



Fort Myers Beach Town Council

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

Agenda

Monday, December 18, 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**
- VII. ADVISORY COMMITTEES ITEMS / REPORTS / APPOINTMENTS**
 - A. Audit Committee - Chair Jeff Taylor
- VIII. APPROVAL OF MINUTES**
 - A. Town Council - December 4, 2023
 - B. Management & Planning Session - December 7, 2023
- IX. CONSENT AGENDA**
 - A. Resolution 23-184; Town Council Policies and Procedures
A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA, ADOPTING AND AMENDING THE TOWN COUNCIL POLICIES AND PROCEDURES MANUAL; AND PROVIDING FOR AN EFFECTIVE DATE.
 - B. Moss Marina Farmer's Market
Motion to amend the Moss Marina Farmer's Market special event permit to add a vendor that would allow tasting and selling alcohol from a rum distillery.

X. PUBLIC HEARINGS

- A. Ordinance 23-18 Post Disaster Buildback Amendment
Second Reading and Final Public Hearing of an Ordinance entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 34, ARTICLE V., DIVISION 2, SECTION 34-3238 POST-DISASTER BUILDBACK; PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND AN EFFECTIVE DATE.
- B. Resolution 23-185; VAR20230142 - 923 Third Street
APPROVE/ APPROVE WITH CONDITIONS/ DENY A VARIANCE FROM LDC SECTION 34-638 TABLE 34-3 DIMENSIONAL REGULATIONS IN CONVENTIONAL ZONING DISTRICTS FOR THE FRONT SETBACK IN THE RC ZONING DISTRICT FOR PROPERTY LOCATED AT 923 THIRD STREET; TO ALLOW 100-FEET OF ADDITIONAL BUILDING COVERAGE OVER THE MAXIMUM ALLOWED.

XI. ADMINISTRATIVE AGENDA

- A. Resolution 23-189; Mooring System Replacement Construction Management Services
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING SUPPLEMENTAL TASK AGREEMENT #21 OF CONTRACT RFQ-20-06-AD BETWEEN THE TOWN AND COASTAL ENGINEERING CONSULTANTS, INC. FOR MOORING SYSTEM REPLACEMENT CONSTRUCTION MANAGEMENT SERVICES IN TOWN OF FORT MYERS BEACH CANALS FOR A COST NOT TO EXCEED \$14,168.00, AND PROVIDING FOR AN EFFECTIVE DATE.
- B. Resolution 23-185; Temporary Dinghy Dock
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING THE TOWN TO PROCURE TWO FLOATING DOCKS FROM SNOOK BIGHT MARINA IN AN AMOUNT NOT TO EXCEED \$2,000, AUTHORIZING THE TOWN MANAGER TO PROCURE COASTAL ENGINEERING CONSULTANT, INC. SERVICES AND ADDITIONAL MATERIALS TO INSTALL THE FLOATING DOCKS TO TEMPORARILY SERVICE THE MOORING FIELD IN AN AMOUNT NOT TO EXCEED \$4,000, AND PROVIDING FOR AN EFFECTIVE DATE.
- C. FY2022 Audit Report
Accept FY2022 Audit Report prepared by Mauldin & Jenkins
- D. Authorize Engagement Letters with Mauldin & Jenkins to Provide Auditor Services for Fiscal Year 2023
Authorize the Town Manager to execute the Engagement Letters with Mauldin & Jenkins to provide independent external auditor services for Fiscal Year 2023

E. Rename Bayside Park

Adopt new name for Bayside Park that was chosen by public survey and includes a reference to the veterans memorial that is planned at the Park.

XII. FINAL PUBLIC COMMENT**XIII. TOWN MANAGER'S ITEMS****XIV. TOWN ATTORNEY'S ITEMS**

A. Persuad Properties FL Investments, LLC

XV. COUNCILMEMBERS ITEMS AND REPORTS**XVI. ADJOURNMENT**

NOTE: THIS MEETING IS STREAMED LIVE ON FACEBOOK AND 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.



Fort Myers Beach Town Council

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

Minutes Monday, December 4, 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

Remove the proposed settlement agreement under the Town Attorney's items and add it to the next Town Council agenda. Add Santa and Mrs. Clause concert at Bayside Park and a bike ride on December 16, 2023, to the consent agenda. Add four change orders totaling \$17,657.00 for a construction contract with C.E. Gleeson at Bay Oaks to the consent agenda. Pull items D. and G. for discussion.

Council Member King moved to approve the final agenda as amended; seconded by Vice Mayor Atterholt.
The motion carried unanimously.

V. PUBLIC COMMENT

Jennifer Rusk, resident and MERTF (Marine and Environmental Resources Task Force) member indicated that she had a meeting with the town manager and an FGCU (Florida Gulf Coast University) student regarding help with the beach kids' activity book. She noted that the dumpster at the end of her street on Miramar

needed to be emptied and Mayor Allers replied that it had been addressed. She felt that businesses with pop-ups in Times Square should be supported and she mentioned hosting a sea school similar to Sanibel. She requested help ordering supplies for the pop-up events.

Jay Birsch stated that a house on Bayview was a mess and asked that it be looked at. Mayor Allers replied that an update would be provided later in the meeting.

VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Council Member King thanked the staff for their hard work with the poinsettia star lighting. He thanked the Chamber for the Christmas boat parade and recognized the Bayside Concert Series.

Vice Mayor Atterholt stated the beach school would open tomorrow with a formal ceremony and ribbon cutting at 9:00 a.m. in front of the school. He encouraged the community to come at 7:30 a.m. to cheer on the students marching from Bay Oaks to the Beach School. He recognized the beach parents for their efforts to save the school. He thanked Jackie Liszak for her excellent job on the boat parade. He indicated that the general contracting crew started on the 7-11 at the south end and the goal was to open in February.

Council Member Woodson commented that her items had been covered and she wished everyone Happy Holidays.

Council Member Veach stated that today was his mother-in-law's 97th birthday. Mayor Allers reminded everyone that the Christmas Tree Festival and auction was this Friday and Saturday.

A. Poinsettia Tree Donation

Accept a donation from Jay and Mary Highley for the purchase of poinsettias for the Town's annual poinsettia tree in Times Square.

Public Works Director Jason Freeman stated that the poinsettia tree was up and thanked Mr. and Mrs. Highly.

Council Member Woodson moved to accept the donation; seconded by Council Member Veach.

The motion carried unanimously.

VII. ADVISORY COMMITTEES ITEMS / REPORTS / APPOINTMENTS

MERTF Chair Steve Johnson commented that MERTF supported replanting royal palms from Bowditch to Times Square and suggested the town replace the lost or damaged coconut palms with sabal palms on Old San Carlos Blvd. He reviewed a list of items MERTF was discussing. He described Sanibel's sea school.

Keith Wilkins, former town manager, stated that he took about 75 pictures of the handmade street signs after Ian on Estero Blvd. He and his wife picked 12 photos to be made into coasters and other items. All proceeds will go to the Estero Island Historical Society and President Ellie Bunting noted they would like to display all the signs in the future. She described the damage and repairs to both cottages and noted an open house would be held on December 16, 2023, from 1:00-3:00 p.m. at the end of Bay Rd. She added that a book titled *The Lost Icons* would come out soon to help raise funds to replenish the Historical Society's savings. Mr. Wilkins indicated that the street sign initiative was called Signs of Hope due to the residents' resiliency. He added that Charlie from Legacy Printing manufactured

the coasters for free.

Mr. Wilkins described canal dredging, a special assessment and a non-binding resolution, which will be discussed later in the meeting.

VIII. APPROVAL OF MINUTES

A. Town Council - November 20, 2023

Council Member King moved to approve the minutes; seconded by Council Member Veach.

The motion carried unanimously.

IX. CONSENT AGENDA

Council Member Veach moved to approve the remainder of the amended consent agenda, including the Mr. & Mrs. Santa Claus special event and the four change orders for C.E. Gleeson construction contract; seconded by Council Member Woodson.

The motion carried unanimously.

A. Resolutions 23-172 through 23-176; Extending Local State of Emergency for Hurricane Ian

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.

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

The motion carried unanimously.

B. Resolutions 23-177 through 23-181; Extending Local State of Emergency for Hurricane Idalia

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, EXTENDING THE DECLARATION OF STATE OF LOCAL EMERGENCY DUE TO HURRICANE IDALIA; PROVIDING THE TOWN WITH POWERS, INCLUDING, BUT NOT LIMITED TO THOSE PURSUANT TO FLORIDA STATUTES, CHAPTER 252, AND TOWN CODE CHAPTER 2, ARTICLE VI; PROVIDING FOR PENALTIES FOR VIOLATIONS; PROVIDING FOR CONFLICTS, SEVERABILITY, AND FOR AN EFFECTIVE DATE AND A TERMINATION DATE

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

The motion carried unanimously.

C. Resolution 23-183; Amendment to Permissive Use License Agreement

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING AN AMENDMENT TO PERMISSIVE USE LICENSE AGREEMENT BETWEEN THE TOWN AND THE FORT MYERS BEACH FIRE CONTROL DISTRICT FOR THE USE OF PROPERTY OWNED BY THE FORT MYERS BEACH FIRE CONTROL DISTRICT AS A LOCATION FOR A TEMPORARY TOWN HALL; AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT ON BEHALF OF THE TOWN; AUTHORIZING THE TOWN MANAGER TO EXPEND BUDGETED FUNDS ON BEHALF OF THE TOWN; AND PROVIDING AN EFFECTIVE DATE.

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

The motion carried unanimously.

D. Resolution 23-170; Approval of FDEM \$5 Million, 0% Interest Loan for Certain Hurricane Ian Public Assistance Projects

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, DIVISION OF EMERGENCY MANAGEMENT IN THE PRINCIPAL AMOUNT OF \$5,000,000.00 TO FUND HURRICANE IAN RELATED REPAIRS AND RECOVERY FOR WHICH WE WILL BE RECEIVING PUBLIC ASSISTANCE; MAKING CERTAIN CERTIFICATIONS; AGREEING TO CERTAIN TERMS AND CONDITIONS; DESIGNATING OFFICIALS 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

Council Member Veach stated that this loan allowed the town to borrow money at no interest to do work before being reimbursed by FEMA. He noted that it was more like a line of credit. Finance Director Joe Onzick reviewed the benefits of using this cash upfront for expenditures.

Council Member Veach moved to approve the resolution; seconded by Council Member King.

The motion carried unanimously.

E. Resolution 23-167; Memorial Bench Program fees

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, AMENDING THE FISCAL YEAR 2023-2024 FEE SCHEDULE ADOPTED ON SEPTEMBER 25, 2023 TO ADJUST THE FEE FOR THE MEMORIAL BENCH PROGRAM; AND PROVIDING FOR AN EFFECTIVE DATE

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

The motion carried unanimously.

- F. Resolution 23-171; Jacobs Project Management, Co.

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, RATIFYING APPROVAL OF AN AGREEMENT WITH JACOBS PROJECT MANAGEMENT, CO. AUTHORIZING THE TOWN MANAGER TO EXECUTE AN ADDENDUM TO THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

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

The motion carried unanimously.

- G. Municipal Elections

Approve an Agreement with Lee County Supervisor of Elections office to conduct municipal elections for the Town of Fort Myers Beach.

Vice Mayor Atterholt questioned whether Town Clerk Baker had conversations with the Supervisor of Elections regarding ballot drop boxes on the island for the next election. Town Manager Hyatt replied that the supervisor would visit the town trailers in January to make sure that location was feasible, but he did not know whether more than one location would be approved. He stated he would call the supervisor after the meeting.

Vice Mayor Atterholt moved to approve the agreement; seconded by Council Member King.

The motion carried unanimously.

X. PUBLIC HEARINGS

- A. Ordinance 23-18; Post Disaster Buildback Amendment

First Reading and Public Hearing of an Ordinance entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 34, ARTICLE V., DIVISION 2, SECTION 34-3238 POST-DISASTER BUILDBACK; PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND AN EFFECTIVE DATE. Open the first public hearing and schedule for second reading and final adoption on December 18, 2023 at 9:00 AM

Mayor Allers read the title of the ordinance. Community Development Planner Sarah Propst reviewed the background of the proposed ordinance as stated on the blue sheet. She described suggestions made by the LPA (Local Planning Agency). Mayor Allers questioned whether number 2 on packet page 164 could be more specific. He preferred determining a square footage limit that could be done through an administrative variance and anything above that number would go through the normal variance process. He indicated that it provided residents with an avenue for something they did not have before the storm and there was still an avenue to do more than what could be done by right.

Public comment:

Chris Mostero, resident and small business owner, described his cottage-style home before Ian and stated he wanted to elevate his home above base flood elevation, but he could not move forward under the current post-disaster buildback policy. He encouraged the council to look at the big picture and maintain density to allow them to build back what they could with current regulations.

Albert Dambrose, architect, supported the policy. He asked that restrictions on bedrooms and bathrooms be eliminated to allow homeowners to design their own house. He felt that the definition of a roofline needed to be improved with a graphic added to help people understand.

Public comment closed.

Mayor Allers questioned the definition of the roofline and Planner Propst replied it was the perimeter of the roof, including overhangs. Town Attorney Vose noted that they could add language.

Mayor Allers disagreed that the number of bedrooms and bathrooms should be removed because residents could add density with additional bedrooms, which would create more noise and more vehicles; however, he supported an avenue to allow applicants to ask for more. Council Member Veach agreed. Council Member Woodson questioned whether Mr. Dambrose could provide sketches of rooflines and he agreed.

Council Member Woodson moved to send it to a second reading on December 18, 2023, at 9:00 a.m. with the added comments and exceptions; seconded by Mayor Allers.

The motion carried unanimously by roll call vote.

B. Resolution 23-152, VAR20230187 - 3580 Estero Blvd

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING VARIANCE VAR20230187 TO ALLOW A GARAGE CLOSER TO THE ESTERO BOULEVARD STREET RIGHT-OF-WAY LINE THAN THE PRINCIPAL BUILDING AND TO ALLOW A GARAGE CLOSER TO THE SIDE PROPERTY LINE THAN THE MINIMUM SIDE SETBACK ON WATERFRONT LOTS FOR THE PROPERTY LOCATED AT 3580 ESTERO BLVD; PROVIDING FOR CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

Town Clerk Baker confirmed that all agenda items were properly noticed. Council Member Veach stated that he had a conflict of interest with item B and completed Form 8B. Town Clerk Baker swore in those providing testimony. Mayor Allers read the title of the resolution. Ex parte communications: all Town Council members know the applicant and the property; however, none have talked to the applicant regarding his application.

Planner Propst reviewed the variance request as stated on the blue sheet. She noted that the LPA recommended approval.

Kara Stewart represented the applicants. She explained that the structure was proposed to be 35 feet off Estero Blvd. to provide a buffer. She added that it was a minimum setback and the previous house had been behind the garage. There was no opposition to the application.
No public comment.

Vice Mayor Atterholt moved to approve the resolution; seconded by Council Member King.

The motion carried unanimously by roll call vote, with Council Member Veach recused.

C. Resolution 23-149; SEZ20230189 Special Exception for Major Accessory Structures in the EC zoning district

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/APPROVING WITH CONDITIONS/DENYING SPECIAL EXCEPTION SEZ20230189 TO ALLOW RECONSTRUCTION OF A POOL, DECK AREAS, WALKWAYS, STEPS, FENCE AND TWO FOOT RINSE STATIONS, IN THE ENVIRONMENTALLY CRITICAL (EC) ZONING DISTRICT, WITH CONDITIONS, FOR THE PROPERTY LOCATED AT 7002 ESTERO BOULEVARD; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, AND AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Ex parte communications: Council Member King - received correspondence and toured the site; Vice Mayor Atterholt - received correspondence and had been to the property; Mayor Allers - received correspondence and drove by the site; Council Member Woodson - received correspondence and reviewed diagrams of the site and Council Member Veach - nothing.

Brett Moore, President of Humiston & Moore Engineers, reviewed his qualifications to be considered an expert.

Mayor Allers moved to recognize Mr. Moore as an expert witness; seconded by Council Member King.

The motion carried unanimously.

The applicants confirmed receipt of the agenda and materials.

Planner Propst reviewed the special exception as stated on the blue sheet. She noted that the applicants were not proposing additional development in the EC (Environmentally Critical) zone beyond what existed before Ian. The LPA recommended approval and several letters of support were received.

Brenda Ryan is the owner and substitute for HOA (Homeowners Association) President Paul Yearwood. She explained that Island Reef was a small community of 43 owners and requested a special exception to return the area to the pre-Ian state. The pool equipment will be moved outside the EC zone and the new stairs will be made of a composite type material with posts. She confirmed that the seawall had not been damaged.

Public comment:

Mr. Moore stated that changes from the storm necessitated their request, and the construction was appropriate.

Public comment closed.

Vice Mayor Atterholt moved to approve the resolution; seconded by Council Member Woodson.

The motion carried unanimously by roll call vote.

D. Resolution 23-154, 1249 Estero Variances for height, stories and parking

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING VARIANCE VAR20230205 TO DECREASE THE NUMBER OF REQUIRED PARKING SPACES BY 37 SPACES, AND TO ALLOW FOR A THREE-STORY BUILDING WITH ENCLOSED SPACE ON THE GROUND FLOOR, AND TO ALLOW FOR A BUILDING HEIGHT OF 36 FEET ABOVE FLOOD ELEVATION, FOR THE PROPERTY AT 1249 ESTERO BLVD; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Ex parte communications: Council Member King - familiar with the site, knows the owners and discussed the project; Vice Mayor Atterholt - has been to the site, had conversations with the owners, received correspondence in support of the application and watched the LPA meeting; Mayor Allers - knows the property, spoke to the applicants and received emails in support of the application; Council Member Woodson - knows the property and owners, received emails in support of the application and watched the LPA meeting and Council Member Veatch - watched the LPA meeting, familiar with the site and property owners.

Rob Fowler, owner of Fowler Construction, reviewed his experience to be considered an expert.

Mayor Allers moved to approve Mr. Fowler as an expert witness; seconded by Council Member Veatch.

The motion carried unanimously.

The property owner confirmed receipt of the agenda and materials.

Planner Propst reviewed the variance request as stated on the blue sheet. The LPA recommended approval and requested that the applicant provide a parking plan for the council to consider.

Vice Mayor Atterholt questioned why the town opposed what they had before the storm concerning parking. Planner Propst replied that the property existed before incorporation and was grandfathered. The increase in square footage and decrease in parking concerned the staff. Vice Mayor Atterholt questioned whether staff considered the idea of 54 cars coming on and off of Estero Blvd. to park in that location. He thought less parking in that location would be better for traffic congestion. Planner Propst replied negatively and indicated that the parking lot did not drive the parking; the use did. Vice Mayor Atterholt mentioned existing parking lots in the area and the number of people who walked to the location.

Mayor Allers questioned whether it would make sense to calculate parking similar to impervious surfaces. He brought up counting motorcycle and golf cart spaces in the total calculation. Planner Propst replied that the LDC (Land Development Code) could be updated to include those vehicles since they allowed bicycles. She explained that she did not think it was a good

idea to base the number of parking spaces on the area of the lot because of the different intensity of uses.

Mr. Fowler thanked the staff for working with them. The owner, Mr. Miller, distributed a rendering of the Whale. Mr. Fowler reviewed the three variances and noted they had to comply with FEMA (Federal Emergency Management Agency) by elevating the structure. He discussed the pedestrian/commercial zoning in the downtown district and the future land use map. He described how he worked with Planner Propst regarding the additional height for a taller peak on the tiki. He stated that parking has been an issue for 30 years and they submitted a plan to maximize conforming parking spaces on the lot. He asserted that the property had approximately 10 conforming parking spaces before. He displayed a picture of the proposed project design, described the height of the ceilings, running the AC in the soffit line, stormwater management and installing pervious pavers to create more parking spaces. Planner Propst addressed pervious pavers and noted it would decrease the capacity of the structure to store water.

Mr. Fowler displayed and described a new rendering of the Whale. The bottom and back areas were flood-proof areas. The parking management plan showed seven places with valet-stacked parking, golf cart parking areas and two bike racks. The additional spaces increased to 32 onsite spaces with 22 offsite parking. Mayor Allers questioned whether the fire department was consulted. Mr. Fowler replied affirmatively and described the conversations.

Applicant Mike Miller indicated that Norm's parking would not give them exclusive parking, but he had approximately 80 available parking spaces. He displayed and explained a chart showing 911 non-exclusive parking spots within 500 feet. He mentioned that the Beach Bar and the Salty Crab had no parking and survived for years. He emphasized that the second floor would be soundproofed to help reduce the noise in the neighborhood. He indicated that he hoped to complete the project in 12–14 months after all approvals.

Public comment:

Jay Birsch supported the project because he missed the burgers and was excited about the design.

Public comment closed.

Council Member King moved to approve the resolution without the LPA conditions; seconded by Vice Mayor Atterholt.

Parking was discussed.

The motion carried unanimously by roll call vote.

E. Resolution 23-155; VAR 20230198 - 49/51 Pompano Street

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING VARIANCE VAR20230198 49/51 Pompano St; requesting a variance from LDC Section 34-638 Table 34-3 Dimensional Regulations in Conventional Zoning Districts for the street and rear setbacks in the RM zoning district; PROVIDING FOR CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Ex parte communications: Council Member King and Vice Mayor Atterholt - none; Mayor Allers and Council Member Woodson - drive-bys and Council Member Veach walked past the property but had no recollection of it.

Community Development Senior Planner Jason Smalley reviewed the request for two variances as stated on the blue sheet. He clarified that the applicants were eligible for a second unit by right and did not have to utilize the post-disaster buildback policy. He described the structure as interconnected structurally but two independent units.

The applicant was not in attendance.

No public comment.

Council Member Veach moved to approve the resolution; seconded by Council Member King.

The motion carried unanimously by roll call vote.

XI. ADMINISTRATIVE AGENDA

No items.

XII. FINAL PUBLIC COMMENT

Terry Persaud stated that the settlement agreement was pushed back due to confusion regarding properties he owned. He indicated that he would install a fence to keep the property secured. He encouraged scheduling a meeting to find a solution and was committed to developing a plan that would benefit all parties.

XIII. TOWN MANAGER'S ITEMS

Town Manager Hyatt stated that the street signs were being installed, three permit techs from the Jacobs group were onboard and two inspectors were hired. RFPs (Request for Proposals) would be sent out for mowing, removal of unsafe structures, the big ball field project at Bay Oaks and lights for the small ball field. He received an agreement with Lee County regarding the light project and Town Attorney Vose will review it. He revealed that Communications Coordinator Jenny Dexter submitted her resignation, and he thanked her for all she did under challenging circumstances. He wished her the best.

Operations and Compliance Director Frankie Kropacek noted that the trailers should be on site in two weeks and will be located on the old ball field.

XIV. TOWN ATTORNEY'S ITEMS

Town Attorney Vose stated that she would write an opinion stating that people with an owner/building permit could obtain a license for vacation rentals. She explained the differences between a lease and vacation rentals.

Vice Mayor Atterholt questioned a new town requirement that required an actual cash value flood plain management appraisal since FEMA and the state would no longer accept insurance appraisals. Town Engineer Steve Poposki replied that FEMA provided three options and this was one.

The rule was that it had to be the value of the structure and the cost to repair it, not the land or the use of the building. Mayor Allers asked staff to coordinate a meeting with condo associations to discuss requirements and answer questions. Vice Mayor Atterholt questioned the new reserve requirement and Town Manager Hyatt replied that he would talk to the lobbyist. Mayor Allers added that the League of Cities also opposed the requirement. Town Attorney Vose will draft a letter.

- A. Proposed Settlement Agreement
Pulled from the agenda.

XV. COUNCILMEMBERS ITEMS AND REPORTS

Council Member Veach requested and received support to add parking to an M&P and discussed the possibility of a public/private parking garage at 1st St. on Old San Carlos by the Yucatan. Council Member King revealed that after the recent MPO meeting (Metropolitan Planning Organization), a county commissioner asked his opinion about a two-tiered parking garage at Lynn Hall.

Council Member Woodson questioned whether the LPA and M&P should meet twice a month. Mayor Allers replied that staff had a lot on their plates and that meetings could be called when needed. Town Manager Hyatt noted that advertising also affected the schedule. Council Member Woodson received support to add the topic to an M&P. Council Member Woodson questioned whether they could allow construction seven days a week.

Vice Mayor Atterholt indicated that the fire department sent back a permit for Santini Plaza for additional information. He questioned whether the town could assign a staff member to assist tenants with permits at Santini Plaza. Operations and Compliance Director Kropocek replied affirmatively.

Council Member King requested that the name of Bayside Park be changed to Veteran's Memorial Bayside Park by Memorial Day. Vice Mayor Atterholt supported the request and suggested adding it to an M&P. He received support. Mayor Allers read the steps for canal dredging and questioned whether they wanted to move forward with the resolution. All council members supported moving forward. Mayor Allers did not support the lighting agreement with the county on Estero Blvd. and will attend the commissioner's meeting tomorrow if the issue is not resolved.

Council Member Veach moved to support the mayor; seconded by Vice Mayor Atterholt.

The motion carried unanimously.

XVI. ADJOURNMENT

Council Member King moved to adjourn; seconded by Council Member Veach. The motion carried unanimously.

The meeting was adjourned at 12:59 p.m.

FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS

LAST NAME—FIRST NAME—MIDDLE NAME <i>Veatch, William</i>		NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE <i>Town Council, Fort Myers Beach</i>	
MAILING ADDRESS <i>3580 E 5th Ave</i>		THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF: ☒ CITY ☐ COUNTY ☐ OTHER LOCAL AGENCY	
CITY <i>FMB</i>	COUNTY <i>Lee</i>	NAME OF POLITICAL SUBDIVISION: <i>Town of Fort Myers Beach</i>	
DATE ON WHICH VOTE OCCURRED <i>12/4/23</i>		MY POSITION IS: ☒ ELECTIVE ☐ APPOINTEE	

WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes.

Your responsibilities under the law when faced with voting on a measure in which you have a conflict of interest will vary greatly depending on whether you hold an elective or appointive position. For this reason, please pay close attention to the instructions on this form before completing and filing the form.

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

A person holding elective or appointive county, municipal, or other local public office **MUST ABSTAIN** from voting on a measure which would inure to his or her special private gain or loss. Each elected or appointed local officer also **MUST ABSTAIN** from knowingly voting on a measure which would inure to the special gain or loss of a principal (other than a government agency) by whom he or she is retained (including the parent, subsidiary, or sibling organization of a principal by which he or she is retained); to the special private gain or loss of a relative; or to the special private gain or loss of a business associate. Commissioners of community redevelopment agencies (CRAs) under Sec. 163.356 or 163.357, F.S., and officers of independent special tax districts elected on a one-acre, one-vote basis are not prohibited from voting in that capacity.

For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

* * * * *

ELECTED OFFICERS:

In addition to abstaining from voting in the situations described above, you must disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; *and*

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

* * * * *

APPOINTED OFFICERS:

Although you must abstain from voting in the situations described above, you are not prohibited by Section 112.3143 from otherwise participating in these matters. However, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:

- You must complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes. (Continued on page 2)

APPOINTED OFFICERS (continued)

- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:

- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, William Veatch, hereby disclose that on 12/4/23, 20 23:

(a) A measure came or will come before my agency which (check one or more)

- ☒ inured to my special private gain or loss;
- ☐ inured to the special gain or loss of my business associate, _____;
- ☐ inured to the special gain or loss of my relative, _____;
- ☐ inured to the special gain or loss of _____, by whom I am retained; or
- ☐ inured to the special gain or loss of _____, which is the parent subsidiary, or sibling organization or subsidiary of a principal which has retained me.

(b) The measure before my agency and the nature of my conflicting interest in the measure is as follows:

If disclosure of specific information would violate confidentiality or privilege pursuant to law or rules governing attorneys, a public officer, who is also an attorney, may comply with the disclosure requirements of this section by disclosing the nature of the interest in such a way as to provide the public with notice of the conflict.

12/4/23
Date Filed


Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$10,000.



Fort Myers Beach Management & Planning Session

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

Minutes

Thursday, December 7, 2023

9:00 AM

ORDER OF BUSINESS

DRAFT

I. CALL TO ORDER

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

II. PLEDGE OF ALLEGIANCE

III. ITEMS FOR DISCUSSION

A. Presentation: SchenkelShultz/SCAPE

Long-term Coastal Resiliency Planning

Nathalie White, an architect with Schenkel Shultz, utilized PowerPoint for her presentation. Slides included September 29, 2022, Headlines; Envisioning Tomorrow's Fort Myers Beach; What We Know; Why Are We Here; Survive, Adapt, Thrive; Who We Are: Schenkel Shultz; Rebuild Southwest Florida; Recognition of Nathalie White and Map of Boots on the Ground and Schenkel Shultz + SCAPE. Pippa Brashear, a landscape architect from SCAPE continued the presentation with Who We Are: SCAPE; Where We Work; An Expression of Landscape Thinking at Multiple Scales; Eco-Aware, Collaborative, Systems Thinking, Engaged; We Work with Communities to Design for a Resilient Future; Innovation Along the Water's Edge is at the Core of Our Practice; Recognition; Working with Communities Towards a More Resilient Future; What is Resilience?; Why a Resilience Plan?; Our Disaster Experience: Recovery & Resilience Post Sandy; Sandy was Devastating, it was also a Wake-up Call; Plan NYC; New York City's Strategic Initiative for Rebuilding & Resilience; Sandy Funding Tracker; Rebuild by Design; Water-Based Economies, Human and Ecological Impacts of Hurricane Sandy; Risk Reduction, Culture, Ecology; Governor Cuomo Announces \$60 Million Living Breakwaters Barrier to Protect Staten Island

Shoreline and Habitat; Living Breakwaters Vision; Living Breakwaters Reduce Risk; Living Breakwaters Enhance Ecosystems; Living Breakwaters Support Education, Stewardship & Recreation; Innovative Nature-Based Adaptation from Vision to Reality; Helping NYC Adapt, FiDi-Seaport Climate Resilience Master Plan; Leveraging Resilience Experience: Working With Communities for Resilient Futures; Resilience and Adaptation Plans; Nantucket Island, MA: Integrated Adaptation & Open Space; Recreation & Access; Risk-Informed Planning; Place-Based Adaptation; A Resilient Downtown Waterfront; Eckerd College, FL: A Resilient Coastal Campus on Tampa Bay; Think Outside; Resilient Jacksonville; Applying a Resilience Planning Process; Creating a Roadmap for Resilient Growth; Adaptation in the Beaches; Pensacola, FL: Framework for a Resilient Waterfront Revitalization; Waterfront Framework & Catalytic Projects; A Framework Plan to Guide Action and Implementation; We Can Help; Why a Resilience Plan?; Where to Start? and Engage Partners!

Ms. Brashear discussed navigating an island-wide resilient plan, starting with workshops. She agreed that Lee County had to be involved and on board with the process.

B. Town Council Policies and Procedures

Annual review of Town Council Policies and Procedures

Town Attorney Stuparich indicated that two major issues were Form 6 and recognition of due process regarding disruptive behavior. Changes were made to clarify some of the language. Vice Mayor Atterholt asked Town Attorney Stuparich to consider whether they needed to add something to the charter or policies and procedures regarding giving the mayor a more significant role in an emergency situation when the town manager position was unstable. Town Attorney Stuparich will research the issue. Council Member Woodson noted that values and culture were not addressed.

Town Attorney Stuparich will review the language on packet page 32 and make the necessary changes or corrections. She discussed receiving gifts as referenced on packet page 12. Vice Mayor Atterholt suggested that they stick with state guidelines. Town Attorney Stuparich agreed that deferring to the state would be the best policy.

Vice Mayor Atterholt stated that Form 6 was very complicated and suggested a group session to discuss the process. Town Attorney Stuparich added that the League of Cities provided a handout and a video will be available on the website. She reviewed ex parte communication disclosures.

Council Member Veach questioned where the line was regarding helping residents solve problems. Town Attorney Stuparich replied that the line was not identified in the policies and procedures, but the town manager or town attorney had to be involved. Council members could not act on their own.

Council Member Veach brought up the policy prohibiting using electronic devices during meetings except for emergencies. Vice Mayor Atterholt disagreed with the policy, especially since some of their meetings were very long. Council Member Veach responded that issues could be addressed during breaks.

Mayor Allers suggested that the balance in the policies be rewritten. Council Member Veach added that personal phones were exposed to public records requests. Consensus was reached for the town attorney to review the policy. Council Member King pointed out a contradictory policy concerning nonresidents on advisory committees. Town Attorney Stuparich will investigate the topic.

C. Parking

Per Town Council's request, a discussion on parking.

Vice Mayor Atterholt suggested that they work with the county and arrange for a parking area across from Lover's Key Park and extend the tram from Bowditch to Lover's Key. Mayor Allers noted that they had to look at parking globally as they continue to develop and build out. He felt the first step was to look at the LDC (Land Development Code) and remove some of the restrictions. Council Member Veach suggested that small businesses on small lots in the pedestrian zoning district not be required to have parking. Mayor Allers brought up installing parking signs that indicate where parking lots are and when they are full. He suggested reviewing buffer zones for parking lots and felt that the staff could update the parking code to help alleviate a lot of the variances. Council Member Veach noted that they could put surface parking on the old town hall property. Council Member King brought up working with the county regarding a parking garage at Lynn Hall Park. Council Member Veach noted the view corridor would be blocked by a parking garage. He felt that they should come up with a common-sense parking garage code that would encourage private industry. Planner Propst stated they would look at the code and update requirements for small businesses. She noted that parking had to be approached from a transportation aspect and public/private partnership options should be investigated. She described a parking benefit district and residential parking passes. She cautioned the council about making changes as long as SB250 was in effect. She added that the staff were trying to allow businesses to have the same number of parking spaces as they did before Ian. The Whale was an exception because they almost doubled their square footage. Planner Propst stated that her first step would be to look at the ITE (Institute of Transportation Engineers) regulations to figure out how closely the town aligned with those.

D. Bayside Park

Per Town Council's request, a discussion about re-naming Bayside Park.

Vice Mayor Atterholt read the difference between Memorial Day and Veterans Day and preferred the name Bayside Veterans Park. Council Member King indicated that some people confused Bay Oaks and Bayside and suggested putting Veterans first in the name. He also supported conducting a public poll. Council Member Veach agreed with public input. Council Member Woodson suggested creating an annual event for Veterans Day weekend. She preferred Veterans Memorial Bayside Park. Vice Mayor

Atterholt was comfortable with all options and suggested soliciting public input. Consensus was reached to survey the community. Town Manager Hyatt will work on coordinating feedback.

E. 2024 Town Council schedule

Per Council's request, a discussion about additional 2024 Town Council meetings

Council Member Woodson explained her reasons for wanting to hold more LPA and town council meetings each month. Mayor Allers felt comfortable leaving the decision to the town manager and staff, who could always add meetings. Council Member Woodson preferred to schedule meetings and cancel if they had to. Mayor Allers replied that more meetings took away from the staff and town manager's job. He questioned whether the charter would have to be changed. Council Member Veatch agreed that pulling staff off their jobs was not streamlining the process. Town Manager Hyatt stated that the council would have meetings every two weeks during the first quarter, so there would not be any gaps. Town Attorney Stuparich noted that the charter established the minimum requirements to meet and they could call special meetings. Mayor Allers felt it was important to check with the LPA regarding their input on extra meetings. Town Manager Hyatt indicated that bringing back monthly department reports would help to identify potential issues.

IV. AGENDA MANAGEMENT

A. December 7, 2023

Remove workforce housing.

Add an M&P meeting with the condo associations and the fire department in January.

V. ADJOURNMENT

Mayor Allers adjourned the meeting at 11:46 a.m.

1. **Requested Motion:**

Meeting Date: December 18, 2023

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA, ADOPTING AND AMENDING THE TOWN COUNCIL POLICIES AND PROCEDURES MANUAL; AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

4. **Submitter of Information:**

5. **Background:**

At the December 7, 2023, Ft. Myers Beach Management & Planning Session, the Town Council reviewed and discussed its current policies and procedures and requested several changes as shown on the Exhibit to Resolution highlighted in yellow. A summary of the additional changes follows:

1. Page 12, #4 regarding use of electronic communication during meetings - Language was added to clarify such communication may occur during a meeting if it was not disruptive to the orderly conduct of the meeting. As discussed, any emails/text that involve public business are public records regardless of if the device used was Town or personal equipment.
2. Page 12, #6 regarding gifts – Language was added to refer to Florida law as far as interpretation of the paragraph.
3. Page 27 - The typo was corrected and the word “next” was deleted.
4. Charts on Pages 29 and 30 – Reference to “Coffee/muffins” was deleted and the time slot was identified as “Public Gathering.”

Attachments:

1. 23-182, re Adopting Amended Town Council Policies and Procedures Manual final for 12.18.23 TC

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

Amy Baker, Town Clerk
Nancy Stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 12/13/2023
Approved - 12/13/2023
Approved - 12/13/2023
Final Approval - 12/13/2023

RESOLUTION NUMBER 23-182

**A RESOLUTION OF THE TOWN OF FORT MYERS
BEACH, FLORIDA, ADOPTING AND AMENDING THE
TOWN COUNCIL POLICIES AND PROCEDURES
MANUAL; AND PROVIDING FOR 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; and

WHEREAS, the Town Council has adopted a Policies and Procedures Manual to standardize the way the Town Council conducts its meetings, acts on items before it and adopts, amends, and implements legislative and policy decisions; and

WHEREAS, the Town Council desires to amend and update the Town Council Policies and Procedures Manual previously approved by Resolution 23-30.

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

Section 1. The foregoing whereas clauses are ratified and confirmed as being true and correct, are the legislative and administrative findings of the Town Council and made a specific part of this Resolution.

Section 2. The amended Town Council Policies and Procedures Manual, attached as Exhibit "A" is approved.

Section 3. This Resolution shall take effect immediately upon its adoption by the Town Council of the Town of Fort Myers Beach.

THE FOREGOING RESOLUTION was adopted by the Town Council upon motion by Council Member Veach and seconded by Council Member King, 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 ____th day of December 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:**

Vose Law Firm LLP, Town Attorney

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

EXHIBIT “A”

**Town of Fort Myers Beach Town Council
Policies and Procedures Manual
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1. Introduction

This Town Council Policies and Procedures Manual is for the purpose of helping the Council Members in the discharge of their duties. They are intended to be guidelines, not “rules” on how to conduct business. Town Council may vary from these policies and procedures on a case-by-case basis by a majority vote unless in conflict with Florida law, the Town Charter, the Land Development Code, Code of Ordinances, Comprehensive Plan or other Town guiding documents. As the Town Council continues to discover situations that are unique to Fort Myers Beach, it will want to update and amend this manual. Experience may show that some of these policies and procedures need to be modified or eliminated and new ones adopted.

By adopting this manual, members of Council will find in one handy reference, answers to policy and procedure questions that come up from time to time. By having an agreed-upon guide, members of Council also may develop common expectations on proper conduct of Council meetings, dealings with the public, and the roles of Town staff and committees.

This manual should be used in conjunction with the Town Charter, Comprehensive Land Use Plan (Comp Plan), Land Development Code (LDC), Code of Ordinances, and the annual budget as necessary. In the event of a conflict between this document and Florida statutes, Town Charter or other Town guiding documents, such other document shall prevail over the language in the Policies and Procedures manual.

2. Town Council Mission and Job Description

Mission:

To legislate and police the powers of the Town, including establishing boards, commissions and committees; to perform all duties and obligations imposed on the municipality by law; to insure by strategic planning and clear policies that the unique and natural characteristics of the island are preserved; to supervise the Town Manager and Town Attorney; to perform all actions for the welfare of the residents, owners, businesspersons, and guests of the Island in adherence to the Town Charter, State and Federal Law.

Functions, Powers and Duties:

- Review and interpret the Comprehensive Plan and conduct public hearings as needed to make changes.
- Review and interpret the Land Development Code and conduct public hearings as needed to make changes.
- Conduct hearings regarding land use matters.
- Introduce and approve Charter Amendments for adoption by referendum.
- Appoint a Town Manager.
- Appoint a Town Attorney.
- Introduce and enact ordinances.

- Introduce and adopt resolutions.
- Review and adopt the Operations and Capital Improvement budgets.
- Review and approve budget amendments.
- Create Special Assessment Districts as may be needed.
- Establish advisory committees as needed.
- Review and approve inter-local agreements.
- Review and approve contracts with the Town above the threshold limit allowed to Town Manager.
- Elect a Mayor and Vice Mayor.
- Perform any other duties that are lawfully defined by the Charter and Florida statutes.

Council Member Requirements:

- Electronically file a Statement of Financial Interests and Ethics Training (Form 6) on the Florida Commission on Ethics website every year.
- Complete and file Form 6F – Final Statement of Financial Interest, within 60 days of leaving office.
- Pursuant to state law, all Council members must complete 4 hours of ethics training each calendar year, which addresses, at a minimum, s. 8, Art. II of the State Constitution, the Code of Ethics for Public Officers and Employees, and the public records and public meetings laws of the State of Florida.

3. How Town Council Will Operate

Code of Conduct:

Recognizing that persons holding a position of public trust are under constant observation, and recognizing that maintaining the integrity and dignity of the public office is essential for maintaining high levels of public confidence in our institutions of government, every member of the Town Council pledges to adhere to the following CODE OF CONDUCT:

1. Regularly attend all scheduled meetings of the Town Council as well as special or called meetings relevant to the office.
2. Regularly attend all scheduled meetings of outside committees of which they are a member.
3. Prepare for each meeting.
4. Create a positive environment in meetings of Town Council.
5. Maintain an attitude of courtesy and consideration toward colleagues, residents, and staff during all discussions and deliberations.
6. Allow residents, colleagues, and staff sufficient opportunity to present their views within the prescribed rules for conduct of meetings of Town Council.

7. Avoid the use of abusive, threatening, or intimidating language or gestures directed at colleagues, residents, or staff.
8. Avoid comments, body language or distracting activity that conveys a message of disrespect and lack of interest.
9. Respect all local, state, and federal laws, rules, and other regulations.
10. Electronically submit completed financial disclosure forms via the Florida Commission on Ethics website by the specified deadline.
11. Publicly acknowledge the adopted position when asked about a decision of Town Council.
12. Read the Town Comprehensive Plan and follow its directives in all decision-making processes for the Town.
13. Follow the procedural and substantive requirements of the LDC.

