope of Professional Services" and Supplemental Task Authorizations, if any, hereto. The compensation to be paid the Consultant as set forth in EXHIBIT "B" entitled "Compensation and Method of Payment" and Supplemental Task Authorizations authorized hereunder shall be understood and agreed to adequately and completely compensate the Consultant for providing and performing whatever services, work, equipment, material, personnel, supplies, facilities, transportation and administrative support that are necessary and required to complete the tasks set forth in EXHIBIT "A" and Supplemental Task Authorizations, if any, thereto.

2.13 DUTIES AND OBLIGATIONS IMPOSED ON THE CONSULTANT: The duties and obligations imposed upon the Consultant by this Agreement and the rights and remedies available hereunder to the Town shall be in addition to, and not a limitation of, any which are otherwise imposed or available by law, regulation, ordinance or statute.

2.14 REPRESENTATION OF THE TOWN BY CONSULTANT: Other than as specified in the Scope of Services which is attached to this Agreement as Exhibit "A" or in any duly executed addendum to this Agreement, the Consultant is not authorized to act on the Town's behalf, and shall not act on the Town's behalf. The Town will neither assume nor accept any obligation, commitment, responsibility or liability which may result from representation by the Consultant not specifically provided for and authorized as stated hereinabove.

ARTICLE 3.00 - OBLIGATIONS OF THE TOWN

3.01 TOWN PROJECT MANAGER: The Town shall promptly provide written notice to Consultant of the name of the Town's PROJECT MANAGER, who, on behalf of the Town, shall provide information, assistance, guidance, coordination, review, approval and acceptance of the professional services, work and materials to be provided and performed by the Consultant pursuant to this Agreement and any addenda hereto. The PROJECT MANAGER is not authorized to, and shall not issue any verbal or written request or instruction to the Consultant that would have the effect or be interpreted to have the effect, of modifying or changing in any way whatever the: (1) Scope of Services to be provided and performed by the Consultant; (2) the time the Consultant is obligated to commence and complete all such services; and (3) the amount of compensation the Town is obligated or committed to pay the Consultant.

3.02 AVAILABILITY OF TOWN INFORMATION

(1) **PROJECT GUIDELINES AND CRITERIA:** Guidelines to the Consultant regarding requirements the Town has established or suggests relative to the Project, including, but not limited to such items as: goals, objectives, constraints, and any special financial, budgeting, space, site, operational, equipment, technical, construction, time and scheduling criteria, are set forth in EXHIBIT "E", entitled "PROJECT GUIDELINES AND CRITERIA", which is attached hereto and incorporated herein by reference.

(2) **TOWN TO PROVIDE PERTINENT REFERENCE MATERIAL:** At the Consultant's request, the Town agrees to provide to the Consultant, at no cost to the Consultant, all pertinent information known to be available to the Town to assist the Consultant in providing and performing the required professional services. Such information may include, but not be limited to: previous reports; plans, drawings and specifications; maps; property, boundary, easement, right-of-way, topographic, reference monuments, control points, plats and related survey data; data prepared or services furnished by others to the Town such as sub-surface investigations, laboratory tests, inspections of natural and man-made materials,

property appraisals, studies, designs and reports.

ARTICLE 4.00 - COMPENSATION AND METHOD OF PAYMENT

4.01 BASIC SERVICES: The Town shall pay the Consultant for all requested and authorized Basic Services rendered hereunder by the Consultant and completed in accordance with the requirements, provisions, and/or terms hereof and accepted by the Town. Such payment shall be as set forth in EXHIBIT "B", entitled "COMPENSATION AND METHOD OF PAYMENT", which is attached hereto and incorporated herein by reference.

4.02 ADDITIONAL SERVICES: The Town shall pay the Consultant for all such Additional Services as have been requested and authorized by the Town and agreed to, in writing, by both parties hereto, which have been rendered as Additional Services by the Consultant and completed in accordance with the requirements, provisions, and/or terms of this Agreement and accepted by the Town. Such payment shall be made as set forth under "ADDITIONAL SERVICES" in EXHIBIT "B".

4.03 LUMP SUM AND NOT-TO-EXCEED PAYMENTS

(1) **LUMP SUM FEE(S):** When the Consultant's compensation hereunder (including any Addenda) is established on a Lump Sum Fee ("L.S.") basis, it shall include all direct and indirect labor costs, personnel-related costs, overhead and administrative costs, costs of Sub consultant(s) and/or Subcontractor(s), out-of-pocket expenses and costs, professional service fee(s) and any other costs or expenses which may pertain to the services and/or work to be performed, provided and/or furnished by the Consultant, as may be required and/or necessary to complete each and every task set forth in this Agreement and/or any Addenda hereto.

(2) **NOT-TO-EXCEED FEE(S):** When the Consultant's compensation hereunder (including any Addenda) is established on a NOT-TO-EXCEED ("N.T.E.") amount basis, it shall mean:

- For the actual hours necessary, required and expended by the Consultant's professional and technical personnel, multiplied by the applicable hourly rates for each classification or position as set forth in Attachment No. 1 to EXHIBIT "B" to this Agreement; and
- For actual necessary, required and expended non-personnel reimbursable expenses and costs, multiplied by the applicable "Basis of Charges" for each item as set forth in Attachment No. 2 to EXHIBIT "B" to this Agreement and any Supplemental Task Authorizations and
- For actual, necessary and required hours, and non-personnel expenses and costs, expended by Sub-consultants and Subcontractors engaged by the Consultant, multiplied by such hourly rates and unit costs as are agreed to by the Town and the Consultant and as are set forth as a part of this Agreement and any Supplemental Task Authorizations thereto; and
- Any payment hereunder is subject to the Consultant presenting an itemized and detailed invoice with appropriate supporting documentation attached thereto to show evidence satisfactory to the Town covering all such costs and expenses; and
- The Consultant's invoices and all payments to be made for all N.T.E. amounts shall be subject to the review, acceptance and approval of the Town; and
- When the Consultant's compensation is established on a N.T.E. basis for a specific Task(s), the total amount of compensation to be paid to the Consultant to cover all personnel costs, non-personnel reimbursable expenses and costs, and Sub consultant and Subcontractor costs for any such specific Task(s) shall not exceed the amount of the total N.T.E. compensation established and agreed to for each specific Task(s).
- If the amount of compensation for any Task(s) which the Consultant is entitled on the N.T.E. basis set forth above is determined to be necessary, required and actually expended and is determined to be actually less than the N.T.E. amount established for the specific Task, any unexpended amount under a specific Task may not be used, applied, transferred, invoiced or paid for services or work provided or performed on any other Task(s).

4.04 METHOD OF PAYMENT

(1) **MONTHLY STATEMENTS:** The Consultant shall submit no more than one invoice statement to the Town each calendar month, covering services rendered during the preceding calendar month. The Consultant's invoice statement(s) shall be itemized to correspond to the basis of compensation as set forth in the Agreement or Supplemental Task Authorization(s) hereunder. The Consultant's invoice statements shall contain a breakdown of charges, description of service(s) and work provided and/or performed, and where appropriate, supportive documentation of charges consistent with the basis of compensation set forth in the Agreement, or in Supplemental

Task Authorization(s) hereunder.

(2) PAYMENT FOR SERVICES PERFORMED: The Town shall pay the Consultant for services performed using either of the following methods, or using a combination thereof:

(A) The Town shall pay the Consultant on the basis of services completed, for tasks set forth in EXHIBITS "A" and "B", as evidenced by work products such as reports, drawings, specifications, etc., submitted by the Consultant and accepted by the Town. No payments shall be made for Consultant's Work-in-Progress until service items for which payment amounts have been established and set forth in this Agreement have been completed by the Consultant and accepted by the Town. Whenever an invoice statement covers services for which no work product is required to be furnished by the Consultant to the Town, the Town reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.

(B) The Town shall pay the Consultant for services performed for tasks set forth in EXHIBITS "A" and "B" on the basis of an invoice statement covering Consultant's Work-in-Progress, expressed as a percentage of the total cost of the service and/or work required for each task invoiced in this manner. All such Work-in-Progress percentages (WIPP) are subject to the review and approval of the Town. The decision of the Town shall be final as to the Work-in-Progress percentages paid. Payment by the Town for tasks on a Work-in-Progress percentage basis shall not be deemed or interpreted in any way to constitute an approval or acceptance by the Town of any such service or Work-in-Progress. The Consultant shall be responsible for correcting, re-doing, modifying or otherwise completing the services and work required for each task before receiving final, full payment whether or not previous Work-in-Progress payments have been made. All tasks to be paid for on a Work-in-Progress percentage basis shall be agreed to by both parties to the Agreement and each task to be paid in this manner shall be identified in EXHIBIT "B" with the notation (WIPP). Only tasks so identified will be paid on a Work-in-Progress percentage basis. The Town reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.

(3) PAYMENT SCHEDULE: The Town shall issue payment to the Consultant within thirty (30) calendar days after receipt of an invoice statement from the Consultant in an acceptable form and containing the requested breakdown and detailed description and documentation of charges. Should the Town object or take exception to the amount of any Consultant's invoice statement, the Town shall notify the Consultant of such objection or exception within the thirty (30) calendar day payment period set forth in this subparagraph. If such objection or exception remains unresolved at the end of said thirty (30) calendar day period, the Town shall withhold the disputed amount and make payment to the Consultant of the amount not in dispute. Payment of any disputed amount, or adjustments thereto, shall be made within thirty (30) calendar days of the date such disputed amount is resolved by mutual agreement of the parties to this Agreement.