Code of Ethics:

Members should ethically serve the public interest by making decisions and taking actions that will enhance the public health, safety and welfare of the region and the residents served by the Town Council and by promoting public confidence in the integrity, independence, ability and impartiality of Town Council.

1. Members shall not convey the impression that they can influence the outcome of a decision of Town Council and shall not attempt to use their office to direct or influence staff recommendations, the Town Manager or Town Attorney without the concurrence of the Town Council.
2. Members shall discharge their duties and responsibilities without favor, bias or prejudice toward any person or group. Members should not allow personal or business relationships to impact upon their conduct or decisions in connection with Town Council business and shall not lend their influence towards the advancement of personal interests, towards the advancement of the interests of friends or business associates or other conflict of interest situations.
3. Members shall avoid creating the appearance of impropriety by refraining from engaging in private discussions with an applicant – or their representatives about specific upcoming Town Council quasi-judicial agenda items unless the ex parte communication is disclosed as required. If a member receives a private written, telephonic or electronic communication about an agenda item, the member will promptly forward the information to the Town Manager and the Town Clerk, or to the member's Town e-mail account so that it may be shared with all other members and filed with the Town official records to comply with the Public Records Law requirement. Any private written, telephonic, or electronic communication about an agenda item, must be submitted to the Town Clerk prior to the commencement of the Town Council meeting at which the agenda item is discussed or it cannot be mentioned or read by any member unless otherwise allowed by majority vote of the Town Council.

4. No member shall communicate, receive, send, or solicit any private written, telephonic, or electronic communication during a Town Council **meeting if disruptive to the orderly conduct of the meeting**, unless it pertains to an emergency situation (example: audio or video feed of Council meeting not working properly).
5. Members shall refrain from any private discussion of Town Council business, or matters that could come before the Town Council, with other members per the requirements of Florida's Government-in-the-Sunshine Law, Chapter 286, Florida Statutes.
6. **Consistent with Florida law**, Members shall not accept or solicit a gift, loan, payment, favor, service, promise of employment or business contract, meal, transportation or anything else of value, if such thing is given with the understanding or possibility that it will influence the official action of the Members during Town Council proceedings. Florida law prohibits the spouse or minor child of that member from soliciting or accepting these as well, and the Member shall be vigilant in ensuring compliance from those family members. Members should contact the Town Attorney or the Florida Commission on Ethics if they have any questions about compliance with Florida law as to gifts.
7. ~~Members shall refrain from participation in any proceeding in which their impartiality may reasonably be questioned.~~ A member whose personal employment or business relationship with a person or entity that is subject to a recommendation of Town Council shall seek the advice and counsel of the Town Attorney, if such relationship could conceivably influence the members' impartiality during Town Council discussion of the subject. The provisions of Chapter 112, Florida Statutes and the Code of Ethics for Public Officers and Employees, shall govern conflict of interest determinations.
8. Members shall remain vigilant against deviations from Town Council policies and procedures.

As a legislative and quasi-judicial body, Town Council must be ever cognizant of the important legal requirements of due process and equal protection. These principles are derived from the United States Constitution, the Constitution of the State of Florida, and Florida Statutes, the Town Charter, Town code and LDC, and apply to legislative and quasi-judicial actions. The legal requirement for due process is separated into two prongs: substantive due process and procedural due process. The principle of substantive due process requires the benefits of a given regulation be within the scope of governmental authority, i.e., health, safety, morals, or general welfare, and that the regulations be accomplished in a rational manner, i.e., not be unreasonable, arbitrary or capricious. This is a principle of fundamental fairness in the substance of a given regulatory scheme or provision.

The other due process prong, procedural due process, requires a fair method of adjudicating the rights of property owners, requiring notice and an opportunity to be heard by an impartial decision maker. In legislative matters, this requirement is derived from Florida Statutes, the Town Code and LDC that provide the type and period of notice depending on the nature of the property interest subject to regulation at a public hearing. Quasi-judicial decisions have an underlying Constitutional requirement for procedural due process.

Equal protection limits governmental regulation from establishing irrational classifications, protects the rights of suspect and quasi-suspect classes, and assures against the exercise of fundamental or important rights of persons in ways different from others. Key overarching principles to keep in mind are that every person must be treated equally and reasonably by the quasi-judicial or legislative substance and process and that decisions and recommendations be deliberated in an open process with adequate notice and allowance for participation of affected parties. Reasonable, consistent, and timely notifications in quasi-judicial matters to be heard by the Town Council provide an applicant and other parties potentially affected by a requested decision these fundamental protections.

Assignment of a Town Council Representative:

Town Council may choose to assign a member to lead a project or assess an issue. The Town Council Representative, or often called a “Point Person” may be assigned to do fact-finding and/or research, recommend a course of action and report back to Town Council for direction. Final decisions are made by a majority of Town Council.

Sunshine Issues:

Members of Town Council and all Town advisory committees, boards and agencies are subject to the Sunshine Law (F.S. 286.011). This means that any gathering of, or communication between, two or more members of the same advisory committee, board or agency must comply with all the Sunshine Law requirements if they participate in any discussion, directly or indirectly, regarding any matter where there is known or could be foreseeable action taken by communication through a spouse or other go-between.

Town Council members cannot engage in discussions with each other (directly or indirectly) at outside meetings such as the Chamber of Commerce or civic groups regarding any matter on which it is known or foreseeable that action may be taken, unless the Sunshine requirements are met. These rules apply equally to any gathering, formal or casual, such as a Rotary Club (or other business or fraternal club gathering), fund-raiser, etc. They also apply to social events and functions unconnected to the advisory committee, such as a neighbor’s backyard barbeque. They also apply to casual discussions between or among members coming in the door for the committee meeting, at breaks during the meeting, and going out the door after the meeting. Every component of the decision-making process must occur in the Sunshine.

The penalties for violating the Sunshine law are severe and can include criminal and civil sanctions. The process of investigation of Sunshine violations is always unpleasant, embarrassing, and expensive, even if the person is ultimately cleared.

Email and Texting Policy:

Email and texting are convenient ways to communicate with staff, Town Council, residents, and others. However, it presents unique legal and ethical challenges. All email and texts regarding Town business must be properly retained as a public record. Furthermore, any email or text regarding an issue that will come before Council in a quasi-judicial hearing must be properly

disclosed as an ex-parte communication as appropriate. Council members must be vigilant to not accidentally violate Sunshine Law requirements. Emailing or texting anyone stating a position on an issue that will come before Town Council is particularly risky. Email and text actions to avoid include:

1. Sending an email to another Council member with anything that could be construed as a position.
2. Copying another Council member on a response to an email sent by a resident, staff member or other person.
3. If another Town Council member's email is inadvertently forwarded to you, respond to the sender recognizing its accidental nature, the fact that it is a Sunshine issue and retain a copy of your response.
4. Sending an email "Reply All" when more than one Council member is also on the email that was received.

Florida has a very broad public records law. Most written communications to or from Fort Myers Beach officials regarding Town business are public records available to the public and media upon request. Your email and text communications and email address and mobile phone number may be subject to public disclosure. (This statement must be included in the closing of any email regarding Town business).

Public Records:

It is the policy of the State of Florida that municipal records shall be open for personal inspection by any person (s. 119.01, F.S.). To that end, the Legislature has enacted the Public Records Law (Ch. 119, F.S.), which contains requirements that public records, as defined in s. 119.011, F.S., be made available for public inspection, they be kept in usable condition, they be kept in safe places, they be kept in convenient places, and copying of records be provided at reasonable costs. A public record is "any material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type."

Council members' responsibility is to ensure their own public records are properly handled and preserved, and to see that the law is adhered to by all employees of the Town. The Town Clerk has been assigned the responsibility of being the custodian of public records. Council members must further understand that their public record must be retained even after leaving office.

Any use of personal electronic equipment or email accounts for government business is allowed, but for a council member's own protection, it is suggested that a copy of any documents produced is sent to their Town email account for proper retention. Materials prepared for Town Council meetings, hearings, minutes, and workshop will already be managed by the custodian of public records and do not need to be retained by the Council member. If there are any questions on retention of a particular document, consult with the custodian of public records and/or the Town Attorney before destroying.

4. Training Materials and First Meeting

Training Materials:

The Town Clerk will provide each new member of the Town Council with copies of:

- Town Charter.
- Comprehensive Plan.
- Land Development Code.
- Code of Ordinances.
- Florida Code of Ethics.
- Florida Sunshine and Public Records Laws.
- Emergency Operations Plan.
- Town Council Policies and Procedures Manual.
- Local Planning Agency Policies and Procedures Manual.
- Town Personnel Manual.
- Town Purchasing and Procurement Manual.
- Other materials as determined by the Town Attorney, Town Manager and Town Council members.

As part of a Council member's orientation, they will be provided a tour of the Town facilities with introductions with all staff members. ~~Pursuant to state law, all Council members must complete 4 hours of ethics training each calendar year, which addresses, at a minimum, s. 8, Art. II of the State Constitution, the Code of Ethics for Public Officers and Employees, and the public records and public meetings laws of the State of Florida.~~

Training Recommendations:

- Successful completion of all courses required by the National Incident Management System (NIMS).
- Florida League of Cities, Inc., Institute of Elected Municipal Officials (IEMO) Basic Course.
- Making Good Planning Decisions.
- Hands-on Emergency Operations Training.
- Other courses as determined by the Town Attorney, Town Manager and Town Council members.

Election of Officers:

At the first meeting after the second Tuesday in November, the Council's Mayor and Vice Mayor will be chosen. Each Council member may nominate a person for each of these positions. A second is not required. The voting procedure will be agreed upon in advance.

Outside Committee Representation:

Charlotte Harbor National Estuary Program – www.chnep.org

Meetings: The Policy Committee meets the third Monday every other month at 9:30 am*.
Mission: The CHNEP is a partnership that protects the estuaries and watersheds from Venice to Bonita Springs to Winter Haven. This partnership gives citizens, elected officials, resource managers, and commercial and recreational resource users in the 4,700-square mile study area a voice to address diverse resource management concerns including fish and wildlife habitat loss, water quality and water flow. The watershed in the study area includes all or parts of Lee, Charlotte, Sarasota, Manatee, Polk, Hardee and DeSoto counties.

Coastal Advisory Committee – www.lee-county.com

Meetings: Last Monday of each month at 9:30 am.*
Mission: The Council's charge is to advise the Board of County Commissioners, staff and the various related advisory boards when proceeding with a project affecting beach and shoreline preservation regarding the proper methods in helping to conserve the Beaches of Lee County.

Horizon Council – www.lee-county.com/business

Meetings: First Friday of each month*
Mission: The Horizon Council is the advisory board to the county commission on economic development issues. This unique public-private partnership is made up of 62 members from government, education, business, and community organizations. Established in 1991, the mission of the Horizon Council is to:

- Work toward improving the business environment in Lee County; and
- Retain and encourage the expansion of existing businesses; and
- Attract new and diversified employment to the area

Human Services Council – www.lee-county.com

Meetings: Third Tuesday of each month*
Mission: The Council will ensure the efficient delivery of community health and human services through:

- Communication
- Coordination
- Strategic Planning
- Innovation
- Integration and collaboration
- Measurable Outcomes

Metropolitan Planning Organization – www.mpo-swfl.org

Meetings: Third Friday of each month at 9 am*
Mission: The MPO is responsible for conducting a continuing, cooperative, and comprehensive transportation planning process for all of Lee County. It must plan for the movement of both people and goods within the county by all modes of travel – including highways, public transportation, bicycles, and foot. It also plans for the connections (such as airports, seaports, or bus, railroad, and pipeline terminals)

linking these modes or tying us to the rest of the world.

The MPO sets priorities among surface transportation improvement projects within Lee County for state or federal funding. To be eligible for federal funds, federal law requires that the MPO endorse a transportation improvement program identifying the projects to be done over the next few years.

Southwest Florida Regional Planning Council – www.swfrpc.org

Meetings: Third Thursday of each month at 9 am*

Mission: The Southwest Florida Regional Planning Council is a locally formed regional planning agency serving six counties: Charlotte, Collier, Glades, Hendry, Lee, and Sarasota. Its mission is to protect and improve the region's physical, economic, and social environment. The agency is directed by a thirty-four-member Council composed of local elected officials and gubernatorial appointees. The activities of the Southwest Florida RPC can be classified into three major areas: long range planning, tactical planning, and transportation planning.

Estero Bay Agency on Bay Management – www.swfrpc.org/abm.shtuil

Meetings: Second Monday of each month at 9:30 am*

Mission: Its directive is to make comments and recommendations regarding the management of Estero Bay and its watershed. The ABM collects and maintains data and it reviews and comments to regulatory agencies on issues affecting the watershed

*Meeting times are subject to change.

5. Town Advisory Committees, Boards and Agencies Standing Advisory Committees

Council Selection of Advisory Board, Agency, and Committee Members:

Residency: Except as required by Town Charter, Town Ordinance or Florida statute, residency on Fort Myers Beach will not be a requirement for nomination or election to a committee, commission, or board of the Town.

Advertising: All advisory committees are listed on the Town website. Information included will be the committee mission, current projects, when the committee meets and current members on the committee and whether submission of an annual Form 1 (Financial Disclosure) is required by the Florida Commission on Ethics.

Openings: In the event of an opening for an advisory board or committee, Town staff will list the opening on the website with a date when applications must be submitted to the Town Clerk for consideration by Town Council. Whenever possible, committee selection will be scheduled 30 days after proper notification. Advertising in local newspapers can be considered if approved by the Town Manager. Committee candidates will be encouraged to appear for interviews during the selection process.

Preliminary matters: The Council should decide how to go about voting prior to any voting taking place and decide the number of members on a committee ahead of time.

Voting:

1. Each Council member makes selections, marking no more than the total number of seats available (or writes the names down), and initials his ballot.
2. Those receiving the most votes are selected to seats available.
3. If there is a tie for any number of seats still left open, there will be a runoff consisting only of the persons who are tied.

Examples of voting procedure:

First Ballot:

Seats available – 9

Candidates – 15

Votes on First Ballot: Results of First Ballot

- 3 get 5 votes apiece 3 are elected
- 3 get 4 votes apiece 3 are elected
- 4 get 3 votes apiece 4 go on a second ballot
- 3 get 2 votes apiece 3 are eliminated
- 2 get 0 votes apiece 2 are eliminated

There would be a second ballot containing only the names of the four candidates who got three votes. Council would vote for three candidates. This process would be repeated in case of a tie until all seats are filled. A variation on this method of voting is that after the first ballot, if there is a tie which prevents all the seats from being filled, the runoff would consist of all the un-selected candidates, not just the ones involved in the tie.

4. The ballots are given to the Town Clerk, who conducts the tallying and announces the results.
5. Once all selections are made, Council adopts a motion containing the new members' names.

Effective Date of Appointment and Follow Up:

Newly appointed advisory board, agency and committee members who are required to file a Financial Disclosure Statement, will be notified of the disclosure requirements no later than the date of appointment. The Town Manager or designee is responsible for such notification. These appointments should be made effective as of some future date, so that there is sufficient time to provide the required notification. For convenience, the notice could be accompanied by a copy of the required disclosure forms, which are available on-line from the Florida Commission on Ethics (<http://www.ethics.state.fl.us/>)

Ad Hoc Committees:

Town Council has the authority to form ad hoc committees requesting participation by volunteers. Ad hoc Committees can be used at Town Council's discretion to address specialized and or short-

term Town issues.

The mission, specific objectives, expected products, membership and timelines of an ad hoc committee should be clearly stated and agreed to by Town Council. One Town Council member will be an ex-officio member of each ad hoc committee. Where possible, an attempt will be made to have a balanced committee membership. Minutes or verbal reports will keep Town Council informed on a regular basis. A final report will document findings and recommendations and will be presented at a Town Council meeting or workshop.

Ad hoc committees are subject to the public records laws, sunshine laws, quorum, and statutory ethical requirements. It is the Town's responsibility to ensure that each committee member is educated on these issues.

Outline of Committee Orientation Material:

- Meeting Requirements
 - Notice
 - Location Requirements, such as ADA compliance
 - Agendas
 - Quorum
- Sunshine Requirements
- Public Records Requirements
- Statutory Ethical Requirements

6. Meeting Preparation and Planning

Meeting Schedule:

Regular meetings of Town Council may be found on the website calendar. Management and Planning meetings (M&Ps) are work sessions and are scheduled to discuss financial and other issues before the Town. The need for workshops special meetings, continuances, or rescheduled meetings will be determined by consensus of the Town Council members or the Town Manager and Town Attorney.

Source of Items:

Items for Town Council agendas are generated by requests and/or legislation (ordinances or resolutions) from members of Town Council prepared by the Town Attorney, requests and actions from the Local Planning Agency, continuations from previous council meetings, in addition to anything Council members, the Town Manager or Town Attorney may wish to have included. Some of these inquiries are routine and can be handled by staff because Town Council policy and procedures have been previously approved which apply.

When an item arises that requires Town Council action either to make a decision or to direct staff or the Town Attorney how to proceed it will appear on the agenda identified as a Council member's request or as an item under the Town Manager's section of the agenda which is the "catch all" for

miscellaneous items, or Town Attorney's section, as appropriate. For an item to appear on an agenda, at least two Council members must agree and shall direct the Town Manager to do so, provided time schedules allow. (Note the agenda preparation timetable below).

Whenever possible, any material written and distributed by Council members as part of the agenda should be included in Council members' packets – allowing ample time for review. This preserves the integrity of the seated Council, conforms to the Florida Public Records law, and lessens the opportunity for misunderstandings and miscommunication. No significant Town staff or Town Attorney time will be spent on an agenda item requested by an individual Council member without advance approval by a majority of the Council. Written requests to be placed on a Council agenda from the public should be submitted directly to the Town Manager. Agenda Management for future meetings is reviewed at each Management & Planning Session.

Timetable and Preparation Process:

A draft agenda will be sent to Town Council for review and comment within 24 hours. The Town Council chair may modify the order of the agenda subject to the approval of the Town Council. Absent an emergency or pressing need, by close of business on the Wednesday prior to the next regular Council meeting, a packet including the finalized agenda and supporting material will be placed in the Council members' mailboxes and placed on the Town website.

The Council members' packets include complete documentation for agenda items (actions required, implications, backup information, memos, ordinances, resolutions, etc.). A sincere effort is made to see that Council packets are complete; if something is not available, a written explanation will be provided. Generally, items requiring documentation (recommendations, memos, ordinances, resolutions, etc.) will not be included on an agenda until the documentation is complete.

The agenda is posted at Town Hall and on the Town website. Meetings may be announced in local newspapers. Hearing notices will be advertised as required by law and may be provided as a service to local newspapers. Occasionally an item comes up late and may be placed on an amended agenda, or as an "add on" (added too late to be included on the published agenda). Such additions should be an exception and require a majority vote prior to the approval of the final agenda at the beginning of the meeting.

Continued Hearings and Legislative Issues:

It is the goal of the Town Council to complete a hearing during the scheduled meeting. If additional time is required and the hearing must be continued to a later date, any Town Council member who missed the initial hearing should attempt to review the DVD prior to participating in the continued hearing or legislative discussion and resolution. If the applicant submits new information or modification(s) to previously submitted information at the hearing, or immediately prior to the hearing, the Town Council shall consult with the Town Manager and the Town Attorney to determine if a continuance of the hearing is appropriate and proceed accordingly. Nothing contained in this section shall be construed to limit the Director's discretion to defer or continue the public hearing as set forth in LDC Section 34-213(3).

Attendance Policy:

The Charter states “A member of Council may forfeit the office, if the member: (d) Misses three consecutive regularly scheduled council meetings without an excused absence.” This statement recognizes that because of the significant meeting preparation required by staff, applicants, and other supporting personnel, it is important that a quorum of the Town Council members be present for all noticed meetings. The Town Manager should be notified of a planned Council member’s absence as soon as known. The Town Manager or designee will notify the Town Attorney and Mayor. It is important that the Town Council know that it will have a quorum of its members prior to notification of a meeting/hearing. Work session attendance is equally important since that is often when information is shared, and issues resolved before putting the item on an agenda of a regular meeting for a vote.

Participation by Videoconference:

A Council member may participate in a Town Council meeting via videoconference if one of the following conditions is met:

1. Permission is granted from the Council for an “extraordinary circumstance”, including but not limited to a medical situation, unexpected travel delay, transportation issue, etc. or.
2. An emergency order or executive order authorizes the use of communications media technology, as provided in s. 120.54(5)(b)2, F.S.

A quorum of Town Council members must be met without the missing Council member(s) in attendance unless this requirement is suspended by emergency order or executive order.

7. Meeting Procedures

Generally, the Order of Agenda Items:

1. Call to Order
2. Invocation
3. Pledge of Allegiance
4. Approval of Final Agenda
5. Public Comment (Any issue can be discussed, but if an agenda item is addressed, the speaker cannot comment at the time such agenda item comes up. For testimony to be considered for a public hearing, it must be made during the hearing).
6. Local Achievements and Recognitions
7. Advisory Committee Items / Reports / Appointments
8. Approval of Minutes
9. Consent Agenda
10. ~~Proclamations, Recognitions and Awards~~

~~Public Comment (Any issue can be discussed, but if an agenda item is addressed, the speaker cannot comment at the time such agenda item comes up. For testimony to be considered for a public hearing, it must be made during the hearing).~~

~~11. Approval of Minutes~~

~~12. Consent Agenda~~

~~13. Advisory Committee Items and Reports~~

10. Public Hearings of proposed ordinances (At conclusion of hearing, requires motion and roll call vote)

11. Administrative Agenda

- a. Introduction of proposed ordinances (Requires a motion and a majority vote for scheduling the hearing).
- b. Resolutions (Requires a motion and vote for passage)
- c. Unfinished business (Items from previous agendas scheduled by Town Manager – should be listed separately on the agenda)

~~14. New business (Scheduled by the Town Manager, should be listed separately)~~

12. Final Public Comment (not limited to agenda items)

13. Town Manager's Items and Reports

14. Town Attorney's Items and Reports

15. Council Members Items and Reports

~~16. Agenda Management (generally addressed during Council work sessions)~~

- ~~a. Topics for upcoming regularly scheduled meetings~~
- ~~b. Planning and scheduling of Management and Planning, and other work sessions~~

~~17. Review New Actions from Meeting~~

18. Adjournment (Requires a motion and vote – no second is required. It is a privileged motion allowing no discussion before vote)

Conduct of Council Meetings:

- The Mayor will conduct Council meetings, and in the Mayor's absence the Vice Mayor will do so.
- The Town Clerk shall deliver a nondenominational invocation.
- Robert's Rules of Order shall be the reference for parliamentary procedure governing the conduct of Town Council meetings when not in conflict with the Town Charter, Town Ordinances, Florida Statutes or these Policies and Procedures. It is not intended that Council meetings be unnecessarily formalistic, but rather that parliamentary procedure will be invoked only when necessary to facilitate the business of the meeting.
- All participants and audiences at Town Council meetings are expected to exhibit common courtesy and proper decorum. No personal attacks will be tolerated. The Chair may

request that someone who is being disruptive be removed from chambers after providing the individual with notice that the continuation of the disruption will result in removal.

- Individuals wishing to speak during the Public Comment times are requested to (1) fill out an index card (available in the meeting room) indicating their name and the topic they will address and (2) give that card to the Clerk prior to the start of the meeting. When recognized by the Chair, the speakers will advance to the podium and state their name for the public record.
- Public Comments will generally be limited to three minutes per speaker. The Chair may modify the three-minute limit with approval by vote of the Council. The Public Comment times are intended as opportunities for interested parties to present their viewpoints to the Council members. They are not intended as question-and-answer sessions or as dialog with the Council. Response to questions and/or clarifications requested during public comment may, with the approval of Town Council, be answered immediately if there is a straight-forward, short answer, directed to the appropriate person for response at a later time or placed on an agenda for a future Council meeting.
- After a proper motion and second, discussion by the Council members shall be limited to agenda items with expression of ideas, facts, and conclusions. No member will speak twice on the item until all others who want to speak have spoken.
- The discussion by Council members is intended as an opportunity for Council members to share their viewpoints with each other. Since this opportunity does not exist outside of Council meetings under the Florida Sunshine Law, this is the primary purpose of this time and it generally should not be used to obtain information from the Town Manager or Town Attorney, which could be obtained outside of the Council meeting. While there is no time limit or censorship on comments, Council members should take into consideration the total time available in the meeting for the published agenda and the time allocated for the specific item in the agenda.

Any Council member may present resolutions related to celebrations or in support of causes for the benefit of the Town, which must be previously reviewed for form and sufficiency by the Town Attorney and subject to a vote by the Town Council.

Rules of Civility:

The Town of Fort Myers Beach Town Council recognizes that public discourse is essential to the democratic system of government. It also embraces civility in public deliberations. Rules for Council discussion and public participation while conducting meetings and workshops are as follows:

1. Speakers are permitted to deliver his or her comments without interruption, absent inappropriate language, conduct or personal attacks.
2. Speakers and debates should focus on issues, not on persons or personalities.
3. Persons are encouraged to participate in the governmental process.
4. To allow time to hear all points of view, speakers are allotted 3 minutes.

5. Sidebar discussions while others are speaking are discouraged in Council Chambers. These discussions are to be removed from the chambers so as not to be disruptive to those conducting and following Council business.
6. Only the speaker recognized by the Chairperson has the floor. Speakers should identify themselves for the record. Speakers should utilize the microphone so that their comments can be recorded.
7. We seek to understand one another's points of view.
8. Anger, rudeness, ridicule, impatience, and lack of respect for others are not acceptable behavior. Demonstrations in support or opposition to a speaker or idea such as clapping, cheering, booing, or hissing or intimidating body language are not permitted in Council Chambers or workshop facilities.
9. We should all take initiative to make things better. Our goal is to foster an environment which encourages a fair discussion and exchange of ideas without fear of personal attacks.
10. No use of profanity will be tolerated.
11. Any email or other digital or internet platform used to communicate with the Town Council, individual members of the Town Council, Town Manager, Town Attorney, or Town staff that contain personal attacks, offensive language or slurs; that are belligerent, sarcastic, accusatory or unsigned shall be deemed by the Town Council as non-compliant with these "Rules of Civility." Such communications place absolutely no obligation upon Town Council Members, the Town Manager, the Town Attorney or Town staff to respond.

Minutes:

Notes will be taken of all meetings and work sessions. The notes are then transcribed into summary minutes that become the written record of subjects discussed, conclusions reached, actions taken, and assignments given. The minutes include the names of all those participating in the meeting including Council members, staff, the Town Attorney, applicants, their attorneys and witnesses, and people who offer public comments. The minutes also serve as a record of motions and votes on all Council decisions.

Once completed, the minutes are provided to Council members for approval at their next meeting. The approval of the minutes is intended for Council members to accurately document the proceedings of the Town Council. Before moving approval, the minutes should be amended, if necessary, to portray more accurately what occurred at a Council meeting. This time is not intended for comment or discussion on what should have or should not have been done, but rather to document what was done. Once approved by Council, the original is filed in a secure file and a copy is placed on the Town's web page.

Video and/or audio recordings when made are available at the request of the public or anyone who wishes to listen to the meeting or a portion of the meeting. The original video and audio recordings are stored in a secured area for safekeeping. Any request for production of a verbatim transcript, in whole or in part, of any meeting, workshop or other function of the Town Council or any Town committee thereof by a member of the public shall be paid for by the member of the public. Any

need for a verbatim transcript requested by Town staff shall require prior consent of payment by the Town Council, except when such requests are required by a court of competent jurisdiction or quasi-judicial officer in the proper exercise of its powers. Video and audio recordings are only the legal record in the absence of approved minutes.

Council Members Items and Reports:

Items and Reports time is set aside for Council Members to report on activities of interest to fellow members, staff, and the public. Council Members are encouraged to send as much information as possible prior to the meeting. Unless an issue is time sensitive, the item will be placed on a future agenda if a vote is required.

Agenda Management:

The Town Manager is responsible for compiling and distributing a schedule of future meetings and work sessions.

Action List:

The Town Manager is responsible for compiling and distributing a list of action items that includes a short status and expected date of completion.

How Voting Order is Established for Roll Call Votes:

The voting order for calling the roll-on Town Council votes shall be conducted at the direction of the Town Clerk. Votes on ordinances require a roll call vote; any Council member may call for a roll call vote on any motion before the Council.

Voting Conflicts:

Florida Statute has very specific rules regarding voting conflicts. If a Town Council member has a voting conflict, he/she must publicly disclose that conflict at the latest at the beginning of the discussion of the subject at the meeting. A Town Council member is permitted to participate in the discussion but cannot vote on the subject. The specific rules are set out in s. 112.3143(3)(a), F.S. as amended, quoted below:

“(3)(a) No county, municipal, or other local public officer shall vote in an official capacity upon any measure which would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained, other than an agency as defined in s. 112.312(2); or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer. Such public officer shall, prior to the vote being taken, publicly state to the assembly the nature of the officer’s interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the

memorandum in the minutes.”

NOTE: s. 112.3143(b) F.S. defines “relative” as follows: “any father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, or daughter-in-law. Also, Section 112.3143(4) prohibits participation by an appointed (as opposed to an elected) official in the event of a voting conflict of interest.

Guidelines for Legislative Hearing Procedures:

1. The Chair opens the hearing.
2. Staff presents Affidavit of Publication or copy of the legal advertisement from the newspaper of record when applicable and a copy of the business impact estimate when applicable, which shall be maintained by Town staff with the hearing’s resulting ordinance or resolution as required.
3. The Chair or Town Attorney reads the ordinance or resolution title.
4. Staff and/or the Town Attorney present(s) a brief overview of the ordinance or resolution.
5. Public input is taken.
6. Public input is closed
7. Town Council members ask questions, if any, of staff/Town Attorney
8. Town Council members discuss ordinance or resolution, including changes, deletions, etc.
9. A motion is made and seconded to either approve the ordinance or resolution as is, or with modifications, or to take some other action.
10. The motion is discussed and voted upon, with roll call voting as appropriate. Upon consideration and passage of all appropriate motions, the Chair declares the hearing on the ordinance or resolution to be concluded, continued, tabled, or other action in conformity with the motion.
11. If an ordinance is approved, the Town Council shall schedule a second reading of the ordinance for adoption.

Notes: There is no ex parte disclosure for legislative hearings.
Members of the public are not sworn in.

The above is intended as a guide and the Council may conduct the legislative hearing utilizing another procedure, so long as due process requirements are met.

Guidelines for Quasi-Judicial Land Use Hearing:

1. The Chair opens the hearing.
2. Staff present Affidavit of Publication or copy of the legal advertisement from the newspaper of record when applicable, which shall be kept by Town staff with the hearing’s resulting resolution or Order.

3. The Chair asks if any Council member has a conflict of interest or has had an ex parte communication regarding this matter. This includes any site visit, receipt of expert opinion, conducting of investigations, discussions with any person, or any direct or indirect communication in any form with any person outside a public hearing and not on the record. See section 34-52 of the Land Development Code.
4. All witnesses are sworn in. This includes Town staff, applicant and applicant's representatives, and anyone who wishes to make public sworn testimony on this case. All persons are requested to state their name for the record when they address the Council and if presenting testimony as an expert, shall state their qualifications and area of expertise. Town Council shall vote to accept or reject the testimony as expert testimony. No statement of qualifications or additional vote is needed if the individual has been previously accepted as an expert in a particular area and this is stated in the record.
5. The applicant presents its case, including any testimony by its experts or others in support of the applicant's request. Town Council may ask clarification questions of the applicant and others giving testimony in support of the applicant's request. *
6. Town staff presents its report and recommendation. Town Council may ask for clarification or questions of staff. *
7. Local Planning Agency representative, if available, presents LPA recommendation. Town Council may ask clarification questions of the LPA representative.
8. Public sworn testimony is opened. At its conclusion, the Chair closes the public sworn testimony portion of the hearing.
9. Applicant presents rebuttal, if any. Town Council may ask detailed informational questions of applicant. **
10. Staff presents rebuttal, if any. Town Council may ask detailed informational questions of staff. **
11. The testimony portion of the hearing is closed, and Council discussion starts.
12. Council ~~next~~ votes on a resolution or Order, or takes other action if approval by ordinance is required.
13. Thereafter the hearing is closed or continued, or other action is taken in conformity with the successful motion, and the time of closure is verbally noted for the record.

*Council has determined that these Council questions are to clarify the applicant's and staff's presentations of information and are intended to be short Qs and As.

**Council has determined that these Council questions are to discuss detailed, substantive matters involving the application.

NOTE: The above is intended as a guide and the Council may conduct the quasi-judicial hearing utilizing another procedure, so long as due process requirements are met.

If new evidence is submitted prior to or at a Town Council hearing for a quasi-judicial matter after the final LPA hearing, Town Council can choose to:

1. Send the matter back to the LPA for review and recommendation.
2. To continue the hearing to provide sufficient time for the staff and Town Attorney to make recommendations; or
3. To complete the hearing if agreeable to the staff and Town Attorney.

8. Reimbursement Procedures

Travel Expenses:

It is the desire of the Town of Fort Myers Beach that Town Council members be reimbursed for certain expenses incurred while traveling on Town business. Appropriate allowances, forms and procedures are documented in the Town Personnel Manual.

Business Expenses:

From time to time, it may be necessary for members of Town Council to entertain various Federal, State and County officials while transacting official Town business. Such business expenses would normally include lunches and/or dinners. A Direct Expense Voucher may be submitted for reimbursement and must be signed by the person requesting reimbursement, and the Town Manager. Invoices must be attached as supporting documentary evidence.

Educational Reimbursement:

The Educational Reimbursement Program is used to encourage Town Council members to improve their knowledge and skills needed for the Town's effectiveness. Reimbursement conditions, forms and procedures are documented in the Town Personnel Manual.

9. Council Communications Policy and Processing Procedures

Council Communications Policy:

Any communication by individual Council members to the media, other governmental agencies, or in public forums should, as clearly as possible, distinguish between personal opinions and actions or direction taken by Town Council. This policy in no way means to censor viewpoints or restrict individual rights but is solely suggested to preserve the integrity of the Council, staff, and the Town.

Mail Processing Procedures:

Mail for the Town should be addressed to the current address. All mail is opened stamped and distributed (it is all public record). Council mail is given to the Administrative Assistant to log and process. Any Council mail that needs a prompt or detailed answer is pulled, copied, and a draft response is prepared for review, usually by the Mayor. The original is distributed, along with other mail, with a note stating a draft response is being prepared. When the response is finalized, it is copied and distributed to all Council members for reading at their leisure.

Communications with Potential Applicants for Zoning and Communications with Vendors or Service Providers:

Section 34-52 of the LDC specifies regulations regarding communications with public officials in non-quasi-judicial matters and ex parte communications with public officials in quasi-judicial matters.

10. Non-Discrimination and Harassment

Policies:

These policies are documented in the Town Personnel Manual

12. Interview/Selection Process for Legal Services

The Town Council shall competitively procure Legal Services (Town Attorney) candidates in accordance with the Town's adopted procurement policies and procedures. The following applicant form, and ranking sheet shall be used in the selection of Legal Services candidates. The Town Council may direct the Town Manager or designee to review the proposals submitted by the applicants for Legal Services and provide the Town Council with a list of five (5) candidates, with two (alternates) for interviews as provided for herein. If there are less than five (5) qualified candidates (i.e., meet the criteria in the RFP/RFQ) all candidates shall be interviewed.

INTERVIEW PROCESS FOR LEGAL SERVICES

Individual 30-minute blocks for private interviews by each Councilor with each applicant.

RFP#: _____. Interview date: _____

	9:00-9:30 (Public Gathering)	9:30 – 10:00	10:00- 10:30	10:30- 11:00	11:00- 11:30	11:30- 12:00	12:00- 1:00
Councilor 1	Coffee/muffins	Applicant 1	Applicant 2	Applicant 3	Applicant 4	Applicant 5	Lunch
Councilor 2	Coffee/muffins	Applicant 2	Applicant 3	Applicant 4	Applicant 5	Applicant 1	Lunch
Councilor 3		Applicant 3	Applicant 4	Applicant 5	Applicant 1	Applicant 2	Lunch
Councilor 4		Applicant 4	Applicant 5	Applicant 1	Applicant 2	Applicant 3	Lunch
Councilor 5		Applicant 5	Applicant 1	Applicant 2	Applicant 3	Applicant 4	Lunch

Applicant 1: _____
Applicant 2: _____
Applicant 3: _____
Applicant 4: _____
Applicant 5: _____

NOTE: Chart for town councilor and applicant names shall be in alphabetical order for impartiality.

AFTERNOON SCHEDULE: Each applicant has 15-minute question and answer session in town hall chambers with all five Town Councilors present (5-minute transition between applicants in schedule). Applicants will address Council in alphabetical order.

TIME	Applicant Name
1:00 – 1:15	Applicant 1
1:20 – 1:35	Applicant 2
1:40 – 1:55	Applicant 3
2:00 – 2:15	Applicant 4
2:20 – 2:35	Applicant 5
2:40 – 3:00	Break
3:00	Town Councilors have open discussion. Each Councilmember uses RANKING SHEET to list order of selection, with 1 being the top choice. The Town Clerk will tally the votes and announce each applicant's combined ranking score with the lowest score being the candidate selected. In case of a tie, Town Council will have a head-to-head discussion of only the tied candidates and use another RANKING SHEET to list their order for only the tied candidates. Ranking scores are tallied and announced by Town Clerk. Contract negotiator from Town Council is selected. Transition period of legal services, if necessary, is discussed including assignment of representation for ongoing municipal litigation cases.
FIRST AVAILABLE COUNCIL MEETING AFTER INTERVIEW PROCESS	When contract negotiations are complete, contract is presented to Town Council for approval. Transition period, if necessary, is approved.
IF SELECTED APPLICANT DOES NOT COME TO AGREEMENT WITH TOWN ON CONTRACT	Town Council shall vote to negotiate with second ranked candidate or resolicit for applications and repeat interview process if necessary. Town Council shall vote at the first Town Council meeting following opening of applications to rank the applicants using the RANKING SHEET.

TOWN COUNCIL RANKING SHEET FOR LEGAL SERVICES

RFP# _____

DATE: _____

Councilor Name:

Councilor Signature:

Ranking (#1 is top choice)

1. _____
2. _____
3. _____
4. _____
5. _____

13. Interview/Selection Process for Town Manager

The Town Council shall competitively procure Town Manager candidates in accordance with the Town's adopted procurement policies and procedures. The following applicant form, and ranking sheet shall be used in the selection of Manager candidates. The Town Council may direct the acting then current Town Manager or designee to review the proposals submitted by the applicants for Town Manger Services and provide the Town Council with a list of five (5) candidates, with two (alternates) for interviews as provided for herein. If there are less than five (5) qualified candidates (i.e., meet the criteria in the RFP/RFQ) all candidates shall be interviewed.

INTERVIEW PROCESS FOR TOWN MANAGER

Councilors rank top 5 candidates from applications. Top 5 overall are invited and scheduled for individual 30-minute blocks for private interviews by each Councilor with each applicant.

RFP# _____ Interview date: _____

	9:00-9:30 Public Gathering	9:30 – 10:00	10:00- 10:30	10:30- 11:00	11:00- 11:30	11:30- 12:00	12:00- 1:00
Councilor 1	Coffee/muffins	Applicant 1	Applicant 2	Applicant 3	Applicant 4	Applicant 5	Lunch
Councilor 2	Coffee/muffins	Applicant 2	Applicant 3	Applicant 4	Applicant 5	Applicant 1	Lunch
Councilor 3	Coffee/muffins	Applicant 3	Applicant 4	Applicant 5	Applicant 1	Applicant 2	Lunch
Councilor 4	Coffee/muffins	Applicant 4	Applicant 5	Applicant 1	Applicant 2	Applicant 3	Lunch
Councilor 5	Coffee/muffins	Applicant 5	Applicant 1	Applicant 2	Applicant 3	Applicant 4	Lunch

Applicant

1: _____

Applicant

2: _____

Applicant

3: _____

Applicant

4: _____

Applicant

5: _____

NOTE: Chart for town councilor and applicant names shall be in alphabetical order for impartiality.

AFTERNOON SCHEDULE: Each applicant has 15-minute question and answer session in town hall chambers with all five Town Councilors present (5-minute transition between applicants in schedule). Applicants will address Council in alphabetical order.

TIME	Applicant Name
1:00 – 1:15	Applicant 1
1:20 – 1:35	Applicant 2
1:40 – 1:55	Applicant 3
2:00 – 2:15	Applicant 4
2:20 – 2:35	Applicant 5
2:40 – 3:00	Break
3:00	Town Councilors have open discussion. Each Councilmember uses RANKING SHEET to list order of selection, with 1 being the top choice. The Town Clerk will tally the votes and announce each applicant's combined ranking score with the lowest score being the candidate selected. In case of a tie, Town Council will have a head-to-head discussion of only the tied candidates and use another RANKING SHEET to list their order for only the tied candidates. Ranking scores are tallied and announced by Town Clerk. Contract negotiator from Town Council is selected. Transition period, if necessary, is discussed.
FIRST AVAILABLE COUNCIL MEETING AFTER INTERVIEW PROCESS	When contract negotiations are complete, contract is presented to Town Council for approval. Transition period, if necessary, is approved.
IF SELECTED APPLICANT DOES NOT COME TO AGREEMENT WITH TOWN ON CONTRACT	Town Council shall vote to negotiate with second ranked candidate or resolicit for applications and repeat interview process if necessary. Town Council shall vote at the first Town Council meeting following opening of applications to rank the applicants using the RANKING SHEET.

TOWN COUNCIL RANKING SHEET FOR TOWN MANAGER

RFP# _____

DATE: _____

Councilor Name: _____

Councilor Signature: _____

Ranking (#1 is top choice)

1. _____

2. _____

3. _____

4. _____

5. _____

1. **Requested Motion:**

Meeting Date: December 18, 2023

Motion to amend the Moss Marina Farmer's Market special event permit to add a vendor that would allow tasting and selling alcohol from a rum distillery.

Why the action is necessary:

ORD 20-17

What the action accomplishes:

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

4. **Submitter of Information:**

5. **Background:**

565.17 Beverage tastings by distributors, craft distilleries, and vendors.—

(1) A licensed distributor of spirituous beverages, a craft distillery as defined in s. 565.03, or any vendor is authorized to conduct spirituous beverage tastings upon any licensed premises authorized to sell spirituous beverages by package or for consumption on premises without being in violation of s. 561.42, provided that the conduct of the spirituous beverage tasting shall be limited to and directed toward the general public of the age of legal consumption.

(2) Craft distilleries may conduct tastings and sales of distilled spirits produced by the craft distilleries at Florida fairs, trade shows, farmers markets, expositions, and festivals. The division shall issue permits to craft distilleries for such tastings and sales. A craft distillery must pay all entry fees and must have a distillery representative present during the event. The permit is limited to the duration and physical location of the event.

Attachments:

1. 235250_Moss Marina Market Completed App
2. 235250 Signed Permit_Moss Marina Market

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

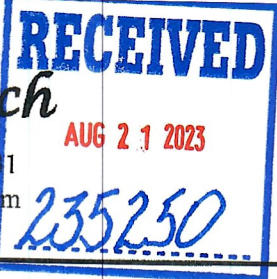
Patty Prevost, Code Supervisor/STR Coordinator
Frankie Kropacek, Operations & Compliance Director
Nancy Stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 12/12/2023
Approved - 12/12/2023
Approved - 12/12/2023
Approved - 12/12/2023
Final Approval - 12/12/2023



Town of Fort Myers Beach

2525 Estero Boulevard, Fort Myers Beach, Florida 33911
Tel: (239) 765-0202 Email: Specialevents@fmbgov.com



Name of event MOSS Marina Market
Attach separate sheet of paper with detailed description of event
9AM-1PM Wed NOV. 1, 8, 15, 22, 29 DEC. 6, 13, 20, 27 JAN. 3, 10, 17, 24, 31
Date(s) and times of event FEB. 7, 14, 21, 28 MAR. 6, 13, 20, 27 APR. 3, 10, 17, 24 26
Address of event 450 HARBOR CT. Ft. Myers Beach
Expected # of participants/attendees 200
Sponsoring Organization Shop Local Productions
Organization address 19552 The Place Blvd Estero 33928
Contact Person/Phone# Linda Miller 239-289-3786
E-mail ShopLocalPro@gmail.com
Amplified Music Y ☐ N ☒ 500 Ft Notifications _____ Copy of Letter _____
Renting Town Property Y ☐ N ☒ Renting Parking Spaces Y ☐ N ☒
How many Spaces? 40 How many hours 4
Extension of Premises? Y ☐ N ☒ ABT Form _____ How many days? 26 (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 Linda Miller
Printed Name Linda Miller 8/18/23

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.

November 2023-April 2024 Vendor Inquiries can be directed to the vendor tab at 41markets.com

Objectives:

operation hours 9am - 1pm
 setup 7am - 9am
 close 1pm - 2pm

- To offer fresh produce, arts, crafts, boutique foods and fresh fish off the boats, not currently available on the island of FMB.
- To attract residents and visitors to FMB through weekly advertising, while boosting the Bayside businesses and traffic.
- To support 30-40 small businessowners whose passion is to be self-sufficient and creative in their work
- To help vendors recover income lost in the last 4 years due to Red Tide, Covid Shut Down and Hurricane Ian.

History:

- Since 2015, Shop Local Productions has operated the farmers markets on Fort Myers Beach which all have been voted voluntarily "Neighborhood Favorites" by locals on Nextdoor.com
- Many businesses have noticed marked improvements in sales on the days that the markets are open.
- Several businesses participated in the markets as vendors for many years to boost their sales and advertising.
- Several residents participate in the market every year, one of which became a retail tenant at Santini Plaza.
- Several tenants from Santini Plaza intend to participate in all the FMB markets scheduled this year.
- FMB markets attract 30K Google Views per month per location pulling more tourist dollars to FMB as a whole.

Other Factoids from: <https://www.uschamber.com/small-business/shopping-small-benefits-more-than-just-local-businesses>

For every dollar spent at a small business, American Express estimates an average of \$0.67 stays in that business's local community. This has the potential to boost sales during the 2021 holiday season, with many small businesses still working to make up the revenue they've lost throughout the pandemic.

"The success of local businesses encourages more entrepreneurs to open shops, offer great jobs, and contribute in real, meaningful ways to the local area," Kidd at Hideaway Café said. "It may be hard to see sometimes, but your local dollar comes back to you in a variety of ways every day from sidewalk improvements and more regular trash pickups, to adding jobs for more firefighters and hiring more EMTs."

Data from the MetLife and U.S. Chamber of Commerce Q4 Small Business Index, to be released in December, indicates that a large majority of small business owners (70%) say the holiday season is important to their overall yearly profit, with nearly four in ten (37%) saying it's very important.

"Each dollar spent with intention at a small business makes a huge difference to the community, and for us personally," said Kidd. "We're able to take care of our family, stay current on our financial obligations to the small businesses we do business with, support our employee's careers, and work to improve our local community in meaningful ways through profit sharing and in-kind donations."

Last Word: Small Businesses reduce unemployment and therefore reduce the burden on taxpayers. Small businesses produce hardworking role models for future generations. It increases the sense of community: shopping from person-to-person, face-to-face, rather than the cold, impersonal internet or Big Box self-checkout shopping where there is not a single human interaction. If you haven't been to an FMB Market, we encourage you to do so to feel the impact of human interaction, compassion, community and commerce all brought together in the great outdoors. It's something special that shouldn't be missed.

Applicant to Complete:

Company managing trash removal: Vendors remove trash

No. of dumpsters: 0 Type of dumpsters: NA

Who is responsible for clean-up and payment: NA

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

To be completed by Town Hall employees:

FMB Public Works:

Public Works remarks: See attached

Approval: _____ Date: _____

FMB Environment Science: Tel (239)765-0202

FMB Environmental Sciences remarks: see attached

Approval: _____ Date: _____



Date: 09/07/2023

Permit #: 235250

Permit Date: 08/21/2023

Review Date: 08/21/2023

Permit Type:

Review Type: SEP-Public Works Review

Target Date: 08/22/2023

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#: 244623W3000260020

FREELAND FL HOLDINGS LLC

450 HARBOR CT

Zoning: CMLot: 0020Block: 00026

FREELAND FL HOLDINGS LLC
5333 HICKORY HOLLOW PKWY
ANTIOCH, TN 37013



Date: 08/25/2023

Permit #: 235250

Permit Date: 08/21/2023

Review Date: 08/21/2023

Permit Type:

Review Type: SEP-Environmental

Target Date: 08/22/2023

Scheduled Time: 00:00

Completed Date: 08/25/2023

Description:

Review Status: REVIEWED W/CONDITIONS

Assigned To: Chadd Chustz

Time In: 00:00

Time Out: 00:00

Hours: 0.0

Notes

SEA TURTLE NESTING SEASON MAY 1 through OCTOBER 31

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.

08/25/2023

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#: 244623W3000260020

FREELAND FL HOLDINGS LLC

450 HARBOR CT

Zoning: CMLot: 0020Block: 00026

FREELAND FL HOLDINGS LLC

5333 HICKORY HOLLOW PKWY

ANTIOCH, TN 37013

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 *Norton beach*

Turtle Time remarks: _____

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

FORT MYERS BEACH FIRE DEPT

100 Voorhis Street • Fort Myers Beach, Florida 33931

Tel (239) 590-4210

Fire Guards: (how many?)

See attached

Fee:

Flammable Vegetation:

First Aid Equipment:

Fire Extinguishing Equipment:

Special Arrangements:

Print Name

Approval Signature

Date

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

LEE COUNTY SHERIFF'S DEPT

Tel (239)477-1830 Fax (239)432-0268
15650 Pine Ridge Road, Fort Myers, FL 33908

Parking: Participants will use paid & public parking to attend. The right-of-way must not be impeded at any time.

Deputies (how many?) None required for this event.

Traffic Control: Should it be found that the vehicle traffic is starting to back up as a result of this event, an extra duty detail deputy may need to be hired at vendors expense.

Fees: Unless an extra duty detail ends up being needed, no fees will be incurred.

Special Arrangements: Vendor will be responsible for setting boundaries in the parking lot to designate all pedestrian areas to be free of vehicle traffic. Access for emergency responders must remain unblocked.

Paul Cummins

Print Name



Approval Signature

8 21 23

Date

January 30, 2023

FORT MYERS BEACH FIRE DEPT

100 Voorhis Street · Fort Myers Beach, Florida 33931

Tel (239) 590-4210

Fire Guards: (how many?) N/AFee: InvoicedFlammable Vegetation: Not PermittedFirst Aid Equipment: N/AFire Extinguishing Equipment: Fire Extinguishers are required on site.Special Arrangements: None. Maintain fire lanes, and access as needed.Jennifer Campbell

Print Name

Jennifer Campbell
Approval Signature9/6/23

Date

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

LEE COUNTY SHERIFF'S DEPT Tel (239)477-1830 Fax (239)432-0268
15650 Pine Ridge Road, Fort Myers, FL 33908

Parking: _____

Deputies (how many?) _____

Traffic Control: _____

Fees: _____

Special Arrangements: _____

Print Name

Approval Signature

Date



Fort Myers Beach Fire Control District

Life Safety Branch

100 Voorhis Street • Fort Myers Beach, Florida 33931
Phone (239) 590-4210 • Email: prevention@FMBFirefl.gov

Special Events Application and Guidebook

Event Type:

☒ Small Outdoor/Indoor Event	☐ Large Outdoor/Indoor Event	☐ Firework Display
Date of Application: 8/14/23		Date of Event: Wednesdays Nov. 4, 2023 - APR. 27, 2024
Location: MOSS MARINA 450 Harbor Court Ft Myers Beach		
Event Start Date/Time: 11/4/23 / 9AM		Event End Date/Time: APR 27, 2024 / 1PM
Setup Date: see above	Setup Time: see above	Inspection Time: 9AM
Event Sponsor: Shop Local Productions		
Sponsor Contact: Linda Miller	Sponsor Phone #: (239) 289-3786	Sponsor Email: ShopLocalPro@gmail.com
Anticipated Number of Attendees: 200	Anticipated Number of Event Workers: 1-2	
Will there be carnival or mechanical rides: NO	Number of Stages: NONE	
Total Number of Vendors: 30-40	Total Number of Hot Food Vendors: ESTIMATED 1-2 (unknown til applicants apply)	
Number of Tents larger than 20 x 20: NONE	Number of 10 x 10 Tents: 30-40	

Every vendor with a booth will receive a fire inspection and is responsible for paying an inspection fee. Please list the contact information for the responsible party below.

Please see F.S. 633.202.17 Vendors unknown til they apply and are vetted.

Please Note: If the event sponsor elects not to pay the vendor's inspection fee, a list of vendors, with full contact information, must be provided to the Fort Myers Beach Fire District. This information shall include contact name, number, and e-mail. All inspection fees will be due at time of service, and must be paid prior to release of any approvals. Event sponsor will pay the \$123 inspection fee therefore vendors need not be listed.

Event applications submitted less than thirty (30) days prior to the event will be subject to additional fees. An expedited review may be requested and will be based upon availability, additional fees will apply.

Applications shall include the following:

1. A legible site plan to include proposed layout of the event; fire hydrant locations; fire/emergency access; and distances to any structures.
2. A life safety evaluation may be required based on the size of the event in accordance with the fire code.
3. All vendors should review FMBFD guidelines, on our website at www.FMBFirefl.gov
4. Failure to comply with requirements of the FMBFD may result in additional fees and/or shutdown of the vendor(s).

Linda Miller	Linda Miller
Submitting Party Name (Print)	Submitting Party Name (Sign)
Date: 8/14/23	

Moss Marina
450 Harbor Ct.
Fort Myers Beach FL 33931

To: Patty Prevost, Permitting City of Fort Myers Beach

Dear Patty,

Please consider this consent letter for the Moss Marina Market, sponsored and managed by Shop Local Productions, to use the parking lot and bathrooms from November 2023-April 2024 Wednesday with operating hours of 9am-1pm.

Best regards,

GB Miller, Controller

Gloria Miller

BAY

yellow = tents

RUDE SHRIMP Co.

1	2	3	4	5	6	7	8	9	10	11

Yellow rectangular area

Yellow grid area

Yellow grid area

MOSS MARINA OFFICES



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

06/07/2023

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 Hiscox Inc. 5 Concourse Parkway Suite 2150 Atlanta GA, 30328	CONTACT NAME: PHONE (A/C, No, Ext): (888) 202-3007 E-MAIL ADDRESS: contact@hiscox.com FAX (A/C, No):
INSURED Watergemz, LLC DBA Shop Local Productions 19552 The Place Blvd Estero, FL 33928	INSURER(S) AFFORDING COVERAGE INSURER A: Hiscox Insurance Company Inc INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:
	NAIC # 10200

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 GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PROJECT ☐ LOC OTHER:	Y		P100.409.208.4	07/15/2023	07/15/2024	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ S/T Gen. Agg. \$
	☐ AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☐ HIRED AUTOS ☐ SCHEDULED AUTOS ☐ NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	☐ UMBRELLA LIAB ☐ EXCESS LIAB DED ☐ RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	☐ WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? ☐ Y ☒ N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						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 HOLDERTown of Fort Myers Beach
2525 Estero Blvd.
Fort Myers Beach, FL 33931**CANCELLATION**

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



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

08/16/2023

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.

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	NAIC # 10200

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

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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 GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PRO-JECT ☐ LOC ☐ OTHER:	Y		P100.409.208.4	07/15/2023	07/15/2024	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ S/T Gen. Agg. \$
	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☐ HIRED AUTOS ☐ SCHEDULED AUTOS ☐ NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB EXCESS LIAB ☐ OCCUR ☐ CLAIMS-MADE ☐ DED ☐ RETENTION \$						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						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 HOLDERFreeland FL Holdings, LLC
5333 Hickory Hollow Pkwy
P.O. Box 656
Anitoch, TN 37013**CANCELLATION**

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



Town of Fort Myers Beach

SPECIAL EVENT PERMIT

Town of Fort Myers Beach Code of Ordinances Part II Chapter 22

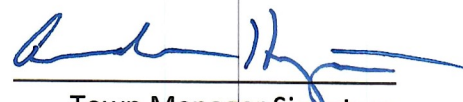
EVENT: Moss Marina Market	Permit Number: 235250	
LOCATION: 450 Harbor Ct	ISSUED: 10/16/2023	
APPLICANT: Linda Miller	DATE & TIME: WEDNESDAYS STARTING 11/1/2023 – 4/24/2024 9AM – 1PM	

PERMIT CONDITIONS

Please have this permit posted during event.

The issuance of this Special Event Permit does not grant exclusive use of the permit area or public lands to the permit holder; but establishes guidelines for use of the permit area.

The applicant has the responsibility to comply with the Town of Fort Myers Beach Land Development Code Section 22, Ordinance 16-03 Special Events; Section 14-23 Noise Control Ordinance 15-01 and any other applicable codes.


Town Manager Signature

10/16/2023
Date

1. **Requested Motion:**

Meeting Date: December 18, 2023

Second Reading and Final Public Hearing of an Ordinance entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 34, ARTICLE V., DIVISION 2, SECTION 34-3238 POST-DISASTER BUILDBACK; PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND AN EFFECTIVE DATE.

Why the action is necessary:

This is a second hearing for adoption but changes to the proposed language can be made at this hearing.

What the action accomplishes:

This discussion will provide improvements to the proposed language.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Ordinance

4. **Submitter of Information:**

Sarah Propst, Planning &
Zoning

5. **Background:**

Staff has been asked to provide some options to amend to the Post-Disaster Buildback policy. This policy is found in Section 34-3238 of the LDC and allows a property owner to redevelop a structure that exceeds current allowable density. The language allows the existing legal number of units to be rebuilt but the existing square footage may not increase, and the property must be brought into compliance with building and flood requirements if the damage exceeds 50% of the value of the property. Currently the code states: "For the purposes of this subsection, interior square footage excludes hallways, stair towers, elevators, open balconies, underbuilding parking and similar common or non-air-conditioned space." This limitation decreases the amount of usable square footage for a rebuild of structures.

Attachments:

1. 23-18, Post Disaster Buildback - ns edits
2. 23-18 Business Impact Estimate - Ordinance 23-18 (Post Disaster Buildback) ns edits
3. Post Disaster Buildback memo
4. RE_ 9604737 For legal publication on or before_ Friday, December 8, 2023 Ord. 23-18 Post Disaster Buildback
5. Exhibit A - Proposed Language
6. Exhibit B - Existing PDB

Financial Impact:

unknown

6. **Alternative Action**

Provide feedback on language and approve.

7. **Management Recommendations:**

Provide input and adopt.

8. **Recommended Approval:**

Sarah Propst, Planning & Zoning
Frankie Kropacek, Operations & Compliance Director
Nancy Stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 12/8/2023
Approved - 12/8/2023
Approved - 12/8/2023
Approved - 12/12/2023
Final Approval - 12/12/2023

ORDINANCE NO. 23-18

**AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA
AMENDING CHAPTER 34, ARTICLE V, DIVISION 2, SECTION 34-3238
POST-DISASTER BUILDBACK; PROVIDING FOR SEVERABILITY;
CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW 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 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, changes and updates to the Land Development Code; and

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on the 14th day of November, 2023, at which time the LPA gave full and complete consideration of the proposed ordinance, recommendations by staff, the documents in the record, and the testimony of all interested persons, and the LPA made a finding of consistency with the Ft. Myers Beach Comprehensive Plan and Land Development Code and thereafter voted 7-0, to recommend approval of the proposed ordinance amending Chapter 34, Article V, Division 2, Section 34-3238 Post-Disaster Buildback of the Land Development Code to the Town Council; and

WHEREAS, on the 4th day of December, 2023, the Town Council held a first reading of the proposed Ordinance and gave full and complete consideration to the proposed ordinance, the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons; and

WHEREAS, on the ____ day of _____, 2023, an advertisement of the public hearing for adoption of the proposed ordinance was published 10 days prior to the second reading of the proposed Ordinance, as required by Section 166.041, Florida Statutes; and

WHEREAS, a Business Impact Estimate was prepared and posted on the City's website on the ____ day of _____, 2023, as required by Section 166.041(4), Florida Statutes; and

WHEREAS, on the ____ day of _____, 2023, the Town Council held a public hearing and second reading of the proposed Ordinance; and

WHEREAS, the Town Council determined by a vote of ____ that adoption of the Ordinance is in the best interest of the health, safety and welfare of the public.

NOW THEREFORE IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH, FLORIDA:

Section 1. The above WHEREAS 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. Chapter 34, Article V, Division 2, Section 34-3238 Post-Disaster Buildback is hereby amended to read as found in attached Exhibit A – Amended Sec. 34-3238.

Section 3. The Town Council intends that the provisions of this ordinance be made a part of the Fort Myers Beach Code of Ordinances, and that sections herein may be renumbered or re-lettered and the words or phrases herein may be changed to accomplish codification; regardless, typographical errors that do not affect intent may be corrected with notice to and authorization of the Town Manager without further process.

Section 4. Whenever the requirements or provisions of this ordinance conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive shall apply.

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, or any part thereof, other than the part so declared.

Section 6. This ordinance shall become effective upon adoption by the Town Council.

The foregoing Ordinance was adopted by the Town Council upon a motion by Councilmember _____ and seconded by Councilmember _____ 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 December 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:**

Vose Law Firm, LLP, Town Attorney

EXHIBITS

Exhibit A – Amended Sec. 34-3238



Business Impact Estimate

Proposed ordinance's title/reference:

Ordinance 23-18 Post Disaster Buildback Amendment

This Business Impact Estimate is provided in accordance with section 166.041(4), Florida Statutes. If one or more boxes are checked below, this means the Town is of the view that a business impact estimate is not required by state law¹ for the proposed ordinance, but the Town is, nevertheless, providing this Business Impact Estimate as a courtesy and to avoid any procedural issues that could impact the enactment of the proposed ordinance. This Business Impact Estimate may be revised following its initial posting.

- ☐ The proposed ordinance is required for compliance with Federal or State law or regulation;
- ☐ The proposed ordinance relates to the issuance or refinancing of debt;
- ☐ The proposed ordinance relates to the adoption of budgets or budget amendments, including revenue sources necessary to fund the budget;
- ☐ The proposed ordinance is required to implement a contract or an agreement, including, but not limited to, any Federal, State, local, or private grant or other financial assistance accepted by the municipal government;
- ☐ The proposed ordinance is an emergency ordinance;
- ☐ The ordinance relates to procurement; or
- ☒ The proposed ordinance is enacted to implement the following:
 - a. Part II of Chapter 163, Florida Statutes, relating to growth policy, county and municipal planning, and land development regulation, including zoning, development orders, development agreements and development permits;
 - b. Sections 190.005 and 190.046, Florida Statutes, regarding community development districts;
 - c. Section 553.73, Florida Statutes, relating to the Florida Building Code; or
 - d. Section 633.202, Florida Statutes, relating to the Florida Fire Prevention Code.

In accordance with the provisions of controlling law, even notwithstanding the fact that an exemption noted above may apply, the Town hereby publishes the following information:

1. Summary of the proposed ordinance, (e.g. statement of the public purpose serving the public health, safety, morals and welfare):

The proposed ordinance amends the existing Section 34-3238 which applies to buildings with 50% or more damage. The amendment will allow the structure to be rebuilt with the same number of legally existing, but nonconforming units and allow some additional square footage, beyond what the code previously allowed.

¹ See Section 166.041(4)(c), Florida Statutes.

2. An estimate of the direct economic impact of the proposed ordinance on private, for-profit businesses in the Town, including the following, if any:

- (a) An estimate of direct compliance costs that businesses may reasonably incur;
- (b) Any new charge or fee imposed by the proposed ordinance or for which businesses will be financially responsible; and
- (c) An estimate of the Town's regulatory costs, including estimated revenues from any new charges or fees to cover such costs.

There are unlikely to be direct compliance costs associated with Ordinance 23-18.

Ordinance 23-18 does not impose any new charge or fee on businesses.

There are no new charges or fees that will be imposed on businesses by the ordinance.

The Town will not likely incur additional costs.

3. Good faith estimate of the number of businesses likely to be impacted by the proposed ordinance:

The Town estimates that a dozen private, for-profit businesses in the Town would potentially be impacted by Ordinance 23-18. The impact should be positive for the business.

4. Additional information the governing body deems useful (if any):

N/A



**Town of Fort Myers Beach
COMMUNITY DEVELOPMENT DEPARTMENT**

To: Town Council
From: Sarah Propst, Community Development
Date: December 18, 2023
Re: Post Disaster Buildback Policy Discussion

BACKGROUND

Staff has been asked to provide some options to amend to the Post-Disaster Buildback policy. This policy is found in Section 34-3238 of the LDC and allows a property owner to redevelop a structure that exceeds current allowable density. The language allows the existing legal number of units to be rebuilt but the existing square footage may not increase, and the property must be brought into compliance with building and flood requirements if the damage exceeds 50% of the value of the property. Currently the code states: "For the purposes of this subsection, interior square footage excludes hallways, stair towers, elevators, open balconies, underbuilding parking and similar common or non-air-conditioned space." This limitation decreases the amount of usable square footage for a rebuild of structures.

There is also a pre-disaster buildback policy that has been used to redevelop properties that exceed density, to bring them in compliance with flood and building code, in advance of storm damage. This code also disallows increasing the square footage although applicants have gone through the required residential planned development process and received additional square footage, in the past.

The Pre and Post-Disaster Buildback policies are also contained within the comprehensive plan as Policy 4-D-1. The attached proposed language does not run counter to the language in Policy 4-D-1.

TOWN COUNCIL DISCUSSION

At the October 5th, Town Council Management and Planning Meeting, post disaster buildback was discussed. The Town Council encouraged staff to provide language that allows the square footage of the footprint, including space that was unenclosed, such as garage, lanai or storage areas. The change would essentially allow the same size building as previously existed, raised above the base flood elevation and would not limit the usable space to only previous interior

FORT MYERS BEACH ESTERO ISLAND

P. 239-765-0202 | F. 239-765-0909 | 2525 Estero Boulevard, Fort Myers Beach, FL 33931



space. The proposed change would allow the same number of units, the same number of bedrooms and the same number of bathrooms, except that bathrooms could be increased to match the number of bedrooms.

LPA DISCUSSION

At the November 14th LPA hearing the LPA recommended several changes to the proposed language before you:

- Adding the following language to 34-3238(2)d: If the additional square footage gained does not provide adequate space to meet building or ADA codes, additional space may be allocated for that purpose.
- Removal of the limit of room numbers and bathrooms from the residential (2)d.
- The LPA voiced a desire for the Post Disaster Buildback to allow new structures with the same number of units without limitation on the allowable square footage, only meeting the bulk standards of the zoning district.
- Include further explanation for the square footage per the roofline measurement in the ordinance. **Staff has included this change already.**
- Prior to the meeting staff was approached by a condominium association asking if the language could be clarified to state that the number of bathrooms means full baths, not half baths. **Staff has included this change already.**

TOWN COUNCIL DEC. 4TH DISCUSSION

At the December 4th hearing, several changes were requested, including an additional graphic. These changes and the graphic are included in the attached proposed language.

LANGUAGE FOR DISCUSSION

The language provided to you today allows all of the space within the previous roofline to be used toward unit space. This includes parking, storage, hallways and outdoor lanais that were covered by the roof. For residential structures, the number of rooms and units may not be increased but the square footage may be increased by using the additional space. For the purposed of hotels/motels the additional square footage may be used to create additional units



but may not be used to increase over 49 rooms, if the hotel previously had fewer than 49 rooms.

This language encourages creative redesign to utilize space without increasing the size of the building a great deal. Some properties will get less of an increase in square footage, if, for instance there was no space below flood that was used for nonhabitable space. Does this go far enough to provide additional square footage to post disaster buildback structures?

The language change also allows for the director to reduce open space, parking, landscaping and buffer requirements if a structure being rebuilt through post disaster buildback is unable to meet those requirements and requests a reduction.

Please provide feedback regarding the proposed language and please provide feedback regarding the LPA's recommendations.

EXHIBITS

Exhibit A – Proposed Post Disaster Buildback Language

Exhibit B – Existing Post Disaster Buildback Language

From: [Gannett Legals Public Notices 4](#)
To: [Amy Baker](#)
Cc: [Jason Freeman](#); [Sarah Propst](#)
Subject: RE: 9604737 For legal publication on or before: Friday, December 8, 2023 Ord. 23-18 Post Disaster Buildback
Date: Tuesday, December 5, 2023 11:42:14 AM
Attachments: [image010.png](#)
[image011.png](#)
[image012.png](#)
[image013.png](#)
[image014.png](#)
[image015.png](#)
[image016.png](#)
Importance: High

Hello,

Please read this email completely to ensure your proof/newspaper/run dates are accurate.

Your notice is scheduled to publish Dec 7 in the News Press. The total cost of your ad is \$150.72, which includes a publisher affidavit that will be mailed to you after the last date of publication. **Please review your proof carefully and advise of any corrections (or cancellation) needed by 3 PM EST TODAY. Your notice is scheduled to run per your request, and will publish unless you advise otherwise – YOU WILL BE INVOICED VIA MAIL.**

NOTICE OF PUBLIC HEARINGS
Notice is hereby given that the Town Council of the Town of Fort Myers Beach will hold a public hearing at a meeting beginning at 9:00 AM on December 18, 2023 regarding the ordinance listed below. This meeting and public hearings will take place at the Diamondhead Beach Resort, 2000 Estero Boulevard, Fort Myers Beach, FL 33931.

ORDINANCE NO. 23-18
AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 34, ARTICLE V, DIVISION 2, SECTION 34-3238 POST-DISASTER BUILDBACK; PROVIDING FOR SEVERABILITY; CODIFICA-

TION; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND 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 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.

Dec 7, 2023

***** IMPORTANT ***** IMPORTANT *****

If you would like to utilize our NEW online self-serve ad portal to place your legal notices, please visit your local publication's online classifieds legal section. There, you can conveniently submit, preview, and pay for your

notices, anytime, 24/7.

Thank you,

Erin Oettinger

Team Lead – Public Notices



Office: 844-254-5287

From: Amy Baker <Amy@fmbgov.com>

Sent: Tuesday, December 5, 2023 9:24 AM

To: LEGALS, FNP <FNPLEGALS@gannett.com>

Cc: Jason Freeman <JasonF@fmbgov.com>; Sarah Propst <sarah.propst@fmbgov.com>

Subject: 9604737 For legal publication on or before: Friday, December 8, 2023 Ord. 23-18 Post Disaster Buildback

Town of Fort Myers Beach Account #6543

(239) 765-0202

Publish on or before: Friday, October 6, 2023

NOTICE OF PUBLIC HEARINGS

Notice is hereby given that the Town Council of the Town of Fort Myers Beach will hold a public hearing at a meeting beginning at **9:00 AM** on **December 18, 2023** regarding the ordinance listed below. This meeting and public hearings will take place at the **Diamondhead Beach Resort, 2000 Estero Boulevard, Fort Myers Beach, FL 33931.**

ORDINANCE NO. 23-18

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 34, ARTICLE V, DIVISION 2, SECTION 34-3238 POST-DISASTER BUILDBACK; PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND 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.

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Amy Baker

Town Clerk

Town of Fort Myers Beach

2525 Estero Boulevard

Fort Myers Beach, FL. 33931

(239) 765-0202, Ext. 1400

FMBgov.com



Think Green. Please print this e-mail only if necessary.

Please Note: Florida has very broad public records laws. Most written communications to and from Fort Myers Beach officials regarding Town business are public records available to the public and media upon request. Your email communications may be subject to public disclosure.

Note: Florida has a very broad public records law. Most communication(s) to or from Fort Myers Beach officials regarding Town business are public records available to the public and media upon request. Your email communications and email address may be subject to public disclosure.

Note: Florida has a very broad public records law. Most communication(s) to or from Fort Myers Beach officials regarding Town business are public records available to the public and media upon request. Your email communications and email address may be subject to public disclosure.

Sec. 34-3238. - Post-disaster buildback.

Owners of buildings or groups of buildings that exceed the density, intensity, or height limits for new buildings and that are damaged or destroyed by a natural disaster, including fire, tropical storms, floods, and hurricanes, shall be permitted to replace those buildings at up to their pre-disaster existing lawful density, intensity, and/or height in accordance with Policy 4-D-1 of the Fort Myers Beach Comprehensive Plan.

- (1) *Less than 50 percent damage.* If the cost to repair the damaged building is less than 50 percent of the building's value and the repair is thus not a "substantial improvement" as that term is defined in § 6-405 of this LDC, then the following rules shall apply:
 - a. The repairs may be made without bringing the building into full compliance with the requirements of this code for building size, dimension, location on the lot, number of dwelling units or guest units, building type, or compliance with floodplain regulations.
 - b. The repairs may not physically enlarge the building either laterally or vertically, with the following potential exception:
 1. During the repair process, owners may wish to elevate lawfully existing dwelling units or guest units that do not comply with the floodplain regulations in ch. 6 of this code.
 2. To encourage this elevation, the director may administratively modify setbacks, open space, buffer, or height requirements to the minimum extent that would accommodate rebuilding the units in conformance with ch. 6 of this LDC up to their existing interior square footage, as computed in accordance with subsections (2)d.1. or e.1 of this section.
 3. However, if the combined cost to repair the damage and elevate the units exceeds 50 percent of the building's value, then all provisions of subsection (2) of this section will apply.
 - c. All repairs must comply with all current building, life safety, and accessibility codes.
- (2) *More than 50 percent damage.* If the cost to repair or rebuild the damaged building is more than 50 percent of the building's value and is thus a "substantial improvement" as that term is defined in § 6-405 of this LDC, then the following rules shall apply:
 - a. The building must meet the floodplain regulations for new buildings, as provided in article IV of ch. 6 of this LDC.
 - b. The building must meet the coastal construction requirements that apply to new structures and portions thereof, as provided in article III of ch. 6 of this LDC and in state regulations. Due to these requirements, habitable major structures and most minor structures that are damaged by more than 50 percent must be rebuilt landward of the 1978 coastal construction control line.
 - c. The building must comply with all current building, life safety, and accessibility codes.
 - d. A property owner wishing to exceed the square footage limitations contained within the post-disaster buildback regulations, may be eligible to request additional square footage through a Commercial Planned Development or a Residential Planned Development.
 - d. *Residential buildings.* A rebuilt residential building may exceed the density limits for new buildings on vacant land but cannot exceed the legally documented number of dwelling units in the building immediately before the natural disaster.
 1. ~~All dwelling units legally existing prior to the natural disaster may be rebuilt, provided the total interior square footage of the rebuilt dwelling units does not exceed the interior square footage of the previous dwelling units. For purposes of this subsection, interior square footage excludes hallways, stair towers, elevators, open balconies, underbuilding parking, and similar common or non-air conditioned.~~

1. The total interior square footage above base flood elevation of the reconstructed building may not exceed the square footage of the total under roof square footage of the previous structure. The square footage under roof means the area within the perimeter of the roof, multiplied by the number of stories that existed prior to the disaster, including stories below flood elevation (See Fig. 34-35)

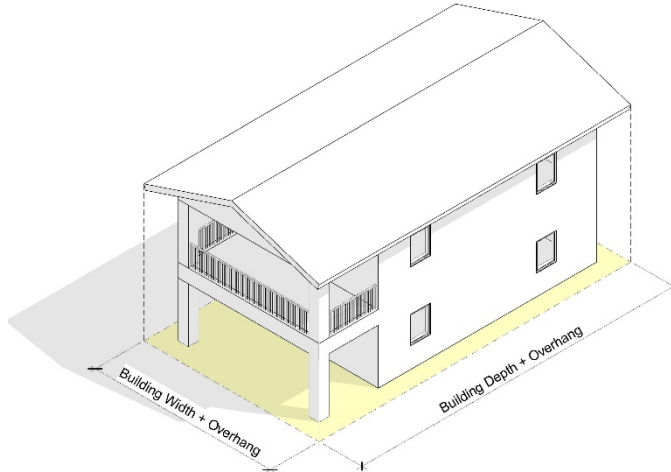


Fig. 34-35 Illustrates the area that is counted toward the total under roof square footage, as referenced in 34-3238.d.1. above.

2. At the owner's option, this same square footage can be used for fewer but larger dwelling units.
 3. Also at the owner's option, the number of dwelling units and the square footage of the new building may be determined by this code's current regulations for new buildings on the same site instead of using either the pre-disaster or post-disaster buildback regulations.
 4. The number of bedrooms may not exceed the legally documented number of bedrooms in the dwelling unit immediately before the natural disaster. The number of full bathrooms may only be increased to equal the number of bedrooms in the structure.
(a) A property owner may request an increase in the number of bedrooms and bathrooms, through the special exception process.
 5. Once additional square footage is added to the structure for post-disaster buildback, no additional below flood elevation square footage may be added for future disaster rebuilds.
- e. *Hotels/motels.* A rebuilt hotel/motel may exceed the intensity-equivalency factor multiplier limits for new hotel/motel buildings on vacant land, but cannot exceed the documented number of lawful guest units square footage within the building footprint immediately before the natural disaster.
1. ~~All guest units lawfully existing prior to the natural disaster may be rebuilt, provided the total interior square footage of the rebuilt guest units does not exceed the interior square footage of the previous guest units. However, interior square footage in the new building may be increased by 30 square feet for each bathroom to reflect current code requirements for larger bathrooms, and any lawfully existing guest units that are smaller than the minimum sizes required by this code may be enlarged to meet the minimum size requirements. For purposes of this subsection, interior square footage excludes hallways, stair towers, elevators, open balconies, underbuilding parking, and similar common or non-air conditioned space.~~
 2. ~~At the owner's option, this same square footage can be used for fewer but larger guest units.~~

- ~~3. Also at the owner's option, the number of guest units and the square footage of the new building may be determined by this code's current regulations for new hotel/motel buildings on the same site instead of using either the pre-disaster or post-disaster buildback regulations.~~
- ~~1. The total interior square footage above base flood elevation of the reconstructed building may not exceed the square footage of the total under roof square footage of the previous structure. The square footage under roof means the area within the perimeter of the roof, multiplied by the number of stories that existed prior to the disaster, including stories below flood elevation.~~
- ~~(a) A property owner may request up to 30 square feet of additional space per room, through the special exception process.~~
- ~~2. If the additional square footage gained does not provide adequate space to meet building or ADA codes, additional space may be allocated for that purpose, with designs illustrating the square footage needed.~~
- ~~3. The owner may choose to reduce the number of rooms or increase the number of rooms but may not create more guest unit space than defined in Sec.34-3238(2) e.1.~~
- ~~4. This section may not be used to increase the number of guest units in a hotel that previously had 49 rooms or less to more than 49 rooms.~~
- f. *All buildings.* The new building must comply with all other zoning and development regulations except where compliance with such regulations would preclude reconstruction otherwise intended by Policy 4-D-1 of the comprehensive plan. Specifically:
 1. If the lowest floor of the rebuilt building must be elevated higher than the damaged or destroyed building to comply with current floodplain or coastal regulations, then the total height of the rebuilt building can be increased by the same amount.
 2. If a rebuilt building must be set back further from any property lines due to current requirements of this code, then the volume of the building so reduced can be rebuilt elsewhere on the site, including one or more extra stories on the building if in the opinion of the director there is no other suitable location to replace the volume.
 3. If current open space, parking, landscaping or buffer regulations cannot be met, those requirements may be ~~waived~~ reduced through a written determination ~~administratively~~ by the director.

Sec. 34-3238. - Post-disaster buildback.

Owners of buildings or groups of buildings that exceed the density, intensity, or height limits for new buildings and that are damaged or destroyed by a natural disaster, including fire, tropical storms, and hurricanes, shall be permitted to replace those buildings at up to their existing lawful density, intensity, and/or height in accordance with Policy 4-D-1 of the Fort Myers Beach Comprehensive Plan.

- (1) *Less than 50 percent damage.* If the cost to repair the damaged building is less than 50 percent of the building's value and the repair is thus not a "substantial improvement" as that term is defined in § 6-405 of this LDC, then the following rules shall apply:
 - a. The repairs may be made without bringing the building into full compliance with the requirements of this code for building size, dimension, location on the lot, number of dwelling units or guest units, building type, or compliance with floodplain regulations.
 - b. The repairs may not physically enlarge the building either laterally or vertically, with the following potential exception:
 1. During the repair process, owners may wish to elevate lawfully existing dwelling units or guest units that do not comply with the floodplain regulations in ch. 6 of this code.
 2. To encourage this elevation, the director may administratively modify setbacks, open space, buffer, or height requirements to the minimum extent that would accommodate rebuilding the units in conformance with ch. 6 of this LDC up to their existing interior square footage, as computed in accordance with subsections (2)d.1. or e.1 of this section.
 3. However, if the combined cost to repair the damage and elevate the units exceeds 50 percent of the building's value, then all provisions of subsection (2) of this section will apply.
 - c. All repairs must comply with all current building, life safety, and accessibility codes.
- (2) *More than 50 percent damage.* If the cost to repair or rebuild the damaged building is more than 50 percent of the building's value and is thus a "substantial improvement" as that term is defined in § 6-405 of this LDC, then the following rules shall apply:
 - a. The building must meet the floodplain regulations for new buildings, as provided in article IV of ch. 6 of this LDC.
 - b. The building must meet the coastal construction requirements that apply to new structures and portions thereof, as provided in article III of ch. 6 of this LDC and in state regulations. Due to these requirements, habitable major structures and most minor structures that are damaged by more than 50 percent must be rebuilt landward of the 1978 coastal construction control line.
 - c. The building must comply with all current building, life safety, and accessibility codes.
 - d. *Residential buildings.* A rebuilt residential building may exceed the density limits for new buildings on vacant land, but cannot exceed the legally documented number of dwelling units in the building immediately before the natural disaster.
 1. All dwelling units legally existing prior to the natural disaster may be rebuilt, provided the total interior square footage of the rebuilt dwelling units does not exceed the interior square footage of the previous dwelling units. For purposes of this subsection, interior square footage excludes hallways, stair towers, elevators, open balconies, underbuilding parking, and similar common or non-air conditioned space.
 2. At the owner's option, this same square footage can be used for fewer but larger dwelling units.
 3. Also at the owner's option, the number of dwelling units and the square footage of the new building may be determined by this code's current regulations for new buildings on

the same site instead of using either the pre-disaster or post-disaster buildback regulations.

- e. *Hotels/motels.* A rebuilt hotel/motel may exceed the intensity limits for new hotel/motel buildings on vacant land, but cannot exceed the documented number of lawful guest units in the building immediately before the natural disaster.
 - 1. All guest units lawfully existing prior to the natural disaster may be rebuilt, provided the total interior square footage of the rebuilt guest units does not exceed the interior square footage of the previous guest units. However, interior square footage in the new building may be increased by 30 square feet for each bathroom to reflect current code requirements for larger bathrooms, and any lawfully existing guest units that are smaller than the minimum sizes required by this code may be enlarged to meet the minimum size requirements. For purposes of this subsection, interior square footage excludes hallways, stair towers, elevators, open balconies, underbuilding parking, and similar common or non-air conditioned space.
 - 2. At the owner's option, this same square footage can be used for fewer but larger guest units.
 - 3. Also at the owner's option, the number of guest units and the square footage of the new building may be determined by this code's current regulations for new hotel/motel buildings on the same site instead of using either the pre-disaster or post-disaster buildback regulations.
- f. *All buildings.* The new building must comply with all other zoning and development regulations except where compliance with such regulations would preclude reconstruction otherwise intended by Policy 4-D-1 of the comprehensive plan. Specifically:
 - 1. If the lowest floor of the rebuilt building must be elevated higher than the damaged or destroyed building to comply with current floodplain or coastal regulations, then the total height of the rebuilt building can be increased by the same amount.
 - 2. If a rebuilt building must be set back further from any property lines due to current requirements of this code, then the volume of the building so reduced can be rebuilt elsewhere on the site, including one or more extra stories on the building if in the opinion of the director there is no other suitable location to replace the volume.
 - 3. If current open space or buffer regulations cannot be met, those requirements may be waived administratively by the director.

1. **Requested Motion:**

Meeting Date: December 18, 2023

APPROVE/ APPROVE WITH CONDITIONS/ DENY A VARIANCE FROM LDC SECTION 34-638 TABLE 34-3 DIMENSIONAL REGULATIONS IN CONVENTIONAL ZONING DISTRICTS FOR THE FRONT SETBACK IN THE RC ZONING DISTRICT FOR PROPERTY LOCATED AT 923 THIRD STREET; TO ALLOW 100-FEET OF ADDITIONAL BUILDING COVERAGE OVER THE MAXIMUM ALLOWED.