4.05 PAYMENT IF SERVICES ARE TERMINATED AT CONVENIENCE OF THE TOWN:

If this Agreement is terminated at the convenience of the Town and not at the fault of the Consultant, the Town shall compensate the Consultant only for services performed prior to the effective date of termination and reimbursable expenses then due including project drawings, plans, data, and other project documents.

4.06 PAYMENT WHEN SERVICES ARE SUSPENDED: If the Town suspends the Consultant's services and work on all or part of the services required be providing and performing by the Consultant pursuant to this Agreement, the Town shall compensate the Consultant only for the services performed prior to the effective date of suspension and reimbursable expenses then due.

4.07 NON-ENTITLEMENT TO ANTICIPATED FEES IN THE EVENT OF SERVICE TERMINATION, SUSPENSION, ELIMINATION, CANCELLATION AND/OR DECREASE: If the services required pursuant to this Agreement are terminated, eliminated, cancelled, or decreased by the Town and/or are modified by the subsequent issuance of Supplemental Task Authorization(s), other than receiving the compensation set forth in Sub Articles 4.05 and 4.06, the Consultant shall not be entitled to receive compensation for anticipated professional fees, profit, mobilization costs, general and administrative overhead expenses or for any other anticipated or unanticipated income or expense which may be associated with the services terminated, suspended, eliminated, cancelled or decreased.

ARTICLE 5.00 - TIME AND SCHEDULE OF PERFORMANCE

5.01 NOTICE TO PROCEED: Following the execution of this Agreement by both parties, and after the Consultant has complied with the insurance requirements set forth hereinafter, the Town shall issue the Consultant a written Notice to Proceed. Following the issuance of such Notice to Proceed, the Consultant shall commence work promptly and shall carry on all such services and work as may be required in a timely and diligent manner to completion. A separate Notice to Proceed shall be issued for each Project requested by the Town hereunder.

5.02 TIME OF PERFORMANCE: The Consultant agrees to complete the services required pursuant to this Agreement by the date assigned with each individual Supplemental Task Authorization as defined for completion of the various phases and/or tasks of each individual project as set forth and described in this Agreement, and specifically as set forth in EXHIBIT "C", entitled "Time and Schedule of Performance", which EXHIBIT "C" is attached hereto and hereby incorporated by reference.

Should the Consultant be obstructed or delayed in the prosecution or completion of its obligations under this Agreement as a result of causes beyond the control of the Consultant, or its Sub consultant(s) and/or Subcontractor(s), and not due to their fault or neglect, the Consultant shall notify the Town, in writing, within two (2) calendar days after the commencement of such delay, stating the cause(s) thereof and requesting an extension of the Consultant's time of performance. Upon receipt of the Consultant's request for an extension of time, the Town shall grant the extension if the Town determines the delay(s) encountered by the Consultant, or its Sub consultant(s) and/or Subcontractor(s), is due to unforeseen causes and not attributable to their fault or neglect, in the Town's sole judgment.

5.03 CONSULTANT WORK SCHEDULE: The Consultant shall be required as a condition of this Agreement to prepare and submit to the Town, on a monthly basis, commencing with the issuance of the NOTICE TO PROCEED, a Consultant's Work Schedule for each project. The Work Schedule shall set forth the time and manpower scheduled for all of the various phases and/or tasks required to provide, perform and complete all of the services and work requiring completion of the various phases and/or tasks of the project services set forth and described in this Agreement, as set forth in EXHIBIT "C", pursuant to this Agreement in such a manner that the Consultant's planned and actual work progress can be readily determined. The Consultant's Work Schedule of planned and actual work progress shall be updated and submitted by the Consultant to the Town on a monthly basis or as otherwise indicated by the Town in writing.

5.04 FAILURE TO PERFORM IN A TIMELY MANNER: Should the Consultant fail to commence, provide, perform and/or complete any of the services and work required hereunder in a timely and diligent manner, the Town may consider such failure as justifiable cause to terminate this Agreement. As an alternative to termination, the Town at its option, may, upon written notice to the Consultant, withhold any or all payments due and owing to the Consultant, not to exceed the amount of the compensation for the work in dispute, until such time as the Consultant resumes performance of his obligations in such a manner as to get back on schedule in accordance with the time and schedule of performance requirements set forth in this Agreement, or any Supplemental Task Authorization(s) hereto. The termination rights specified in this sub-paragraph are in addition to any termination rights set forth elsewhere herein.

ARTICLE 6.00 - SECURING AGREEMENT:

The Consultant warrants that the Consultant has not employed or retained any company or person other than a bona fide, regular, full time employee working for the Consultant to solicit or secure this Agreement and that the Consultant has not paid or agreed to pay any person, company, corporation individual, or firm, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Agreement.

ARTICLE 7.00 - CONFLICT OF INTEREST:

The Consultant represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder. The Consultant further

agrees that no person having any such interest shall be employed or engaged by the Consultant for said performance.

If Consultant, for itself and on behalf of its Sub-consultants and Subcontractors, is about to engage in representing another client, which it in good faith believes could result in a conflict of interest with the work being performed by Consultant or such Sub consultant or Subcontractor under this Agreement, then it will promptly bring such potential conflict of interest to the Town's attention, in writing. The Town will advise the Consultant, in writing, within ten (10) calendar days as to the period of time required by the Town to determine if such a conflict of interest exists. If the Town determines that there is a conflict of interest, Consultant or such Sub consultant shall decline the representation upon written notice by the Town.

If the Town determines that there is not such conflict of interest, then the Town shall give its written consent to such representation. If the Consultant or Sub consultant accepts such a representation without obtaining the Town's prior written consent, and if the Town subsequently determines that there is a conflict of interest between such representation and the work being performed by Consultant or such Sub consultant under this Agreement, then the Consultant or such Sub consultant agrees to promptly terminate such representation. Consultant shall require each of such Sub consultants to comply with the provisions of this Section. Should the Consultant fail to advise or notify the Town as provided hereinabove of representation which could, or does, result in a conflict of interest, or should the Consultant fail to discontinue such representation, the Town may consider such failure as justifiable cause to terminate this Agreement.

ARTICLE 8.00 - ASSIGNMENT, TRANSFER AND SUBCONTRACTS:

The Consultant shall not assign or transfer any of its rights, benefits or obligations hereunder, except for transfers that result from: (1) the merger or consolidation of Consultant with a third party; or (2) the disestablishment of the Consultant's professional practice and the establishment of a successor consultant, or consulting organization. The Consultant shall not subcontract any of its service obligations hereunder to third parties, except as otherwise authorized in this Agreement, without prior written approval of the Town. The Consultant shall have the right, subject to the Town's prior written approval, to employ other persons and/or firms to serve as Sub consultants and/or Subcontractors to Consultant in connection with Consultant providing and performing services and work pursuant to the requirements of this Agreement. The Town shall have the right and be entitled to withhold such approval.

In providing and performing the services and work required pursuant to this Agreement, Consultant intends to engage the assistance of the Sub consultant(s) and/or Subcontractor(s) set forth in EXHIBIT "D", entitled "CONSULTANT'S ASSOCIATED SUB-CONSULTANTS AND SUBCONTRACTORS."

ARTICLE 9.00 - APPLICABLE LAW:

Unless otherwise specified, this Agreement shall be governed by the applicable ordinances, laws, rules, and regulations of the Town of Fort Myers Beach, Lee County, Florida, and the State of Florida. It shall be governed by the laws, rules, and regulations of the United States when the Consultant is providing services funded by the United States government.

ARTICLE 10.00 - LITIGATION

The venue for any litigation arising from this Agreement shall be Lee County, Florida. The prevailing party in any litigation arising out of this Agreement is entitled to recover reasonable attorney's fees from the non-prevailing party.

ARTICLE 11.00 - COVENANTS AGAINST DISCRIMINATION

The Consultant for itself, its successors in interest, and assigns as part of the consideration thereof, does hereby covenant and agree that in the furnishing of services to Town hereunder, no person on the grounds of race, color, national origin, handicap, or sex shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination. The Consultant shall comply with state laws in the hiring of sub consultants.

ARTICLE 12.00 - WAIVER OF BREACH:

Waiver by either party of a breach of any provision of this Agreement shall not be deemed to be a waiver of any

other breach and shall not be construed to be a modification of the terms of this Agreement.

ARTICLE 13.00 - OWNERSHIP OF DOCUMENTS

All documents such as drawings, tracings, notes, computer files, photographs, plans, specifications, maps, evaluations, reports and other records and data relating to this project, other than working papers, specifically prepared or developed by the Consultant under this Agreement shall be property of the Consultant until the Consultant has been paid for providing and performing the services and work required to produce such documents.

Upon completion or termination of this Agreement, or upon the issuance by the Town of written Supplemental Task Authorization(s) deleting all or portions of the scope of services or task(s) to be provided or performed by the Consultant, all of the above documents, to the extent requested in writing by the Town, shall be delivered by the Consultant to the Town within seven (7) calendar days of the Town making such a request. If the Town gives the Consultant a written Notice of Termination of all or part of the services or work required, or upon the issuance to the Consultant by the Town of a written Supplemental Task Authorization deleting all or part of the services or work required, the Consultant shall deliver to the Town the requested documents as set forth hereinabove, with the mutual understanding and commitment by the Town that compensation earned or owing to the Consultant for services or work provided or performed by the Consultant prior to the effective date of any such termination or deletion will be paid to the Consultant within thirty (30) calendar days of the date of issuance of the Notice of Termination or Supplemental Task Authorization.