Why the action is necessary:

The applicant has proposed a new, elevated flood-compliant level to his home, but to keep the existing porch that he intends to elevate he will need a street setback variance. The applicant will exceed the maximum building coverage of the site by approximately 100 s.f. to expand the building to current setbacks and retain the existing, covered porch.

What the action accomplishes:

allows further protrusion into the street setback by a covered porch and allows for additional roof area of approx. 100 s.f.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Jason Smalley, Senior Planner

5. **Background:**

The applicant for 923 Third St., is requesting two variances from the Town's Land Development Code (LDC) Table 34-3 which requires a single-family home in the RC zoning district to provide a minimum street setback of 25 feet from the front property line. The applicant is requesting a variance of 9.5-feet from the street setback for a front setback of 15.5-feet. The applicant is also requesting a variance of 2-percent –a difference of approximately 100-square feet.

Attachments:

1. Town Council Staff Report
2. 23-188, VAR20230142 923 Third St
3. Revised Site Plan v3 - Mosteiro
4. Revised Elevations v3 - Mosteiro
5. 2007 Administrative Variance for Rear Deck/ Stairs
6. Mosteiro Exhibit 6-2 Boundary Survey
7. Building Coverage Calculation v3 - Mosteiro
8. Revised Home Rendering - Mosteiro
9. Revised PH-B Attachment
10. Revised Supplement PH-B

Financial Impact:

unknown

6. **Alternative Action**

Approve

7. **Management Recommendations:**

Recommend denial of request for variances to the front setback and for building coverage.

8. Recommended Approval:

Kendra Rosa, Zoning Coordinator/Planner 1
Frankie Kropacek, Operations & Compliance Director
Gretchen R.H. Vose, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 12/12/2023
Approved - 12/12/2023
Approved - 12/12/2023
Approved - 12/13/2023
Final Approval - 12/13/2023



Town of Fort Myers Beach
COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT

TYPE OF CASE: Variance

CASE NUMBER: VAR20230142

CASE NAME: 923 Third Street; requesting two variances from LDC Section 34-638 Table 34-3 Dimensional Regulations in Conventional Zoning Districts for the street setbacks in the RC zoning district; and allow for additional building coverage.

COUNCIL HEARING DATE: December 18, 2023, at 9 AM

STAFF RECOMMENDATION: DENIAL

**PREPARED/
SUBMITTED BY:** Jason Smalley- Senior Planner

I. APPLICATION SUMMARY

Applicant/Owner: Christopher Mosteiro – Owner/ Applicant

Request: The applicant is requesting a front setback variance of 9.5 feet for a third-floor deck; the minimum front setback is 25-feet. The applicant is also requesting a variance to allow 2-percent additional building coverage when the existing maximum building coverage is 40-percent of the lot area.

Subject property: See attached site plan

Physical Address: 923 Third Street

STRAP #: 29-46-23-W3-0030A.0050

FLU: Mixed Residential

Zoning: Residential Conservation (RC)

Adjacent zoning and land uses:

North:	COMMERCIAL MARINA (CM) Marina
South:	RESIDENTIAL CONSERVATION (RC) Single-Family Residential
East:	RESIDENTIAL CONSERVATION (RC) Single-Family Residential
West:	RESIDENTIAL CONSERVATION (RC) Single-Family Residential

II. LPA OUTCOME

Discussion from the LPA centered on whether the applicant was requesting to reduce setbacks further from what existed pre-storm and the timing of the variance request in-relation to the amendment to the Post Disaster-Buildback.

Staff advised that the code amendment would have to proceed for its two required Council readings and that a condition of approval should be added stating that the recommendation from the LPA was contingent on approval at Council of the Post Disaster-Buildback amendments.

The LPA voted 6-0 (with one excused absence) to recommend approval to Town Council.

III. BACKGROUND AND ANALYSIS

Background:

Christopher Mosteiro, the applicant for 923 Third St., is requesting two variances from the Town's Land Development Code (LDC) Table 34-3 which requires a single-family home in the RC zoning district to provide a minimum street setback of 25 feet from the front property line. The applicant is requesting a variance of 9.5-feet from the street setback and will provide a front setback of 15.5-feet to the proposed new deck on the new second floor unit. The applicant is also requesting a variance of 2-percent—a difference of approximately 80-square feet—to develop additional roofed area.

Prior to Hurricane Ian the primary structure was non-conforming due to rear setbacks and the lot's dimensions were conforming for minimum lot area within the residential conservation zoning district. An Administrative Variance was approved in 2007 to construct a deck and stairs 5-feet from the rear property line (ADD2007-0009; 12/7/2007)

Analysis:

The purpose of the RC zoning district is to recognize certain older neighborhoods that had been zoned for duplex, multifamily, or mobile home purposes prior to incorporation of the town. Some lots in this district are large enough to accommodate a second dwelling unit. The subject property is an interior lot that is rectangular and is adjacent to a marina and within a single-family neighborhood. The lot has a depth of approximately 80-feet and a width of approximately 50-feet, requiring a street setback of 25-feet, side setbacks of 7.5-feet, and rear setbacks of 20-feet. The property has an existing single-family home, which was moderately damaged by Hurricane Ian.

The applicant is requesting to develop a second living level –three total floors—above the existing living level, the ground-floor will be made entirely into storage and parking to serve the home. The structure will provide minimum 7.5-foot side setbacks as they expand the first living level and the front setbacks of the home and the first living level deck. Both living levels (second & third stories) are proposed with non-compliant rear setbacks to match the existing non-conforming house setbacks. Staff determined that the applicant should apply for an Administrative Variance to develop a new living level (second story) utilizing the existing non-compliant rear setback of approximately 12-feet from the property line. The applicant understands staff will pursue an Administrative Variance if the applicant's variances are approved. The applicant has also been advised that approval of the proposed living level expansion beyond the area that existed pre-storm, is dependent on approval of the Post-Disaster Buildback ordinance currently being heard before LPA, the applicant understands and wished to continue while the proposed ordinance amendment is being discussed.

Neighborhood Compatibility:

The lot sits within an RC zoned neighborhood, although the lots on the corner of Old San Carlos and Third street are zoned Downtown. The neighborhood sits adjacent to Moss Marina and less than 400-feet from Old San Carlos Blvd. The requested street-setback variance for the second living level deck would not extend further than the existing first living level deck. The requested increase of the building coverage by 2-percent, may make the redeveloped structure appear more intense than lots of relatively similar sizes in the area. The requested increase of approximately 80-square feet of roofed area is a relatively small ask, but staff is conscientious of the code language meant to limit the bulk within neighborhoods.

The proposed development exceeds building coverage and further expansion will be limited without removing roofed area or developing unroofed structures.

Findings and Conclusions:

LDC Sec. 34-87 sets forth the required findings and conclusions for the approval of a variance:

- a. That there are/**are not** exceptional or extraordinary conditions or circumstances that are inherent to the property in question, or that the request*

is/is not for a de minimis variance under circumstances or conditions where rigid compliance is not essential to protect public policy.

The existing structure footprint was developed years prior to the current owner purchasing it, the existing non-compliances were not done by the current owner and the request to expand the first living level footprint isn't due to changing codes, but decisions by the homeowner to fully build-out the site.

- b. That the conditions justifying the variance **are**/are not the result of actions of the applicant taken after the adoption of the regulation in question.*

The subject property survived the storm, with the second floor living area largely intact and the owner has chosen to expand the building to the minimum setbacks and develop an additional deck within the front setbacks. The variances all stem from decisions made by the homeowner to redevelop their structure.

- c. That the variance granted is/**is not** the minimum variance that will relieve that applicant of an unreasonable burden caused by the application of the regulation in question to this property.*

The variance request largely stems from the development of a third floor deck to match the second floor deck, this is a design choice and is the main reason that the applicant requires a variance.

- d. That the granting of the variance will/**will not** be injurious to the neighborhood or otherwise detrimental to the public welfare; and*

The marina adjacent to the property would be the most affected by the 1-foot proposed reduction of the stairs and deck, this will not materially affect the use of the marina property and does not appear to be out of place with the other, existing homes in the neighborhood.

- e. That the conditions or circumstances on the specific piece of property for which the variance is sought are/**are not** of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.*

The conditions or circumstances on this specific property for which a variance is sought are not general in nature and do not warrant a code change.

IV. RECOMMENDATION

Staff has reviewed the request for a variance from LDC Table 34-3 which requires that a lot in the RC zoning district have minimum 25-foot street setback and maximum

building coverage of 40-percent of the lot area and found that the variances requested do not meet the requirements set forth in sec. 34-87.

Therefore, staff recommends **DENIAL** of VAR20230142, a request for variances of 9.5-feet from the street setback and allow for an additional 2-percent of maximum building coverage.

V. CONDITIONS FOR APPROVAL

If the Town Council recommends approval for the variance, town's staff recommends the following conditions of approval.

- 1) Approval of the proposed Post Disaster-Buildback amendment is required prior to any approval of the customer's variance requests, should the amendment fail, or not allow additional living space to be created using the Post Disaster-Buildback policy, the current plan will become unbuildable and would require additional variances.
- 2) Should the home be demolished and the site redeveloped, the approved variances will become null and void and the new structure will be expected to be build to meet the codes at the time of review.
- 3) All other LDC requirements shall be met.

VI. EXHIBITS

- A. Complete application
- B. Site Plans
- C. Administrative Variance (ADD2007-0009; 12/7/2007)

RESOLUTION 23-188

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING VAR20230142, TWO VARIANCES FROM LDC TABLE 34-3 REQUESTING A REDUCTION OF THE FRONT STREET SETBACKS AND MAXIMUM BUILDING COVERAGE, IN THE RC ZONING DISTRICT, FOR THE PROPERTY LOCATED AT 923 THIRD ST; 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, applicant Christopher Mosteiro is requesting a variance from LDC Table 34-3 which requires all lots in the RC zoning district to provide a 25-foot setback to the primary structure

WHEREAS, applicant Christopher Mosteiro is requesting a variance from LDC Table 34-3 which limits all lots in the RC zoning district to a maximum building coverage of 40-percent.

WHEREAS, the STRAP number for the subject property is 29-46-23-W3-0030A.0050 and is known as Lot 5, Block A in the Matanzas View Subdivision; and

WHEREAS, the Property is located in the "Mixed Residential" category of the Future Land Use Map of the Comprehensive Plan and the "Residential Conservation" (RC) zoning district of the Official Zoning Map of the Town of Fort Myers Beach, Florida; and

WHEREAS, a public hearing on this matter was legally noticed and held before the Local Planning Agency (LPA) on November 14, 2023, and at said hearing the LPA gave full and complete consideration to the request of Applicant, recommendations of staff, the documents in the file, and the testimony of all interested persons, as required by Section 34-87 of the LDC. The LPA voted 6-0 with one absence to recommend approval of the variance; and

WHEREAS, on December 18, 2023 the Town Council held a duly noticed public hearing to fully consider the request of the Applicant, the recommendations of Town staff and the LPA, the documents in the record, and testimony of all interested persons as required by 34-87 of the LDC; and

WHEREAS, the Town Council determined it is in the best interest of the Town to approve/ approve with conditions/ deny the request.

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

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

Section 2. The Town Council determines the Applicant did/ did not meet its burden of proof that the requested Variances do/ do not meet the requirements of the Town Comprehensive Plan and LDC and approving/ approving with conditions/ denying the Variances is in the best interest of the Town. Therefore, based upon the recommendations, testimony, and evidence presented by the Applicant, Town staff, and interested parties and public, the Town Council APPROVES/ APPROVES WITH CONDITIONS/ DENIES the variances from LDC Table 34-3 to reduce the required front setback from 25-feet to 15.5-feet, a difference of 9.5-feet; and allow for the development of an additional 100 square-feet of roofed area.

Section 3. In approving/ approving with conditions/ denying the Variance, the Town Council makes the following findings and conclusions in accordance with the requirements of Section 34-87 of the LDC:

- A. There are/ are not exceptional or extraordinary conditions or circumstances that are inherent to the property in question, and the request is/ is not for a de minimis variance under circumstances or conditions where rigid compliance is not essential to protect public policy.
- B. The conditions justifying approval of the variance are/ are not the result of actions of the Applicant taken after the adoption of the regulation in question.
- C. The variance is/ is not the minimum variance that will relieve the Applicant of an unreasonable burden caused by the application of the regulation to the Property.
- D. The granting of the variance will/ will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
- E. The conditions or circumstances on the Property are/ are not of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.

Section 4. If the Town Council approves the requested variance, the following conditions of approval are imposed on the Applicant and the Property:

- A. Approval of this variance does not give the Applicant an undeniable right to permit approval. Development or redevelopment of the Property must comply with all applicable requirements of the Fort Myers Beach Comprehensive Plan and LDC in effect at the time of permit approval, except as specifically modified herein.

- B. Should the home be demolished and the site redeveloped, the approved variances will become null and void and the new structure will be expected to be build to meet the codes at the time of review.
- C. All other LDC requirements shall be met.

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

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

ADOPTED this 18th day of December 2023 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

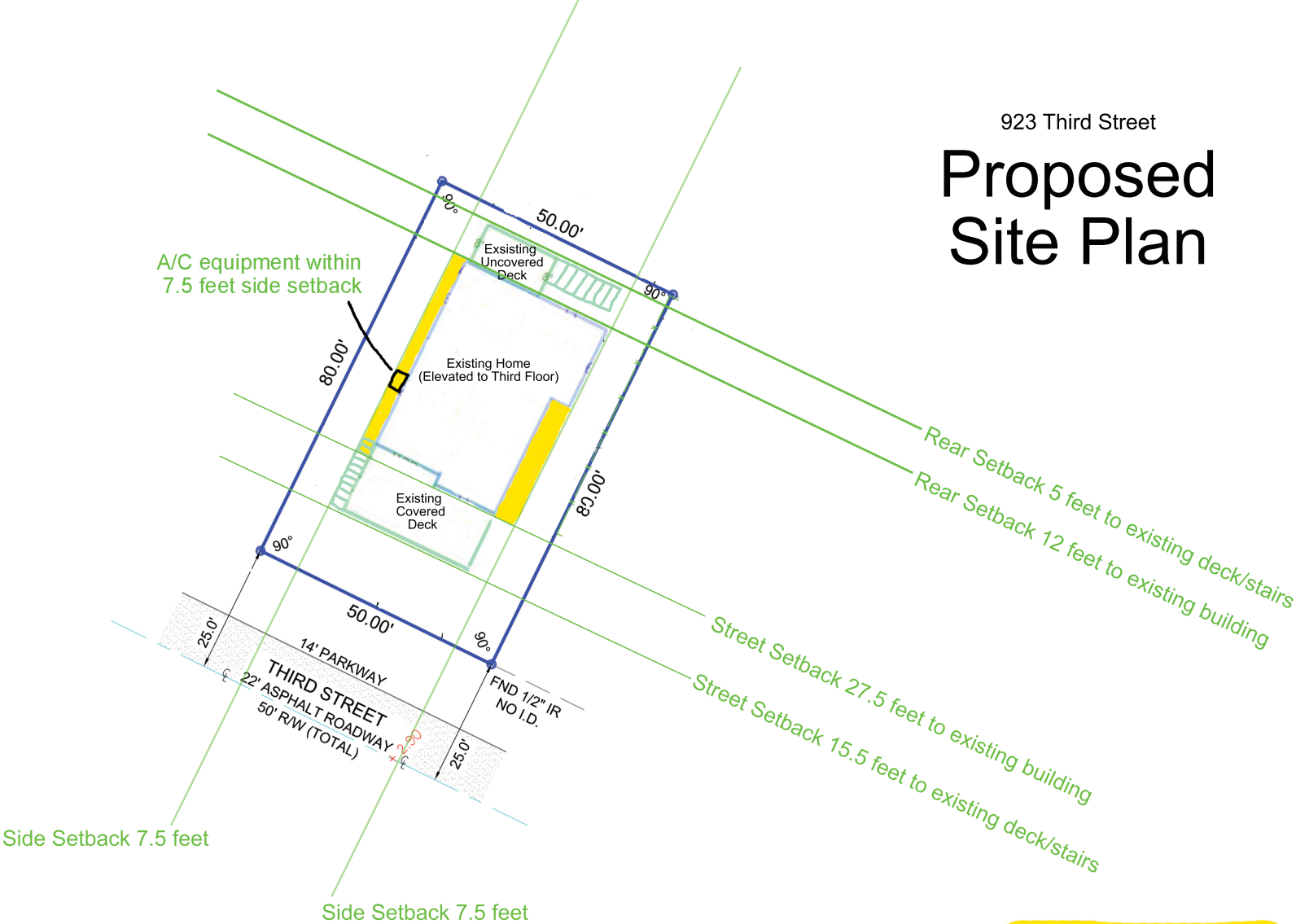
**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:**

Gretchen R. H. Vose., Town Attorney

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

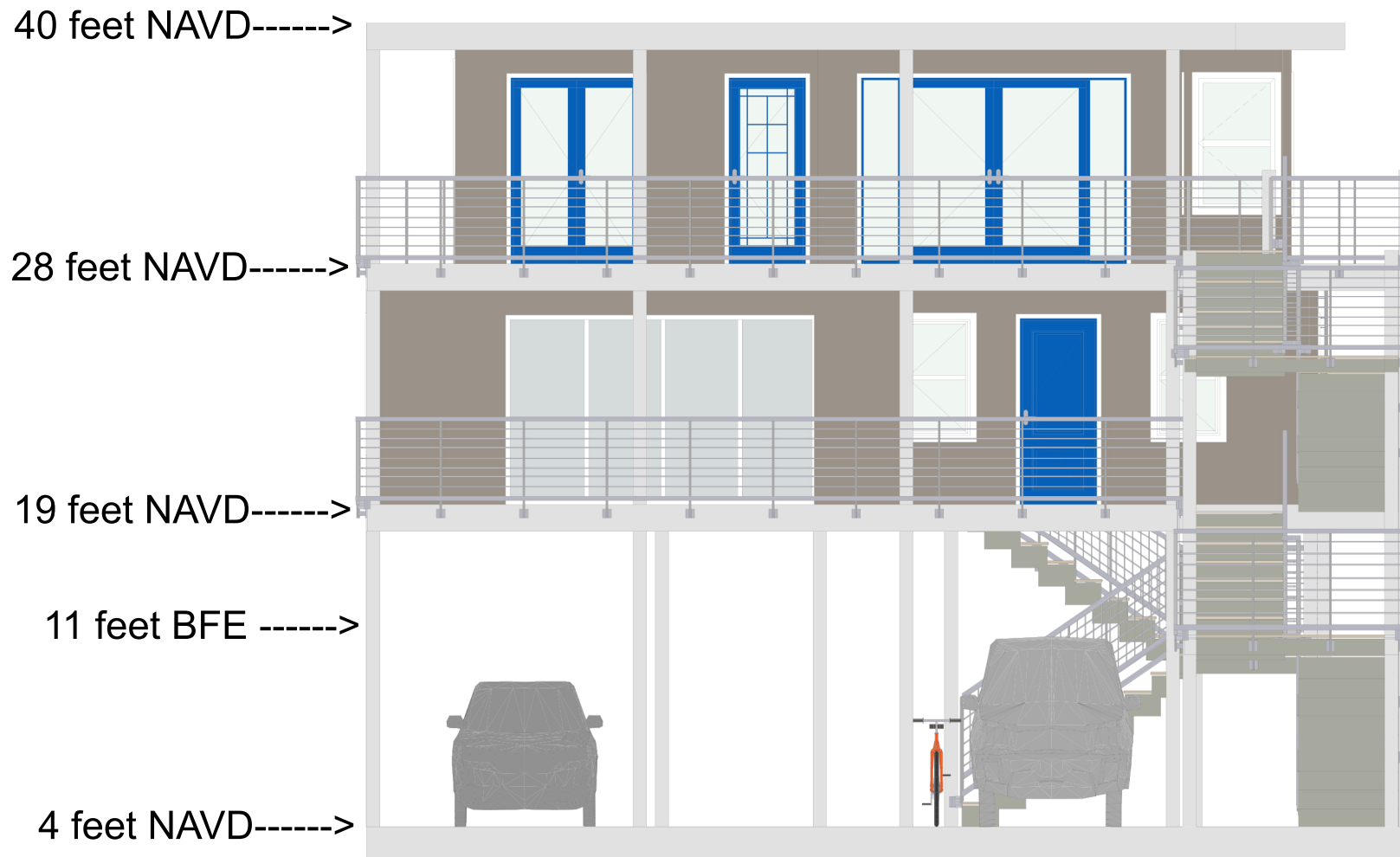
923 Third Street

Proposed Site Plan



Second Floor rebuild &
widened to
Side Setbacks

923 Third Street Proposed Elevations



**ADMINISTRATIVE APPROVAL
FORT MYERS BEACH, FLORIDA
FMBADD2007-0009**

WHEREAS Gwen Horn, owner of the real property located at 923 Third Street in Fort Myers Beach, Florida, requested an administrative setback variance for property legally described as

**Lot 5, Block A, Matanzas View Subdivision, as recorded in Plat Book
9, Page 40 of the Public Records of Lee County, Florida**

and

WHEREAS the subject property is within the Mixed Residential Future Land Use Map (FLUM) Category according to the Town of Fort Myers Beach Comprehensive Plan; and

WHEREAS the subject property is zoned Residential Conservation (RC); and

WHEREAS the subject property is developed with one elevated two-family building, nonconforming with regard to the density allowed by the Fort Myers Beach Comprehensive Plan, constructed in 1955 according to the records of the Lee County Property Appraiser; and

WHEREAS the existing building is located 12.25 feet from the rear property line according to the Sketch of Survey by Miguel Garay, LS 6592, dated 6/22/2007 (copy attached hereto as Exhibit "A"); and

WHEREAS the entrance to one of the two units in the existing building is located at the rear of the elevated building; and

WHEREAS a deck and stairs providing access to the rear unit was located 2.32 feet from the rear property line according to the survey dated 6/22/2007; and

WHEREAS the deck and stairs are visible in photographs dated 6/21/2007 and attached to the elevation certificate prepared by Miguel Garay, dated 6/22/2007; and

WHEREAS the deck and stairs are visible in aerial photographs taken in 2007, 2005, 2002, 1998, and 1988; and

WHEREAS inspection of the subject property on July 18, 2007 by a code enforcement officer disclosed the existence of a violation of Fort Myers Beach Land Development Code (LDC) Section 6-111 adopting the Florida Building Code, section 105.1 requiring permits for constructing, enlarging, altering, repairing, or demolishing a building or structure; and

WHEREAS the form of the violation disclosed by the code enforcement officer's inspection was the construction of a new raised deck at the rear of the residence without permits; and

WHEREAS LDC Section 34-1173(b)(1) requires that any accessory building or structure which is structurally a part of the principal building must comply in all respects with the regulations for a principal building; and

WHEREAS LDC Section 34-638 and Table 34-3 require a rear setback of 20 feet in the RC (Residential Conservation) zoning district; and

WHEREAS Fort Myers Beach Land Development Code (LDC) Section 34-268(a)(1) authorizes the Director to modify the setbacks provided in LDC Sections 34-638, 34-1174 through 34-1176, and 34-1744 to permit remodeling of or addition to an existing structure that is nonconforming so long as, *inter alia*, the remodeling or addition will not result in further diminution of the nonconforming setback; and

WHEREAS LDC Section 34-268(a)(3) authorizes the Director to modify street, rear, side, or waterbody setbacks to allow replacement of stairs or decking that provides access to an existing dwelling unit; and

WHEREAS any redevelopment of the subject property must comply with all setbacks applicable at the time of permitting for the redevelopment; and

WHEREAS the Director hereby makes the following findings of fact with regard to the setback variance:

1. There are no apparent deleterious effects upon the adjoining property owners;
2. The modifications will not have an adverse impact on the public health, safety, and welfare; and
3. The modifications will be the minimum required;

NOW, THEREFORE, IT IS HEREBY DETERMINED that the rear setback required on the subject property in the RC zoning district by LDC Table 34-3 is modified from 20 feet to permit a minimum rear setback of 5 feet, to allow the replacement deck and stairs for access to the existing dwelling unit as shown on site plan attached hereto as EXHIBIT B.

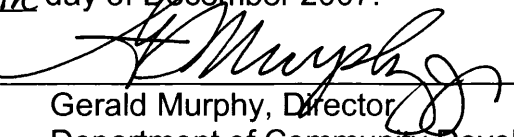
SUBJECT TO the following condition:

1. The variance is limited to the stair and deck replacement. Any movement or replacement of the principal structure must conform to the requirements of the

LDC in effect at that time. Substantial improvements, including substantial damage, to the existing structure must comply with all requirements of the LDC.

DULY ADOPTED this 7th day of December 2007.

By: _____

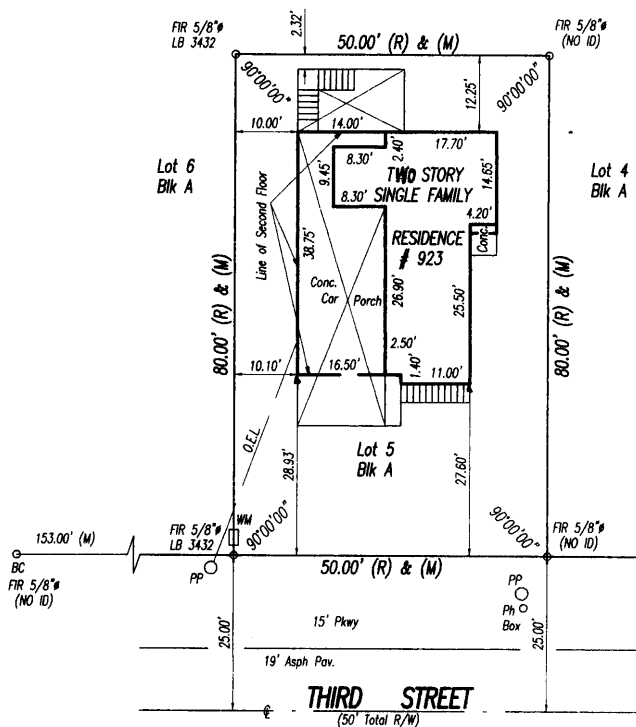

Gerald Murphy, Director
Department of Community Development
Town of Fort Myers Beach

SCALE 1":20'



EXHIBIT (A)

F M B ADD 2007 0 0 0 9



923 THIRD STREET, FORT MYERS BEACH, FLORIDA, 33931

LOT(S) 5, BLOCK A, MATANZAS VIEW SUBDIVISION, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 9, PAGE(S) 40, INCLUSIVE, IN THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

THIS SURVEY DOES NOT REFLECT OR DETERMINE WHETHER AN EXAMINATION OF THE ABSTRACT OF TITLE WILL HAVE TO BE MADE TO DETERMINE RECORDER INSTRUMENT, IF ANY, AFFECTING THIS PROPERTY IS SUBJECT TO DEDICATIONS, LIMITATIONS, RESERVATIONS AND/OR EASEMENTS OF RECORDS. LEGAL DESCRIPTION WAS PROVIDED BY CLIENT OR ATTESTING TITLE COMPANY. THE LIABILITY OF THIS SURVEY IS LIMITED TO THE COST OF THE SURVEY - UNDERGROUND ENCROACHMENTS, IF ANY, ARE NOT SHOWN. THIS FIRM HAS NOT ATTEMPTED TO LOCATE FOOTING FOUNDATIONS AND/OR UNDERGROUND IMPROVEMENTS OF ANY NATURE. IF SHOWN, BEARINGS ARE REFERRED TO AN ASSUMED MERIDIAN. IF SHOWN, ELEVATIONS ARE REFERRED TO N.G.V.D. OF 1929. THIS SURVEY - FOR DESIGN OR CONSTRUCTION PURPOSES A TOPOGRAPHIC SURVEY IS REQUIRED. APPLICABLE ZONING AND BUILDING SET BACKS MUST BE CHECKED BEFORE DESIGN OR CONSTRUCTION BEGINS ON THIS PROPERTY.

ORDER No:	FIELD WORK:	REVISIONS:
NB-1378	06/22/2007	
FLOOD INFORMATION: (BASED ON THE FLOOD INSURANCE RATE MAP OF THE FEDERAL EMERGENCY MANAGEMENT AGENCY.) ELEVATION ARE REFERRED TO N.G.V.D. OF 1929.		
F.I.R.M. DATE:	FLOOD ZONE:	BASE ELEVATION:
09/20/1996	A12	12'
COMMUNITY	PANEL NUMBER	SUFFIX:
125124	0429	D

NATIONAL CITY MORTGAGE
WEST BAY TITLE
CHICAGO TITLE INSURANCE COMPANY
GWENDOLYN HORN

I HEREBY CERTIFY: THAT THIS SURVEY OF THE PROPERTY DESCRIBED HEREON WAS MADE UNDER MY DIRECTION AND THAT THE SAME MEETS THE MINIMUM TECHNICAL STANDARD AS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL LAND SURVEYORS IN CHAPTER 61G17-6 FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.027 FLORIDA STATUTES.

P.S.M. LS 6592, STATE OF FLORIDA
NEW BEARINGS, INC.
 2710 Del Prado Blvd. # 2 PMB-208 Cape Coral FL 33904
 Phone: 239-458-2340 Fax: 239-458-0138
 NOT VALID UNLESS EMBOSSED WITH SURVEYORS SEAL

A	=ARC	CL	=CENTER LINE
A/C	=AIR CONDITIONER	C/L	=CHAIN LINK FENCE
ASPH	=ASPHALT	C/C	=CLEAR
BBQ	=BARBEQUE	CC	=CONCRETE
BW	=BENCH MARK	DM	=DIMETER
BOLD	=BUILDING	Ø	=HOLE
CB	=CATCH BASIN	D.M.E.	=DRAINAGE MAINTENANCE
CBS	=CONCRETE BLOCK	EASEMENT	
	STRUCTURE	ENC.	=ENCROACHMENT
CH	=CHORD DISTANCE	F.H.	=FIRE HYDRANT
CH24	=CHASTANTHOXEE	F.F.M.	=FIRE FIGHTING MANSION

- FIR = FOUND IRON REBAR
- FPL = FLORIDA POWER & LIGHT
- LB = LICENSED BUSINESS
- L.F.ELV. = LOWEST FLOOR ELEVATION
- L.M.E. = LAKE MAINTENANCE EASEMENT
- LS = LAND SURVEYOR
- M.E. = MAINTENANCE EASEMENT
- (M) = MEASURED
- M.L. = MONUMENT LINE
- MON. = MONUMENT
- N.A. = NOT APPLICABLE
- N.D. = N/A & O.K.C.

N.G.V.D. = NATIONAL GEODETIC
VERTICAL DATUM
N.T.S. = NOT TO SCALE
O.S. = OFFSET
O.E.L. = OVERHEAD ELECTRIC
LINE
P. = PLAT
PB. = PLAT BOOK
P.C. = POINT OF CURVATURE
P.C.C. = POINT OF COMPOUND
CURVATURE
P.C.C. = POINT OF COMPOUND
CURVATURE

P.C.	=PAGE
P.I.	=POINT OF INTERSECTION
P.W.Y.	=PARKWAY
P.	=PROPERTY LINE
P.L.	=PLANTER
P.L.S.	=PROFESSIONAL LAND SURVEYOR
P.O.B.	=POINT OF BEGINNING
P.O.C.	=POINT OF COMMENCEMENT
P.P.	=POWER POLE
P.R.C.	=POINT OF REVERSE CURVE
P.R.U.	=POINT OF REFERENCE MONUMENT

R	=RADIUS
RAD	= RADIAL
R.E.S.	=RESIDENCE
R.L.S.	=REGISTERED LAND SURVEYORS
RNG	=RANGE
R/R	=RAILROAD
R/W	=RIGHT OF WAY
R.S.M.	=REGISTER SURVEY
SNK	=SIDEWALK
SEC.	=SECTION
S.I.P.	=SET IRON PIPE

I
T.W.P.
U.E.
UTIL
W.F.
W.M.
A
ELV

=TANGENT
=TOWNSHIP
=UTILITY EASEMENT
=UTILITY
=WOOD FENCE
=WATER MEYER
=CENTRAL ANGLE
=ELEVATION

Pag

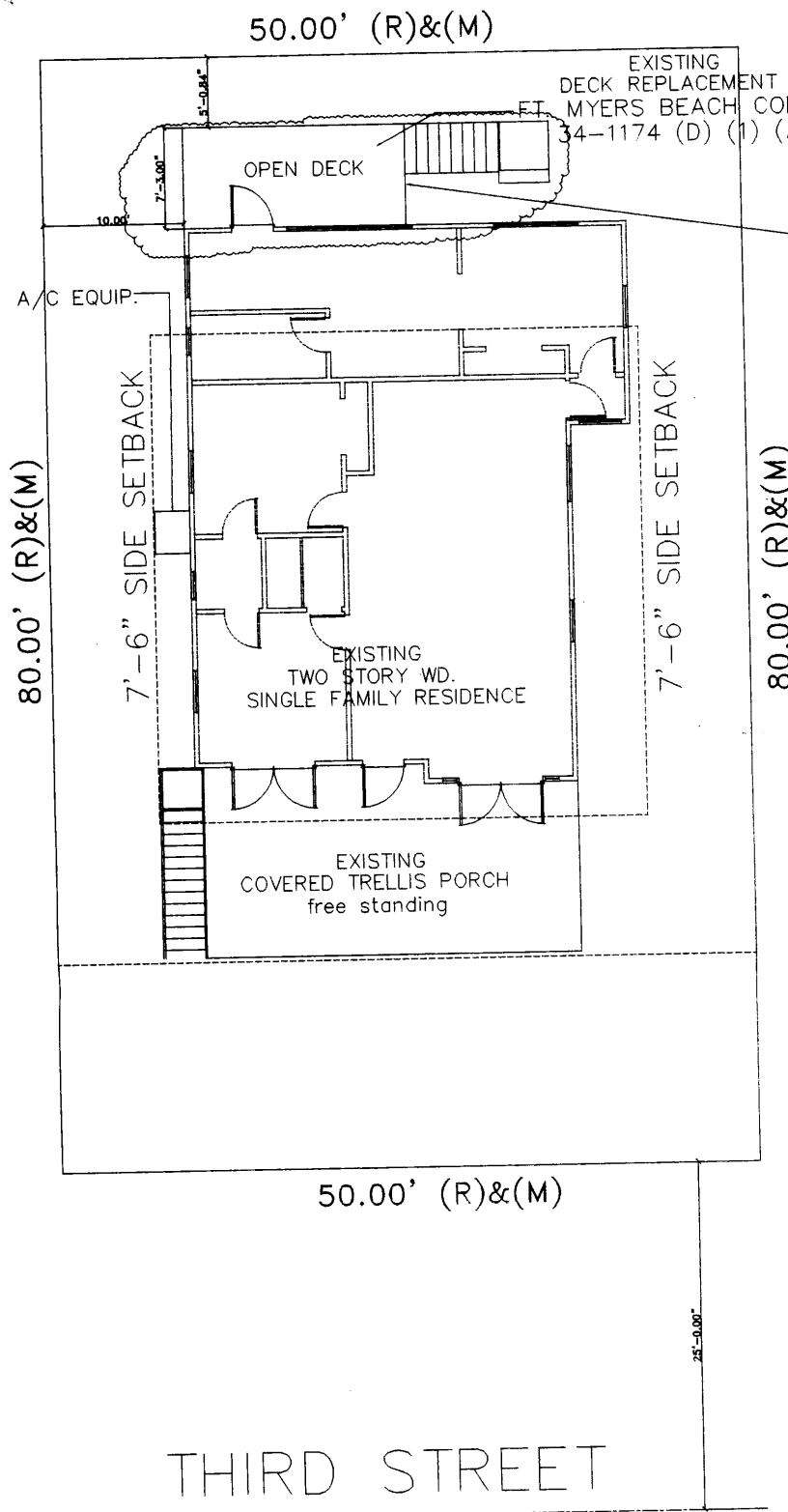


EXHIBIT (B)

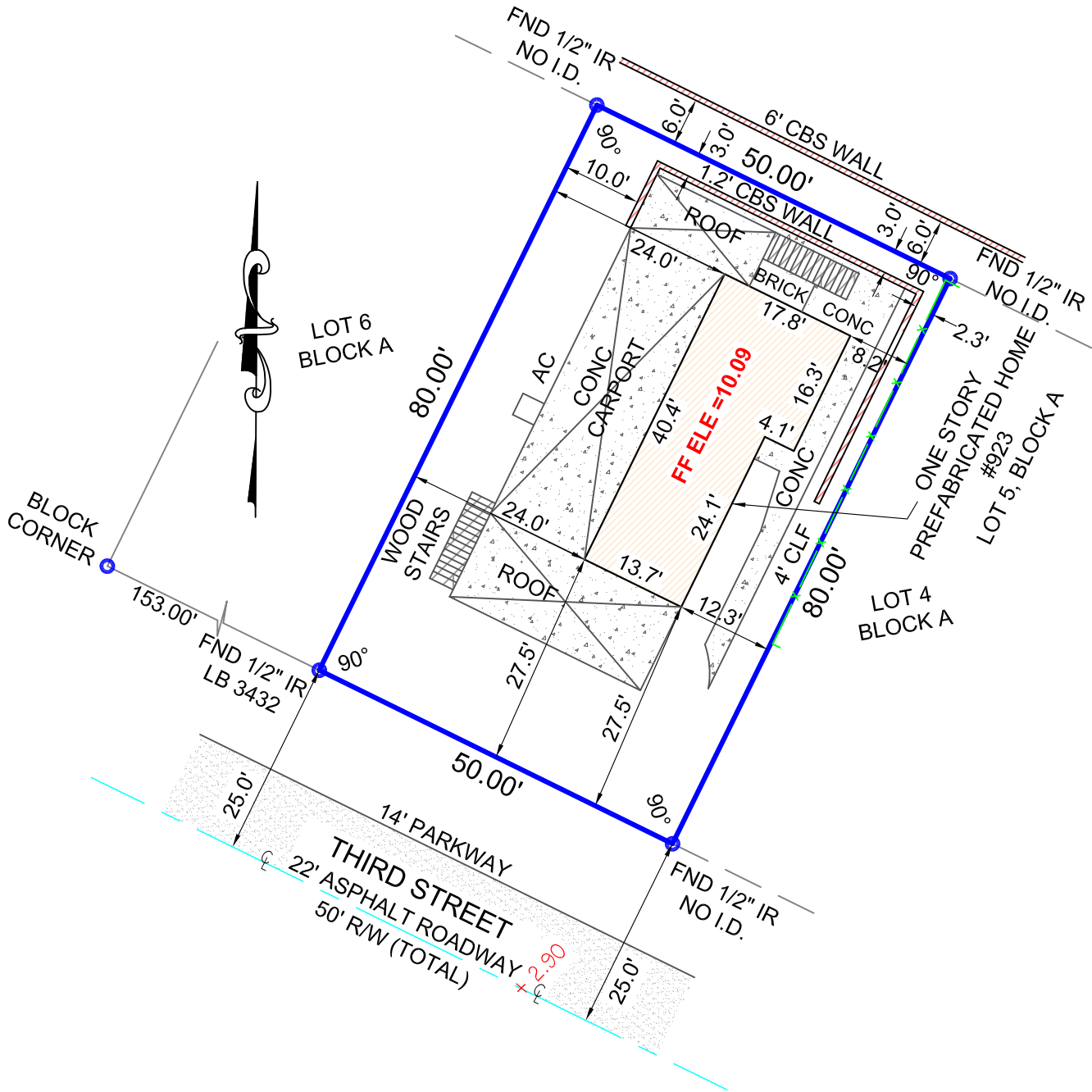
Town of Fort Myers Beach

F M B ADD 2007 0 0 9

EXISTING REAR DECK RE

- GENERAL LEGEND:**
- A/C = AIR CONDITIONER
 - AF = ALUMINUM FENCE
 - BCR = BROWARD COUNTY RECORDS
 - BM = BENCHMARK
 - CB = CATCH BASIN
 - C.M.E. = CANAL MAINTENANCE EASEMENT
 - C/L = CENTERLINE
 - CLF = CHAIN LINK FENCE
 - CBS = CONCRETE BLOCK STRUCTURE
 - CHATT = CHATTAHOOCHEE
 - CONC = CONCRETE
 - CO = CLEAN OUT
 - D = DELTA (CENTRAL ANGLE)
 - D.E. = DRAINAGE EASEMENT
 - E = EAST
 - EB = ELECTRIC BOX
 - ELE = ELEVATION
 - X 0.00' = ELEVATION
 - EOP = EDGE OF PAVEMENT
 - EOW = EDGE OF WATER
 - FF = FINISHED FLOOR
 - FDH = FOUND DRILLHOLE
 - FH = FIRE HYDRANT
 - FN = FOUND NAIL
 - FND = FOUND
 - IP = IRON PIPE
 - IR = IRON ROD
 - INV = INVERT
 - L = ARC LENGTH
 - LP = LIGHT POLE
 - L.M.E. = LAKE MAINTENANCE EASEMENT
 - N = NORTH
 - N/A = NO BASE FLOOD (FOR FLOOD ZONE X)
 - N&D = NAIL & DISC
 - NO ID = NO IDENTIFICATION
 - MF = METAL FENCE
 - MH = MAN HOLE
 - OH = OVERHEAD CABLES
 - OR = OFFICIAL RECORD BOOK
 - O/S = OFFSET
 - PB = PLAT BOOK
 - PBCR = PALM BEACH COUNTY RECORDS
 - P.C. = POINT OF CURVATURE
 - PG = PAGE
 - PL = PLANTER
 - P.O.B. = POINT OF BEGINNING
 - P.O.C. = POINT OF COMMENCEMENT
 - PP = POOL PUMP
 - P&M = PLAT AND MEASURED
 - PVCF = POLYVINYL CHLORIDE FENCE
 - R = RADIUS
 - R/W = RIGHT OF WAY
 - S = SOUTH
 - S/W = SIDEWALK
 - SIR = SET 3/4" IRON ROD #6677
 - SND = SET NAIL & DISC
 - TYP = TYPICAL
 - U.E. = UTILITY EASEMENT
 - W = WEST
 - WF = WOOD FENCE
 - WM = WATER METER
 - WV = WATER VALVE

- OVERHEAD CABLES (OH)
- POLYVINYL CHLORIDE FENCE (PVCF)
- CHAIN LINK FENCE (CLF)
- WOOD FENCE (WF)
- METAL FENCE (MF)
- ° DEGREE SYMBOL
- WATER METER LIGHT POLE
- AT&T BOX UTILITY POLE



LEGAL DESCRIPTION:

LOT 5, BLOCK A, OF "MATANZAS VIEW", ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 9, PAGE 40, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

CERTIFICATIONS:

CHRISTOPHER C. MOSTEIRO

SURVEYORS NOTES:

- (1.) ANGLES IF SHOWN ARE REFERENCED TO THE RECORD PLAT AND ARE AS MEASURED.
- (2.) LEGAL DESCRIPTION PROVIDED BY CLIENT UNLESS OTHERWISE NOTED.
- (3.) NO UNDERGROUND IMPROVEMENTS LOCATED EXCEPT AS SHOWN.
- (4.) THIS SURVEY WAS PREPARED WITHOUT THE BENEFIT OF A TITLE COMMITMENT THEREFOR THE ONLY SURVEY MATTERS SHOWN ARE PER THE RECORD PLAT. THERE MAY BE ADDITIONAL MATTERS OF RECORD, NOT SHOWN WHICH CAN BE FOUND IN THE PUBLIC RECORDS OF THE CORRESPONDING COUNTY OF RECORD.
- (5.) THERE MAY BE EXISTING RECORDED EASEMENTS CONTAINED IN THE PUBLIC RECORDS NOT DEPICTED HEREON THAT ONLY A THOROUGH TITLE SEARCH WOULD UNCOVER.
- (6.) SURVEY PURPOSE FOR ADDITION.
- (7.) ELEVATIONS (IF SHOWN) ARE REFERENCED TO THE NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD88) UNLESS OTHERWISE NOTED. BENCHMARK REFERENCE: LEE COUNTY BENCHMARK #: L 801, ELEVATION = 4.04' (NGVD 1929)

BOUNDARY SURVEY

PROPERTY ADDRESS:

923 THIRD STREET,
FORT MYERS, FL 33931

FLOOD ZONE: AE

BASE FLOOD: 11

COMMUNITY #: 120673

PANEL & SUFFIX: 0554 G

DATE OF FIRM: 11/17/2022

DATE OF SURVEY:

FIELD LOCATION OF IMPROVEMENTS 01/14/2023

SCALE: 1" = 20'

CADD: LJ

CHECKED BY: EWD

INVOICE #: 23- 58164

SHEET # 1 OF 1

THIS SURVEYS MEETS THE STANDARDS OF PRACTICE AS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS IN CHAPTER 5J-17, FLORIDA ADMINISTRATIVE CODE.

ERNEST W DUNCAN PSM.,STATE OF FLORIDA
PROFESSIONAL SURVEYOR AND MAPPER LS 5182
NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

ALL COUNTY SURVEYORS



Building Coverage/ Square Footage Analysis

Owner: Christopher Mosteiro

Site Address: 923 Third Street

Lot Dimensions: 80x50

Total Lot Area: 4,000 SqFt

Existing Home

Pre-lan Second Floor – Unit 1:

40' x 29' = 1,084 SqFt

Front Covered Deck: 11.5' x 27' = 310.5 SqFt

Pre-lan First Floor – Unit 2:

40' x 16' = 633 SqFt

Pre-lan Building Coverage (Front Deck Excluded):

1,084 Total sq.ft. / 4,000 sq.ft. Total Lot Area = .271

Pre-lan Building Coverage Calculation (Front Deck Included):

1,408 Total sq.ft. / 4,000 sq.ft. Total Lot Area = .352

Proposed Renovations

Third Floor – Unit 1 (Pre-lan Second Floor being Elevated):

40' x 29' = 1,084 SqFt

Front Deck being Elevated: 11.5' x 27' = 310.5 SqFt

New Second Floor Addition – Unit 2

40' x 35' = 1,400 SqFt

New Building Coverage Calculation (Front Deck Excluded):

1,400 Total sq.ft. / 4,000 sq.ft. Total Lot Area = .35

New Building Coverage Calculation (Front Deck Included):

1,710.5 Total sq.ft. / 4,000 sq.ft. Total Lot Area = .427

Concept Front View



Concept Front View



Concept Rear View



Concept Rear View



Explain the specific regulation contained in this section from which relief is sought:

Request for variance from (34-683)

LDC Table 34-3 requires a home in the RC zoning district to provide a minimum rear setback of 20 feet from the rear property line and a minimum street setback of 25 feet from the front property line.

I am requesting a variance of 16 feet from the rear setback for a rear setback of 4 feet to existing deck/stairs and 12 feet to existing building.

I am requesting a variance of 10 feet from the street setback for a front setback of 15 feet to existing deck/stairs and 27.5 feet to existing building. The existing second story deck will be elevated to the third story which cannot utilize the additional 10 feet of street setback protrusion currently allowed.

Request for variance from (34-3238)

LDC section 34-3238 requires a residential building that previously legally exceeded density of new buildings to be built back post-disaster provided the total interior square footage of the rebuilt dwelling units does not exceed the interior square footage of the previous dwelling units.

I am requesting a variance to allow an increase of square footage in one out of two dwelling units in my home.

Explain why the variance is needed:

The variance from 34-683 is needed to reduce the setbacks to permit me to keep, restore, and elevate my home as a result of hurricane Ian. My home was determined to be "Substantially Damaged" (over 50%) and required to be brought up to current codes. A previous rear setback variance was approved in 2007 for replacement of rear stairs and deck. Where the home and decks/stairs currently sit does not meet setback requirements. The existing front second story deck will be elevated to the third story cannot utilize the additional 10 feet of street setback protrusion currently allowed.

The variance from 34-3238 is needed because previously only 50% of the ground level of the home was enclosed as a dwelling unit. The other 50% of the home was an open-air car port which was typically found across our island. With the requirement to elevate my home, it would not be possible to reconstruct an elevated second floor with the same square footage (50% of the footprint above). There are issues with engineering supporting the wider load above as well as design aesthetics making rebuilding the same square footage not possible.

Explain the possible effect the variance, if granted, would have on surrounding properties:

If granted, there would be a very minimal effect on the surrounding properties. The front and rear footprint the existing home has now will not be changed, the home is already encroaching on the rear setback as originally built. The front footprint and deck is remaining the same, only to be elevated. My home has always been known to have two dwelling units by the surrounding neighbors. Duplexes are not uncommon for this neighborhood and there are 6+ commercial rental units across the street at Manatee Bay Inn. Secondly, the redevelopment of Moss Marina is directly behind my home and we are expecting much larger building intensities in our neighborhood. With their proposal of multiple hotels and hundreds of rooms, we will be seeing much larger buildings and density in this area and need to keep up with the new development surrounding us. No view corridors will be obstructed as the marina behind my home exceeds the height and width of my structure.

Additionally, a decreased Rear setback is not unusual for this neighborhood. The north side neighboring property (Lot 6 Block A), 917 Third Street, has a variance to 10' for rear setback approved by Lee County on the Town's Historic Zoning Map #199 (95-03-265.05V, 5/25/95). Three adjacent properties have home structures that are also too close to the rear property line similarly to my home.

Explain the hardship (what is unique about the property) that justifies relief from the regulation:

The relief is justified as it would pose an undue hardship to me because I will have to tear down my home if the variance is not approved. My home was built in 1955 and is one of a few original cottages that survived Hurricane Ian. I must elevate the structure above BFE due to the 50% rule and rebuild the lost ground level space. The structure can't be moved forward/away from the rear set back, because it would then not meet the current street set back requirements. The home previously only being enclosed half on the first floor which does not work in an elevated scenario.

My home is a more of a unique case having repetitive flooding into my home. This has been documented many times by Town Staff and previous councils. As Hurricane Idalia passed our coast, my home stood in over 2.5 feet of water. This further clarifies the need to elevate and not rebuild the lost dwelling unit on grade.

Therefore, the requested variances would make it possible to elevate and keep my home.

Explain how the property qualifies for a variance. Direct this explanation to the guidelines for decision-making in LDC Section 34-87.

The presence and preservation of my existing home presents an extraordinary condition as it is still standing after Hurricane Ian and does not meet the new required setbacks in the LDC. The home was built in 1955 and now does not meet the LDC after new regulations were adopted. It would be an extreme hardship to tear down a structurally sound home and rebuild new.

The proposed setback variances are the minimum needed to keep my home and is in line with other structures in the neighborhood. The front and rear footprint of the structure will not be changed from where the current home sits at. A previous rear setback variance was approved in 2007 for the replacement of the rear deck on this property. The structure is compliant with other setbacks and the increase square footage is allowed under 40% building property coverage required by the code in this section of the LDC.



Case # _____

Date Received: _____

Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

Supplement PH-B

Additional Required Information for a Variance Application

This is the second part of a two-part application. This part requests specific information for a variance. Include this form with the Request for Public Hearing form.

Case Number:
Project Name: Mosteiro Residence - 923 Third Street
Authorized Applicant: Christopher Mosteiro
LeePA STRAP Number: 24-46-23-W3-0030A.0050

Current Property Status: Substantial Damage Determination	
Current Zoning: RC	
Future Land Use Map (FLUM) Category: Mixed Residential	
Comp Plan Density:	Platted Overlay? ☒ Yes ☐ No

Variance is requested from:

LDC Section Number

Title of Section or Subsection

34-638 Minimum Setbacks - Front & Rear

Sec. 34-3238. - Post-disaster buildback.

Complete the narrative statements below for EACH variance requested.



Case # _____ Date Received: _____

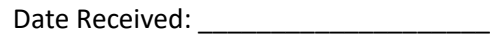
PART I
Narrative Statements

Request for variance from _____ (LDC Section number)

Explain the specific regulation contained in this section from which relief is sought:
See Attached

Reasons for request

Explain why the variance is needed:
See Attached



See Attached

See Attached

Explain how the property qualifies for a variance. Direct this explanation to the guidelines for decision-making in LDC Section 34-87.

See Attached

1. **Requested Motion:**

Meeting Date: December 18, 2023

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING SUPPLEMENTAL TASK AGREEMENT #21 OF CONTRACT RFQ-20-06-AD BETWEEN THE TOWN AND COASTAL ENGINEERING CONSULTANTS, INC. FOR MOORING SYSTEM REPLACEMENT CONSTRUCTION MANAGEMENT SERVICES IN TOWN OF FORT MYERS BEACH CANALS FOR A COST NOT TO EXCEED \$14,168.00, AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

Engineering services are needed to ensure new mooring system components are installed in compliance with design specifications and standards.

What the action accomplishes:

Coastal Engineering Consultants (CEC) shall support the marine contractor to remove and replace the 70 mooring systems damaged by Hurricane Ian. CEC will inspect new mooring system components for compliance with design specifications and standards, and provide survey support to locate anchors not marked by buoys. CEC will coordinate with the Town and marine contractor, and attend meetings with Town and representatives, to review reports and recommendations, and provide written or phone correspondence through project completion.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

4. **Submitter of Information:**

5. **Background:**

The Matanzas Mooring Field suffered damage and destruction of mooring systems due to Hurricane Ian. American Underwater Contractors have been contracted to replace the 70 systems that were damaged in the East Field.

Attachments:

1. 23-189, CEC STA 21 Mooring System Replacement Construction Management
2. 23052_STA 21 _ MF_Replacement CMS_20231107

Financial Impact:

Replacement of Mooring Systems and associated engineering services are expected to be reimbursed by FEMA.

6. **Alternative Action**

Do not approve Coastal Engineering Consultants to provide Construction Management Services for the replacement of mooring systems.

7. **Management Recommendations:**

Approve engineering construction management services.

8. **Recommended Approval:**

Chadd Chustz, Environmental Services
Frankie Kropacek, Operations & Compliance Director

Created/Initiated - 12/12/2023
Approved - 12/12/2023

Nancy Stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Approved - 12/12/2023
Approved - 12/13/2023
Final Approval - 12/13/2023

RESOLUTION NUMBER 23-189

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING SUPPLEMENTAL TASK AGREEMENT #21 OF CONTRACT RFQ-21-09-EN BETWEEN THE TOWN AND COASTAL ENGINEERING CONSULTANTS, INC. FOR BID PHASE AND PRE-CONSTRUCTION SERVICES FOR THE ESTERO ISLAND BEACH RENOURISHMENT PROJECT, FOR A COST NOT TO EXCEED \$30,880.

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 of Fort Myers Beach recognizes the beach as a vital economic and environmental asset for the Town residents and businesses, and

WHEREAS, The Town of Fort Myers Beach recognizes the importance of the beach providing recreational space, native habitat for listed species, and storm impact reduction benefits to upland properties, and

WHEREAS, The Town of Fort Myers Beach is responsible for beach management, restoration and maintenance of the beach in its jurisdiction, and

WHEREAS, the Town Council has determined it is in the best interest of the Town to approve the requested Supplemental Task Order #21 of Contract # RFQ-21-09-EN.

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

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

Section 2. The Town Council hereby approves the Supplemental Task Order #21 of Contract # RFQ-21-09-EN between the Town and Coastal Engineering Consultants, Inc., for \$30,880. A copy of the Supplemental Task Order #21 of Contract # RFQ-21-09-EN is attached hereto as Attachment "A".

The foregoing Resolution was adopted 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	_____
Bill Veach	_____
Karen Woodson	_____

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

FORT MYERS BEACH TOWN COUNCIL

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:**

Vose Law Firm, LLP, Town Attorney

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

**TOWN OF FORT MYERS BEACH SERVICE AGREEMENT
SUPPLEMENTAL TASK AUTHORIZATION**

X Supplemental Task Authorization

NO.: 21

CONTRACT/PROJECT NAME: Mooring System Replacement Construction Management Services

CONSULTANT: Coastal Engineering Consultants, Inc.

PROJECT NO.: _____

SOLICIT NO.: RFQ 17-11

CONTRACT NO.: RFQ-20-06-AD

REQUESTED BY: Austin Gilchrist, Harbormaster

DATE OF REQUEST: 11/3/2023

Upon the completion and execution of this Supplemental Task Authorization by both parties, the Consultant/Provider is authorized to and shall proceed with the following:

EXHIBIT "A" SCOPE OF PROFESSIONAL SERVICE: DATED: November 7, 2023

EXHIBIT "B" COMPENSATION & METHOD OF PAYMENT: DATED: November 7, 2023

EXHIBIT "C" TIME AND SCHEDULE OF PERFORMANCE: DATED: November 7, 2023

EXHIBIT "D" CONSULTANT'S/PROVIDER'S ASSOCIATED
SUB-CONSULTANT(S)/SUB-CONTRACTORS: DATED: November 7, 2023

It is understood and agreed that the acceptance of this modification by the CONSULTANT/PROVIDER constitutes an accord and satisfaction.

RECOMMENDED:

By: _____
Department Director Date

By: _____
Contracts Manager Date

ACCEPTED:

By:  _____
Consultant/Provider November 7, 2023
Date

TOWN APPROVAL:

By: _____
Town Manager Date

SCOPE OF PROFESSIONAL SERVICES

MOORING SYSTEM REPLACEMENT CONSTRUCTION MANAGEMENT SERVICES

Task 1. Mooring System Replacement Construction Management Services

CEC shall support the marine contractor remove and replace the 70 mooring systems damaged by Hurricane Ian. Inspect new mooring system components for compliance with design specifications and standards. Provide survey support to locate anchors not marked by buoys. Coordinate with the Town and marine contractor through project completion.

Task 2. Owner Coordination

Coordination with Town, including attendance of meetings with Town and representatives, to review reports and recommendations, and provide written or phone correspondence through project completion. Coordination with Tidal Basin staff and FEMA representatives.

EXHIBIT BDate: November 7, 2023COMPENSATION AND METHOD OF PAYMENTMOORING SYSTEM REPLACEMENT CONSTRUCTION MANAGEMENT SERVICESSection 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 5.02(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.)
Task 1	Mooring System Replacement Construction Management Services	\$ 11,924	NTE	Y
Task 2	Owner Coordination	\$ 2,244	NTE	Y
TOTAL		\$ 14,168		

(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 10/16/2023, 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 11/7/2023, entitled "NON-PERSONNEL REIMBURSABLE EXPENSES AND COSTS".

ATTACHMENT NO. 1 TO EXHIBIT B

Date: November 7, 2023

CONSULTANT'S PERSONNEL HOURLY RATE SCHEDULE *** FOR
MOORING SYSTEM REPLACEMENT CONSTRUCTION MANAGEMENT SERVICES

Consultant or Sub-Consultant Name: Coastal Engineering Consultants, Inc.
(A separate Attachment No. 1 should be included for each Sub-Consultant)

(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)
Standard Rate Schedule Included in Master Contract			

*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.

***NOTE: A separate personnel hourly rate schedule should also be attached for each Sub-Consultant listed in Exhibit "D".

ATTACHMENT NO. 2 TO EXHIBIT B

Date: November 7, 2023

NON-PERSONNEL REIMBURSABLE EXPENSES AND COSTS

MOORING SYSTEM REPLACEMENT CONSTRUCTION MANAGEMENT SERVICES

CONSULTANT OR SUB-CONSULTANT NAME: Coastal Engineering Consultants, Inc.

(A separate Attachment No. 2 should be included for each Sub-Consultant)

ITEM	BASIS OF CHARGE
Telephone (Long Distance)	Actual Cost
Postage and Shipping	Actual Cost
Commercial Air Travel	Actual Cost (Coach)
Vehicle Travel Allowance (N.T.E. 50 miles one-way) (or)	\$0.405/mile
Vehicle Rental/Gas	Actual Cost
Lodging (Per Person)	Actual Cost or NTE \$100.00
Meals:	
Breakfast	\$12.01
Lunch	\$11.82
Dinner	\$24.72
In accordance with the Runzheimer rate service for Travel utilizing the "average", dated 5/4/06	
Reproduction (Photocopy) 8 1/2" x 11"	\$0.15/Page
8 1/2" x 14"	\$0.20/Page
11" x 14"	\$0.35/Page
Reproduction (Blue/White Prints)	\$0.20/Sq. Ft.
Printing/Binding	Actual Cost
Mylar Sheets	Actual Cost
Photographic Supplies & Services	Actual Cost
Tolls	Actual Cost
*List other specific project related reimbursables (i.e., film/developing):	
Permit Fees	Actual Cost
NOTE: Receipts or in-house logs are required for all non-personnel reimbursable expenses unless exempt (such as meals).	
Administrative Services Fee – Applicable only when specifically authorized by the Town, for administering the procurement of special additional services, equipment, reimbursables etc. not covered under the costs and/or changes established in the Agreement.	

*NOTE: N.T.E. indicates Not-To-Exceed

EXHIBIT C

Date: November 7, 2023

TIME AND SCHEDULE OF PERFORMANCE

MOORING SYSTEM REPLACEMENT CONSTRUCTION MANAGEMENT SERVICES

This EXHIBIT "C" establishes 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
Task 1	Mooring System Replacement Construction Management Services	60	60
Task 2	Owner Coordination	180	240

EXHIBIT D

Date: November 7, 2023

CONSULTANT'S ASSOCIATED SUB-CONSULTANT(S) AND SUBCONTRACTOR(S)

MOORING SYSTEM REPLACEMENT CONSTRUCTION MANAGEMENT SERVICES

CONSULTANT has identified the following Sub-Consultant(s) and/or Subcontractor(s) which may be engaged to assist the CONSULTANT in providing and performing services and work on this Project:

(If none, enter the word "none" in the space below.)

Service and/or Work to be Provided or Performed	Name and Address of Individual or Firm				Sub-Consultant Services are Exempted from Prime Consultant's Insurance Coverage	
					Yes	No
NONE						

1. **Requested Motion:**

Meeting Date: December 18, 2023

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING THE TOWN TO PROCURE TWO FLOATING DOCKS FROM SNOOK BIGHT MARINA IN AN AMOUNT NOT TO EXCEED \$2,000, AUTHORIZING THE TOWN MANAGER TO PROCURE COASTAL ENGINEERING CONSULTANT, INC. SERVICES AND ADDITIONAL MATERIALS TO INSTALL THE FLOATING DOCKS TO TEMPORARILY SERVICE THE MOORING FIELD IN AN AMOUNT NOT TO EXCEED \$4,000, AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

The agreement with Matanzas Inn to provide dinghy dockage expires January 20, 2024.

What the action accomplishes:

The floating docks will provide Mooring Field renters access to upland services.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

5. **Background:**

The Matanzas Mooring Field was devastated by Hurricane Ian. Currently, 13 mooring systems are in service. An additional 70 mooring systems are scheduled to be installed by contractors in December 2023 through January 2024.

Dinghy dock services are being provided on a temporary basis by the Matanzas Inn to provide Mooring Field renters access to upland services. The agreement for dinghy dock services with Matanzas Inn expires on January 30, 2024.

Attachments:

1. Resolution 23-185, Temporary Dinghy Dock
2. Dock Sale Details

Financial Impact:

The financial impact is not to exceed \$6,000. Staff will work with FEMA Public Assistance Consultants to be recoup costs to Town.

6. **Alternative Action**

Do not approve the purchase of floating docks from Snook Bight Marina, and do not authorize the Town Manager to procure engineering services and additional materials needed to install the floating docks.

7. **Management Recommendations:**

Approve.

8. **Recommended Approval:**

Chadd Chustz, Environmental Services
Frankie Kropacek, Operations & Compliance Director
Gretchen R.H. Vose, Town Attorney

Created/Initiated - 12/12/2023
Approved - 12/12/2023
Approved - 12/12/2023

Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Approved - 12/13/2023
Final Approval - 12/13/2023

RESOLUTION NUMBER 23-185

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING THE TOWN TO PROCURE TWO FLOATING DOCKS FROM SNOOK BIGHT MARINA IN AN AMOUNT NOT TO EXCEED \$2,000, AUTHORIZING THE TOWN MANAGER TO PROCURE COASTAL ENGINEERING CONSULTANT, INC. SERVICES AND ADDITIONAL MATERIALS TO INSTALL THE FLOATING DOCKS TO TEMPORARILY SERVICE THE MOORING FIELD IN AN AMOUNT NOT TO EXCEED \$4,000, 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 of Fort Myers Beach requires a dinghy dock to service Matanzas Mooring Field renters; and

WHEREAS, the Town Council has determined it is in the best interest of the Town to approve the requested procurement of 2 floating docks, engineering services, and additional materials to install a dinghy dock to service the Matanzas Mooring Field.

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

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

Section 2. The Town Council hereby approves the purchase between the Town and Snook Bight Marina, for two floating docks, and authorizes the Town Manager to procure Coastal Engineering Consultant Services and additional materials as needed to install a temporary dinghy dock to service the Matanzas Mooring Field. A copy of the proposal is attached hereto as Attachment "A".

The foregoing Resolution was adopted 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 _____
Bill Veach _____
Karen Woodson _____

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

FORT MYERS BEACH TOWN COUNCIL

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:**

Vose Law Firm, LLP, Town Attorney

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



December 11, 2023

Proposal to sell dock sections to Fort Myers Beach

Attn: Chadd Chustz, Environmental Project Manager

Description of Docks:

Two sections of floating docks, approximately 37' x 5'. Docks are used and are in serviceable condition as shown during site visit at Snook Bight Marina in December, 2023. They are aluminum structures with encased floatation and composite decking surfaces.

Price: \$2,000 for one section as identified during site visit. A second section, also shown during site visit will be included at no additional cost to provide additional floatation, decking surface, etc. to assist with the town's modification as necessary for the dock section(s) to serve as a dinghy dock.

1. **Requested Motion:**

Meeting Date: December 18, 2023

Accept FY2022 Audit Report prepared by Mauldin & Jenkins

Why the action is necessary:

Section 218.39, F.S., requires that local governments that meet specific criteria outlined in the chapter shall have an annual financial audit of its accounts and records completed within nine (9) months after the end of its fiscal year. The annual audited financial report could also be required to include a "single audit" in accordance with Title 2 U.S. Code of Federal Regulations Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) or Section 215.97, F.S., and Chapter 10.550, Rules of the Auditor General. The audit shall be performed by an independent certified public accountant in accordance with Section 218.39, F.S., and Chapter 10.550, Rules of the Auditor General. At the conclusion of the audit, the auditor shall discuss all comments that will be included in the audit report with management, each member of the governing body, and each member of an audit committee charged with governance.

The local government's response to the audit findings, including corrective action to be taken, must be filed with the local government's governing body within thirty (30) days after delivery of the audit findings. In addition, the audit findings and responses must be incorporated in the audit report package and submitted to the Auditor General within forty-five (45) days after the delivery of the audit report to the local government's governing body, but no later than nine (9) months after the end of the fiscal year.

References:

Section 215.97, F.S.; Florida Single Audit Act
Section 218.39, F.S.; Annual Financial Audit Reports
Section 218.391, F.S.; Auditor Selection Procedures
Section 218.415, F.S.; Investment of Public Funds
Section 218.503, F.S.; Determination of Financial Emergency
Chapter 10.550, Rules of the Auditor General; local Government Entity Audits

What the action accomplishes:

By accepting the Audit Report, the Town Council is facilitating compliance with its statutory responsibilities regarding an audit.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

Joe Onzick, Finance Director

5. **Background:**

The Town's annual audit was performed by Mauldin & Jenkins. A copy of the audit report was provided to the Town's Audit Committee. On December 11, 2023, there was a presentation by the auditor to the Audit Committee regarding the audit. The Committee reviewed and discussed the audit report with the Finance Director and approved forwarding it to the Town Council for acceptance.

Attachments:

1. FY22 Audit Report
2. 2022 AD&A - Town of Fort Myers Beach

Financial Impact:

6. Alternative Action

7. Management Recommendations:

The Audit Committee unanimously recommended acceptance of the audit report at their December 11, 2023 meeting.

8. Recommended Approval:

Joe Onzick, Finance Director
Joe Onzick, Finance Director
Nancy Stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 12/11/2023
Approved - 12/12/2023
Approved - 12/12/2023
Approved - 12/12/2023
Final Approval - 12/12/2023

TOWN OF FORT MYERS BEACH, FLORIDA
FINANCIAL STATEMENTS
FOR THE FISCAL YEAR ENDED
SEPTEMBER 30, 2022

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TOWN OF FORT MYERS BEACH, FLORIDA
FINANCIAL STATEMENTS
FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 2022

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TOWN OF FORT MYERS BEACH, FLORIDA
FINANCIAL STATEMENTS
FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 2022

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INDEPENDENT AUDITOR'S REPORT

Honorable Mayor, Town Council and Town Manager
Town of Fort Myers Beach, Florida

Report on the Audit of the Financial Statements

Opinions

We have audited the accompanying financial statements of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of the Town of Fort Myers Beach, Florida (the "Town"), as of and for the year ended September 30, 2022, and the related notes to the financial statements, which collectively comprise the Town's basic financial statements as listed in the table of contents.

In our opinion, the financial statements referred to above present fairly, in all material respects, the respective financial position of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of the Town as of September 30, 2022, and the respective changes in financial position and, where applicable, cash flows thereof and the budgetary comparisons for the General Fund, Gas Tax Fund, Building Fund, and Beach Access Fund for the year then ended in accordance with accounting principles generally accepted in the United States of America.

Basis for Opinions

We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of the Financial Statements section of our report. We are required to be independent of the Town and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audit. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinions.

Responsibilities of Management for the Financial Statements

Management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the Town's ability to continue as a going concern for twelve months beyond the financial statement date, including any currently known information that may raise substantial doubt shortly thereafter.

Auditor's Responsibilities for the Audit of the Financial Statements

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinions. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with generally accepted auditing standards and *Government Auditing Standards* will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

In performing an audit in accordance with generally accepted auditing standards and *Government Auditing Standards*, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Town's internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about the Town's ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control-related matters that we identified during the audit.

Required Supplementary Information

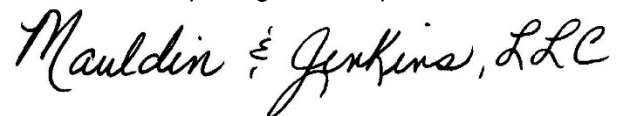
Accounting principles generally accepted in the United States of America require that the management's discussion and analysis on pages 4 through 12, schedule of the changes in the total OPEB liability on page 48 be presented to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

Supplementary Information

Our audit was conducted for the purpose of forming opinions on the financial statements that collectively comprise the Town's basic financial statements. The combining nonmajor fund financial statements are presented for purposes of additional analysis and are not a required part of the basic financial statements. The schedule of expenditures of federal awards and state financial assistance is presented for purposes of additional analysis as required by Title 2 *U.S. Code of Federal Regulations Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) and Chapter 10.550, *Local Governmental Entity Audits*, Rules of the Auditor General, and is also not a required part of the basic financial statements of the Town. The combining nonmajor fund financial statements and the schedule of expenditures of federal awards and state financial assistance are the responsibility of management and were derived from and relate directly to the underlying accounting and other records used to prepare the basic financial statements. Such information has been subjected to the auditing procedures applied in the audit of the basic financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the basic financial statements or to the basic financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the combining nonmajor fund financial statements and the schedule of expenditures of federal awards and state financial assistance are fairly stated, in all material respects, in relation to the basic financial statements as a whole.

Other Reporting Required by Government Auditing Standards

In accordance with *Government Auditing Standards*, we have also issued our report dated October 26, 2023, on our consideration of the Town's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts and grant agreements and other matters. The purpose of that report is solely to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the Town's internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the Town's internal control over financial reporting and compliance.



Bradenton, Florida
October 26, 2023

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**THE TOWN OF FORT MYERS BEACH, FLORIDA
MANAGEMENT'S DISCUSSION AND ANALYSIS
YEAR ENDED SEPTEMBER 30, 2022**

Introduction

As management of the Town of Fort Myers Beach, we offer readers of the Town's financial statements this narrative overview and analysis of the financial activities of the Town for the fiscal year ended September 30, 2022. We encourage readers to read the information presented herein in conjunction with additional information furnished in the Town's financial statements, which follow this narrative.

Financial Highlights

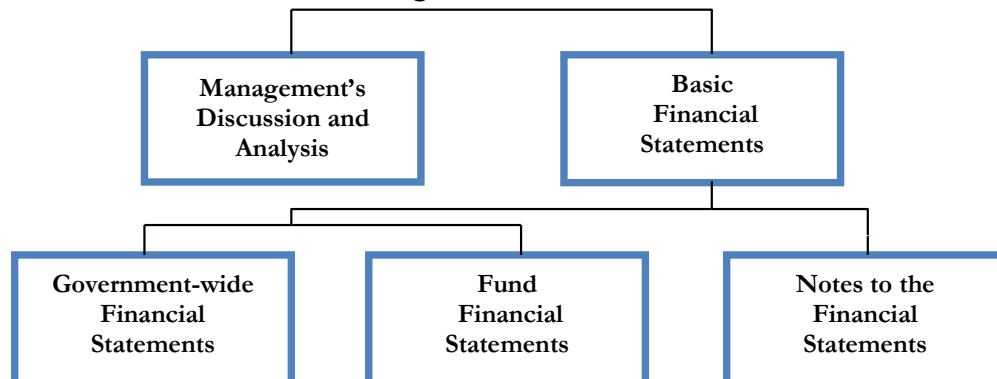
- The Town's assets and deferred outflows of resources exceeded its liabilities and deferred inflows of resources by \$56,789,432 (net position). Of this amount, \$13,993,789 is unrestricted net position that may be used to meet the Town's ongoing obligations.
- The Town's total net position decreased by \$5,611,046 due primarily to the destruction and impairment of the Town's capital assets caused by Hurricane Ian on September 28, 2022.
- The Town's combined governmental funds had combined ending fund balances of \$9,084,720 and a combined decrease in fund balances of \$2,342,920, primarily due to the delay in receiving loan proceeds to fund the Bay Oaks Rec Center, Times Square and Bayside Park community enhancement projects, as well as capital expenditures related to Road Impact Fees that were greater than corresponding revenues.

Overview of the Financial Statements

This discussion and analysis introduce the Town of Fort Myers Beach's basic financial statements. The basic financial statements consist of three components: (1) government-wide financial statements, (2) fund financial statements, and (3) notes to the financial statements (see Figure 1). The basic financial statements present two views of the Town through government-wide statements and fund financial statements.

Required Components of the Annual Financial Report

Figure 1



THE TOWN OF FORT MYERS BEACH, FLORIDA MANAGEMENT'S DISCUSSION AND ANALYSIS YEAR ENDED SEPTEMBER 30, 2022

Basic Financial Statements

The statement of net position and statement of activities together comprise the government-wide financial statements. They provide both short and long-term information about the Town's financial status.

The next statements are fund financial statements. These statements focus on the individual parts of the Town's government. The fund statements provide more detail than the government-wide statements. There are two parts to the fund financial statements: (1) the governmental funds statements, and (2) the proprietary funds statements.

The next section of the basic financial statements is the notes. The notes to the financial statements explain in detail some of the data contained in the basic financial statements.

The following section is required supplementary information reporting changes in the Town's total OPEB liability.

Other supplementary information is included after the required supplementary information and provides combining fund financial statements of the nonmajor governmental funds.

Government-Wide Financial Statements

The *statement of net position* and the *statement of activities* provide information about the net position and activities of the Town as a whole. The *government-wide financial statements* separate governmental from business-type activities. Both statements are measured and reported on the full accrual basis of accounting using the economic resources measurement focus. The government-wide financial statements are designed to provide the reader with a broad overview of the Town's finances - similar to private-sector business financial statements.

The statement of activities presents information showing how the Town's net position changed during the 2022 fiscal year. The statement reflects the expenses of a given function or segment, offset by program revenues. Program revenues are defined as charges for services, operating grants and contributions, and capital grants and contributions directly associated with a given function. Property taxes and other taxes are reported under general revenue.

Both financial statements display the primary types of functions of the Town as follows:

- **Governmental activities** – Most of the Town's primary functions are reported in governmental activities, including culture/recreation, public works, streets, roads, planning, zoning, and general and administrative services. Major revenues supporting these activities are property taxes, gas taxes, communications services taxes, and intergovernmental revenues.
- **Business-type activities** – These activities include the water and stormwater enterprise funds. The water fund accounts for the operations of the water system. The stormwater fund accounts for operations of the stormwater system. User fees support both services.

THE TOWN OF FORT MYERS BEACH, FLORIDA MANAGEMENT'S DISCUSSION AND ANALYSIS YEAR ENDED SEPTEMBER 30, 2022

Fund Financial Statements

The fund financial statements provide a more detailed look at the Town's most significant activities. A fund is a grouping of related accounts used to maintain control over resources that have been segregated for specific activities or objectives. The Town, like other state and local governments, uses fund accounting to ensure and reflect compliance (or non-compliance) with finance-related legal requirements. All of the funds of the Town can be divided into two categories: governmental funds and proprietary funds.

1. **Governmental funds** – Governmental funds are used to account for those functions reported as governmental activities in the government-wide financial statements. Most of the Town's basic services are accounted for in governmental funds. These funds focus on how assets can readily be converted into cash flow in and out and what monies are left at year-end will be available for spending in the next year. Governmental funds are reported using an accounting method called *modified accrual basis accounting* which provides a short-term spending focus. As a result, the governmental fund financial statements give the reader a detailed short-term view that helps him or her determine if there are more or less financial resources available to finance the Town's programs.

The relationship between government activities (reported in the statement of net position and the statement of activities) and governmental funds is described in a reconciliation that is a part of the fund financial statements.

2. **Proprietary funds** – The Town has two proprietary funds, which are *enterprise funds* used to report the same functions presented as business-type activities in the government-wide financial statements. The Town uses enterprise funds to account for its water and stormwater activities. The funds use full accrual basis accounting and the economic measurement focus. Fees or charges are the primary revenue service for the funds.

Government-Wide Financial Analysis

Town of Fort Myers Beach's Net Position

	Governmental Activities		Business-Type Activities		Total	
	2022	2021	2022	2021	2022	2021
Current and other assets	\$ 14,042,645	\$ 13,969,647	\$ 10,888,143	\$ 11,588,955	\$ 24,930,788	\$ 25,558,602
Capital assets	23,079,808	24,273,379	56,365,127	57,415,379	79,444,935	81,688,758
Total assets	37,122,453	38,243,026	67,253,270	69,004,334	104,375,723	107,247,360
Deferred outflows of financial resources	73,055	39,117	13,273	7,107	86,328	46,224
Current and other liabilities	4,519,599	2,345,987	1,201,580	2,368,496	5,721,179	4,714,483
Noncurrent liabilities	1,435,008	1,214,354	40,402,730	38,858,570	41,837,738	40,072,924
Total liabilities	5,954,607	3,560,341	41,604,310	41,227,066	47,558,917	44,787,407
Deferred inflows of financial resources	96,220	89,448	17,482	16,251	113,702	105,699
Net investment in capital assets	22,341,102	23,534,673	18,386,746	22,423,626	40,727,848	45,958,299
Restricted	2,067,795	2,455,869	-	-	2,067,795	2,455,869
Unrestricted	6,735,784	8,641,812	7,258,005	5,344,498	13,993,789	13,986,310
Total net position	\$ 31,144,681	\$ 34,632,354	\$ 25,644,751	\$ 27,768,124	\$ 56,789,432	\$ 62,400,478

**THE TOWN OF FORT MYERS BEACH, FLORIDA
MANAGEMENT'S DISCUSSION AND ANALYSIS
YEAR ENDED SEPTEMBER 30, 2022**

Government-Wide Financial Analysis (Continued)

Key elements in the analysis of the Town's net position at the end of the year are as follows:

- The assets and deferred outflows of the Town of Fort Myers Beach exceeded liabilities and deferred inflows by \$56,789,432 as of September 30, 2022.
- Total net position decreased by 9% over the prior year.
- The net investment in capital assets was 72% of the Town's total net position. The Town uses these capital assets to provide services to citizens; consequently, these assets are not available for future spending. Therefore, although the Town's net investment in capital assets is reported net of the outstanding related debt, the resources needed to repay that debt must be provided by other sources since the capital assets cannot be used to liquidate these liabilities.
- Net assets of the Town subjected to external restrictions on their use was 4% of total net position.
- Unrestricted net assets of the Town was 25% of total net position.
- Total liabilities of the Town increased by 6%.

Town of Fort Myers Beach's Changes Net Position

	Governmental Activities		Business-Type Activities		Total	
	2022	2021	2022	2021	2022	2021
Program revenues						
Charges for services	\$ 4,507,770	\$ 4,070,014	\$ 8,596,527	\$ 7,207,884	\$ 13,104,297	\$ 11,277,898
Operating grants and contributions	1,858,729	1,041,739	-	-	1,858,729	1,041,739
Capital grants and contributions	207,396	1,640,318	-	-	207,396	1,640,318
General revenues						
Property taxes	3,571,341	3,404,467	-	-	3,571,341	3,404,467
Franchise fees	1,196,064	1,093,483	-	-	1,196,064	1,093,483
Gas taxes	389,878	369,879	-	-	389,878	369,879
Communications taxes	564,172	536,426	-	-	564,172	536,426
Business taxes	2,961	4,159	-	-	2,961	4,159
Intergovernmental revenues, unrestricted	1,045,367	904,098	-	-	1,045,367	904,098
Investment earnings	(39,475)	9,828	24,001	10,573	(15,474)	20,401
Total revenues	13,304,203	13,074,411	8,620,528	7,218,457	21,924,731	20,292,868
Program expenses						
Governmental activities						
General government	9,688,214	3,753,674	-	-	9,688,214	3,753,674
Public safety	640,368	459,555	-	-	640,368	459,555
Physical environment	216,268	196,835	-	-	216,268	196,835
Transportation	2,041,034	1,840,712	-	-	2,041,034	1,840,712
Culture/recreation	4,177,566	3,156,915	-	-	4,177,566	3,156,915
Interest on long-term debt	28,426	9,538	-	-	28,426	9,538
Business-type activities						
Water utility	-	-	8,436,444	3,976,287	8,436,444	3,976,287
Stormwater	-	-	2,307,457	598,028	2,307,457	598,028
Total expenses	16,791,876	9,417,229	10,743,901	4,574,315	27,535,777	13,991,544
Change in net position	(3,487,673)	3,657,182	(2,123,373)	2,644,142	(5,611,046)	6,301,324
Net position, beginning	34,632,354	30,975,172	27,768,124	25,123,982	62,400,478	56,099,154
Net position, ending	\$ 31,144,681	\$ 34,632,354	\$ 25,644,751	\$ 27,768,124	\$ 56,789,432	\$ 62,400,478

THE TOWN OF FORT MYERS BEACH, FLORIDA MANAGEMENT'S DISCUSSION AND ANALYSIS YEAR ENDED SEPTEMBER 30, 2022

Government-Wide Financial Analysis (Continued)

Governmental activities in the current year decreased the Town's net position by \$3,487,673. Key net elements of these activities are as follows:

- Total governmental revenues increased by 2% from the prior year.
- Charges for services increased 11% from the prior year.
- Capital grants and contributions decreased 87% from the prior year.
- Total governmental expenses increased 78% from the prior year, primarily the result of \$6.1 million of loss due to the destruction and impairment of the Town's capital assets caused by Hurricane Ian.

Business-Type Activities

Business-type activities in the current year decreased the Town's net position by \$2,123,373. Key net elements of these activities are as follows:

- Total business-type revenues increased 19% from the prior year.
- Charges for services increased 19% from the previous year and are nearly 100% of operating revenues.
- The Town did not receive any capital grants and contributions during the current year or the previous year.
- Total business-type expenses increased 135% from the prior year, primarily the result of \$4.7 million of loss due to the impairment of the Town's capital assets caused by Hurricane Ian.

Financial Analysis of the Town's Funds

Governmental Funds

Governmental funds comprise the *General Fund*, special revenue funds, and a capital projects fund. Governmental funds use the current financial resources measurement focus that provides information on the near-term inflows, outflows, and balances of available resources.