The Consultant, at its expense, may make and retain copies of all documents delivered to the Town for reference and internal use. The Consultant shall not, and agrees not to use any of these documents, and data and information contained therein on any other project or for any other client without the prior express written permission of the Town.

Any use by the Town of said documents, and data and information contained therein, obtained by the Town hereunder for any purpose not within the scope of this Agreement shall be at the risk of the Town, and without liability to the Consultant.

ARTICLE 14.00 - MAINTENANCE OF RECORDS

The Consultant will keep and maintain adequate records and supporting documentation applicable to all of the services, work, information, expense, costs, invoices and materials provided and performed hereunder. Said records and documentation will be retained by the Consultant for a minimum of five (5) years from the date of termination of this Agreement.

The Town and its authorized agents shall have the right to audit, inspect and copy all such records and documentation as often as the Town deems necessary during this Agreement, and during the period of five (5) years thereafter. Such activity shall be conducted only during normal business hours and at the expense of the Town. To the extent permitted by law, the Town shall retain all such records as confidential.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF THE PUBLIC RECORDS AT (239) 765-0202, AMY@FMBGOV.COM , 2525 ESTERO BOULEVARD, FORT MYERS BEACH, FLORIDA 33931.

E-Verify. ***As a condition precedent to entering into this AGREEMENT***, and in compliance with Section 448.095, Fla. Stat., Contractor, and its subcontractors shall, register with and use the E-Verify system to verify work authorization status of all employees hired after January 1, 2021.

a. Contractor shall require each of its subcontractors to provide Contractor with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. Contractor shall maintain a copy of the subcontractor's affidavit as part of and pursuant to the records retention requirements of this AGREEMENT.

b. Town, Contractor, or any subcontractor who has a good faith belief that a person or entity with which it is contracting has knowingly violated Section 448.09(1), Fla. Stat. or the provisions of this section shall terminate the contract with the person or entity.

c. Town, upon good faith belief that a subcontractor knowingly violated the provisions of this section, but Contractor otherwise complied, shall promptly notify Contractor and Contractor shall immediately terminate the contract with the subcontractor.

d. A contract terminated under the provisions of this section is not a breach of contract and may not be considered such. Any contract termination under the provisions of this section may be challenged pursuant to Section 448.095(2)(d), Fla. Stat. Contractor acknowledges that upon termination of this AGREEMENT by the Town for a violation of this section by Contractor, Contractor may not be awarded a public contract for at least one (1) year. Contractor further acknowledges that Contractor is liable for any additional costs incurred by the Town as a result of termination of any contract for a violation of this section.

e. *Subcontracts.* Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section, including this subsection, requiring the subcontractors to include these clauses in any lower tier subcontracts. Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

1. Prohibition Against Contracting with Scrutinized Companies. By execution of this Contract, in accordance with the requirements of §§287.135 and 215.473, Fla. Stat., Contractor certifies that Contractor is not participating in a boycott of Israel. Contractor further certifies that Contractor is not on the Scrutinized Companies that Boycott Israel list, not on the Scrutinized Companies with Activities in Sudan List, and not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has Contractor been engaged in business operations in Cuba or Syria. Subject to limited exceptions provided in state law, the Town will not contract for the provision of goods or services with any scrutinized company referred to above. Submitting a false certification shall be deemed a material breach of Contract. The Town shall provide notice, in writing, to Contractor of the Town's determination concerning the false certification. Contractor shall have five (5) days from receipt of notice to refute the false certification allegation. If such false certification is discovered during the active Contract term, Contractor shall have ninety (90) days following receipt of the notice to respond in writing and demonstrate that the determination of false certification was made in error. If Contractor does not demonstrate that the Town's determination of false certification was made in error then the Town shall have the right to terminate the contract and seek civil remedies pursuant to §287.135, Fla. Stat., as amended from time to time.

ARTICLE 15.00 - TERMINATION

This Agreement may be terminated by the Town without cause and/or at its convenience, or due to the fault of the Consultant, by the Town giving thirty (30) days' written notice to the Consultant. If the Consultant is adjudged bankrupt or insolvent; if it makes a general assignment for the benefit of its creditors; if a trustee or receiver is appointed for the Consultant or for any of its property; if it files a petition to take advantage of any debtor's act or to reorganize under the bankruptcy or similar laws; if it disregards the authority of the Town's designated representatives; if it otherwise violates any provisions of this Agreement; or for any other just cause, the Town may, without prejudice to any other right or remedy, terminate this Agreement.

In addition to the Town's contractual right to terminate this Agreement in its entirety as set forth above, the Town may also, at its convenience, stop, suspend, supplement or otherwise change all, or any part of, the Scope of Professional Services as set forth in EXHIBIT "A", or the Project Guidelines and Criteria as set forth in EXHIBIT "E", or as such may be established or modified by a Supplemental Task Authorization. The Town shall provide written notice to the Consultant in order to implement a stoppage, suspension, supplement or change.

The Consultant may request that this Agreement be terminated by submitting a written notice to the Town dated not less than sixty (60) calendar days prior to the requested termination date and stating the reason(s) for such a request. However, the Town reserves the right to accept or not accept the termination request submitted by the Consultant, and no such termination request submitted by the Consultant shall become effective unless and until Consultant is notified, in writing, by the Town of its acceptance.

Upon termination, the Consultant shall deliver to the Town all papers, drawings, models, and other material in which the Town has exclusive rights by virtue hereof or of any business done, or services or work performed or provided by the Consultant on behalf of the Town.

ARTICLE 16.00 - MODIFICATION AND AMENDMENTS

Modifications and amendments to the covenants, terms and provisions of this Agreement shall only be valid when issued in writing as a properly executed Supplemental Task Authorization(s) or written contract amendment, executed by both parties. In the event of any conflicts between the requirements, provisions, and/or terms of this Agreement and any written Supplemental Task Authorization(s), the latest executed Supplemental Task Authorization(s) shall take precedence.

In the event the Town issues a purchase order, memorandum, letter, or other instruments covering the professional services, work and materials to be provided and performed pursuant to this Agreement, it is hereby specifically agreed and understood that such purchase order, memorandum, letter or other instruments are for the Town's internal control purposes only, and any terms, provisions and conditions contained therein, whether printed or written, shall in no way modify the covenants, terms and provisions of this Agreement and shall have no force or effect thereon.

No modification, waiver, or termination of the Agreement or of any terms hereof shall impair the rights of either party.

ARTICLE 17.00 - HEADINGS

The Headings of the Articles, Sections, Exhibits, Attachments, Phases or Tasks herein are for the purpose of convenience only and shall not be deemed to expand, limit or change the provisions contained in such Articles, Sections, Exhibits, Attachments, Phases or Tasks.

ARTICLE 18.00 - ENTIRE AGREEMENT

This Agreement, including referenced Exhibits and Attachments hereto, constitute the entire Agreement between the parties hereto and shall supersede, replace and nullify any and all prior agreements or understandings, written or oral, relating to the matters set forth herein, and any such prior agreements or understandings shall have no force or effect on this Agreement.

The following listed documents, which are referred to hereinbefore, are attached to and are acknowledged, understood and agreed to be an integral part of this Agreement:

- (1) EXHIBIT "A" entitled "Scope of Professional Services", dated April 17, 2023
- (2) EXHIBIT "B" entitled "Compensation and Method of Payment" dated April 17, 2023
- (3) EXHIBIT "C" entitled "Time and Schedule of Performance", dated April 17, 2023.
- (4) EXHIBIT "D" entitled "Consultant's Associated Sub- Consultant(s) and Subcontractor(s)", dated April 17, 2023
- (5) EXHIBIT "E" entitled "Project Guidelines and Criteria", dated April 17, 2023
- (6) EXHIBIT "F" entitled "Truth in Negotiation Certificate", dated April 17, 2023
- (7) EXHIBIT "G" entitled "Insurance". (Containing copies of applicable Certificates of Insurance)
- (8) EXHIBIT "H" entitled "Amendment to Articles", dated April 17, 2023
- (9) EXHIBIT "I" entitled "Public Entity Crime Affidavit", dated April 17, 2023
- (10) EXHIBIT "J" entitled "Affidavit Certification Immigration Laws", dated April 17, 2023
- (11) EXHIBIT "K" entitled "Affidavit of Confidentiality", dated April 17, 2023
- (12) EXHIBIT "L" entitled "Federal Contract Provisions and Assurances", dated April 17, 2023

ARTICLE 19 .00 - NOTICES AND ADDRESS OF RECORD

19.01 NOTICES BY CONSULTANT TO TOWN

All notices hereunder from the Consultant to the Town shall be in writing and shall be given by US first class mail service, postage prepaid, addressed to: Town of Fort Myers Beach, 2525 Estero Boulevard, Fort Myers Beach, Florida 33931

19.02 NOTICES BY TOWN TO CONSULTANT

All notices hereunder from the Town to the Consultant shall be in writing and shall be given by U.S. first class mail service, postage prepaid, addressed to:

(Consultant's Business Name)

(Street/ P.O. Box)

(City) (State) (Zip Code)

Telephone Number: _____

Fax Number: _____

ATTENTION: _____
Project Director

19.03 CHANGE OF ADDRESS OF RECORD

Either party may change its address of record by written notice to the other party given in accordance with the requirements of this Article.