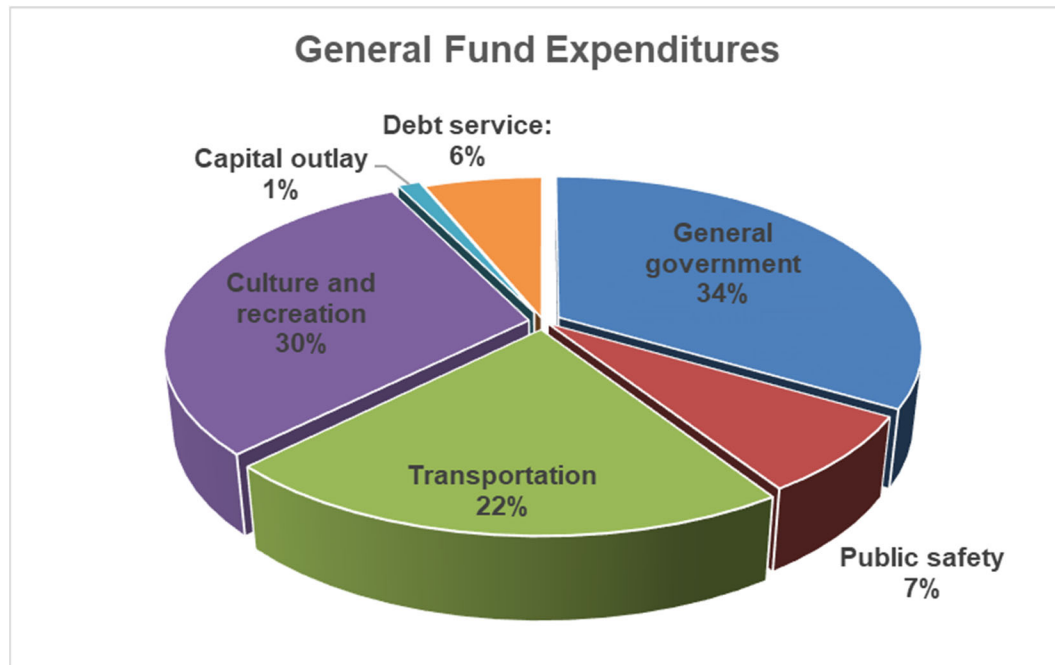
The *General Fund* is the primary operating fund for the Town. The fund accounts for all the financial resources not restricted by federal and state laws, local ordinances, or other outside restrictions. Key components and the highlights in the activities of the *General Fund* are as follows:

- Total assets increased 12% from the prior year.
- Total fund balance increased 13% from the prior year.
- Total revenues increased 4% from the prior year, and expenditures increased 29%, primarily related to capital improvements to the Bay Oaks Rec Center, Times Square and Bayside Park.

**THE TOWN OF FORT MYERS BEACH, FLORIDA
MANAGEMENT'S DISCUSSION AND ANALYSIS
YEAR ENDED SEPTEMBER 30, 2022**

Governmental Funds (Continued)

The percentages (rounded) of General Fund expenditures for the various functions are presented in the graph below:



The *Gas Tax Fund* accounts for gas taxes and other resources restricted for road-related projects. At the end of the current year, the total fund balance was \$967,520. The fund balance increased 25% from the prior year.

The *Building Fund* accounts for Town-administered building permits and plans review. At the end of the current year, the fund balance was \$498,560. The fund balance increased 23% from the prior year.

The *Beach Access Fund* accounts for the expenditures incurred to maintain the Town's beaches and records the reimbursement received from Lee County Tourist Development Council. The amount of reimbursement decreased 1% from the prior year.

The *Capital Projects Fund* is maintained by transfers from the *General Fund* and other special revenue funds, as well as bond proceeds. Capital outlays totaled \$4,579,296 in the current year.

American Rescue Fund is a federally funded relief package used for investments in water, sewer, and infrastructure, as well as lost revenue replacement and general operating expenses. The fund had cash and cash equivalents of \$3,553,056 at September 30, 2022. There was no project activity during the year.

The *Nonmajor Governmental Funds* consist of two special revenue funds, the *Park Impact Fund* and the *Road Impact fund*. The *Park Impact Fund* had a decrease in fee revenue of \$184,172, or 94%, and the *Road Impact Fund* had a decrease in fee revenue of \$477,181, or 90%.

**THE TOWN OF FORT MYERS BEACH, FLORIDA
MANAGEMENT'S DISCUSSION AND ANALYSIS
YEAR ENDED SEPTEMBER 30, 2022**

Proprietary Funds

The *Water Fund* accounts for the assets and activities of the Town's water system. The fund's net position decreased by \$1,779,753, primarily due to a \$3,456,300 loss due to Hurricane Ian related impairment of capital assets.

The *Stormwater Fund* accounts for the assets and activities of the Town's stormwater system. The fund's net position decreased by \$343,620, primarily due to a \$1,465,023 loss due to Hurricane Ian related impairment of capital assets.

Budgetary Highlights

Revenue budget-to-actual in the General Fund resulted in a positive revenue variance of \$1,304,634, or 15%. The positive variance was due primarily to an increase of \$938,709 in actual charges for services, an increase of \$268,232 in actual intergovernmental revenues, and an increase of \$202,064 in franchise taxes over budgeted revenues.

Budget-to-actual expenditures in the General Fund resulted in a positive variance of \$312,041 (less than fiscal budget), primarily due to reduced expenditures in general governmental services of \$590,917, reduced expenditures of \$159,622 in cultural and recreation activities, and reduced expenditures of \$155,223 in transportation activities, offset by an unbudgeted, voluntary debt service payment of \$500,000.

Revenue budget-to-actual in the Building Fund resulted in a positive revenue variance of \$132,245, or 18%, due entirely to an increase in actual licenses and permits revenue over budgeted revenues.

Capital Asset and Debt Administration

Capital Assets

The following table provides a comparative summary of capital assets (net of accumulated depreciation) by category:

	Governmental Activities		Business-Type Activities		Total	
	2022	2021	2022	2021	2022	2021
Land	\$ 11,999,901	\$ 10,536,780	\$ 305,000	\$ 305,000	\$ 12,304,901	\$ 10,841,780
Buildings and leasehold improvements	3,353,349	6,286,808	434,754	520,981	3,788,103	6,807,789
Improvements other than buildings	1,073,542	1,717,141	-	-	1,073,542	1,717,141
Office furniture and equipment	25,123	94,857	2,400	-	27,523	94,857
Vehicles and other equipment	683,426	973,144	81,545	112,634	764,971	1,085,778
Infrastructure	5,557,267	3,912,402	55,083,974	41,740,736	60,641,241	45,653,138
Construction in progress	387,200	752,247	457,454	14,736,028	844,654	15,488,275
Total capital assets	<u>\$ 23,079,808</u>	<u>\$ 24,273,379</u>	<u>\$ 56,365,127</u>	<u>\$ 57,415,379</u>	<u>\$ 79,444,935</u>	<u>\$ 81,688,758</u>

Additional information on the Town's capital assets can be found in Note 6 to the financial statements.

**THE TOWN OF FORT MYERS BEACH, FLORIDA
MANAGEMENT'S DISCUSSION AND ANALYSIS
YEAR ENDED SEPTEMBER 30, 2022**

Long-Term Debt

As of September 30, 2022, and 2021 the Town had \$41,158,712 and \$39,533,940, respectively, in long-term debt. The table on the following page provides a breakdown.

	Governmental Activities		Business-Type Activities		Total	
	2022	2021	2022	2021	2022	2021
Refunding bond payable	\$ -	\$ -	\$ 360,000	\$ 540,000	\$ 360,000	\$ 540,000
Capital improvements revenue note	820,786	708,090	-	-	820,786	708,090
State revolving fund loans	-	-	39,957,221	38,255,234	39,957,221	38,255,234
Financed purchase payable	20,705	30,616	-	-	20,705	30,616
Total debt	<u>\$ 841,491</u>	<u>\$ 738,706</u>	<u>\$ 40,317,221</u>	<u>\$ 38,795,234</u>	<u>\$ 41,158,712</u>	<u>\$ 39,533,940</u>

Additional information on the Town's long-term debt can be found in Note 7 to the financial statements.

Economic Factors and Next Fiscal Year's Budget

The State of Florida operates primarily using sales, gasoline, and corporate income taxes. Local governments (cities, counties, and school boards) primarily rely on property and a limited array of permitted other taxes (sales, gasoline, communication services, etc.) and fees (franchise, occupational licensing, impact, etc.) for funding their governmental activities. There are several state-shared revenues and recurring and non-recurring (one-time) grants from both the state and federal governments.

The following factors were considered in preparing the Town's budget for the 2022-2023 fiscal year:

- The Town continued planning significant investment in infrastructure in the water utility as well as the expansion of the stormwater utility, which will provide for dedicated operation and maintenance and future stormwater infrastructure. Pursuant to funding the infrastructure improvements, Ordinance 15-08 established the stormwater utility, Resolution 16-07 adopted February 16, 2016, adopted the user fee to support a dedicated source of funding, and Resolution 20-25 adopted August 17, 2020, authorized an annual rate increase based on a rate study.
- The State of Florida Department of Environmental Protection has approved two stormwater loans totaling \$26 million for the side streets in the Town, and two drinking water loans totaling \$37 million to replace the Town's water distribution lines.
- The Town continued its plan on drawing down proceeds from the \$10 million Capital Improvement Revenue Note, Series 2020, to fund community enhancement projects for Bay Oaks Rec Center, Times Square and Bayside Park.

The devastating impact of Hurricane Ian on September 28, 2022 on the Town's capital assets, its taxable property value and its economy will certainly be taken into consideration in future budgets, for which the Town will utilize funding from insurance reimbursements, grants and loans as it will be focusing all of its resources on recovery.

**THE TOWN OF FORT MYERS BEACH, FLORIDA
MANAGEMENT'S DISCUSSION AND ANALYSIS
YEAR ENDED SEPTEMBER 30, 2022**

Requests for Information

The financial report is designed to provide a general overview of the Town of Fort Myers Beach, Florida's finances. Questions concerning any information provided in this report or requests for additional financial information should be addressed to:

Town of Fort Myers Beach
Finance
2525 Estero Boulevard
Fort Myers Beach, Florida 33931

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BASIC FINANCIAL STATEMENTS

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TOWN OF FORT MYERS BEACH, FLORIDA

**STATEMENT OF NET POSITION
SEPTEMBER 30, 2022**

	Governmental Activities	Business-Type Activities	Total
Assets			
Cash and cash equivalents	\$ 11,226,952	\$ 7,180,199	\$ 18,407,151
Investments	1,860,497	-	1,860,497
Internal balances	90,487	(90,487)	-
Due from other governments	775,963	2,490,742	3,266,705
Accounts receivable, net	-	959,695	959,695
Prepaid expenses	88,746	20,848	109,594
Restricted cash	-	327,146	327,146
Capital assets			
Nondepreciable	12,387,101	762,454	13,149,555
Depreciable	10,692,707	55,602,673	66,295,380
Total assets	<u>37,122,453</u>	<u>67,253,270</u>	<u>104,375,723</u>
Deferred outflows of resources			
Deferred outflows - OPEB	<u>73,055</u>	<u>13,273</u>	<u>86,328</u>
Liabilities			
Accounts payable and other accrued liabilities	966,543	791,748	1,758,291
Accrued interest payable	-	82,686	82,686
Unearned revenue	3,553,056	-	3,553,056
Payable from restricted assets			
Customer deposits	-	327,146	327,146
Noncurrent liabilities			
Due within one year	152,621	198,305	350,926
Due in more than one year	1,282,387	40,204,425	41,486,812
Total liabilities	<u>5,954,607</u>	<u>41,604,310</u>	<u>47,558,917</u>
Deferred inflows of resources			
Deferred inflows - OPEB	<u>96,220</u>	<u>17,482</u>	<u>113,702</u>
Net position			
Net investment in capital assets	22,341,102	18,386,746	40,727,848
Restricted for			
Parks and recreation	253,962	-	253,962
Transportation	1,813,833	-	1,813,833
Unrestricted	6,735,784	7,258,005	13,993,789
Total net position	<u>\$ 31,144,681</u>	<u>\$ 25,644,751</u>	<u>\$ 56,789,432</u>

The accompanying notes to financial statements are an integral part of this statement.

TOWN OF FORT MYERS BEACH, FLORIDA

**STATEMENT OF ACTIVITIES
FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 2022**

		Program Revenues			Net (Expense) Revenue and Changes in Net Position		
		Charges for Services	Operating Grants and Contributions	Capital Grants and Contributions	Governmental Activities	Business-Type Activities	Total
Functions/programs	Expenses						
Governmental activities							
General government	\$ 9,688,214	\$ 1,220,399	\$ 81,896	\$ -	\$ (8,385,919)	\$ -	\$ (8,385,919)
Public safety	640,368	-	-	140,971	(499,397)	-	(499,397)
Physical environment	216,268	-	-	-	(216,268)	-	(216,268)
Transportation	2,041,034	412	530,188	54,894	(1,455,540)	-	(1,455,540)
Culture/recreation	4,177,566	3,286,959	1,246,645	11,531	367,569	-	367,569
Interest on long-term debt	28,426	-	-	-	(28,426)	-	(28,426)
Total governmental activities	<u>16,791,876</u>	<u>4,507,770</u>	<u>1,858,729</u>	<u>207,396</u>	<u>(10,217,981)</u>	<u>-</u>	<u>(10,217,981)</u>
Business-type activities							
Water and sewer	8,436,444	6,656,691	-	-	-	(1,779,753)	(1,779,753)
Stormwater	2,307,457	1,939,836	-	-	-	(367,621)	(367,621)
Total business-type activities	<u>10,743,901</u>	<u>8,596,527</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>(2,147,374)</u>	<u>(2,147,374)</u>
Total primary government	<u>\$ 27,535,777</u>	<u>\$ 13,104,297</u>	<u>\$ 1,858,729</u>	<u>\$ 207,396</u>	<u>(10,217,981)</u>	<u>(2,147,374)</u>	<u>(12,365,355)</u>
General revenues							
Property taxes, levied for general purposes					3,571,341	-	3,571,341
Communication services tax					564,172	-	564,172
Gas taxes					389,878	-	389,878
Franchise fees					1,196,064	-	1,196,064
Business taxes					2,961	-	2,961
Intergovernmental revenues, unrestricted					1,045,367	-	1,045,367
Investment earnings (loss)					(39,475)	24,001	(15,474)
Total general revenues and transfers					<u>6,730,308</u>	<u>24,001</u>	<u>6,754,309</u>
Change in net position					<u>(3,487,673)</u>	<u>(2,123,373)</u>	<u>(5,611,046)</u>
Net position, beginning of year					<u>34,632,354</u>	<u>27,768,124</u>	<u>62,400,478</u>
Net position, end of year					<u>\$ 31,144,681</u>	<u>\$ 25,644,751</u>	<u>\$ 56,789,432</u>

The accompanying notes to financial statements are an integral part of this statement.

TOWN OF FORT MYERS BEACH, FLORIDA
BALANCE SHEET
GOVERNMENTAL FUNDS
SEPTEMBER 30, 2022

	General	Gas Tax	Building	Beach Access	Capital Projects	American Rescue	Nonmajor Governmental Funds	Total Governmental Funds
Assets								
Cash and cash equivalents	\$ 4,719,168	\$ 548,116	\$ 575,714	\$ 904	\$ 819,767	\$ 3,553,056	\$ 1,010,227	\$ 11,226,952
Investments	1,503,770	356,727	-	-	-	-	-	1,860,497
Prepaid items	86,646	-	2,100	-	-	-	-	88,746
Due from other funds	1,491,092	-	-	-	-	-	90,487	1,581,579
Due from other governments	292,711	62,764	-	420,488	-	-	-	775,963
Total assets	<u>\$ 8,093,387</u>	<u>\$ 967,607</u>	<u>\$ 577,814</u>	<u>\$ 421,392</u>	<u>\$ 819,767</u>	<u>\$ 3,553,056</u>	<u>\$ 1,100,714</u>	<u>\$ 15,533,737</u>
Liabilities, deferred inflows of resources and fund balances								
Liabilities								
Accounts payable and accrued liabilities	\$ 262,983	\$ 87	\$ 79,254	\$ 26,274	\$ 597,506	\$ -	\$ 439	\$ 966,543
Due to other funds	-	-	-	538,246	952,846	-	-	1,491,092
Unearned revenue	-	-	-	-	-	3,553,056	-	3,553,056
Total liabilities	<u>262,983</u>	<u>87</u>	<u>79,254</u>	<u>564,520</u>	<u>1,550,352</u>	<u>3,553,056</u>	<u>439</u>	<u>6,010,691</u>
Deferred inflows of resources								
Unavailable revenue	<u>17,838</u>	<u>-</u>	<u>-</u>	<u>420,488</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>438,326</u>
Fund balances (deficit)								
Nonspendable								
Prepaid items	86,646	-	2,100	-	-	-	-	88,746
Restricted								
General government - building inspections	-	-	496,460	-	-	-	-	496,460
Parks and recreation	-	-	-	-	-	-	253,962	253,962
Transportation	-	967,520	-	-	-	-	846,313	1,813,833
Committed								
Beach renourishment	100,000	-	-	-	-	-	-	100,000
Workforce housing	110,950	-	-	-	-	-	-	110,950
Public works - landscaping	782,958	-	-	-	-	-	-	782,958
Emergency	1,060,000	-	-	-	-	-	-	1,060,000
Compensated absences	130,000	-	-	-	-	-	-	130,000
Assigned								
Subsequent years budget	3,656,567	-	-	-	-	-	-	3,656,567
Legal and general liability	200,000	-	-	-	-	-	-	200,000
Health	160,000	-	-	-	-	-	-	160,000
Operating reserve	600,000	-	-	-	-	-	-	600,000
Unassigned	925,445	-	-	(563,616)	(730,585)	-	-	(368,756)
Total fund balances (deficit)	<u>7,812,566</u>	<u>967,520</u>	<u>498,560</u>	<u>(563,616)</u>	<u>(730,585)</u>	<u>-</u>	<u>1,100,275</u>	<u>9,084,720</u>
Total liabilities, deferred inflows of resources and fund balances	<u>\$ 8,093,387</u>	<u>\$ 967,607</u>	<u>\$ 577,814</u>	<u>\$ 421,392</u>	<u>\$ 819,767</u>	<u>\$ 3,553,056</u>	<u>\$ 1,100,714</u>	<u>\$ 15,533,737</u>

The accompanying notes to financial statements are an integral part of this statement.

**TOWN OF FORT MYERS BEACH, FLORIDA
RECONCILIATION OF THE BALANCE SHEET-
GOVERNMENTAL FUNDS TO THE STATEMENT OF NET POSITION
SEPTEMBER 30, 2022**

Fund balances, total governmental funds		\$ 9,084,720
Amounts reported for governmental activities in the statement of net position are different because:		
Capital assets used in governmental activities are not financial resources and therefore, are not reported in the funds.		
Governmental nondepreciable capital assets	\$ 12,387,101	
Governmental depreciable capital assets, net	<u>10,692,707</u>	23,079,808
Deferred outflows, deferred inflows, and the total OPEB liability related to the Town's other post-employment benefits plan are not expected to be liquidated with expendable available financial resources and, therefore are not reported in the funds.		
Deferred outflows - OPEB	73,055	
Deferred inflows - OPEB	(96,220)	
Total OPEB liability	<u>(202,211)</u>	(225,376)
Certain deferred inflows of resources are not available to pay for current period expenditures and, therefore, are reported as unavailable revenue in the funds.		438,326
Long-term liabilities, including capital leases and compensated absences are not due and payable in the current period and therefore, are not reported in the funds.		
Compensated absences	(391,306)	
Capital improvements revenue note	(820,786)	
Financed purchase	<u>(20,705)</u>	<u>(1,232,797)</u>
Net position of governmental activities		<u>\$ 31,144,681</u>

The accompanying notes to financial statements are an integral part of this statement.

TOWN OF FORT MYERS BEACH, FLORIDA
STATEMENT OF REVENUES, EXPENDITURES AND CHANGES IN FUND BALANCES-
GOVERNMENTAL FUNDS
FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 2022

	General	Gas Tax	Building	Beach Access	Capital Projects	American Rescue	Nonmajor Governmental Funds	Total Governmental Funds
Revenues								
Taxes								
Property	\$ 3,571,341	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 3,571,341
Gas	-	389,878	-	-	-	-	-	389,878
Franchise	1,196,064	-	-	-	-	-	-	1,196,064
Communication services	564,172	-	-	-	-	-	-	564,172
Local business	2,961	-	-	-	-	-	-	2,961
Licenses and permits	46,961	-	884,915	-	-	-	-	931,876
Intergovernmental	1,179,232	7,106	-	1,004,339	530,188	-	-	2,720,865
Charges for services	3,286,959	-	412	-	-	-	-	3,287,371
Fines and forfeitures	2,770	-	-	-	-	-	-	2,770
Special assessments/impact fees	-	-	-	-	-	-	66,425	66,425
Investment loss	(24,671)	(14,804)	-	-	-	-	-	(39,475)
Miscellaneous	285,753	-	-	-	81,896	-	-	367,649
Total revenues	<u>10,111,542</u>	<u>382,180</u>	<u>885,327</u>	<u>1,004,339</u>	<u>612,084</u>	<u>-</u>	<u>66,425</u>	<u>13,061,897</u>
Expenditures								
Current								
General government	2,849,884	-	790,972	-	-	-	-	3,640,856
Public safety	626,953	-	-	-	-	-	-	626,953
Transportation	1,843,969	172,118	-	-	-	-	-	2,016,087
Culture and recreation	2,565,178	-	-	1,165,300	-	-	-	3,730,478
Capital outlay	100,000	17,029	-	120,251	4,579,296	-	648,226	5,464,802
Debt service:								
Principal	500,000	-	-	-	9,911	-	-	509,911
Interest	26,888	-	-	-	1,538	-	-	28,426
Total expenditures	<u>8,512,872</u>	<u>189,147</u>	<u>790,972</u>	<u>1,285,551</u>	<u>4,590,745</u>	<u>-</u>	<u>648,226</u>	<u>16,017,513</u>
Excess (deficiency) of revenues over (under) expenditures	<u>1,598,670</u>	<u>193,033</u>	<u>94,355</u>	<u>(281,212)</u>	<u>(3,978,661)</u>	<u>-</u>	<u>(581,801)</u>	<u>(2,955,616)</u>
Other financing sources (uses)								
Loan issuance	-	-	-	-	612,696	-	-	612,696
Transfers in	-	-	-	-	730,000	-	-	730,000
Transfers out	(730,000)	-	-	-	-	-	-	(730,000)
Total other financing sources (uses)	<u>(730,000)</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>1,342,696</u>	<u>-</u>	<u>-</u>	<u>612,696</u>
Change in fund balances	<u>868,670</u>	<u>193,033</u>	<u>94,355</u>	<u>(281,212)</u>	<u>(2,635,965)</u>	<u>-</u>	<u>(581,801)</u>	<u>(2,342,920)</u>
Fund balances (deficits), beginning of year	<u>6,943,896</u>	<u>774,487</u>	<u>404,205</u>	<u>(282,404)</u>	<u>1,905,380</u>	<u>-</u>	<u>1,682,076</u>	<u>11,427,640</u>
Fund balances (deficit), end of year	<u>\$ 7,812,566</u>	<u>\$ 967,520</u>	<u>\$ 498,560</u>	<u>\$ (563,616)</u>	<u>\$ (730,585)</u>	<u>\$ -</u>	<u>\$ 1,100,275</u>	<u>\$ 9,084,720</u>

The accompanying notes to financial statements are an integral part of this statement.

TOWN OF FORT MYERS BEACH, FLORIDA
RECONCILIATION OF THE STATEMENT OF REVENUES, EXPENDITURES AND
CHANGES IN FUND BALANCES OF GOVERNMENTAL FUNDS TO THE
STATEMENT OF ACTIVITIES
FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 2022

Net change in fund balances, total governmental funds		\$ (2,342,920)
Amounts reported for governmental activities in the statement of net position are different because:		
Governmental funds report capital outlays as expenditures. However, in the statement of activities, the cost of these assets is depreciated over their estimated useful lives.		
Capital outlay	\$ 6,105,913	
Less current year depreciation	<u>(1,210,998)</u>	4,894,915
The net effect of various transactions involving capital assets (i.e. sales, trade-ins, and donations) is to decrease net position.		(6,088,486)
Revenues in the statement of activities that do not provide current financial resources are not reported as revenues in the funds.		242,306
The issuance of long-term debt provides current financial resources to governmental funds, while the repayment of principal of long-term debt consumes the current financial resources of governmental funds. Neither transaction, however has any effect on net position. This amount is the net effect of these differences in the treatment of long-term liabilities.		
Issuance of long-term debt	(612,696)	
Principal repayment of long-term debt	<u>509,911</u>	(102,785)
In the governmental funds, current year expenditures related to OPEB are comprised solely of amounts contributed to the plan for the current year. However, in the statement of activities, expenses related to OPEB include amounts that do not require the use of current financial resources. This amount represents the difference in the required accounting treatment of OPEB and related items.		(28,036)
Some expenses reported in the statement of activities do not require the use of current financial resources and therefore, are not reported as expenditures in governmental funds.		
Change in compensated absences		<u>(62,667)</u>
Change in net position of governmental activities		<u>\$ (3,487,673)</u>

The accompanying notes to financial statements are an integral part of this statement.

TOWN OF FORT MYERS BEACH, FLORIDA
STATEMENT OF REVENUES, EXPENDITURES AND CHANGES IN FUND
BALANCES-BUDGET AND ACTUAL-GENERAL FUND
FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 2022

	Budgeted Amounts			Variance With Final Budget- Positive (Negative)
	Original	Final	Actual	
Revenues				
Taxes				
Property	\$ 3,546,858	\$ 3,546,858	\$ 3,571,341	\$ 24,483
Franchise	994,000	994,000	1,196,064	202,064
Communications services	595,000	595,000	564,172	(30,828)
Local business	2,000	2,000	2,961	961
Licenses and permits	192,300	192,300	46,961	(145,339)
Intergovernmental	911,000	911,000	1,179,232	268,232
Charges for services	2,348,250	2,348,250	3,286,959	938,709
Fines and forfeitures	35,000	35,000	2,770	(32,230)
Investment income	90,000	90,000	(24,671)	(114,671)
Miscellaneous	92,500	92,500	285,753	193,253
Total revenues	8,806,908	8,806,908	10,111,542	1,304,634
Expenditures				
Current				
General government	3,440,801	3,440,801	2,849,884	590,917
Public safety	660,120	660,120	626,953	33,167
Transportation	1,999,192	1,999,192	1,843,969	155,223
Culture and recreation	2,724,800	2,724,800	2,565,178	159,622
Capital outlay	-	-	100,000	(100,000)
Debt service:				
Principal	-	-	500,000	(500,000)
Interest	-	-	26,888	(26,888)
Total expenditures	8,824,913	8,824,913	8,512,872	312,041
Excess (deficiency) of revenues over (under) expenditures	(18,005)	(18,005)	1,598,670	1,616,675
Other financing sources (uses)				
Transfers in	1,608,285	1,608,285	-	(1,608,285)
Transfers out	(1,311,380)	(1,311,380)	(730,000)	581,380
Total other financing sources (uses)	296,905	296,905	(730,000)	(1,026,905)
Change in fund balance	278,900	278,900	868,670	589,770
Fund balance, beginning of year	6,943,896	6,943,896	6,943,896	-
Fund balance, end of year	\$ 7,222,796	\$ 7,222,796	\$ 7,812,566	\$ 589,770

The accompanying notes to financial statements are an integral part of this statement.

TOWN OF FORT MYERS BEACH, FLORIDA
STATEMENT OF REVENUES, EXPENDITURES AND CHANGES IN FUND
BALANCES-BUDGET AND ACTUAL-GAS TAX FUND
FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 2022

	Budgeted Amounts			Variance With Final Budget- Positive (Negative)
	Original	Final	Actual	
Revenues				
Taxes				
Gas taxes	\$ 330,000	\$ 330,000	\$ 389,878	\$ 59,878
Intergovernmental	-	-	7,106	7,106
Investment loss	-	-	(14,804)	(14,804)
Total revenues	<u>330,000</u>	<u>330,000</u>	<u>382,180</u>	<u>52,180</u>
Expenditures				
Current				
Transportation	330,000	330,000	172,118	157,882
Capital outlay	-	-	17,029	(17,029)
Total expenditures	<u>330,000</u>	<u>330,000</u>	<u>189,147</u>	<u>140,853</u>
Change in fund balance	-	-	193,033	193,033
Fund balance, beginning of year	<u>774,487</u>	<u>774,487</u>	<u>774,487</u>	<u>-</u>
Fund balance, end of year	<u>\$ 774,487</u>	<u>\$ 774,487</u>	<u>\$ 967,520</u>	<u>\$ 193,033</u>

The accompanying notes to financial statements are an integral part of this statement.

TOWN OF FORT MYERS BEACH, FLORIDA
STATEMENT OF REVENUES, EXPENDITURES AND CHANGES IN FUND
BALANCES-BUDGET AND ACTUAL-BUILDING FUND
FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 2022

	Budgeted Amounts			Variance With Final Budget- Positive (Negative)
	Original	Final	Actual	
Revenues				
Licenses and permits	\$ 752,670	\$ 752,670	\$ 884,915	\$ 132,245
Total revenues	<u>752,670</u>	<u>752,670</u>	<u>885,327</u>	<u>132,657</u>
Expenditures				
Current				
General government	752,670	752,670	790,972	(38,302)
Total expenditures	<u>752,670</u>	<u>752,670</u>	<u>790,972</u>	<u>(38,302)</u>
Change in fund balance	-	-	94,355	94,355
Fund balance, beginning of year	<u>404,205</u>	<u>404,205</u>	<u>404,205</u>	<u>-</u>
Fund balance, end of year	<u>\$ 404,205</u>	<u>\$ 404,205</u>	<u>\$ 498,560</u>	<u>\$ 94,355</u>

The accompanying notes to financial statements are an integral part of this statement.

TOWN OF FORT MYERS BEACH, FLORIDA
STATEMENT OF REVENUES, EXPENDITURES AND CHANGES IN FUND
BALANCES-BUDGET AND ACTUAL-BEACH ACCESS FUND
FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 2022

	Budgeted Amounts			Variance With Final Budget- Positive (Negative)
	Original	Final	Actual	
Revenues				
Intergovernmental	\$ 862,875	\$ 862,875	\$ 1,004,339	\$ 141,464
Total revenues	<u>862,875</u>	<u>862,875</u>	<u>1,004,339</u>	<u>141,464</u>
Expenditures				
Current				
Culture and recreation	812,375	812,375	1,165,300	(352,925)
Capital outlay	50,500	50,500	120,251	(69,751)
Total expenditures	<u>862,875</u>	<u>862,875</u>	<u>1,285,551</u>	<u>(422,676)</u>
Change in fund balance	-	-	(281,212)	(281,212)
Fund balance (deficit), beginning of year	<u>(282,404)</u>	<u>(282,404)</u>	<u>(282,404)</u>	<u>-</u>
Fund balance (deficit), end of year	<u><u>\$ (282,404)</u></u>	<u><u>\$ (282,404)</u></u>	<u><u>\$ (563,616)</u></u>	<u><u>\$ (281,212)</u></u>

The accompanying notes to financial statements are an integral part of this statement.

TOWN OF FORT MYERS BEACH, FLORIDA
STATEMENT OF NET POSITION
PROPRIETARY FUNDS
SEPTEMBER 30, 2022

	Water Fund	Stormwater Fund	Total
Assets			
Current assets			
Cash	\$ 3,156,469	\$ 4,023,730	\$ 7,180,199
Accounts receivable, net	749,340	210,355	959,695
Due from other governments	1,218,553	1,272,189	2,490,742
Prepaid items	20,323	525	20,848
Total current assets	<u>5,144,685</u>	<u>5,506,799</u>	<u>10,651,484</u>
Noncurrent assets			
Restricted cash	327,146	-	327,146
Capital assets, nondepreciable	373,191	389,263	762,454
Capital assets, depreciable, net	38,481,822	17,120,851	55,602,673
Total noncurrent assets	<u>39,182,159</u>	<u>17,510,114</u>	<u>56,692,273</u>
Total assets	<u>44,326,844</u>	<u>23,016,913</u>	<u>67,343,757</u>
Deferred outflows of resources			
Deferred outflow - OPEB	<u>10,877</u>	<u>2,396</u>	<u>13,273</u>
Liabilities			
Current liabilities			
Payable from current assets			
Accounts payable	750,163	41,585	791,748
Due to other funds	14,235	76,252	90,487
Accrued interest payable	64,824	17,862	82,686
Compensated absences	18,305	-	18,305
Notes payable, due within one year	180,000	-	180,000
Payable from restricted assets			
Customer deposits	327,146	-	327,146
Total current liabilities	<u>1,354,673</u>	<u>135,699</u>	<u>1,490,372</u>
Long-term liabilities			
Compensated absences	27,347	3,119	30,466
Notes payable	26,919,506	13,217,714	40,137,220
Total OPEB liability	30,108	6,631	36,739
Total long-term liabilities	<u>26,976,961</u>	<u>13,227,464</u>	<u>40,204,425</u>
Total liabilities	<u>28,331,634</u>	<u>13,363,163</u>	<u>41,694,797</u>
Deferred inflows of resources			
Deferred Inflows - OPEB	<u>14,326</u>	<u>3,156</u>	<u>17,482</u>
Net position			
Net investment in capital assets	12,822,157	5,564,589	18,386,746
Unrestricted	3,169,604	4,088,401	7,258,005
Total net position	<u>\$ 15,991,761</u>	<u>\$ 9,652,990</u>	<u>\$ 25,644,751</u>

The accompanying notes to financial statements are an integral part of this statement.

TOWN OF FORT MYERS BEACH, FLORIDA
STATEMENT OF REVENUES, EXPENSES AND CHANGES IN NET POSITION
PROPRIETARY FUNDS
FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 2022

	Water Fund	Stormwater Fund	Total
Operating revenues			
Charges for services	\$ 6,651,310	\$ 1,939,836	\$ 8,591,146
Miscellaneous	5,381	-	5,381
Total operating revenues	<u>6,656,691</u>	<u>1,939,836</u>	<u>8,596,527</u>
Operating expenses			
Bulk water	2,177,444	-	2,177,444
Depreciation expense	871,290	398,378	1,269,668
Repairs and maintenance	214,173	236,995	451,168
Salaries and benefits	616,822	91,594	708,416
Insurance	187,130	-	187,130
Power	54,817	-	54,817
Professional services	35,000	-	35,000
Other operating supplies and expenses	551,335	55,106	606,441
Total operating expenses	<u>4,708,011</u>	<u>782,073</u>	<u>5,490,084</u>
Operating income	<u>1,948,680</u>	<u>1,157,763</u>	<u>3,106,443</u>
Nonoperating revenues (expenses)			
Interest income	-	24,001	24,001
Interest expense	(272,133)	(60,361)	(332,494)
Loss on disposal of capital assets	(3,456,300)	(1,465,023)	(4,921,323)
Total nonoperating revenues (expenses)	<u>(3,728,433)</u>	<u>(1,501,383)</u>	<u>(5,229,816)</u>
Change in net position	(1,779,753)	(343,620)	(2,123,373)
Net position, beginning of year	<u>17,771,514</u>	<u>9,996,610</u>	<u>27,768,124</u>
Net position, end of year	<u><u>\$ 15,991,761</u></u>	<u><u>\$ 9,652,990</u></u>	<u><u>\$ 25,644,751</u></u>

The accompanying notes to financial statements are an integral part of this statement.

TOWN OF FORT MYERS BEACH, FLORIDA
STATEMENT OF CASH FLOWS
PROPRIETARY FUNDS
FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 2022

	Water Fund	Stormwater Fund	Total
Cash flows from operating activities			
Cash received from customers	\$ 7,021,370	\$ 1,912,982	\$ 8,934,352
Cash paid to suppliers	(3,873,383)	(688,355)	(4,561,738)
Cash paid to employees	(603,622)	(87,555)	(691,177)
Net cash provided by operating activities	<u>2,544,365</u>	<u>1,137,072</u>	<u>3,681,437</u>
Cash flows from capital and related financing activities			
Principal payment on notes payable and bonds	(963,826)	(440,730)	(1,404,556)
Proceeds from loan	1,914,299	3,014,632	4,928,931
Interest paid	(265,696)	(77,432)	(343,128)
Acquisition and construction of capital assets	(3,078,626)	(2,062,113)	(5,140,739)
Net cash provided by (used by) capital and related financing activities	<u>(2,393,849)</u>	<u>434,357</u>	<u>(1,959,492)</u>
Cash flows from investing activities			
Interest received	-	24,001	24,001
Net change in cash and cash equivalents	150,516	1,595,430	1,745,946
Cash and cash equivalents, beginning of year	<u>3,333,099</u>	<u>2,428,300</u>	<u>5,761,399</u>
Cash and cash equivalents, end of year	<u><u>\$ 3,483,615</u></u>	<u><u>\$ 4,023,730</u></u>	<u><u>\$ 7,507,345</u></u>
Reconciliation of cash and cash equivalents to statement of net position			
Cash and cash equivalents	\$ 3,156,469	\$ 4,023,730	\$ 7,180,199
Restricted cash	327,146	-	327,146
Total cash and cash equivalents	<u><u>\$ 3,483,615</u></u>	<u><u>\$ 4,023,730</u></u>	<u><u>\$ 7,507,345</u></u>
Reconciliation of operating income to net cash provided by operating activities			
Operating income	\$ 1,948,680	\$ 1,157,763	\$ 3,106,443
Adjustment to reconcile operating income to net cash provided by operating activities			
Depreciation expense	871,290	398,378	1,269,668
Decrease (increase) in assets			
Accounts receivable	364,679	(26,854)	337,825
Prepaid items	107,069	(525)	106,544
Due from other funds	-	14,235	14,235
Deferred outflow - OPEB	(5,053)	(1,113)	(6,166)
Increase (decrease) in liabilities			
Accounts payable	(770,608)	(395,729)	(1,166,337)
Due to other funds	-	(14,235)	(14,235)
Customer deposits	10,055	-	10,055
Compensated absences	9,025	3,119	12,144
Deferred inflow - OPEB	1,008	223	1,231
Total OPEB liability	8,220	1,810	10,030
Net cash provided by operating activities	<u><u>\$ 2,544,365</u></u>	<u><u>\$ 1,137,072</u></u>	<u><u>\$ 3,681,437</u></u>

The accompanying notes to financial statements are an integral part of this statement.

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TOWN OF FORT MYERS BEACH, FLORIDA

NOTES TO THE FINANCIAL STATEMENTS SEPTEMBER 30, 2022

NOTE 1 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

The Town of Fort Myers Beach, Florida (the “Town”) was incorporated pursuant to Chapter 95-494, *Laws of Florida*. The Town operates under a Town Manager form of government and is governed by an elected five-member Town Council. The Town Manager is appointed by a majority vote of the Council. The Town provides the following services: parks and recreation, public works, streets and roads, planning and zoning, water utility services, museum and cultural, stormwater, and general and administrative services.

The basic financial statements of the Town have been prepared in conformity with accounting principles generally accepted in the United States of America (GAAP), applicable to state and local governmental units. The Governmental Accounting Standards Board (GASB) is the standard-setting body for governmental accounting and financial reporting. The GASB periodically updates its codification of the existing Governmental Accounting and Financial Reporting Standards, which along with subsequent GASB pronouncements (statements and interpretations), constitutes GAAP for governmental units.

A. Reporting Entity

In evaluation of the Town as a reporting entity, management considered all potential component units in accordance with applicable Governmental Accounting Standards Board Statements (GASBS). A component unit is a legally separate organization for which the elected officials of the primary government are financially accountable. Management reviewed all of the financial accountability concepts and determined that there are no component units required to be included in the Town’s financial statements.

B. Government-Wide and Fund Financial Statements

The government-wide and fund financial statements along with the notes to the financial statements comprise the basic financial statements. The government-wide financial statements (i.e., the statement of net position and the statement of activities) report information on all of the nonfiduciary activities of the Town. For the most part, the effect of interfund activity has been removed from these statements. Government-wide financial statements do not provide information by fund but distinguish between the Town’s governmental activities and business-type activities. *Governmental activities*, which normally are supported by taxes and intergovernmental revenues, are reported separately from *business-type activities*, which rely to a significant extent on fees and charges for support.

The statement of net position includes non-current assets and non-current liabilities. In addition, the government-wide statement of activities reflects depreciation expense on the Town’s capital assets. The statement of activities demonstrates the degree to which the direct expenses of a given function or activity is offset by program revenues. Direct expenses are those that are clearly identifiable with a specific function or segment. Program revenues include: (1) charges to customers or applicants who purchase, use or directly benefit from goods, services or privileges provided by a given function or segment, and (2) grants and contributions that are restricted to meeting the operational or capital requirements of a particular function or activity. Taxes and other items not properly included among program revenues are reported instead as general revenues.

TOWN OF FORT MYERS BEACH, FLORIDA

NOTES TO THE FINANCIAL STATEMENTS SEPTEMBER 30, 2022

NOTE 1 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

Separate financial statements are provided for governmental funds and proprietary funds. Major individual governmental funds and major individual enterprise funds are reported as separate columns in the fund financial statements.

Major individual governmental funds and major individual enterprise funds are reported as separate columns in the fund financial statements. The reports the following major governmental funds:

The **General Fund** is the Town's primary operating fund. It accounts for all financial resources, except those required to be accounted for in another fund.

The **Gas Tax Fund (Special Revenue Fund)** is used to account for gas taxes and other resources dedicated to road related projects.

The **Building Fund (Special Revenue Fund)** is used to account for funds and other resources dedicated to community development.

The **Beach Access Fund (Special Revenue Fund)** is used to account for funds and other resources used for improvements to, and maintenance of, public beach access.

The **Capital Projects Fund** is used to account for funds and other resources used for the acquisition and/or construction of major capital facilities.

The **American Rescue Fund (Special Revenue Fund)** is used to account for grant funds received by the Town under the American Rescue Plan Act.

The Town reports the following major proprietary funds:

The **Water Fund** is used to account for the activities of the Town's water system.

The **Stormwater Fund** is used to account for the activities of the Town's stormwater system.

C. Measurement Focus, Basis of Accounting and Financial Statement Presentation

The government-wide financial statements are reported using the economic resources measurement focus and the accrual basis of accounting, as are the proprietary fund financial statements. Revenues are recorded when earned and expenses are recorded when a liability is incurred, regardless of the timing of related cash flows. Property taxes are recognized as revenues in the year for which they are levied. Grants and similar items are recognized as revenue as soon as all eligibility requirements imposed by the provider have been met.

TOWN OF FORT MYERS BEACH, FLORIDA

NOTES TO THE FINANCIAL STATEMENTS SEPTEMBER 30, 2022

NOTE 1 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

Governmental fund financial statements are reported using the current financial resources measurement focus and the modified accrual basis of accounting. Revenues are recognized as soon as they are both measurable and available. Revenues are considered to be available when they are collectible within the current period or soon enough thereafter to pay liabilities of the current period. For this purpose, the Town considers revenues, except intergovernmental revenues, to be available if they are collected within 60 days of the end of the current fiscal period. Intergovernmental revenues are recognized in the year in which all eligibility requirements have been satisfied. Eligibility requirements include timing requirements, which specify the year when the resources are required to be used or the year when use is first permitted, matching requirements, in which the Town must provide local resources to be used for a specified purpose, and expenditure requirements, in which the resources are provided to the Town on a reimbursement basis. Expenditures generally are recorded when a liability is incurred, as under accrual accounting. However, expenditures related to long-term debt, compensated absences and claims and judgments are recorded only when payment is due.

Taxes, licenses and permits, intergovernmental revenue, charges for services, and investment earnings associated with the current fiscal period are all considered to be susceptible to accrual and so have been recognized as revenues of the current fiscal period. All other revenue items are considered to be measurable and available only when cash is received by the government.

In accordance with GASB Statement No. 33, *Accounting and Financial Reporting for Non-exchange Transactions*, the corresponding assets (receivables) in non-exchange transactions are recognized in the period in which the underlying exchange occurs, when an enforceable legal claim has arisen, when all eligibility requirements have been met, or when resources are received, depending on the revenue source.

As a general rule, the effect of interfund activity has been eliminated from the government-wide financial statements. Exceptions to this general rule are charges between the Town's water function and various other functions of the Town. Elimination of these charges would distort the direct costs reported for the various functions concerned.

Proprietary funds distinguish operating revenues and expenses from non-operating items. Operating revenues and expenses generally result from providing services and producing and delivering goods in connection with a proprietary fund's principal ongoing operations. The principal operating revenues of the Town's enterprise funds are charges to customers for sales and services. Operating expenses for enterprise funds include the cost of sales and services, administrative expenses and depreciation on capital assets. All revenues and expenses not meeting this definition are reported as non-operating revenues and expenses.

The preparation of basic financial statements in conformity with GAAP requires management to make estimates and assumptions that affect certain reported amounts and disclosures. Accordingly, actual results could differ from those estimates.

TOWN OF FORT MYERS BEACH, FLORIDA

NOTES TO THE FINANCIAL STATEMENTS SEPTEMBER 30, 2022

NOTE 1 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

D. Assets, Liabilities, Deferred Inflows of Resources, and Fund Balance/Net Position

Cash and Investments

The Town's cash consists of amounts in demand deposits and certificates of deposit. Investments consist of amounts on deposit with the Florida State Board of Administration's Florida Prime pool and with the Florida Municipal Investment Trust.

The Town's investment policy follows Section 218.415 of the Florida Statutes and allows management to invest any surplus funds in its control in the following:

- The Florida State Board of Administration's SBA Florida Prime;
- Florida Municipal Investment Trust (an intergovernmental investment pool authorized pursuant to the Florida Interlocal Cooperation Act as provided in Florida Statute 163.01);
- Securities and Exchange Commission registered money market funds with the highest credit quality rating from a nationally recognized rating agency;
- Interest-bearing time deposits or savings accounts in qualified public depositories, as defined in Florida Statutes, Chapter 280.02;
- Direct obligations of the United States Treasury.

For accounting and investment purposes, the Town maintains cash and investment pool available for use by all funds except those whose cash and investments must be segregated due to legal or other restrictions. Investments within this pool are treated as a demand deposit account by the various funds of the Town that participate. Interest earned on investments in the pool is allocated to the various funds based upon each fund's equity balance in the pool during the allocation period.

SBA Florida Prime meets the necessary criteria to elect to measure all of the investments in Florida Prime at amortized cost.

For purposes of the statement of cash flows, the Town considers highly liquid investments, including those held as restricted assets, with maturities of three months or less when purchased to be cash equivalents.

Customer deposit resources in the Water Fund are restricted to the payment of customer's deposits as they become due.

Receivables

The accounts receivable of the Town are recorded net of an allowance for doubtful accounts which generally is equivalent to the receivables that are over 90 days past due. In the Water Fund, revenues and receivables are accrued for services provided to customers through year-end even if the customers have not yet been billed.

TOWN OF FORT MYERS BEACH, FLORIDA

NOTES TO THE FINANCIAL STATEMENTS SEPTEMBER 30, 2022

NOTE 1 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

Interfund Transactions

During the course of operations, the Town has activity between funds for various purposes. Activity between funds that are representative of lending/borrowing arrangements outstanding at the end of the fiscal year are reported as either "due from/to other funds" or "advances to/from other funds," the latter being amounts due in excess of one year. Any residual balances outstanding between the governmental activities and business-type activities are reported in the government-wide financial statements as "internal balances."

Prepaid Items

Payments made to vendors for services that will benefit periods beyond September 30, 2022 are recorded as prepaid items using the consumption method by recording an asset for the prepaid amount and reflecting the expenditure/expense in the year in which services are consumed. At the fund reporting level, an equal amount of fund balance is reported as nonspendable as this amount is not available for general appropriation.

Restricted Assets

Assets are reported as restricted when limitations on their use change the nature or normal understanding of the availability of the asset. Such constraints are either externally imposed by creditors, contributors, grantors or laws of other governments, or are imposed by law through constitutional provisions or enabling legislation. Restricted assets in the enterprise funds represent cash and cash equivalents set aside for the repayment of deposits to utility customers.

Capital Assets

Capital assets include property, plant, equipment, and infrastructure assets (e.g., roads, bridges, sidewalks, and similar items) and are reported in the governmental activities column in the government-wide financial statements. As permitted by GASB No. 34, the Town has elected not to report infrastructure assets retroactively.

Capital assets are recorded at cost if purchased or constructed. Donated capital assets are recorded at their acquisition value at the date of donation. The costs of normal maintenance and repairs that do not add to the value of the asset or materially extend asset lives are not capitalized. The Town follows a capitalization policy that calls for the capitalization of all capital assets that have costs of \$1,000 or more and useful lives in excess of one year. Property, plant and equipment are depreciated using the straight-line method over the following estimated useful lives:

Buildings and improvements	10 - 40 years
Leasehold improvements	10 years
Equipment	5 - 10 years
Computer equipment	3 - 10 years
Furniture	3 - 10 years
Vehicles and rolling stock	3 - 10 years
Distribution lines	20 - 25 years
Booster stations	25 years
Generators	10 years
Infrastructure	40 years

TOWN OF FORT MYERS BEACH, FLORIDA

NOTES TO THE FINANCIAL STATEMENTS SEPTEMBER 30, 2022

NOTE 1 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

Deferred Outflows/Inflows of Resources

The Town reports deferred inflows and deferred outflows related to the recording of changes in its total OPEB liability. Certain changes in these liabilities are recognized as OPEB expense over time instead of all being recognized in the year of occurrence. Experience gains or losses result from periodic studies by the Town's actuary which adjust the total OPEB liability for actual experience for certain trend information that was previously assumed, for example the assumed dates of retirement of plan members. These experience gains or losses are recorded as deferred outflows of resources or deferred inflows of resources and are amortized into OPEB expense over the expected remaining service life of plan members. Changes in actuarial assumptions which adjust the total OPEB liability are also recorded as deferred outflows of resources or deferred inflows of resources and are amortized into expense over the expected remaining lives of plan members. Additionally, any contributions made by the Town to the OPEB plan before year-end but subsequent to the measurement date of the Town's total OPEB liability are reported as deferred outflows of resources.

In addition to the above OPEB related deferred inflows, the Town also has one other type of these items, which arises only under a modified accrual basis of accounting that qualifies for reporting in this category. Accordingly, the item, *unavailable revenue*, is reported only in the Governmental Funds Balance Sheet. The governmental funds report unavailable revenues from certain charges for services and fines and these amounts are deferred and will be recognized as an inflow of resources in the period in which the amounts become available.

Long-Term Obligations

In the government-wide financial statements and proprietary fund financial statements, long-term debt and other long-term obligations are reported as liabilities in the applicable governmental activities, business-type activities, or proprietary fund statement of net position. Debt premiums and discounts are deferred and amortized over the life of the debt using the effective interest method. Debt payable is reported net of the applicable debt premium or discount.

In the fund financial statements, governmental fund types recognize debt premiums and discounts during the current period. The face amount of debt issued and debt premiums are separately reported as other financing sources, while discounts on debt issuances are reported as other financing uses. Issuance costs, whether or not withheld from the actual debt proceeds received, are reported as debt service expenditures when incurred.

Compensated Absences

Full-time employees may accumulate paid time-off. The Town's policy allows employees to accumulate up to 560 hours of paid time-off. Upon voluntary or involuntary separation from employment, an employee will be paid for all accumulated vacation leave (up to 560 hours). The accumulated compensated absences are accrued when incurred in the government-wide financial statements for both the current and long-term portions.

Fund Balance/Net Position

Fund equity at the governmental fund financial reporting level is classified as "fund balance." Fund equity for all other reporting is classified as "net position."

TOWN OF FORT MYERS BEACH, FLORIDA

NOTES TO THE FINANCIAL STATEMENTS SEPTEMBER 30, 2022

NOTE 1 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

Fund Balance—Generally, fund balance represents the difference between current assets and current liabilities in fund financial statements using the current financial resources measurement focus. In the fund financial statements, governmental funds report fund balance classifications that comprise a hierarchy based primarily on the extent to which the Town is bound to honor constraints on the specific purposes for which amounts in those funds can be spent.

Fund balances are classified as follows:

Nonspendable—Fund balances are reported as nonspendable when amounts cannot be spent because they are either: (1) not in spendable form (i.e., items that are not expected to be converted to cash such as prepaid items), or (2) legally or contractually required to be maintained intact.

Restricted—Fund balances are reported as restricted when there are limitations imposed on their use either through enabling legislation or through external restrictions imposed by creditors, grantors or laws or regulations of other governments.

Committed—Fund balances are reported as committed when they can be used only for specific purposes pursuant to constraints imposed by formal action of the Town Council through the adoption of a resolution or ordinance. Only the Town Council may modify or rescind the commitment. These self-imposed limitations must be set in place prior to the end of the fiscal year.

Assigned—Fund balances are reported as assigned when amounts are constrained by the Town's intent to be used for specific purposes but are neither restricted nor committed. Intent is stipulated by the Town Council or an official for whom that authority has been given by Town Council. The Town Manager has the authority to assign fund balance.

With the exception of the General Fund, amounts in all other governmental funds that are not *nonspendable*, *restricted* or *committed* will be considered to be *assigned*. Also, at fiscal year-end, any appropriation of existing fund balance to eliminate a projected budgetary deficit in the next year's budget is considered to be an assignment of fund balance.

Unassigned—Fund balances reported as unassigned are the residual amount of balances that do not meet any of the above criterion. The Town reports positive unassigned fund balance only in the General Fund. Negative unassigned fund balances may be reported in other funds.

TOWN OF FORT MYERS BEACH, FLORIDA

NOTES TO THE FINANCIAL STATEMENTS SEPTEMBER 30, 2022

NOTE 1 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

Net Position—Net position represents the difference between assets and liabilities in reporting units using the economic resources measurement focus. Net position reported as net investment in capital assets consists of capital assets, net of accumulated depreciation, reduced by the outstanding balances of any borrowing used for the acquisition, construction or improvement of those assets, adding back unspent proceeds. Net position reported as restricted consists of amounts that have limitations imposed on their use either through enabling legislation or through external restrictions imposed by creditors, grantors or laws or regulations of other governments. Net position not reported as “net investment in capital assets” or “restricted” is reported as unrestricted.

Flow Assumptions—When both restricted and unrestricted amounts of fund balance/net position are available for use for expenditures/expenses incurred, it is the Town’s policy to use restricted amounts first and then unrestricted amounts as they are needed.

For unrestricted amounts of fund balance, it is the Town’s policy to use fund balance in the following order:

- Committed
- Assigned
- Unassigned

Property Taxes

The billing and collection of all property taxes is performed for the Town by the Lee County, Florida Tax Collector. Property taxes are levied after formal adoption of the Town’s budget and become due and payable on November 1 of each year. Discounts are allowed for payment of property taxes before March 1 of the following year. Taxes are recognized as revenue when levied to the extent that they result in current receivables and meet availability criteria. On April 1, any unpaid taxes become delinquent. If the taxes are still unpaid in May, tax certificates are then offered for sale to the general public. The proceeds collected are remitted to the Town. There were no delinquent taxes or uncollected taxes at year-end.

Key dates in the property tax cycle (latest date, where appropriate) are as follows:

July 1	Assessment roll validated
September 30	Millage resolution approved and taxes levied following certificate of assessment roll
October 1	Beginning of fiscal year for which tax is to be levied
November 1	Property taxes due and payable (levy date) with various discount provisions through March 1
April 1	Taxes become delinquent
Prior to June 1	Tax certificates sold by Lee County Tax Collector

TOWN OF FORT MYERS BEACH, FLORIDA

NOTES TO THE FINANCIAL STATEMENTS SEPTEMBER 30, 2022

NOTE 2 – STEWARDSHIP, COMPLIANCE AND ACCOUNTABILITY

Budgetary Information

The Town follows the procedures enumerated below in establishing the legally adopted budgetary data reflected in the fund financial statements:

1. On or before July 15 of each year, the Town Manager is to submit to the Town Council a proposed operating budget, including a Town Manager's message explaining the budget, for the fiscal year commencing the following October 1. The operating budget will include a complete financial plan of all Town funds and activities for the ensuing fiscal year.
2. The Town Council shall publish in one or more newspapers of general circulation the time and place of public hearings. Public hearings are then conducted to obtain taxpayer comments.
3. Prior to October 1, the budget is legally enacted through passage of a resolution required by Town Charter and as required by the State of Florida.
4. Budgets are adopted on a basis consistent with accounting principles generally accepted in the United States of America.
5. Budget amounts, as shown in the fund financial statements, are as originally adopted and as finally amended by the Town Council. If, during the fiscal year, additional revenues become available for appropriation in excess of those estimated in the budget, the Town Council may make supplemental appropriations by resolution for the year up to the amount of such excess. There were no supplemental appropriations during the year.
6. The annual budgets serve as the legal authorization for expenditures. Expenditures cannot legally exceed the total amount budgeted for each fund. The Town Council must approve all budget amendments, which change the legally adopted total appropriation for a fund. Authority to transfer budget within a fund is delegated to the Town Council. Appropriations lapse at the fiscal year-end.

Deficit Fund Balance

The Beach Access Fund and the Capital Projects Fund reported deficits of \$563,616 and \$730,585, respectively. The Town expects the deficits to be recovered from subsequent reimbursement requests from the Tourist Development Council and the recognition of unavailable revenues for the Beach Access Fund and transfers from the General Fund for the Capital Projects Fund as well as a draw from the \$10 million Capital Improvement Revenue Note to fund improvements at Bayside Park, Bay Oaks, and Times Square.

Excess of Expenditures over Appropriations

For the year ended September 30, 2022, expenditures exceeded appropriations in capital outlay and debt service areas of the General Fund by \$100,000 and \$526,888; capital outlay of the Gas Tax Fund by \$17,029; general government of the Building Fund by \$38,302; culture and recreation and capital outlay of the Beach Access Fund by \$352,925 and \$69,751.

TOWN OF FORT MYERS BEACH, FLORIDA

NOTES TO THE FINANCIAL STATEMENTS SEPTEMBER 30, 2022

NOTE 3 – CASH AND INVESTMENTS

Deposits

Custodial credit risk for deposits is the risk that, in the event of the failure of a depository financial institution, a government will not be able to recover deposits or will not be able to recover collateral securities that are in the possession of an outside party. In accordance with its policy, all Town depositories are banks designated by the Florida State Treasurer as qualified public depositories. Chapter 280 of the Florida Statutes, *Florida Security for Public Deposits Act*, provides procedures for public depositories to ensure public monies in banks and saving and loans are collateralized with the Treasurer as agent for the public entities. Chapter 280 defines deposits as demand deposit accounts, time deposit accounts, and non-negotiable certificates of deposit.

Financial institutions qualifying as public depositories shall deposit with the Treasurer eligible collateral having a market value equal to or in excess of the average daily balance of public deposits times the depository collateral pledging level required pursuant to Chapter 280 as computed and reported monthly or 125% of the average monthly balance, whichever is greater. The Public Deposit Security Trust Fund has a procedure to allocate and recover losses in the event of a default or insolvency. When public deposits are made in accordance with Chapter 280, no public depositor shall be liable for any loss thereof, and therefore, the Town is not exposed to custodial credit risk.

Investments

As of September 30, 2022, the Town had the following investments:

<u>Investment Type</u>	<u>Percent of Portfolio</u>	<u>Fair Value</u>
Florida Municipal Investment Trust (FMIT)	78.08%	\$ 1,452,763
SBA Florida PRIME	21.92%	407,734
		<u>\$ 1,860,497</u>

The FMIT is an external investment pool. The Town's investment in the FMIT is not evidenced by securities that exist in physical or book form and, therefore, disclosures for concentration of credit risk and custodial credit risk are not applicable. The Town's investment at FMIT is in the Intermediate High Quality Bond Fund. This fund was rated AAf/S3 by Fitch Ratings as of September 30, 2022. The Town's investment policy addresses interest rate risk by requiring that the Town's investment portfolio be structured so that securities mature to meet cash requirements for ongoing operations and/or long-term debt payments, thereby avoiding the need to sell securities on the open market prior to maturity. The weighted average days to maturity (WAM) of the FMIT Intermediate High Quality Bond Fund at September 30, 2022 was 4.7 years.

TOWN OF FORT MYERS BEACH, FLORIDA

NOTES TO THE FINANCIAL STATEMENTS SEPTEMBER 30, 2022

NOTE 3 – CASH AND INVESTMENTS (CONTINUED)

In accordance with GASBS No. 79, *Certain External Investment Pools and Pool Participants*, the Florida State Board of Administration's (SBA) Florida PRIME meets the necessary criteria to elect to measure all of the investments in Florida PRIME at amortized cost. Therefore, the Town's participant account balance should also be considered the fair value of its investment and exempt from the GASBS No. 72, *Fair Value Measurement and Application*. The WAM of the Florida PRIME at September 30, 2022 was 21 days and the weighted average life (WAL) was 72 days. The Florida PRIME is rated AAAM by *Standards and Poor's*. The Florida PRIME is administered by SBA under the regulatory oversight of the State of Florida, Chapter 19-7, *Florida Administrative Code*.

With regard to redemption gates, Chapter 218.409(8)(a), Florida Statutes, states that "The principal, and any part thereof, of each account constituting the trust fund is subject to payment at any time from the moneys in the trust fund. However, the Executive Director may, in good faith, on the occurrence of an event that has a material impact on liquidity or operations of the trust fund, for 48 hours limit contributions to or withdrawals from the trust fund to ensure that the Board can invest moneys entrusted to it in exercising its fiduciary responsibility. Such action must be immediately disclosed to all participants, the Trustees, the Joint Legislative Auditing Committee, the Investment Advisory Council, and the Participant Local Government Advisory Council. The Trustees shall convene an emergency meeting as soon as practicable from the time the Executive Director has instituted such measures and review the necessity of those measures. If the Trustees are unable to convene an emergency meeting before the expiration of the 48-hour moratorium on contributions and withdrawals, the moratorium may be extended by the Executive Director until the Trustees are able to meet to review the necessity for the moratorium. If the Trustees agree with such measures, the Trustees shall vote to continue the measures for up to an additional 15 days. The Trustees must convene and vote to continue any such measures before the expiration of the time limit set, but in no case may the time limit set by the Trustees exceed 15 days."

With regard to liquidity fees, Florida Statute 218.409(4) provides authority for the SBA to impose penalties for early withdrawal, subject to disclosure in the enrollment materials of the amount and purpose of such fees. At present, no such disclosure has been made.

As of September 30, 2022, there were no redemption fees or maximum transaction amounts, or any other requirements that serve to limit a participant's daily access to 100% of their account value. Florida PRIME did not participate in a securities lending program in the period October 1, 2021 through September 30, 2022.

Fair Value Measurements

The Town categorizes its fair value measurements within the fair value hierarchy established by GAAP. The hierarchy is based on the valuation inputs used to measure the fair value of the asset. Level 1 inputs are quoted prices in active markets for identical assets; Level 2 inputs are significant other observable inputs; and Level 3 inputs are significant unobservable inputs.

The Town has the following recurring fair value measurements as of September 30, 2022: FMIT (Intermediate High Quality Bond Fund) of \$1.45 million based on market-corroborated date (Level 2).

TOWN OF FORT MYERS BEACH, FLORIDA

NOTES TO THE FINANCIAL STATEMENTS SEPTEMBER 30, 2022

NOTE 4 – ACCOUNTS RECEIVABLE

Receivables at September 30, 2022, including the applicable allowances for uncollectible accounts, are as follows:

	<u>Accounts Receivable</u>	<u>Due from Other Governments</u>	<u>Less Allowance for Doubtful Accounts</u>	<u>Total</u>
Governmental activities				
General Fund	\$ -	\$ 292,711	\$ -	\$ 292,711
Gas Tax Fund	-	62,764	-	62,764
Beach Access	-	420,488	-	420,488
Governmental activities subtotal	-	775,963	-	775,963
Business-type activities				
Water Fund	904,092	1,218,553	(154,752)	1,967,893
Stormwater	210,355	1,272,189	-	1,482,544
Business-type activities subtotal	1,114,447	2,490,742	(154,752)	3,450,437
Total	<u>\$ 1,114,447</u>	<u>\$ 3,266,705</u>	<u>\$ (154,752)</u>	<u>\$ 4,226,400</u>

NOTE 5 – INTERFUND RECEIVABLES, PAYABLES, AND TRANSFERS

At September 30, 2022, the Town reported the following due from/to other funds:

	<u>Due from Other Funds</u>	<u>Due to Other Funds</u>
General	\$ 1,491,092	\$ -
Beach Access	-	538,246
Road Impact	90,487	-
Capital projects	-	952,846
Water	-	14,235
Stormwater	-	76,252
Total	<u>\$ 1,581,579</u>	<u>\$ 1,581,579</u>

These balances resulted from the time lag between the dates that: (1) interfund goods and services are provided or reimbursable expenditures occur, and (2) payments between funds are made.

At September 30, 2022, the Town reported the following interfund transfers:

	<u>Transfers In</u>	<u>Transfers Out</u>
General	\$ -	\$ 730,000
Capital Projects	730,000	-
Total	<u>\$ 730,000</u>	<u>\$ 730,000</u>

Transfers of resources from a fund to the fund through which resources are to be expended, are recorded as transfers and are reported as other financing sources (uses) in the governmental funds and as transfers in (out) in the proprietary funds.

These transfers from the General Fund were used to fund capital projects for the year ended September 30, 2022.

TOWN OF FORT MYERS BEACH, FLORIDA

NOTES TO THE FINANCIAL STATEMENTS SEPTEMBER 30, 2022

NOTE 6 – CAPITAL ASSETS

Capital asset activity for the year ended September 30, 2022 was as follows:

	Beginning Balance	Additions	Deletions	Transfers	Ending Balance
Governmental Activities					
Capital assets, not being depreciated					
Land	\$ 10,536,780	\$ 1,463,121	\$ -	\$ -	\$ 11,999,901
Construction in progress	752,247	241,809	(92,606)	(514,250)	387,200
Total capital assets, not being depreciated	11,289,027	1,704,930	(92,606)	(514,250)	12,387,101
Capital assets, being depreciated					
Buildings and improvements	8,740,041	128,745	(3,819,450)	-	5,049,336
Improvements other than buildings	2,758,377	482,466	(1,217,105)	47,178	2,070,916
Office furniture and equipment	1,105,047	371,284	(881,643)	-	594,688
Vehicles and other equipment	3,143,585	689,146	(2,053,012)	-	1,779,719
Infrastructure	5,931,986	2,729,342	(1,349,435)	467,072	7,778,965
Total capital assets, being depreciated	21,679,036	4,400,983	(9,320,645)	514,250	17,273,624
Less accumulated depreciation for					
Buildings and improvements	(2,453,233)	(310,801)	1,068,047	-	(1,695,987)
Improvements other than buildings	(1,041,236)	(215,778)	259,640	-	(997,374)
Office furniture and equipment	(1,010,190)	(85,232)	525,857	-	(569,565)
Vehicles and other equipment	(2,170,441)	(325,605)	1,399,753	-	(1,096,293)
Infrastructure	(2,019,584)	(273,582)	71,468	-	(2,221,698)
Total accumulated depreciation	(8,694,684)	(1,210,998)	3,324,765	-	(6,580,917)
Total capital assets, being depreciated, net	12,984,352	3,189,985	(5,995,880)	514,250	10,692,707
Governmental activities capital assets, net	<u>\$ 24,273,379</u>	<u>\$ 4,894,915</u>	<u>\$ (6,088,486)</u>	<u>\$ -</u>	<u>\$ 23,079,808</u>

TOWN OF FORT MYERS BEACH, FLORIDA

NOTES TO THE FINANCIAL STATEMENTS SEPTEMBER 30, 2022

NOTE 6 – CAPITAL ASSETS (CONTINUED)

	Beginning Balance	Additions	Deletions	Transfers	Ending Balance
Business-Type Activities					
Capital assets not being depreciated					
Land	\$ 305,000	\$ -	\$ -	\$ -	\$ 305,000
Construction in progress	14,736,028	4,474,425	-	(18,752,999)	457,454
Total capital assets, not being depreciated	15,041,028	4,474,425	-	(18,752,999)	762,454
Capital assets being depreciated					
Computer equipment	62,975	2,400	(1,859)	-	63,516
Buildings and leasehold improvements	1,137,739	-	(66,706)	-	1,071,033
Vehicles and other equipment	411,749	173,635	(243,607)	-	341,777
Infrastructure	46,627,095	490,279	(4,717,370)	18,752,999	61,153,003
Total capital assets, being depreciated	48,239,558	666,314	(5,029,542)	18,752,999	62,629,329
Less accumulated depreciation for					
Computer equipment	(62,975)	-	1,859	-	(61,116)
Buildings and leasehold improvements	(616,758)	(41,978)	22,457	-	(636,279)
Vehicles and other equipment	(299,115)	(45,020)	83,903	-	(260,232)
Infrastructure	(4,886,359)	(1,182,670)	-	-	(6,069,029)
Total accumulated depreciation	(5,865,207)	(1,269,668)	108,219	-	(7,026,656)
Total capital assets, being depreciated, net	42,374,351	(603,354)	(4,921,323)	18,752,999	55,602,673
Business-type activities capital assets, net	\$ 57,415,379	\$ 3,871,071	\$ (4,921,323)	\$ -	\$ 56,365,127

Included in the above business-type activities deletions was \$4,717,370 of impairments caused by Hurricane Ian.

Depreciation expense was charged to functions/programs as follows:

Governmental Activities

General government	\$ 567,260
Transportation	6,635
Physical environment	216,268
Culture and recreation	420,835
Total depreciation expense, governmental activities	<u>\$ 1,210,998</u>

Business-Type Activities

Water	\$ 871,290
Stormwater	398,378
Total depreciation expense, business-type activities	<u>\$ 1,269,668</u>

TOWN OF FORT MYERS BEACH, FLORIDA

NOTES TO THE FINANCIAL STATEMENTS SEPTEMBER 30, 2022

NOTE 7 – LONG-TERM OBLIGATIONS

Long-Term Obligations

Changes in long-term obligations for the year ended September 30, 2022 are as follows:

	Beginning Balance	Additions	Reductions	Ending Balance	Due Within One Year
Governmental Activities					
Compensated absences	\$ 328,639	\$ 202,677	\$ (140,010)	\$ 391,306	\$ 142,110
Capital improvements revenue note	708,090	612,696	(500,000)	820,786	-
Financed purchase	30,616	-	(9,911)	20,705	10,511
Total OPEB liability	147,009	82,171	(26,969)	202,211	-
	<u>\$ 1,214,354</u>	<u>\$ 897,544</u>	<u>\$ (676,890)</u>	<u>\$ 1,435,008</u>	<u>\$ 152,621</u>
Business-Type Activities					
Utility revenue refunding bonds	\$ 540,000	\$ -	\$ (180,000)	\$ 360,000	\$ 180,000
Notes payable from direct borrowings:					
State revolving fund loans	38,255,234	2,926,543	(1,224,556)	39,957,221	-
Compensated absences	36,627	30,178	(18,034)	48,771	18,305
Total OPEB liability	26,709	14,935	(4,906)	36,738	-
	<u>\$ 38,858,570</u>	<u>\$ 2,971,656</u>	<u>\$ (1,427,496)</u>	<u>\$ 40,402,730</u>	<u>\$ 198,305</u>

For the governmental activities, compensated absences and other post-employment benefits are generally liquidated by the General Fund.

Governmental Activities

\$10,000,000 Capital Improvement Revenue Note, Series 2020 – Issued for the purpose of providing funding for various capital improvement projects of the Town and to pay the costs of issuance related thereto. The note bears interest at 3.15% through November 1, 2030, and are payable from and secured by a lien upon and pledge of the net revenues of the public service tax revenues. Monthly interest payments are due commencing on December 1, 2020 until the note is paid in full and principal payments paid monthly commencing on December 1, 2023. Final maturities will be determined after all funds have been drawn. The amount outstanding as of September 30, 2022 was \$820,786.

Business-Type Activities

\$1,980,000 Utility Revenue Refunding Bonds, Series 2013 – Issued for the principal purpose of paying off the Town's Public Utility Revenue Note, Series 2010 which was issued to refinance monies expended to acquire the water system of the Town and pay certain capital costs for additions and/or improvements to the water system. The bonds bear interest at 1.81% and are payable from and secured by a lien upon and pledge of the net revenues of the utility. Additionally, payment of the bonds is secured by a covenant to budget and appropriate non-ad valorem revenues for payment of principal and interest in the event the utility's net revenues are insufficient to make those payments. Annual principal payments of \$180,000 plus interest are due on October 1 through final maturity on October 1, 2023. The outstanding balance as of September 30, 2022 was \$360,000.

TOWN OF FORT MYERS BEACH, FLORIDA

NOTES TO THE FINANCIAL STATEMENTS SEPTEMBER 30, 2022

NOTE 7 – LONG-TERM OBLIGATIONS (CONTINUED)

Notes Payable from Direct Borrowings:

\$15,723,946 State Revolving Fund Loan – issued for the purpose of funding the water main improvement projects. The loan bears interest ranging from 0.92% to 1.24% and is collateralized by a subordinated pledge of the net revenues of the utility. Principal and interest is payable in 60 semi-annual payments of \$260,259 through November 2038. The outstanding balance as of September 30, 2022 was \$13,240,065.

\$20,329,458 State Revolving Fund Loan – issued for the purpose of funding the water main improvement projects. The loan bears interest of 0.98% and is collateralized by a subordinated pledge of the net revenues of the utility. Principal and interest is payable in 40 semi-annual payments of \$574,614 commencing upon project completion. The outstanding balance as of September 30, 2022, including amounts receivable for eligible expenses, was \$13,499,441.

\$9,364,684 State Revolving Fund Loan – issued for the purpose of funding the stormwater management system project. The loan bears interest ranging from 0.32% to 0.49% and is collateralized by a subordinated pledge of the net revenues of the utility. Principal and interest is payable in 60 semi-annual payments of \$259,081 through October 2050. The outstanding balance as of September 30, 2022 was \$8,930,894.

\$16,204,800 State Revolving Fund Loan – issued for the purpose of funding the stormwater management system project. The loan does not bear interest and is collateralized by a subordinated pledge of the net revenues of the utility. Principal and interest is payable in 40 semi-annual payments of \$413,222 commencing upon the project completion. The outstanding balance as of September 30, 2022, including amounts receivable for eligible expenses, was \$4,286,821.

Due to Hurricane Ian, the State has pushed back all state revolving fund loan payments for two years. As such they are all excluded from the following table. Annual debt service requirements to maturity for the business-type activities as of September 30, 2022 are as follows:

	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
2023	\$ 180,000	\$ 4,887	\$ 184,887
2024	180,000	1,629	181,629
	<u>\$ 360,000</u>	<u>\$ 6,516</u>	<u>\$ 366,516</u>

Loan Agreements

The loan agreements contain various covenants, including such items as debt service coverage, reporting requirements, and maintenance of facilities. Management believes that it has complied, in all material respects, with the covenants of the loan agreement for the year ended September 30, 2022.

TOWN OF FORT MYERS BEACH, FLORIDA

NOTES TO THE FINANCIAL STATEMENTS SEPTEMBER 30, 2022

NOTE 8 – FINANCED PURCHASE

The Town has entered into an agreement for the financing of various mower equipment. The agreement has been recorded at the present value of the future minimum payments as of the inception date.

The asset acquired through this agreement is as follows:

	Governmental Activities
Mowing equipment	\$ 49,486
Less: accumulated depreciation	(29,692)
Total	<u>\$ 19,794</u>

The future minimum lease obligations and the net present value of these lease payments as of September 30, 2022 for governmental activities are as follows:

	Principal	Interest	Total
2023	\$ 10,511	\$ 938	\$ 11,449
2024	10,194	298	10,492
	<u>\$ 20,705</u>	<u>\$ 1,236</u>	<u>\$ 21,941</u>

NOTE 9 – RETIREMENT PLAN

The Town sponsors a defined contribution pension plan entitled the Town of Fort Myers Beach Pension Plan (Plan 002) as well as a governmental 457(b) plan entitled the Town of Fort Myers Beach Deferred Compensation Plan (Plan 001). Plan 001 covers eligible regular full-time and part-time employees, while Plan 002 covers only eligible regular full-time employees.

The Plans are being administered by the Town, and administrative services are being provided by a third-party under an Administrative Services Agreement. Effective April 1, 2020, the Town switched service providers (from Valic to Massachusetts Mutual Life Insurance Company), while simultaneously adopting restated plan documents and reducing the employer contribution for Plan number 002 from 10% to 4% of an employee's Code §415 Compensation. However, under a "grandfather" provision in Plan number 002, employees who were in full-time status prior to April 1, 2020, and who remain in full-time status onwards without a break in service, will remain eligible for a 10% employer contribution. Plan number 001 is funded only by voluntary employee contributions. Employee and employer contributions vest 100% to the employee upon contribution to the Plans.

For the year ended September 30, 2022, employer contributions to Plan number 002 was \$270,680.

TOWN OF FORT MYERS BEACH, FLORIDA

NOTES TO THE FINANCIAL STATEMENTS SEPTEMBER 30, 2022

NOTE 10 – SELF-INSURANCE

On October 1, 2018, the Town became a member of the Florida Local Government Health Insurance Consortium ("the Consortium"). The Consortium is a public entity risk pool organized under the provision of the Florida Interlocal Cooperation Act of 1969 with the objective of obtaining preferential pricing on health care services and diversification of self-insurance risk. The Consortium's membership is comprised of county and municipal governments located in Florida.

The Consortium is fully funded by its members. Each member funds their claim liability separately. Stop loss insurance levels are set up for each member to cap their claim liability. Each member's rates, as determined by actuarial calculation, are generated based on their own benefits, census, and experience. Additionally, members pledge a percentage of their claim fund surplus towards a cross share arrangement which creates a pool of money used to pay claims on behalf of members whose total claims for the year exceed their maximum claim fund for the year. This arrangement keeps the stop loss costs lower for every member and creates equity within the group by recognizing variations in the size of member communities and their varying risk retention levels. In the event of a shortfall, members must fund the difference. For this purpose, the Town has created a budgetary reserve of \$100,000 for the year ended September 30, 2022.

NOTE 11 – OTHER POST-EMPLOYMENT BENEFITS

Plan Description and Funding Policy

The post-employment healthcare benefits plan is a single-employer defined benefit plan administered by the Town. Pursuant to the provisions of Section 112.0801, Florida Statutes, former employees and eligible dependents who retire from the Town may continue to participate in the Town's group health insurance plan. The Town subsidizes the premium rates paid by retirees by allowing them to participate in the plan at a reduced or blended group (implicitly subsidized) premium rate. These rates provide an implicit subsidy for retirees because, on an actuarial basis, their current and future claims are expected to result in higher costs to the plan on average than those of active employees. The post-employment healthcare benefits plan does not issue a stand-alone financial report.

As of October 1, 2020, there were 47 active plan members, there were no inactive retirees and eligible dependents receiving post-employment healthcare benefits, and there were no inactive employees entitled to but not yet receiving benefits.

Contribution requirements for the post-employment healthcare benefits of the Town are established and may be amended by Town Council. The Town has not advance funded or established a funding methodology for the annual other post-employment benefit (OPEB) costs or the net OPEB obligation. Currently, retirees pay 100% of the cost of the healthcare insurance premiums. The Town's actuarially required contributions are based on a projected pay-as-you-go basis. Therefore, no assets are accumulated in a trust that meets the criteria in paragraph 4 of GASB Statement No. 75.

TOWN OF FORT MYERS BEACH, FLORIDA

NOTES TO THE FINANCIAL STATEMENTS SEPTEMBER 30, 2022

NOTE 11 – OTHER POST-EMPLOYMENT BENEFITS (CONTINUED)

Total OPEB Liability of the Town

The Town's total OPEB liability was measured as of September 30, 2021, and was determined by an actuarial valuation as of October 1, 2020, with the actuary using standard techniques to roll forward the liability to the measurement date.

Actuarial Assumptions. The total OPEB liability in the October 1, 2020, actuarial valuation was determined using the following actuarial assumptions, applied to all periods included in the measurement:

Inflation Rate:	2.50%
Salary Increase:	3.00%
Discount Rate:	2.43%
Initial Trend Rate:	8.50%
Ultimate Trend Rate:	5.00%
Years to Ultimate:	4
Participation Rate:	80%

Mortality Basis. Sex-distinct rates set forth in the PUB-2010 Mortality Table (without income adjustments) for general employees, with full generational improvements in mortality using Scale MP-2020.

Discount Rate. Given the Town's decision not to fund the program, all future benefit payments were discounted using a high quality municipal bond rate of 2.43%. The high quality municipal bond rate was based on the week closest but not later than the measurement date of the Bond Buyer 20-Bond Index as published by the Federal Reserve. The 20-Bond Index consists of 20 general obligation bonds that mature in 20 years. The average rating of the 20 bonds is roughly equivalent to Moody's Investors Service's Aa2 rating and Standard & Poor's Corp.'s AA.

Changes in the Total OPEB Liability of the Town. The changes in the total OPEB liability of the Town for the year ended September 30, 2022 were as follows:

Total OPEB Liability	
Service Cost	\$ 42,724
Interest	5,105
Change in Benefit Terms	-
Differences Between Expected and Actual Experience	(19,058)
Employer Contributions	-
Changes of Assumptions	49,277
Benefit Payments	(12,817)
Net Change in Total OPEB Liability	<u>65,231</u>
Total OPEB Liability - Beginning	<u>173,718</u>
Total OPEB Liability - Ending	<u><u>\$ 238,949</u></u>

TOWN OF FORT MYERS BEACH, FLORIDA

NOTES TO THE FINANCIAL STATEMENTS SEPTEMBER 30, 2022

NOTE 11 – OTHER POST-EMPLOYMENT BENEFITS (CONTINUED)

Changes in assumptions reflect a change in the discount rate from 2.14% for the reporting period ended September 30, 2021, to 2.43% for the reporting period ended September 30, 2022.

The required schedule of changes in the Town's total OPEB liability and related ratios immediately following the notes to the financial statements presents multi-year trend information about the total OPEB liability.

Sensitivity of the Total OPEB Liability to Changes in the Discount Rate. The following presents the total OPEB liability of the Town, as well as what the Town's total OPEB liability would be if it were calculated using a discount rate that is 1-percentage-point lower (1.43%) or 1-percentage-point higher (3.43%) than the current discount rate:

	1.43% Discount Rate	2.43% Discount Rate	3.43% Discount Rate
Total OPEB Liability	\$ 267,444	\$ 238,949	\$ 214,327

Sensitivity of the Total OPEB Liability to Changes in the Healthcare Cost Trend Rates. The following presents the total OPEB liability of the Town, as well as what the Town's total OPEB liability would be if it were calculated using healthcare cost trend rates that are 1-percentage-point lower or 1-percentage-point higher than the current healthcare cost trend rates:

	Trend Rate Minus 1%	8.50% Graded Down to 5.00%	Trend Rate Plus 1%
Total OPEB Liability	\$ 202,177	\$ 238,949	\$ 285,781

Actuarial valuations involve estimates of the value of reported amounts and assumptions about the probability of events far into the future, and actuarially determined amounts are subject to continual revisions as results are compared to past expectations and new estimates are made about the future. Actuarial calculations reflect a long-term perspective. Calculations are based on the substantive plan in effect as of September 30, 2022, and the current sharing pattern of costs between employer and inactive employees.

OPEB Expense and Deferred Outflows/Inflows of Resources Related to OPEB. For the year ended September 30, 2022, the Town recognized OPEB expense of \$33,130. At September 30, 2022, the Town reported deferred outflows of resources and deferred inflows of resources related to OPEB from the following sources:

Description	Deferred Outflows of Resources	Deferred Inflows of Resources
Differences between expected and actual experience	\$ 15,103	\$ 76,595
Change of assumptions	71,225	37,107
	<u>\$ 86,328</u>	<u>\$ 113,702</u>

TOWN OF FORT MYERS BEACH, FLORIDA

NOTES TO THE FINANCIAL STATEMENTS SEPTEMBER 30, 2022

NOTE 11 – OTHER POST-EMPLOYMENT BENEFITS (CONTINUED)

Amounts reported as deferred outflows and inflows of resources related to OPEB will be recognized in OPEB expense as follows:

Fiscal Year Ending		
2023	\$	(1,882)
2024		(1,882)
2025		(1,882)
2026		(1,882)
2027		(1,882)
Thereafter		(17,964)
	\$	<u>(27,374)</u>

NOTE 12 – RISK MANAGEMENT

The Town is exposed to various risks of loss related to torts; theft of, damage to and destruction of assets; errors and omissions; injuries to employees; and natural disasters.

The Town participates in the public entity risk pool administered by the Florida League of Cities, Inc. for general/professional liability, property and workers compensation. The Town pays an annual premium to Florida League of Cities, Inc. for this insurance program. Participation in this risk pool is non-assessable. There were no significant reductions in insurance coverage in the past three fiscal years. The amount of settlements did not exceed insurance coverage in each of the past three fiscal years.