ARTICLE 21.00 - ACCEPTANCE. Acceptance of this Agreement shall be indicated by the signature of the duly authorized representative of the hereinabove named parties in the space provided hereinafter and being attested and witnessed as indicated.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Agreement effective the day and year first written above.

TOWN OF FORT MYERS BEACH

ATTEST:

By: _____
Keith Wilkins, Town Manager

By: _____
Amy Baker, Town Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

BY: _____
Town Attorney

PROVIDER: _____
Printed name of organization

BY: _____
Signature

Witness Signature

Printed name of person signing

Printed name of Witness

Title (printed)

EXHIBIT A - SCOPE OF PROFESSIONAL SERVICES

Ongoing Miscellaneous Professional Services RFQ-22-25-AD

TYPES OF WORK

The following is a list of the Types of Work the Town of Fort Myers Beach may require. Each Type of Work states the minimum requirements to be met in order to be qualified by the Town of Fort Myers Beach.

Type of Work

101 Water Resource

Requires engineering expertise in planning, design, permitting, bidding, construction administration, long term loan and grant funding programs in connection with Water Resources as well as knowledge of current rules and regulations of local, state and federal agencies as applicable. The firm must employ at least one professional engineer, registered with the Florida State Board of Professional Engineers, having training and experience in the area of Water Resources.

102 Architectural Design

Requires architectural expertise in planning, designing, permitting, bidding and construction administration phases of service in Architectural Design. The firm must employ at least one architect, registered with the Florida State Board of Architecture and Interior Design. Additionally, the firm must have knowledge of current rules and regulations of local, state and federal agencies as applicable.

103 Stormwater

Requires engineering expertise in planning, designing, permitting, bidding and construction administration phases of service for Storm Water Design, as well as knowledge of current rules and regulations of local, state and federal agencies as applicable. The firm must employ at least one professional engineer, registered with the Florida State Board of Professional Engineers, having training and experience in the area of Storm Sewer.

104 Water Distribution, Including Lift and Pump Station Design

Requires engineering expertise in long term loan and grant funding programs, planning, designing, permitting, bidding, and construction administration phases of service for Water Distribution, as well as knowledge of current rules and regulations of local, state and federal agencies as applicable. The firm must employ at least one professional engineer, registered with the Florida State Board of Professional Engineers, having training and experience in the area of gravity and pressure systems.

105 Surveying Services

Requires surveying expertise in the preparation of Boundary, Topographic and Right of Way Surveys and Sketch and Legal Descriptions in conformance with the Florida Minimum Technical Standards. The firm must employ at least one land surveyor, registered with the Florida State Board of Land Surveyors, having at least one year of land surveying experience acting as responsible in charge. The consultant must employ and list sufficient staff to undertake the requirements normally associated with this type of work and must document the availability of proper equipment to perform this work.

106 Landscape Architect

Requires expertise in planning designing, permitting, bidding and construction administration phases of service for Landscape Architecture, including design of Community Parks and Streetscape. The firm must employ at least one landscape architect, registered with the Florida State Board of Landscape Architecture. Additionally, the firm must employ sufficient personnel to provide services normally associated with this type of work.

107 Community and Neighborhood Improvements

Requires engineering, architectural or landscape architectural expertise in planning, designing, permitting, bidding and construction administration phases of service for various neighborhood improvements, as well as knowledge of current rules and regulations of local, state and federal agencies regulating the environment and all land use and building code provisions. The firm must employ at least one professional engineer, registered with the Florida State Board of Professional Engineers or at least one professional architect, registered with the Florida State Board of Professional Architects and Interior Design or at least one professional Landscape Architect, registered with the Florida State Board of Landscape Architecture, having training and experience in the area of Community Parks and Streetscape.

108 Electrical Systems

Requires engineering expertise in planning, designing, permitting, bidding and construction administration services in connection with electrical systems as well as knowledge of current rules and regulations of local, state and federal agencies regulating the industry. The firm must employ at least one professional engineer, registered with the Florida State Board of Professional Engineers, having training and experience in the area of Electrical Systems.

109 Structural Systems

Requires engineering expertise in planning, designing with an emphasis on hurricane resistant design, permitting, bidding and construction administration services in connection with structural design, as well as knowledge of current rules and regulations of local, state and federal agencies regulating the industry. The firm must employ at least one professional engineer, registered with the Florida State Board of Professional Engineers, having training and experience in the area of Structural Systems.

110 Geo-Technical Analysis

Requires engineering expertise in connection with Geo-Technical Analysis. The firm must employ at least one professional engineer, registered with the Florida State Board of Professional Engineers having demonstrated experience in the activities normally associated with this work. The consultant must employ and list sufficient staff to undertake the requirements normally associated with this type of work and must document the availability of proper equipment to perform this work.

111 Civil Engineering

Requires engineering expertise in planning, designing, permitting, bidding and construction administration services in connection with Civil Engineering as well as knowledge of current rules and regulations of local, state and federal agencies as applicable. The firm must employ at least one professional engineer, registered with the Florida State Board of Professional Engineers, having training and experience in this general area.

112 Development and Building Services

Requires engineering expertise with review of property development proposals and construction design plans. Must be familiar with local land development code and Florida Building Code, including plan reviews and inspection services for all professional disciplines. Development order review services, for all disciplines.

113 Transportation Planning and Traffic Engineering Services

Requires engineering expertise in planning, design and operation of traffic control devices to provide technical support and engineering recommendations on traffic engineering and related issues. Services shall include, but are not limited to; traffic data/counts, traffic models, signal operations, traffic monitoring, traffic analysis, roadway safety assessment, ITS applications, traffic operations improvements, traffic calming, roadway lighting and traffic control device assessment.

114 Planning / Zoning

The selected individual/firm will work with Town staff to provide expertise in the detailed review of development projects (including projects seeking rezoning) and their consistency with all local, state and federal requirements; preparation of Land Development Code Regulations; preparation of Comprehensive Plan Amendments; Floodplain Management review; Community Rating System review and preparation; Risk-map assessments; oversight of projects through all local, state and federal application processes and approvals to ensure adherence to all Town codes as well as public and Town Council concerns. The individual/firm will prepare staff reports and make presentations to the Local Planning Agency and Town Council. The firm must employ at least one professional engineer, registered with the Florida State Board of Professional Engineers, having training and experience in site development. The firm must also employ at least one member who is certified through AICP. The firm must employ at least one Certified Floodplain Manager.

115 Historical Restoration

Requires experience in historical restoration projects according to the Secretary of the Interior's Standards for Rehabilitation of Historical Structures.

116 Archaeological Services

Requires experience and registration in the State of Florida, Division of Historical Resources for archaeological services. Must comply with State Standards and Resource Protection.

117 Environmental Assessments

Requires engineering expertise in planning, designing, permitting, bidding and construction administration phases of service for Environmental Assessments, as well as knowledge of current rules and regulations of local, state and federal agencies regulating the environment and all marine, land use regulations and expertise in local wildlife programs, including the Department of Environmental Protection, the South Florida Water Management District, the United States Environmental Protection Agency, the South Florida Building Code and the United States Corps of Engineers. Expertise in document creation and progress reporting. A degree in Environmental Biology or similar field is desirable from at least one staff member (experience may be substituted for degree) with experience reading blueprints, site plans and be able to communicate with applicants regarding requirements if so needed. Knowledge of water quality issues, including common plants and plankton and familiarity with testing procedures and laboratory analysis of water quality is required. The firm must employ at least one professional engineer, registered with the Florida State Board of Professional Engineers, having training and experience in the area of Environmental Assessments.*

* Contamination assessment and radiation projects are not included within this Scope of Work, and if needed, would be bid separately at a later time.

118 Marine Engineering

Requires expertise in planning, design, permitting, bidding and construction administration services in connection with waterfront facilities and marine systems and infrastructure, including docks, seawalls, dredging activities, mooring systems. Expertise should include permitting and public assistance grants as well as knowledge of current rules and regulations of local, state and federal agencies, including the Florida Department of Environmental Protection and the United States Army Corps of Engineers. Expertise in document creation and progress reporting. Experience in reading blueprints and site plans and be able to communicate with applicants regarding requirements if so needed. Knowledge of water quality issues, including common plants and plankton and familiarity with testing procedures and laboratory analysis of water quality is required. The firm must employ at least one professional engineer, registered with the Florida State Board of professional Engineers, having training and experience in the area of marine design.

119 Geographical Information System

Requires Geographic Information System (GIS) support services and experience including familiarity with custom GIS applications for Capital Improvement Plans (CIP), As-built Document Retrieval, Map Gallery, and other business functions, Technical requirements including an understanding of relational database design, Command-line SQL capability, including the ability to construct triggers and stored procedures, demonstrated knowledge of PHP, HTML5 and CSS2, and the use of those tools to link tabular and spatial data sets. Support for geospatial data and applications that provide GIS integration with existing business applications and other enterprise databases e.g. the Lee County Tax Parcel data, for use within existing GIS applications. This would include OSSI, CIP, Asset Management, addressing, etc. with technical experience with GIS data structures and links to external data sets, thorough understanding of current addressing practice, especially the Federal Geographic Data Committee (FGDC) data content standard, the United States Thoroughfare, Landmark and Postal Address Data Standard.

QUALIFICATION FOR TYPE OF WORK

Name of Firm: _____

Date: April 17, 2023

Code: _____ Type of Work: _____

List the personnel permanently employed by your firm and indicate the groups of work that you feel they are qualified to do.

Attach supplemental sheets if necessary and attach a resume for each person which supports their ability

Name of Employee	City of Residence	Florida Registration Number	Years of Professional Experience	Type of Work

EXHIBIT B - COMPENSATION AND METHOD OF PAYMENT**Date: April 17, 2023****Ongoing Miscellaneous Professional Services
RFQ-22-25-AD**Section 1. BASIC SERVICES/TASK(S)

The TOWN shall compensate the CONSULTANT for providing and performing the Task(s) set forth and enumerated in EXHIBIT "A", entitled "SCOPE OF PROFESSIONAL SERVICES", as follows:

NOTE: A Lump Sum (L.S.) or Not-to-Exceed (N.T.E.) amount of compensation to be paid the CONSULTANT should be established and set forth below for each task or sub-task described and authorized in Exhibit "A". In accordance with Agreement Article 4.04(2) "Method of Payment", tasks to be paid on a Work-in-Progress payment basis should be identified (WIPP).

Task Number	Task Title	Amount of Compensation	Indicate Basis of Compensation LS or NTE	If Applicable Indicate (W.I.P.P.)
	To be negotiated through each Supplemental Task Authorization issued.			
TOTAL				

(Unless list is continued on next page)

Section 2. ADDITIONAL SERVICES

The TOWN shall compensate the CONSULTANT for such ADDITIONAL SERVICES as are requested and authorized in writing for such amounts or on such a basis as may be mutually agreed to in writing by both parties to this Agreement. The basis and/or amount of compensation to be paid the CONSULTANT for ADDITIONAL SERVICES requested and authorized in writing by the TOWN shall be as set forth in Article 4 of this Agreement.

Should it be mutually agreed to base compensation for ADDITIONAL SERVICES on an hourly rate charge basis for each involved professional and technical employee's wage rate classification, the applicable hourly rates to be charged are as set forth and contained in ATTACHMENT NO. 1 hereto dated April 17, 2023 entitled "CONSULTANT'S PERSONNEL HOURLY RATE SCHEDULE".

Section 3. REIMBURSABLE EXPENSES AND COSTS

When the CONSULTANT'S compensation and method of payment is based on an hourly rate for professional and/or technical personnel, the CONSULTANT shall, in addition to such hourly rates as are set forth in Attachment No. 1 hereto, be entitled to reimbursement of out-of-pocket, non-personnel expenses and costs as set forth in ATTACHMENT NO. 2 hereto dated April 17, 2023, entitled "NON-PERSONNEL REIMBURSABLE EXPENSES AND COSTS".

ATTACHMENT NO. 1 TO EXHIBIT B
Ongoing Miscellaneous Professional Services
RFQ-22-25-AD

Date: April 17, 2023

CONSULTANT'S PERSONNEL HOURLY RATE SCHEDULE

Consultant Name: _____

(1) Project Position or Classification (Function to be Performed)	(2) Current Direct* Payroll Average Hourly Rate	(3) Multiplier**	(4) Hourly Rate To Be Charged (Column 2x3)

*NOTE: Direct Payroll hourly rate means the actual gross hourly wage paid.

**NOTE: Indicate applicable multiplier for indirect personnel costs, general administrative & overhead costs, and profit.

CONSULTANT NAME: _____

NOTE: N.T.E. indicates Not-To-Exceed

EXHIBIT C – TIME AND SCHEDULE OF PERFORMANCE
Ongoing Miscellaneous Professional Services
RFQ-22-25-AD

Date: April 17, 2023

This EXHIBIT “C” establishes a total time for completion, detailed by times of completion for the various phases and tasks required to provide and perform the services and work set forth in EXHIBIT "A" of this Agreement. The times and schedule of performance set forth hereinafter is established pursuant to this Agreement.

Phase and/or Task Reference As Enumerated in EXHIBIT “A”	NAME OR TITLE Of Phase and/Task	Number Of Calendar Days For Completion Of Each Phase And/or Task	Cumulative Number Of Calendar Days For Completion From Date of Notice to Proceed
	Shall be negotiated through each Supplemental Task Authorization issued.		

EXHIBIT E - PROJECT GUIDELINES AND CRITERIA
Ongoing Miscellaneous Professional Services
RFQ-22-25-AD

Date: April 17, 2023

The Town has established the following Guidelines, Criteria, Goals, Objectives, Schedule, Budget and/or Requirements which shall serve as a guide to the Consultant in performing the professional services and work to be provided pursuant to this Agreement:

Item No. 1

Work will be negotiated, authorized, scheduled, funded, and accounted for by the issuance of Supplemental Task Authorizations, by the requesting department, division, or government entity.

Item No. 2

Any governmental entity may utilize the provisions of this contract for their specific needs.

Item No. 3

Work may be assigned at any-time during the thirty-six (36) month contract duration. This contract also contains an option to renew by mutual agreement of both parties.

Item No. 4

No amount of work is guaranteed upon the execution of a Professional Services Agreement.

Item No. 5

Hourly rates and all other negotiated expenses will remain in effect throughout the duration of the contract.

Item No. 6

This Contract Document does not entitle any firm to exclusive rights to Town contracts. The Town reserves the right to perform any and all required work in house, through another firm, and/or by any means it so desires. The Consultant may be requested to complete portions of certain tasks in coordination with the Town and/or other Consultants under contract with the Town.

Item No. 7

In reference to Attachment No. 2 to Exhibit "B" of the Professional Service Agreement, vehicle travel mileage is considered incidental to the work and not an extra expense. Also, man-hours spent in travel time to and from work or the job site(s), are not compensational.

Item No. 8

Town reserves the right to add or delete, at any time, any or all tasks or services associated with this agreement.

The Consultant's services may be retained for any of the tasks separately or all of the tasks collectively. The Town and the Consultant will mutually establish the specific scope of work, which will serve as the basis for the Supplemental Task Authorization (STA) and will be based on the specifics and parameters relating to the issue or concern under study.

Item No. 9

Town shall have the right to use the documents on any Town project without the Consultant's authorization. All documents created, prepared and presented under this Agreement may be used by the Town in connection with any public offering; borrowing or other financing arrangements The Consultant shall have the right to retain copies of all such materials.

EXHIBIT F - TRUTH IN NEGOTIATION CERTIFICATE
Ongoing Miscellaneous Professional Services
RFQ-22-25-AD

This Certificate is executed and given by the undersigned as a condition precedent to entering into a Professional Services Agreement with the Town of Fort Myers Beach for the project known as:

Ongoing Miscellaneous Professional Services

Before me, the undersigned authority personally appeared, who having personal knowledge as to the facts and statements contained herein after being duly sworn, deposes and states under oath that:

1. This Certificate shall be attached to and constitute an integral part of the above said Professional Services Agreement as provided in Article 2.11.
2. The undersigned hereby certifies that the wage rates and other factual unit costs supporting the compensation on which this Professional Services Agreement is established are accurate, complete, and current on the date set forth here-in-above.
3. The truth of statements made herein may be relied upon by the Town and the undersigned is fully advised of the legal effect and obligations imposed upon him by the execution of this instrument under oath.

Executed on behalf of the Party to the Professional Services Agreement referred to as the CONSULTANT, doing business as:

BY:

TITLE:

The foregoing instrument was signed and acknowledged before me this ____ day of _____, 2020,
by _____ who has produced _____ as identification
(Print or Type Name) (Type of Identification)

Notary Public Signature

Printed Name of Notary Public

Notary Commission Number/Expiration

EXHIBIT "G": INSURANCE**FOR THE PROJECT KNOWN AS:
Ongoing Miscellaneous Professional Services
RFQ-22-25-AD****Section One. Insurance Coverage's to Be Obtained**

(1) The Consultant shall obtain and maintain such insurance as will protect it from: (1) claims under workers' compensation laws, disability benefit laws, or other similar employee benefit laws; (2) claims for damages because of bodily injury, occupational sickness or disease or death of its employees including claims insured by general personal injury liability coverage; (3) claims for damages because of bodily injury, sickness or disease, or death of any person other than its employees including claims insured by usual personal injury liability coverage; and (4) from claims for injury to or destruction of tangible property, including loss of use resulting there from; any or all of which claims may arise out of, or result from, the services, work and operations carried out pursuant to and under the requirements of this Agreement, whether such services, work and operations are performed by the Consultant, its employees, or by any Sub consultant(s), Subcontractor(s), or anyone employed by or under the supervision of any of them, or for whose acts any of them may be legally liable.

(2) The insurance protection set forth hereinabove shall be obtained and written for not less than the limits of liability specified hereinafter, or as required by law, whichever is greater.

(3) The Consultant, throughout the time this Agreement is in effect, shall require and ensure that any and all of its Sub-consultants and/or Sub-Contractors obtain, have, and maintain the insurance coverages required by law to be provided.

(4) The Consultant shall obtain, have and maintain during the entire period of this Agreement all such insurance policies as are set forth and required herein.

(5) In the event that the Consultant engages Sub-consultants or Sub-Contractors to assist the Consultant in providing or performing services or work pursuant to the requirements of this Agreement, the insurance coverages required under this Article to be provided by the Consultant shall cover all of the services or work to be provided or performed by all of the Sub consultants or Subcontractors engaged by the Consultant. However, in the event the services or work of Sub consultants or Sub-Contractors engaged by the Consultant is not covered by the Consultant's insurance policy or policies, it shall be the responsibility of the Consultant to ensure that all Sub-consultants or Sub-Contractors have fully complied with the Town insurance requirements for: (1) Worker's Compensation; (2) Comprehensive General Liability; (3) Comprehensive Automobile Liability; and (4) Professional Liability as required and set forth in this Exhibit.

The services or work to be provided or performed by the following Sub-consultant(s) or Sub-Contractor(s) identified elsewhere in this agreement are exempted and excluded from the Professional Liability insurance coverage requirements set forth in this Agreement:

Service and/or work to be
Provided and/or Performed

Indicate Name of
Individual or Firm

(If none, enter the word "none" in the space above.)

(6) The insurance coverage to be obtained by the Consultant or by Sub-consultants or Sub-Contractors engaged by the Consultant, as set forth in this Article for: (1) Workers' Compensation; (2) Comprehensive General Liability; (3) Comprehensive Automobile Liability; and (4) Professional Liability is understood and agreed to cover any and all of the services or work set forth in this Agreement and all subsequent Supplemental Task Authorization(s). In the event the Town shall execute and issue written Supplemental Task Authorization(s) authorizing the Consultant to provide or perform services or work in addition to those set forth in this Agreement, it is agreed that the Town has the right to change the amount of insurance coverages required to cover the additional services or work. If the additional insurance coverages established exceeds the amount of insurance coverage carried by the Consultant, the compensation established for the Supplemental Task Authorization(s) shall include consideration of any increased premium cost incurred by the Consultant to obtain same.

Section Two. Consultant Required to File Insurance Certificate(s)

(1) The Consultant shall submit to the Town's RISK MANAGEMENT DIVISION all insurance certificates which are required under this Agreement for review and approval with respect to compliance with the insurance requirements. After approval by the RISK MANAGER, the Town will execute this Agreement and issue a written Notice to Proceed. The Consultant may then commence with any service or work pursuant to the requirements of this Agreement. All such Insurance Certificates shall be attached to this Agreement at the end of this EXHIBIT "G" and are hereby incorporated by reference thereto.

(2) All such insurance certificates shall be in a form and underwritten by an insurance company(s) acceptable to the Town and licensed in the State of Florida.

(3) Each Certificate of Insurance submitted to the Town shall be an original and shall be executed by an authorized representative of the insurance company affording coverage.

(4) Each Certificate of Insurance shall be addressed to the TOWN OF FORT MYERS BEACH, ATTN: TOWN MANAGER, at the address listed at the beginning of this Agreement.

(5) Each Certificate of Insurance shall specifically include all of the following:

(A) The name and type of policy and coverages provided; and

(B) The amount or limit applicable to each coverage provided and the deductible amount, if any, applicable to each type of insurance coverage being provided; and

(C) The date of expiration of coverage; and

(D) The designation of the TOWN OF FORT MYERS BEACH both as an additional insured and as a certificate holder. (This requirement is excepted for Professional Liability Insurance and for Workers' Compensation Insurance); and

(E) A specific reference to this Agreement and the Project to which it pertains. (This requirement may be excepted for Professional Liability Insurance).

In the event the Consultant has, or expects to enter into an agreement for professional services with the Town in addition to those provided for in this Agreement, the Consultant may elect, in the alternative, to submit a certificate of insurance containing the following statement:

"This policy covers the services or work provided or performed by the Named Insured for any and all projects undertaken for the Town of Fort Myers Beach, pursuant to one or more written Professional Services Agreements, or written Supplemental Task Authorizations thereto, and the limit(s) of liability shown shall not be intended or construed as applying to only one project."

Upon receipt and approval of such a certificate of insurance, the Town will administer the insurance required for all such agreements utilizing the single "multi-project" certificate of insurance and a separate certificate of insurance will not be required for each separate agreement.

(F) The following clause must appear on the Certificate of Insurance:

"Cancellation - Should any of the above described policies be cancelled before the expiration date thereof, the issuing company will endeavor to mail 30 days written notice to the Certificate Holder named."

(G) A statement indicating any services or work included in or required under this Agreement that is specifically excluded or exempted from coverage under the provisions, terms, conditions or endorsements of the Consultant's insurance policy(s). A statement which indicates any and all deductible amounts applicable to each type of insurance coverage required. In the absence of any such statements, the Town will proceed with the understanding, stipulation and condition that there are no deductible amount(s), or exclusions or exemptions to the insurance coverage(s) provided.

(6) Each Certificate of Insurance shall be issued by an insurance agent and/or agency duly authorized to do so by and on behalf of the insurance company affording the insurance coverage(s) indicated on each Certificate of Insurance.

(7) If the initial, or any subsequently issued Certificate of Insurance expires prior to the completion of the work or termination of this Agreement, the Consultant shall furnish to the Town renewal or replacement Certificate(s) of Insurance, or Certified Binder(s), not later than fifteen (15) calendar days prior to the date of their expiration. Failure of the Consultant to provide the Town with such renewal certificate(s) shall be considered justification for the Town to terminate this Agreement.

(8) If any of the insurance coverage(s) required by this Agreement shall reach the date of expiration indicated on the approved Certificate(s) of Insurance without the Town having received satisfactory evidence of renewal or replacement, the Consultant shall automatically and without further notice stop performing all previously authorized services and work. During any time period that the Consultant's services or work is suspended for failure to comply with the insurance requirements set forth in the Agreement, the Consultant shall not be entitled to any additional compensation or time to provide and perform the required services or work and the Town shall not be required to make payment on any invoices submitted by the Consultant. Upon receipt and approval of renewal or replacement Certificates of Insurance, payment for any such invoices shall be made promptly by the Town.

Section Three. Insurance Coverages Required

The Consultant shall obtain and maintain the following insurance coverages as provided hereinbefore, and in the type, amounts and in conformance with the following minimum requirements:

(1) WORKERS' COMPENSATION

Coverage to comply for all employees for statutory limits in compliance with the applicable State and Federal laws. In addition, the policy must include the following:

(A) Employer's Liability with a minimum limit per accident in accordance with statutory requirements, or a minimum limit of \$500,000 for each accident, whichever limit is greater.

(B) Notice of Cancellation and/or Restriction - The policy must be endorsed to provide the Town with thirty (30) days prior written notice of cancellation and/or restriction.

(2) COMMERCIAL GENERAL LIABILITY

Coverage must be afforded on a form no more restrictive than the last edition of the Commercial General Liability Policy filed by the Insurance Services Office and must include the following:

(A) Minimum limits of \$1,000,000 per occurrence and \$1,000,000 aggregate for Bodily Injury Liability and a minimum limit of \$1,000,000 for Property Damage Liability, or a minimum combined single limit of \$1,000,000.

(B) Contractual coverage applicable to this specific Agreement including any hold harmless and/or

such indemnification agreement.

- (C) Such additional requirements as are set forth in the Agreement above.

(3) BUSINESS AUTOMOBILE LIABILITY

Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability Policy filed by the Insurance Services Office and must include the following:

- (A) Minimum limits of \$1,000,000 per person and \$1,000,000 per accident for Bodily Injury Liability and a minimum limit of \$1,000,000 for Property Damage Liability, or a minimum combined single limit of \$1,000,000.

- (B) Coverage shall include owned vehicles, hired and leased, or non-owned vehicles.

- (C) Such additional requirements as are set forth in the Agreement above.

(4) PROFESSIONAL LIABILITY

Coverage must include the following:

- (A) A minimum aggregate limit of \$1,000,000.00.

- (B) Such additional requirements as are set forth in the Agreement above.

- (C) Should the Professional Liability Insurance Policy issued pursuant to the above requirements and limits be written so as to provide an applicable deductible amount, or other exclusion or limitation as to the amount of coverage to be provided within the minimum coverage limits set forth above, the Town shall hold the Consultant responsible and liable for any such difference in the amount of coverage provided by the insurance policy. In the event of any such deductible amount, exclusion or limitation, the Consultant shall be required to provide written documentation that is acceptable to the Town establishing that the Consultant has the financial resources readily available to cover damages, injuries and/or losses which are not covered by the policy's deductible amounts, exclusions and/or limitations as stated above.

**EXHIBIT H - AMENDMENT TO ARTICLES
FOR THE PROJECT ENTITLED:
Ongoing Miscellaneous Professional Services
RFQ-22-25-AD**

Date: April 17, 2023

For amending (i.e., changing, deleting from or adding to) the articles.

(NOTE: Each Article to be amended should be set forth below and described in such a manner as to clearly indicate what the proposed changes, deletions or additions are with respect to the present Article provisions, and should set forth the wording of the Article resulting from the Amendment. The following identification system should be followed: Indicate additional (new) words or phrases by inserting the words in the text and then underline, (i.e., Months) and indicated words or phrases in the text to be deleted by striking over (i.e. ~~Weeks~~).

THE PROVISIONS HEREBY SUPERCEDE ANY PROVISIONS TO THE CONTRARY
CONTAINED ELSEWHERE IN THE ARTICLES OR EXHIBITS.

AMENDMENT NO.

ARTICLE No.____ is hereby amended as follows:

EXHIBIT I - PUBLIC ENTITY CRIME AFFIDAVIT**SWORN STATEMENT PURSUANT TO SECTION 287.133(3) (a),
FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES**

THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER
OFFICIAL AUTHORIZED TO ADMINISTER OATHS.

1. This sworn statement is submitted to _____
(print name of public entity)
- by _____
(print individual's name and title)
- for _____
(print name of entity submitting sworn statement)
- whose business address is _____

and (if applicable) its Federal Employer Identification Number (FEIN) is _____
(If the entity has no FEIN, include the Social Security Number of individual signing this sworn statement: _____.)

2. I understand that a "public entity crime" as defined in Paragraph 287.233(1)(g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or of the United States, including, but not limited to, any bid, proposal or contract for goods or services to be provided to any public entity or an agency or political subdivision of any other state or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.
3. I understand that "convicted" or "conviction" as defined in Paragraph 287.233 (1) (b), Florida Statutes, means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, non-jury trial, or entry of a plea of guilty or nolo contendere.
4. I understand that an "affiliate" as defined in Paragraph 287.133 (1) (a), Florida Statutes, means:
1. A predecessor or successor of a person convicted of a public entity crime; or
 2. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate
5. I understand that a "person" as defined in Paragraph 287.133 (1) (e), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.
6. Based on information and belief, the statement, which I have marked below, is true in relation to the entity submitting this sworn statement. (Indicate which statement applies.)

_____. Neither the entity submitting this sworn statement, nor any of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, nor any affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

ONGOING MISCELLANEOUS PROFESSIONAL SERVICES

_____The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

_____The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989. However, there has been a subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearings and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list. (Attach a copy of the final order)

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 (ONE) ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES FOR CATEGORY TWO OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

(Signature)

Sworn to and subscribed before me this _____ day of _____, 20__.

Personally known _____

OR Produced Identification _____

Notary Public – State of _____

(Type of Identification)

My Commission expires _____

(Printed typed or stamped commissioned name of notary public)

EXHIBIT J – AFFIDAVIT CERTIFICATION IMMIGRATION LAWS

TOWN OF FORT MYERS BEACH WILL NOT INTENTIONALLY AWARD TOWN CONTRACTS TO ANY CONTRACTOR WHO KNOWINGLY EMPLOYS UNAUTHORIZED ALIEN WORKERS, CONSTITUTING A VIOLATION OF THE EMPLOYMENT PROVISIONS CONTAINED IN 8 U.S.C. SECTION 1324 a(e) SECTION 274A(e) OF THE IMMIGRATION AND NATIONALITY ACT (“INA”).

TOWN OF FORT MYERS BEACH SHALL CONSIDER THE EMPLOYMENT BY ANY CONTRACTOR OF UNAUTHORIZED ALIENS A VIOLATION OF SECTION 274A (e) OF THE INA. **SUCH VIOLATION BY THE RECIPIENT OF THE EMPLOYMENT PROVISIONS CONTAINED IN SECTION 274A (e) OF THE INA SHALL BE GROUNDS FOR UNILATERAL CANCELLATION OF THE CONTRACT BY LEE COUNTY.**

PROVIDER ATTESTS THAT THEY ARE FULLY COMPLIANT WITH ALL APPLICABLE IMMIGRATION LAWS (SPECIFICALLY TO THE 1986 IMMIGRATION ACT AND SUBSEQUENT AMENDMENTS).

Company Name: _____

(Signature)

(Title)

(Date)

STATE OF _____

COUNTY OF _____

The foregoing instrument was signed and acknowledged before me this _____ day of _____, 20____, by _____ who has produced
(Print or Type Name)

_____ as identification.
(Type of Identification and Number)

Notary Public Signature

Printed Name of Notary Public

Notary Commission Number/Expiration

The signee of this Affidavit guarantee, as evidenced by the sworn affidavit required herein, the truth and accuracy of this affidavit to interrogatories hereinafter made. TOWN OF FORT MYERS BEACH RESERVES THE RIGHT TO REQUEST SUPPORTING DOCUMENTATION, AS EVIDENCE OF SERVICES PROVIDED, AT ANY TIME.

**EXHIBIT K – AFFIDAVIT OF CONFIDENTIALITY
FOR THE PROJECT ENTITLED:
Ongoing Miscellaneous Professional Services
RFQ -22-25-AD**

I, the undersigned, _____, am an employee of _____, the Town's provider of technical support services, and serve as a member of the Technical Support Service team for the Town of Fort Myer Beach.

This is to certify that I have been informed of the Town's policy on disclosure of information, and agree to not use, disclose, or share Town information in any way, except for as directed by the Town Manager or his/her designee. I agree to use my best efforts to prevent and protect information, or any part thereof, from disclosure to any person other than the intended recipient, who is required to receive said information.

Signature

Date

EXHIBIT "L"

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

FEDERAL EMERGENCY MANAGEMENT AGENCY PUBLIC ASSISTANCE

The supplemental conditions contained in this section are intended to cooperate with, to supplement, and to modify the general conditions and other specifications. In cases of disagreement with any other section of this contract, the Supplemental Conditions shall govern. This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract.

Pursuant uniform requirements of federal awards (2 CFR Part 200.23) the definition of CONTRACTOR is an entity that receives a Contract / Purchase Order.

Compliance with Federal Law, Regulations and Executive Orders: The Sub-Recipient (Town) agrees to include in the subcontract that (i) the subcontractor is bound by the terms of the Federally-Funded Subaward and Grant Agreement, (ii) the subcontractor is bound by all applicable state and Federal laws and regulations, and (iii) the subcontractor shall hold the Division and Sub-Recipient harmless against all claims of whatever nature arising out of the subcontractor's performance of work under this Agreement, to the extent allowed and required by law.

Specifically, the Contractor shall be responsible for being knowledgeable and performing any and all services under this contract in accordance with the following governing regulations along with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

- 2 C.F.R. Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- 44 C.F.R. Part 206
- The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended, 42 U.S.C. 5121 et seq., and Related Authorities
- FEMA Public Assistance Program and Policy Guide

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

Access to Records: The contractor agrees to provide the Town, the Florida Department of Emergency Management, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representative's access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions. (2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. (3) The contractor agrees to provide the FEMA Administrator or his authorized representatives' access to construction or other work sites pertaining to the work being completed under the contract. (4) In compliance with section 1225 of the Disaster Recovery Act of 2018, the Town and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

Affirmative Socioeconomic Steps If subcontracts are to be let, the prime contractor is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

Changes: To be allowable under a FEMA grant or cooperative agreement award, the cost of any contract change, modification, amendment, addendum, change order, or constructive change must be necessary, allowable, allocable, within the scope of the grant or cooperative agreement, reasonable for the scope of work, and otherwise allowable.

DHS Seal, Logo, and Flags: The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre- approval. The contractor shall include this provision in any subcontracts.

Domestic Preference for Procurements 200.322 As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

For purposes of this section: "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

License and Delivery of Works Subject to Copyright and Data Rights: The Contractor grants to the Town, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the contract but not first produced in the performance of this contract, the Contractor will identify such data and grant to the Town or acquires on its behalf a license of the same scope as for data first produced in the performance of this contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this contract, the Contractor will deliver to the Town data first produced in the performance of this contract and data required by the contract but not first produced in the performance of this contract in formats acceptable by the Town.

No Obligation by Federal Government: The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

Prohibition on Covered Telecommunications Equipment or Services

(a) Definitions. As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy, #405-143-1 Prohibitions on Expending FEMA Award Funds for covered Telecommunications Equipment or Services As used in this clause –

(b) Prohibitions.

(1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug. 13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

(2) Unless an exception in paragraph (c) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:

- (i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
- (ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
- (iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or
- (iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(c) Exceptions.

(1) This clause does not prohibit contractors from providing — (i). A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or (ii). Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) By necessary implication and regulation, the prohibitions also do not apply to: (i). Covered telecommunications equipment or services that: i. Are not used as a substantial or essential component of any system; and ii. Are not used as critical technology of any system. (ii). Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(d) Reporting requirement.

(1) In the event the contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause: (i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended. (ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph(e), in all subcontracts and other contractual instruments.

Program Fraud and False or Fraudulent Statements or Related Acts: The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract.

Rights to Inventions Made Under a Contract or Agreement: Exempt from FEMA Public Assistance Funding

Suspension and Debarment: (1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935). (2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into. (3) This certification is a material representation of fact relied upon by the Town. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Town, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Procurement of Recovered Materials (§200.323) (Over \$10,000): In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired— Competitively within a timeframe providing for compliance with the contract performance schedule; Meeting contract performance requirements; or At a reasonable price. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines webpage:

<https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

Termination for Cause and Convenience (over \$10,000): See Standard Purchase Order and/or Contract Terms and Conditions

Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352 (as amended) (over \$100,000): Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient."

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

Contractors must sign and submit a certification to the Town with each bid or offer exceeding \$100,000. See Certifications and Assurances and the end of this document.

Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708) (over \$100,000): Where applicable, all contracts awarded by the solicitor in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The Town or FEMA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section."

For contracts that are only subject to Contract Work Hours and Safety Standards Act and are not subject to the other statutes in 29 C.F.R. § 5.1

"Further Compliance with the Contract Work Hours and Safety Standards Act.

(1) The contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

(2) Records to be maintained under this provision shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Homeland Security, the Federal Emergency Management Agency, and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

Clean Air Act (over \$150,000): 1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. 2. The contractor agrees to report each violation to the Town and understands and agrees that the Town will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office. 3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act (over \$150,000): 1. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. 2. The contractor agrees to report each violation to the Town and understands and agrees that the Town will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office. 3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Administrative, Contractual, or Legal Remedies (over \$250,000): Unless otherwise provided in this contract, all claims, counter-claims, disputes and other matters in question between the local government and the contractor, arising out of or relating to this contract, or the breach of it, will be decided by arbitration, if the parties mutually agree, or in a Florida court of competent jurisdiction.

CONSTRUCTION ACTIVITIES

Equal Employment Opportunity Clause (§60-1.4): Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60-1.4.

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Davis Bacon Act: Exempt under FEMA Public Assistance Funding

Copeland Anti-Kickback Act: Exempt under FEMA Public Assistance Funding

**STATE OF FLORIDA PROVISIONS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
BEACH MANAGEMENT FUNDING ASSISTANCE PROGRAM**

Applicable Laws - The Town and all its agents shall comply with all federal, state and local regulations, including, but not limited to, nondiscrimination, wages, social security, workers' compensation, licenses, and registration requirements. The Town shall include this provision in all contracts issued.

Data Collection: The Project shall be conducted in accordance with the terms and conditions set forth under this Agreement, all applicable Department permits and the eligible Project task items established below. All data collection and processing, and the resulting product deliverables, shall comply with the standards and technical specifications contained in the Department's Monitoring Standards for Beach Erosion Control Projects (2014) and all associated state and federal permits, unless otherwise specified in the approved scope of work for an eligible Project item. The monitoring standards may be found at: [Project Monitoring \(floridadep.gov\)](http://ProjectMonitoring.floridadep.gov)

In order to comply with Florida Auditor General report 2014-064 regarding conflicts of interest and to be consistent with Section 287.057(17)(a)(I), F.S., **all monitoring data and statistical analysis must be provided directly and concurrently from the monitoring contractor to the Florida Department of Environmental Protection/Town/permittee/engineering consultant.** The Town's engineering consultant must provide an adequate mitigation plan, consistent with Section 287.057(17)(a)(I), F.S., including a description of organizational, physical, and electronic barriers to be used by the Town's engineering consultant, that addresses conflicts of interest when contracting multi-disciplinary firms for Project engineering and post-construction environmental monitoring services, or when the Project engineering consultant firm subcontracts for post-construction environmental monitoring. Environmental monitoring includes hardbottom, seagrass, and mangrove resources.

Equal Employment Opportunity: No person on the ground of race, creed, color, religion, national origin, age, gender, or disability, shall be excluded from participation in; be denied the proceeds or benefits of, otherwise subjected to discrimination.

Inspector General Cooperation: The Parties agree to comply with Section 20.055(5), Florida Statutes, for the inspector general to have access to any records, data and other information deemed necessary to carry out his or her duties and incorporate into all subcontracts the obligation to comply with Section 20.055(5), Florida Statutes.

Lobbying: No funds received pursuant to this Agreement may be expended for lobbying the Legislature, the judicial branch or a state agency.

Local Preference: Pursuant to Section 255.0991, F.S. local vendor preference is not applicable

Physical Access and Inspection: Grantor personnel shall be given access to and may observe and inspect work being performed under this Agreement, with reasonable notice and during normal business hours, including by any of the following methods:

- i. The Town shall provide access to any location or facility on which Town is performing work, or storing or staging equipment, materials or documents.
- ii. The Town shall permit inspection of any facility, equipment, practices, or operations required in performance of any work pursuant to this Agreement; and,
- iii. The Town shall allow and facilitate sampling and monitoring of any substances, soils, materials or parameters at any location reasonable or necessary to assure compliance with any work or legal requirements pursuant to this Agreement.

Record Retention: A. The contractor shall maintain and retain sufficient records demonstrating its compliance with the terms of the Agreement for a period of at least five (5) years after final payment is

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

made and shall allow the Town, the State, or its authorized representatives access to such records for audit purposes upon request.

Statutory Notices Relating to Unauthorized Employment: The Town shall consider the employment by any Contractor of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. If the Contractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this Agreement

Statutory Notices Relating to Subcontracts: Pursuant to Sections 287.133 and 287.134, F.S., the following restrictions apply to persons placed on the convicted vendor list or the discriminatory vendor list:

- i. **Public Entity Crime.** A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a Grantee, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, F.S., for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.
- ii. **Discriminatory Vendors.** An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity.
- iii. **Notification.** The Grantee shall notify Department if it or any of its suppliers, subcontractors, or consultants have been placed on the convicted vendor list or the discriminatory vendor list during the life of the Agreement. The Florida Department of Management Services is responsible for maintaining the discriminatory vendor list and posts the list on its website. Questions regarding the discriminatory vendor list may be directed to the Florida Department of Management Services, Office of Supplier Diversity, at (850) 487-0915.

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

**Compliance with Federal Law, Regulations, And Executive Orders
and Acknowledgement of Federal Funding**

Certification

This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

If the Contractor subcontracts any of the work required under this Agreement, a copy of the signed subcontract must be available to the Town for review and approval. The Contractor agrees to include in the subcontract that (1) the subcontractor is bound by the terms of this Agreement, (ii) the subcontractor is bound by all applicable state and federal laws and regulations, and (iii) the subcontractor shall hold the Town and the Grantor Agency harmless against all claims of whatever nature arising out of the subcontractor's performance of work under this Agreement, to the extent allowed and required by law. The Town may document in the quarterly report the Contractor's progress in performing its work under this agreement.

On behalf of my firm, I acknowledge, the grant requirements identified in this document.

Vendor/Contractor Name _____

Date _____

Authorized Signature _____

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY
and VOLUNTARY EXCLUSION**

Contractor Covered Transactions

- (1) The prospective subcontractor of the Sub-recipient, Town, certifies, by submission of this document, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the Sub-recipient's subcontractor is unable to certify to the above statement, the prospective contract shall attach an explanation to this form.

CONTRACTOR

By: _____
Signature

Name and Title

Street Address

City, State, Zip

UEI Unique Entity Identifier (for SAM.gov verification)

Date

Sub-Recipient Name: Town of Fort Myers Beach

DEM Contract Number: TBD

FEMA Project Number: TBD

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

TOWN OF FORT MYERS BEACH																					
ANTICIPATED DISADVANTAGED, MINORITY, WOMEN OR VETERAN PARTICIPATION STATEMENT																					
Status will be verified. Unverifiable statuses will require the PRIME to either provide a revised statement or provide source documentation that validates a status.																					
A. PRIME VENDOR/CONTRACTOR INFORMATION																					
PRIME NAME		PRIME FID NUMBER		CONTRACT DOLLAR AMOUNT																	
IS THE PRIME A FLORIDA-CERTIFIED DISADVANTAGED, MINORITY OR WOMEN BUSINESS ENTERPRISE? (DBE/MBE/WBE) OR HAVE A SMALL DISADVANTAGED BUSINESS 8A CERTIFICATION FROM THE SMALL BUSINESS ADMINISTRATION? A SERVICE DISABLED VETERAN?		VETERAN Y N DBE? Y N MBE? Y N WBE? Y N SDB 8A? Y N	IS THE ACTIVITY OF THIS CONTRACT... CONSTRUCTION ? Y N CONSULTATION? Y N OTHER? Y N																		
IS THIS SUBMISSION A REVISION?		Y N	IF YES, REVISION NUMBER _____																		
B. IF PRIME HAS SUBCONTRACTOR OR SUPPLIER WHO IS A DISADVANTAGED MINORITY, WOMEN-OWNED, SMALL BUSINESS CONCERN OR SERVICE DISABLED VETERAN, PRIME IS TO COMPLETE THIS NEXT SECTION																					
DBE M/WBE VETERAN	SUBCONTRACTOR OR SUPPLIER NAME	TYPE OF WORK OR SPECIALTY	ETHNICITY CODE (See Below)	SUB/SUPPLIER DOLLAR AMOUNT	PERCENT OF CONTRACT DOLLARS																
TOTALS:																					
C. SECTION TO BE COMPLETED BY PRIME VENDOR/CONTRACTOR																					
NAME OF SUBMITTER		DATE		TITLE OF SUBMITTER																	
EMAIL ADDRESS OF PRIME (SUBMITTER)		TELEPHONE NUMBER		FAX NUMBER																	
NOTE: This information is used to track and report anticipated DBE or MBE participation in federally-funded contracts. The anticipated DBE or MBE amount is voluntary and will not become part of the contractual terms. This form must be submitted at time of response to a solicitation. If and when awarded a County contract, the prime will be asked to update the information for the grant compliance files.																					
<table border="1" style="width: 100%; border-collapse: collapse; font-size: x-small;"> <thead> <tr> <th style="text-align: center;">ETHNICITY</th> <th style="text-align: center;">CODE</th> </tr> </thead> <tbody> <tr><td>Black American</td><td>BA</td></tr> <tr><td>Hispanic American</td><td>HA</td></tr> <tr><td>Native American</td><td>NA</td></tr> <tr><td>Subcont. Asian American</td><td>SAA</td></tr> <tr><td>Asian-Pacific American</td><td>APA</td></tr> <tr><td>Non-Minority Women</td><td>NMW</td></tr> <tr><td>Other: not of any other group listed</td><td>O</td></tr> </tbody> </table>						ETHNICITY	CODE	Black American	BA	Hispanic American	HA	Native American	NA	Subcont. Asian American	SAA	Asian-Pacific American	APA	Non-Minority Women	NMW	Other: not of any other group listed	O
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Asian-Pacific American	APA																				
Non-Minority Women	NMW																				
Other: not of any other group listed	O																				
D. SECTION TO BE COMPLETED BY TOWN OF FORT MYERS BEACH																					
DEPARTMENT NAME		FMB CONTRACT # (FBI/RFP or PO/REQ)		GRANT PROGRAM/CONTRACT																	
ACCEPTED BY:				DATE																	

LOBBYING CERTIFICATION
(To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form- LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.

Contractor (Firm Name)

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date