The Florida League of Cities, Inc. published financial report for the year ended September 30, 2022, can be obtained from the Florida League of Cities, Inc., Public Risk Service, 135 East Colonial Drive, Orlando, Florida 32853-0065.

The Town retains the risk of loss up to a deductible amount (ranging from \$0 to \$250) with the risk of loss in excess of this amount transferred to the pool with limits of liability of \$1,000,000 to \$3,000,000 per occurrence.

The Town carries commercial coverage for all other risks of loss such as for mooring field operations and floor insurance for Town owned buildings. There have been no significant reductions in insurance coverage in the prior year, and claims have not exceeded coverage in any of the past three fiscal years. Due to Hurricane Ian and the extensive damage, there were claims in excess of coverage which the Town anticipates being reimbursed from Federal disaster area assistance.

NOTE 13 – COMMITMENTS AND CONTINGENCIES

The Town has received federal and state grants for specific purposes that are subject to review and audit by the grantor agencies. Such audits could lead to the disallowance of certain expenditures previously reimbursed by those agencies. Based upon prior experience, management of the Town believes such disallowances, if any, will not be significant.

TOWN OF FORT MYERS BEACH, FLORIDA

NOTES TO THE FINANCIAL STATEMENTS SEPTEMBER 30, 2022

NOTE 13 – COMMITMENTS AND CONTINGENCIES (CONTINUED)

In fiscal year 2003, the State of Florida and Lee County provided funding toward the purchase of property known as the "Jim and Ellie Newton Property." The Town is required to comply with the terms of the grant agreements as to the use and maintenance of the acquired property. Title to this property would revert to the State of Florida if the Town does not comply with the terms of the grant agreement. In addition, the Town would be required to repay Lee County the original funding amount of \$969,230 plus interest at 12% per annum.

The Town is a defendant in various lawsuits. The Town is not in a position at this time to predict the outcome of the lawsuits or the exact amount of costs and/or potential recovery. The Town plans to contest these matters unless settled. The Town believes the outcome of these lawsuits will not have a material effect on the financial statements.

On October 1, 2021, the Town entered into a contract for two years, with three one-year renewal options, with Estero Bay Hotel Company, dba Matanzas Inn, to provide services for the operation and management of the Town's Municipal Anchorage. Pursuant to the agreement, the Town is to make monthly payments of an amount equal to \$4,033 for the first three months and \$3,433 for each month thereafter. Either party may terminate the agreement without cause upon 60 calendar day's written notice. Amounts paid pursuant to this agreement for fiscal year ended September 30, 2022 were approximately \$43,000.

As of year-end, the Town has several ongoing construction contracts and commitments relating to various capital projects within the Town. The remaining construction commitments as of September 30, 2022 total approximately \$7.0 million.

NOTE 14 – ECONOMIC DEPENDENCY

On August 3, 2001, a Bulk Water Agreement was entered into with Lee County, Florida, to provide the Town with potable water. Lee County is currently the only source of the Town's potable water that it supplies to the residents of the Town of Fort Myers Beach. The Bulk Water Agreement is for 25 years. The inter-local agreement provides that the County may, from time to time, increase the rate charged for the cost of bulk water provided to the Town. Effective October 1, 2014, Lee County raised its rate from \$3.20 to \$3.84 per 1,000 gallons. The Town conducted a rate study which recommended adjustments to the Town's rates to cover anticipated costs of the reserve and debt payment for the water relocation project. As a result, the Town revised its base rate effective August 15, 2016, to pass this increase on to its customers.

NOTE 15 – SUBSEQUENT EVENTS

The Town has evaluated all subsequent events through October 26, 2023 the date the financial statements were available to be issued.

REQUIRED SUPPLEMENTARY INFORMATION

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TOWN OF FORT MYERS BEACH, FLORIDA

**SCHEDULE OF CHANGES IN THE TOTAL OPEB LIABILITY
SEPTEMBER 30, 2022**

	2022	2021	2020	2019	2018	2017
Total OPEB Liability						
Service cost	\$ 42,724	\$ 27,556	\$ 24,301	\$ 31,025	\$ 23,443	\$ 21,172
Interest	5,105	3,609	6,975	5,735	5,008	2,777
Differences between expected and actual experience	(19,058)	16,140	(45,248)	(32,437)	(8,725)	-
Employer contributions	-	-	-	-	(1,220)	-
Changes of assumptions	49,277	(13,368)	(13,164)	41,636	(17,690)	-
Benefit payments	(12,817)	(2,598)	(1,994)	(1,919)	-	(187)
Net change in total OPEB liability	65,231	31,339	(29,130)	44,040	816	23,762
Total OPEB liability - beginning	173,718	142,379	171,509	127,469	126,653	102,891
Total OPEB liability - ending	<u>\$ 238,949</u>	<u>\$ 173,718</u>	<u>\$ 142,379</u>	<u>\$ 171,509</u>	<u>\$ 127,469</u>	<u>\$ 126,653</u>
Covered-employee payroll	<u>\$ 2,309,591</u>	<u>\$ 2,408,360</u>	<u>\$ 2,311,759</u>	<u>\$ 2,118,269</u>	<u>\$ 2,002,493</u>	<u>\$ 2,152,467</u>
OPEB liability as a percentage of covered-employee payroll	<u>10.35%</u>	<u>7.21%</u>	<u>6.16%</u>	<u>8.10%</u>	<u>6.37%</u>	<u>5.88%</u>

Notes to the Schedule

The schedule will present 10 years of information once it is accumulated.

No assets are accumulated in a trust that meets the criteria of GASBs No. 75, paragraph 4, to pay related benefits.

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SUPPLEMENTARY INFORMATION

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**TOWN OF FORT MYERS BEACH, FLORIDA
COMBINING BALANCE SHEET
NONMAJOR GOVERNMENTAL FUNDS
SEPTEMBER 30, 2022**

	Special Revenue Funds		Nonmajor Governmental Funds
	Park Impact	Road Impact	
Assets			
Cash	\$ 254,401	\$ 755,826	\$ 1,010,227
Due from other funds	-	90,487	90,487
Total assets	<u>\$ 254,401</u>	<u>\$ 846,313</u>	<u>\$ 1,100,714</u>
Liabilities and fund balances			
Liabilities			
Accounts payable and accrued liabilities	\$ 439	\$ -	\$ 439
Total liabilities	<u>439</u>	<u>-</u>	<u>439</u>
Fund balances			
Restricted			
Parks and recreation	253,962	-	253,962
Transportation	-	846,313	846,313
Total fund balances	<u>253,962</u>	<u>846,313</u>	<u>1,100,275</u>
Total liabilities and fund balances	<u>\$ 254,401</u>	<u>\$ 846,313</u>	<u>\$ 1,100,714</u>

TOWN OF FORT MYERS BEACH, FLORIDA
COMBINING STATEMENT OF REVENUES, EXPENDITURES AND CHANGES IN
FUND BALANCES–NONMAJOR GOVERNMENTAL FUNDS
FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 2022

	Special Revenue Funds		Nonmajor
	Park	Road	Governmental
	Impact	Impact	Funds
Revenues			
Impact fees	\$ 11,531	\$ 54,894	\$ 66,425
Total revenues	<u>11,531</u>	<u>54,894</u>	<u>66,425</u>
Expenditures			
Capital outlay	-	648,226	648,226
Total expenditures	<u>-</u>	<u>648,226</u>	<u>648,226</u>
Change in fund balances	11,531	(593,332)	(581,801)
Fund balances, beginning of year	<u>242,431</u>	<u>1,439,645</u>	<u>1,682,076</u>
Fund balances, end of year	<u>\$ 253,962</u>	<u>\$ 846,313</u>	<u>\$ 1,100,275</u>

OTHER REPORTS

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**INDEPENDENT AUDITOR'S REPORT ON INTERNAL CONTROL OVER FINANCIAL
REPORTING AND ON COMPLIANCE AND OTHER MATTERS BASED ON AN AUDIT OF
FINANCIAL STATEMENTS PERFORMED IN ACCORDANCE WITH
GOVERNMENT AUDITING STANDARDS**

Honorable Mayor, Town Council and Town Manager
Town of Fort Myers Beach, Florida

We have audited, in accordance with the auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, the financial statements of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of the Town of Fort Myers Beach, Florida (the "Town"), as of and for the year ended September 30, 2022, and the related notes to the financial statements, which collectively comprise the Town's basic financial statements, and have issued our report thereon dated October 26, 2023.

Internal Control Over Financial Reporting

In planning and performing our audit of the financial statements, we considered the Town's internal control over financial reporting (internal control) as a basis for designing audit procedures that are appropriate in the circumstances for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the Town's internal control. Accordingly, we do not express an opinion on the effectiveness of the Town's internal control.

A *deficiency in internal control* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A *material weakness* is a deficiency, or a combination of deficiencies, in internal control such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented or detected and corrected on a timely basis. A *significant deficiency* is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control that might be material weaknesses or, significant deficiencies. Given these limitations, during our audit we did not identify any deficiencies in internal control that we consider to be material weaknesses. However, material weaknesses or significant deficiencies may exist that were not identified.

Compliance and Other Matters

As part of obtaining reasonable assurance about whether the Town's financial statements are free of material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the financial statements. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

Purpose of this Report

The purpose of this report is solely to describe the scope of our testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the entity's internal control or on compliance. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the entity's internal control and compliance. Accordingly, this communication is not suitable for any other purpose.

A handwritten signature in black ink that reads "Mauldin & Jenkins, LLC". The script is cursive and fluid, with the letters "M", "J", and "L" being particularly large and stylized.

Bradenton, Florida
October 26, 2023

**INDEPENDENT AUDITOR'S REPORT ON COMPLIANCE FOR EACH MAJOR
FEDERAL PROGRAM AND STATE PROJECT AND ON INTERNAL CONTROL OVER
COMPLIANCE REQUIRED BY THE UNIFORM GUIDANCE AND CHAPTER 10.550,
RULES OF THE AUDITOR GENERAL**

Honorable Mayor, Town Council and Town Manager
Town of Fort Myers Beach, Florida

Report on Compliance for Each Major Federal Program and State Project

Opinion on Each Major Federal Program and State Project

We have audited the Town of Fort Myers Beach, Florida's (the "Town") compliance with the types of compliance requirements identified as subject to audit in the OMB *Compliance Supplement* and the requirements described in the *Department of Financial Services' State Projects Compliance Supplement* that could have a direct and material effect on each of the Town's major federal programs and state projects for the year ended September 30, 2022. The Town's major federal programs and state financial assistance projects are identified in the summary of auditor's results section of the accompanying schedule of findings and questioned costs.

In our opinion, the Town complied, in all material respects, with the types of compliance requirements referred to above that could have a direct and material effect on each of its major federal programs and state projects for the year ended September 30, 2022.

Basis for Opinion on Each Major Federal Program and State Project

We conducted our audit of compliance in accordance with auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in Government Auditing Standards, issued by the Comptroller General of the United States; the audit requirements of Title 2 U.S. *Code of Federal Regulations* Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance); and Chapter 10.550, Rules of the Auditor General. Our responsibilities under those standards and the Uniform Guidance are further described in the Auditor's Responsibilities for the Audit of Compliance section of our report.

We are required to be independent of the Town and to meet our other ethical responsibilities, in accordance with relevant ethical requirements relating to our audit. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion on compliance for each major federal program. Our audit does not provide a legal determination of Town's compliance with the compliance requirements referred to above.

Responsibilities of Management for Compliance

Management is responsible for compliance with the requirements referred to above and for the design, implementation, and maintenance of effective internal control over compliance with the requirements of laws, statutes, regulations, rules, and provisions of contracts or grant agreements applicable to Town's federal and state programs.

Auditor's Responsibilities for the Audit of Compliance

Our objectives are to obtain reasonable assurance about whether material noncompliance with the compliance requirements referred to above occurred, whether due to fraud or error, and express an opinion on the Town's compliance based on our audit. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with generally accepted auditing standards, *Government Auditing Standards*, and the Uniform Guidance will always detect material noncompliance when it exists. The risk of not detecting material noncompliance resulting from fraud is higher than for that resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Noncompliance with the compliance requirements referred to above is considered material if there is a substantial likelihood that, individually or in the aggregate, it would influence the judgment made by a reasonable user of the report on compliance about the Town's compliance with the requirements of each major federal program as a whole.

In performing an audit in accordance with generally accepted auditing standards, *Government Auditing Standards*, and the Uniform Guidance, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material noncompliance, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the Town's compliance with the compliance requirements referred to above and performing such other procedures as we considered necessary in the circumstances.
- Obtain an understanding of the Town's internal control over compliance relevant to the audit in order to design audit procedures that are appropriate in the circumstances and to test and report on internal control over compliance in accordance with the Uniform Guidance, but not for the purpose of expressing an opinion on the effectiveness of the Town's internal control over compliance. Accordingly, no such opinion is expressed.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit and any significant deficiencies and material weaknesses in internal control over compliance that we identified during the audit.

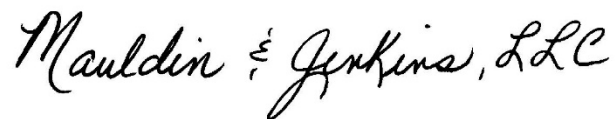
Report on Internal Control Over Compliance

A *deficiency in internal control over compliance* exists when the design or operation of a control over compliance does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, noncompliance with a type of compliance requirement of a federal program on a timely basis. A *material weakness in internal control over compliance* is a deficiency, or a combination of deficiencies, in internal control over compliance, such that there is a reasonable possibility that material noncompliance with a type of compliance requirement of a federal program will not be prevented, or detected and corrected, on a timely basis. A *significant deficiency in internal control over compliance* is a deficiency, or a combination of deficiencies, in internal control over compliance with a type of compliance requirement of a federal program that is less severe than a material weakness in internal control over compliance, yet important enough to merit attention by those charged with governance.

Our consideration of internal control over compliance was for the limited purpose described in the Auditor's Responsibilities for the Audit of Compliance section above and was not designed to identify all deficiencies in internal control over compliance that might be material weaknesses or significant deficiencies in internal control over compliance. Given these limitations, during our audit we did not identify any deficiencies in internal control over compliance that we consider to be material weaknesses, as defined above. However, material weaknesses or significant deficiencies in internal control over compliance may exist that were not identified.

Our audit was not designed for the purpose of expressing an opinion on the effectiveness of internal control over compliance. Accordingly, no such opinion is expressed.

The purpose of this report on internal control over compliance is solely to describe the scope of our testing of internal control over compliance and the results of that testing based on the requirements of the Uniform Guidance and Chapter 10.550, Rules of the Auditor General. Accordingly, this report is not suitable for any other purpose.

A handwritten signature in black ink that reads "Mauldin & Jenkins, LLC". The signature is written in a cursive, flowing style.

Bradenton, Florida
October 26, 2023

TOWN OF FORT MYERS BEACH, FLORIDA

**SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS AND STATE FINANCIAL ASSISTANCE
FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 2022**

Federal/State Agency, Pass-through Entity, Federal/State Program	AL / CSFA No.	Grantors No.	Expenditures	Passed Through to Subrecipients
Federal Awards:				
U.S. Department of Environmental Protection				
Passed through Florida Department of Environmental Protection				
Capitalization Grants for Drinking Water SRF	66.468	DW360801 - 140129	\$ 1,218,553	\$ -
Total U.S. Department of Environmental Protection			<u>1,218,553</u>	<u>-</u>
U.S. Department of Transportation				
Passed through Florida Department of Transportation				
Local Agency Program	20.205	G1Q10	530,188	-
Total U.S. Department of Transportation			<u>530,188</u>	<u>-</u>
Total Expenditures of Federal Awards			<u>\$ 1,748,741</u>	<u>\$ -</u>
State Awards:				
State of Florida Department of Environmental Protection				
Wastewater Treatment Facility Construction	37.077	SW360860	\$ 1,272,189	\$ -
Clean Vessel Act	37.084	MV416	14,355	-
Clean Vessel Act	37.084	MV429	116,936	-
Total State of Florida Department of Environmental Protection			<u>1,403,480</u>	<u>-</u>
Total Expenditures of State Financial Assistance			<u>\$ 1,403,480</u>	<u>\$ -</u>

TOWN OF FORT MYERS BEACH, FLORIDA
NOTES TO SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS AND
STATE FINANCIAL ASSISTANCE
FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 2022

NOTE 1. BASIS OF PRESENTATION

The accompanying schedule of expenditures of federal awards and state financial assistance includes the federal and state grant activity of the Town of Fort Myers Beach, Florida (the "Town"), and is presented on the modified accrual basis of accounting.

The information in this schedule is presented in accordance with the requirements of Title 2 *U.S. Code of Federal Regulations (CFR) Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*. Therefore, some amounts presented in the schedule may differ from amounts presented in, or used in the preparation of, the basic financial statements.

NOTE 2. DE MINIMIS INDIRECT COST RATE

The Town chose not to use the 10% de minimis cost rate for the year ended September 30, 2022.

NOTE 3. NON-CASH AWARDS

The Town did not receive non-cash federal awards during the year ended September 30, 2022.

NOTE 4. CONTINGENCIES

Grant monies received and disbursed by the Town are for specific purposes and are subject to review by the grantor agencies. Such audits may result in disallowed expenditures under the terms of the grants. Based upon prior experience, the Town does not believe that such disallowances, if any, would be material.

NOTE 5. LOANS OUTSTANDING

The Town had \$39,957,221 in State Revolving Fund loans outstanding at September 30, 2022.

**TOWN OF FORT MYERS BEACH, FLORIDA
SCHEDULE OF FINDINGS AND QUESTIONED COSTS
FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 2022**

**SECTION I
SUMMARY OF AUDIT RESULTS**

Financial Statements

Type of report the auditor issued on whether the financial statements audited were prepared in accordance with GAAP:

Unmodified

Internal control over financial reporting:
Material weaknesses identified?

___ yes X no

Significant deficiencies identified not considered
to be material weaknesses?

___ yes X none reported

Noncompliance material to financial statements noted?

___ yes X none reported

Federal Programs

Internal control over major federal programs:
Material weaknesses identified?

___ yes X no

Significant deficiencies identified not considered
to be material weaknesses?

___ yes X none reported

Type of auditor's report issued on compliance for
major federal programs:

Unmodified

Any audit findings disclosed that are required to
be reported in accordance with the 2 CFR 200.516(a)?

___ yes X no

Identification of major federal program:

AL Number

66.468

Name of Federal Program or Cluster

U.S. Environmental Protection Agency –
Capitalization Grants for Drinking Water-SRF

Identification of major state financial assistance project:

CSFA Number

37.077

Name of Federal Program or Cluster

Florida Department of Environmental Protection –
Wastewater Treatment Facility Construction

Dollar threshold used to distinguish between
Type A and Type B federal programs:

\$750,000

Dollar threshold used to distinguish between
Type A and Type B state projects:

\$421,044

Auditee qualified as low-risk auditee?

___ yes X no

**TOWN OF FORT MYERS BEACH, FLORIDA
SCHEDULE OF FINDINGS AND QUESTIONED COSTS
FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 2022**

**SECTION II
FINANCIAL STATEMENT FINDINGS AND RESPONSES**

None noted.

**SECTION III
FEDERAL PROGRAMS FINDINGS AND QUESTIONED COSTS**

None noted.

**SECTION IV
STATE PROJECTS FINDINGS AND QUESTIONED COSTS**

None noted.

**TOWN OF FORT MYERS BEACH, FLORIDA
SCHEDULE OF FINDINGS AND QUESTIONED COSTS
FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 2022**

**SECTION V
SUMMARY SCHEDULE OF PRIOR AUDIT FINDINGS**

2021-001 Proprietary Funds Capital Assets and Project Loans Payable (Material Weakness)

Criteria: Enterprise funds are required to be maintained on the full accrual basis of accounting. As such, capital outlays should be capitalized and depreciated and loans obtained should be recorded as long-term liabilities.

Condition: As of September 30, 2022, the Town did not properly record its capital outlays and loans payable in relation to its ongoing water and stormwater projects.

Status: Resolved.

2021-002 Accounts Payable (Material Weakness)

Criteria: Internal controls should be in place to provide reasonable assurance that all transactions are recorded in accordance with accounting principles generally accepted in the United States of America. As part of the audit process, we identified the need for significant adjustments to accounts payable for the Town to properly obtain an appropriate cutoff as of September 30, 2022.

Condition: We identified issues with the Town's accounts payable balances as of year-end.

Status: Resolved.

2021-003 Accounts Receivable (Material Weakness)

Criteria: Internal controls should be in place to provide reasonable assurance that all transactions are recorded in accordance with accounting principles generally accepted in the United States of America. As part of the audit process, we identified the need for adjustments to accounts receivable for the Town to properly obtain an appropriate cutoff as of September 30, 2022.

Condition: We identified issues with the Town's accounts receivable balances as of year-end.

Status: Resolved

INDEPENDENT AUDITOR'S MANAGEMENT LETTER

Honorable Mayor, Town Council and Town Manager
Town of Fort Myers Beach, Florida

Report on the Financial Statements

We have audited the financial statements of the Town of Fort Myers Beach, Florida (the "Town"), as of and for the fiscal year ended September 30, 2022, and have issued our report thereon dated October 26, 2023.

Auditor's Responsibility

We conducted our audit in accordance with auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; the audit requirements of Title 2 *U.S. Code of Federal Regulations Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance); and Chapter 10.550, Rules of the Auditor General.

Other Reporting Requirements

We have issued our Independent Auditor's Report on Internal Control over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with *Government Auditing Standards*; Independent Auditor's Report on Compliance for Each Major Federal Program and State Project and Report on Internal Control over Compliance; Schedule of Findings and Questioned Costs; and Independent Accountant's Report on an examination conducted in accordance with *AICPA Professional Standards*, AT-C Section 315, regarding compliance requirements in accordance with Chapter 10.550, Rules of the Auditor General. Disclosures in these reports, which are dated October 26, 2023, should be considered in conjunction with this management letter.

Prior Audit Findings

Section 10.554(1)(i)1., Rules of the Auditor General, requires that we determine whether or not corrective actions have been taken to address findings and recommendations made in the preceding annual financial audit report. The status of findings and recommendations made in the preceding financial audit report is listed within the Schedule of Findings and Questioned Costs, Section V.

Official Title and Legal Authority

Section 10.554(1)(i)4., Rules of the Auditor General, requires that the name or official title and legal authority for the primary government and each component unit of the reporting entity be disclosed in this management letter, unless disclosed in the notes to the financial statements. The Town discloses this information in the notes to the financial statements.

Financial Condition and Management

Sections 10.554(1)(i)5.a. and 10.556(7), Rules of the Auditor General, require us to apply appropriate procedures and communicate the results of our determination as to whether or not the Town has met one or more of the conditions described in Section 218.503(1), Florida Statutes, and to identify the specific condition(s) met. In connection with our audit, we determined that the Town did not meet any of the conditions described in Section 218.503(1), Florida Statutes.

Pursuant to Sections 10.554(1)(i)5.b. and 10.556(8), Rules of the Auditor General, we applied financial condition assessment procedures. It is management's responsibility to monitor the Town's financial condition, and our financial condition assessment was based in part on representations made by management and the review of financial information provided by same.

Section 10.554(1)(i)2., Rules of the Auditor General, requires that we communicate any recommendations to improve financial management. In connection with our audit, we did not have any such recommendations.

Special District Component Units

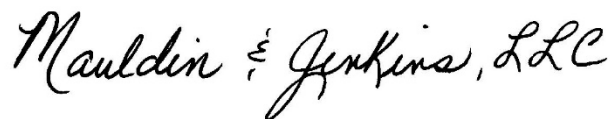
Section 10.554(1)(i)5.c, Rules of the Auditor General, requires, if appropriate, that we communicate the failure of a special district that is a component unit of a county, municipality, or special district, to provide the financial information necessary for proper reporting of the component unit, within the audited financial statements of the county, municipality, or special district in accordance with Section 218.39(3)(b), Florida Statutes. The Town does not have any special district component units.

Additional Matters

Section 10.554(1)(i)3., Rules of the Auditor General, require us to communicate noncompliance with provisions of contracts or grant agreements, or abuse, that have occurred, or are likely to have occurred, that have an effect on the financial statements that is less than material but which warrants the attention of those charged with governance. In connection with our audit, we did not note any such findings.

Purpose of this Letter

Our management letter is intended solely for the information and use of the Legislative Auditing Committee, members of the Florida Senate and the Florida House of Representatives, the Florida Auditor General, federal and other granting agencies, the Mayor and Members of the Town Council Members, and applicable management, and is not intended to be and should not be used by anyone other than these specified parties.



Bradenton, Florida
October 26, 2023

INDEPENDENT ACCOUNTANT'S REPORT

Honorable Mayor, Town Council and Town Manager
Town of Fort Myers Beach, Florida

We have examined the Town of Fort Myers Beach, Florida's (the "Town") compliance with Section 218.415, Florida Statutes, regarding the investment of public funds during the year ended September 30, 2022. Management of the Town is responsible for the Town's compliance with those requirements. Our responsibility is to express an opinion on the Town's compliance based on our examination.

Our examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. Those standards require that we plan and perform the examination to obtain reasonable assurance about whether the Town complied, in all material respects, with the specified requirements referenced above. An examination involves performing procedures to obtain evidence about whether the Town complied with the specified requirements. The nature, timing and extent of the procedures selected depend on our judgement, including an assessment of the risks of material noncompliance, whether due to fraud or error. We believe that the evidence we obtained is sufficient and appropriate to provide a reasonable basis for our opinion.

Our examination does not provide a legal determination on the Town's compliance with specified requirements.

We are required to be independent and to meet our ethical responsibilities in accordance with relevant ethical requirements relating to the examination engagement.

In our opinion, the Town complied, in all material respects, with the aforementioned requirements during the year ended September 30, 2022.

This report is intended solely for the information and use of the Town and the Auditor General, State of Florida, and is not intended to be and should not be used by anyone other than these specified parties.

Mauldin & Jenkins, LLC

Bradenton, Florida
October 26, 2023

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Town of Fort Myers Beach, Florida

Auditor's Discussion and Analysis Financial and Compliance Audit Summary September 30, 2022

Presented by:
Wade Sansbury, CPA
www.mjcpa.com
941-747-4483



TOWN OF FORT MYERS BEACH, FLORIDA

AUDITOR'S DISCUSSION AND ANALYSIS

SEPTEMBER 30, 2022

PURPOSE OF ANNUAL AUDITOR'S DISCUSSION AND ANALYSIS

- ◆ Engagement Team and Firm Information:
 - The Governmental Practice.
 - Additional Information regarding Other Industries and Services.
- ◆ Overview of:
 - Independent Auditor's Report.
 - Financial Statements, Footnotes and Supplementary Information.
 - Compliance Reports (Internal Controls and Laws and Regulations).
 - Audit Scopes and Procedures.
- ◆ Required Communications under *Government Auditing Standards*.
- ◆ Accounting Recommendations and Related Matters:
 - Recommendations for Improvement.
 - Other Matters for Communication.
- ◆ Free Continuing Education and Newsletters.
- ◆ Answer Questions.



VISION

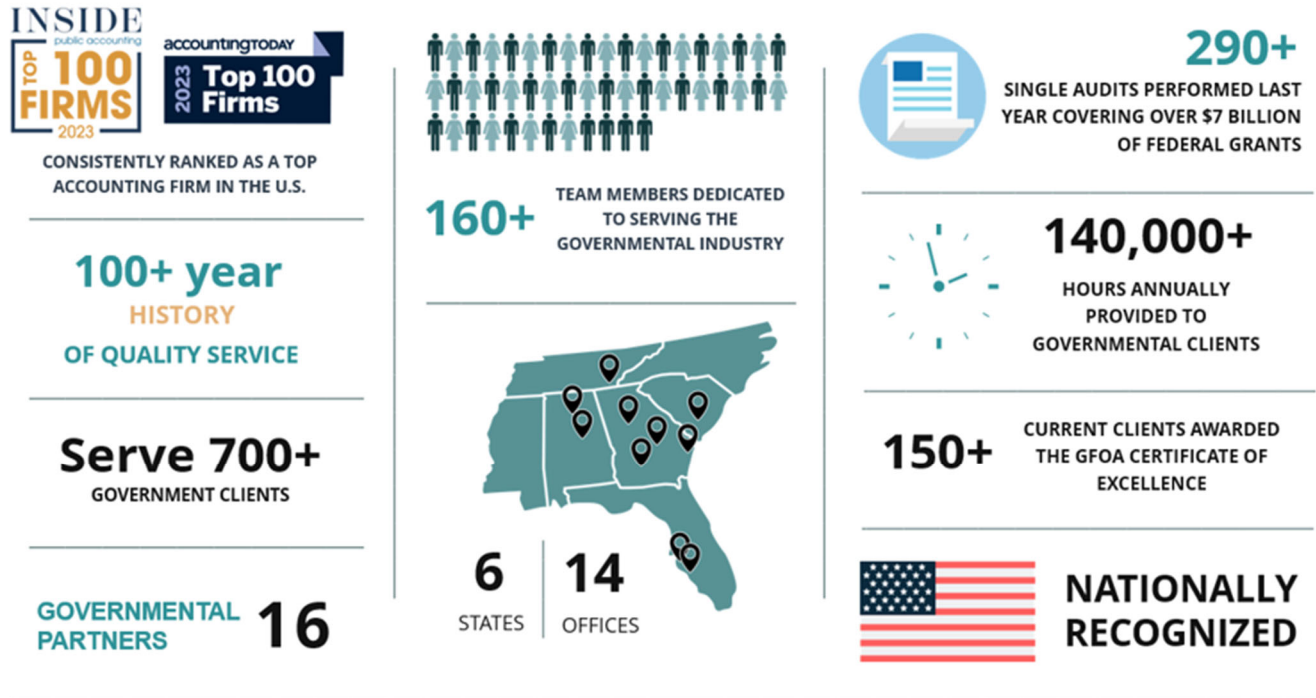
To be a trusted advisor, earning trust and building respect through our consistent commitment to sustainable excellence, leadership, and integrity.

TOWN OF FORT MYERS BEACH, FLORIDA

AUDITOR'S DISCUSSION AND ANALYSIS

SEPTEMBER 30, 2022

MAULDIN & JENKINS – BY THE NUMBERS



Engagement Team Leaders for the Town Include:

- Wade Sansbury, Engagement Lead Partner: 27 years of experience, 100% governmental
- Meredith Lipson, Quality Assurance Partner: 30 years of experience, 100% governmental

TOWN OF FORT MYERS BEACH, FLORIDA

AUDITOR'S DISCUSSION AND ANALYSIS

SEPTEMBER 30, 2022

MAULDIN & JENKINS – ADDITIONAL INFORMATION

Other Industries and Services by Mauldin & Jenkins:

Each of Mauldin & Jenkins' offices provides a wide variety of services to a broad range of clientele. We have partners and managers who are responsible for specialized practice areas of auditing and accounting, taxes and management advisory services. Their purpose, as leaders in the particular practice area, is to establish policies with respect to technical matters in these specific areas and ensure that the quality of the Firm's practice is maintained.

Industries Served: Over the years, our partners have developed expertise in certain industries representative of a cross section of the Florida economy, including:

- Governmental Entities (state entities, cities, counties, school systems, business type operations, libraries, and other special purpose entities)
- SEC Registrants
- Wholesale Distribution
- Agri-Businesses
- Manufacturing
- Professional Services
- Employee Benefit Plans
- Financial Institutions (community banks, savings and loans, thrifts, credit unions, mortgage companies, and finance companies)
- Non-Profit Organizations
- Retail Businesses
- Long-Term Healthcare
- Construction and Development
- Individuals, Estates and Trusts
- Real Estate Management

Services Provided: This diversity of practice enables our personnel to experience a wide variety of business, accounting and tax situations. We provide the traditional and non-traditional services such as:

- Financial Audit/Review/Compilation
- Compliance Audits and Single Audits
- Agreed-Upon Procedures
- Forensic Audits
- Bond Issuance Services
- Performance Audits
- State Sales Tax Matters
- International Tax Matters
- Business and Strategic Planning
- Profitability Consulting
- Budgeting
- Buy-Sell Agreements and Business Valuation Issues
- Income Tax Planning and Preparation
- Multi-State Income Tax Issues
- Information Systems Consulting
- Cost Accounting Analysis
- Healthcare Cost Reimbursement
- Outsourced Billing Services
- Fixed Asset Inventories
- Succession and Exit Strategy Consulting
- Estate Planning
- Management Information Systems
- Employee Benefit Plan Administration
- Merger/Acquisition and Expansion Financing

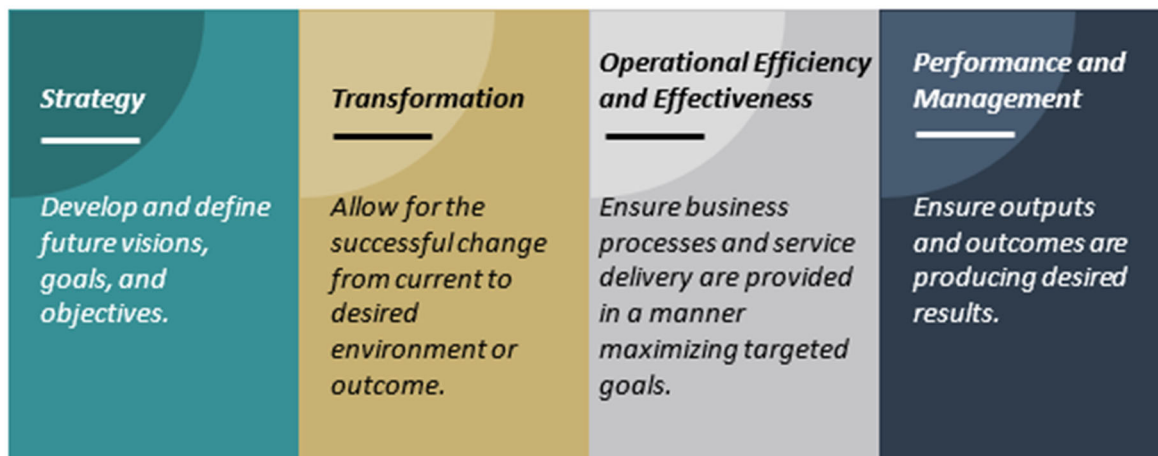
TOWN OF FORT MYERS BEACH, FLORIDA

AUDITOR'S DISCUSSION AND ANALYSIS

SEPTEMBER 30, 2022

GOVERNMENTAL ADVISORY SERVICES

Beyond traditional audit and accounting services and IT services, we provide advisory services that are wide-ranging in nature. Our experienced government advisory team helps governments, governmental agencies and special purpose governmental organizations balance fiscal responsibility with the latest business strategies to achieve targeted and overarching objectives. Our advisory services can be summarized via the following:



David Roberts

Partner, Governmental Advisory Services

David Roberts has more than 22 years of experience as a consultant and trusted advisor providing operational/organizational assessments and similar transformational projects for federal, state, and local governments across the country. David's experience includes leading numerous enterprise-wide/departmental/functional assessments and transformations over his career measuring the efficiency and effectiveness of organizational structures and culture, performance management, technology systems and strategies, staffing models, service delivery models, and customer satisfaction.

David helps his clients turn visions and goals into reality. He has helped multiple clients win national government industry awards for innovation, transformation, and cost savings.

David leads our Government Advisory practice, where he focuses on helping governments and individual agencies fulfill and exceed their financial, operational, and regulatory obligations to the public. David has completed hundreds of projects over his career. On the following page are sample management consulting projects demonstrating David's depth and breadth completed within the past 12 months.

TOWN OF FORT MYERS BEACH, FLORIDA

AUDITOR'S DISCUSSION AND ANALYSIS

SEPTEMBER 30, 2022

Operational and Performance Assessment – Walton County, Georgia

David led a multi-department Operational and Performance Assessment for Walton County. The scope included assessing organizational structure, operational efficiency, staffing levels and resource utilization, comparison to leading practices, and observations and recommendations to assist the County in achieving the desired future state. The final report included numerous observations with associated recommendations and a detailed Roadmap/Implementation Plan.

Outsourcing Feasibility Study – City of Rocky Mount, North Carolina

David led a feasibility study for the City of Rocky Mount to assess its current service delivery model for providing parks maintenance and landscaping services. City operations used of a hybrid model of both internal resources and third-party contractors to provide parks maintenance and landscaping. The project evaluated the pros and cons (both financial and non-financial) of: (1) maintaining the hybrid model, (2) performing all services in-house, and (3) performing all services externally.

Finance Functional Assessment – Richland County Library, South Carolina

David led a functional assessment of the Library's finance department. The project consisted of understanding the current state – current service provision, performance, workflow, business processes, internal controls, organizational structure, reporting, and communications. The current state was compared to leading practices and gaps were identified. An implementation roadmap was created that aligned recommendations to leaderships' vision to help the organization achieve its desired future state.

Grant Compliance Audit – Decide DeKalb (Georgia)

David led a Grant Compliance Assessment of various development projects for Decide DeKalb. The project reviewed the established grant and contractual criteria to be maintained by developers and compared with tenant information related to low-income occupants. The project identified areas of compliance, non-compliance, and recommendations for remediation.

Forensic Audit – Confidential City

David led a forensic investigation into questionable cash management activity for a City Parks and Recreation department. The project reviewed bank account activity, cancelled checks, cash withdrawals, and purchased item documentation as well as conducted interviews with account cardholders to determine the collection, handling, and use of several hundred thousand dollars collected in fees, sponsorships, and contributions made to the City. Numerous observations and corresponding recommendations were developed to enhance internal controls, written policies, and procedures to correct conflicts of interest, mishandling of funds, and misappropriation of funds.

TOWN OF FORT MYERS BEACH, FLORIDA

AUDITOR'S DISCUSSION AND ANALYSIS

SEPTEMBER 30, 2022

INDEPENDENT AUDITOR'S REPORT

The standard independent auditor's report for governmental units has specific sections of significance to readers of the financial report.

Opinions

We have issued an unmodified audit report (a "clean opinion") which is the highest form of assurance we can render. The respective financial statements are considered to present fairly the financial position and results of operations as of, and for the year ended.

Management's Responsibility for the Financial Statements

The financial statements are the responsibility of management.

Auditor's Responsibility

Our responsibility, as external auditors, is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. We planned and performed our audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

Other Matters

Certain required supplementary information and other information is included in the financial report, and as directed by relevant auditing standards, we have not expressed an opinion or provided any assurance on the respective information.

Other Reporting

Government Auditing Standards require auditors to issue a report on our consideration of internal control over financial reporting and on our tests of compliance with certain provisions of laws, regulations, contracts and grant agreements and other matters. We have issued such a report and reference to this report is included in the independent auditor's report.

TOWN OF FORT MYERS BEACH, FLORIDA

AUDITOR'S DISCUSSION AND ANALYSIS

SEPTEMBER 30, 2022

OVERVIEW OF FINANCIAL STATEMENTS

The financial statements as presented to you today include the basic financial statements as well as management's discussion and analysis as prepared by Town management. The Town's basic financial statements include three components: (1) government-wide financial statements; (2) fund financial statements; and (3) notes to the financial statements.

The **government-wide financial statements** provide a broad overview of all of the Town's activities. The *Statement of Net Position* presents information on all assets and liabilities of the Town, with the difference between the two reported as net position. The *Statement of Activities* presents information showing how the Town's net position changed during the most recent fiscal year. Revenues are categorized as program revenues or general revenues. Expenses are categorized by function.

The **fund financial statements** more closely resemble the financial statements as presented prior to the adoption of GASB Statement No. 34. All of the funds of the Town can be divided into three categories: governmental funds, proprietary funds, and fiduciary funds.

COMPLIANCE REPORTS

The financial report package contains two compliance reports:

Yellow Book Report: The first compliance report is a report on our tests of the Town's internal controls and compliance with laws, regulations, etc. The tests of internal controls were those we determined to be required as a basis for designing our financial statement auditing procedures. Such tests also considered the Town's compliance with certain provisions of laws, regulations, contracts and grant agreements, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. In accordance with the respective standards, the report is not intended to provide an opinion, but to provide a form of negative assurance as to the Town's internal controls and compliance with applicable rules and regulations.

Single Audit Report: The second compliance report is a report on our tests of the Town's internal controls and compliance with laws, regulations, etc. relative to certain federal grant programs and the respective expenditures. Our tests were performed on the Town's major programs (as defined by the relevant federal and state guidelines), and were not applied to each and every federal grant expended by the Town. In accordance with the respective standards, we did provide an unmodified (or positive) opinion on the Town's compliance based on our audit. However, we were not required to provide an opinion on the relevant internal controls, but to provide a form of negative assurance on such controls.

Independent Auditor's Management Letter: The Independent Auditor's Management Letter is required to document the Town's Compliance with the requirements of the Rules of the Auditor General. In accordance with the respective rules, the report is not intended to provide an opinion, but to provide a form of negative assurance as to the Town's internal controls and compliance with applicable rules and regulations.

TOWN OF FORT MYERS BEACH, FLORIDA

AUDITOR'S DISCUSSION AND ANALYSIS

SEPTEMBER 30, 2022

Independent Accountant's Report: The Independent Accountant's Report is required to provide the results of our examination procedures performed concerning the Town's investment of public funds in accordance with Florida Statutes.

REQUIRED COMMUNICATIONS

The Auditor's Responsibility Under Government Auditing Standards and Auditing Standards Generally Accepted in the United States of America

Our audit of the financial statements of the Town of Fort Myers Beach, Florida (the "Town") for the year ended September 30, 2022, was conducted in accordance with auditing standards generally accepted in the United States of America and *Government Auditing Standards* issued by the Comptroller General of the United States. Those standards require we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether caused by error, fraudulent financial reporting or misappropriation of assets. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. Accordingly, the audit was designed to obtain reasonable, rather than absolute, assurance about the financial statements. We believe our audit accomplishes that objective.

In accordance with *Government Auditing Standards*, we have also performed tests of controls and compliance with laws and regulations that contribute to the evidence supporting our opinion on the financial statements. However, they do not provide a basis for opining on the Town's internal control or compliance with laws and regulations.

Accounting Policies

Management has the ultimate responsibility for the appropriateness of the accounting policies used by the Town. During the current year, the Town implemented Governmental Accounting Standards Board (GASB) Statement No. 87. In addition, there are several new accounting standards which will be required to be implemented in the coming years. These are discussed later in this document.

In considering the qualitative aspects of the Town's accounting policies, we did not identify any significant or unusual transactions or significant accounting policies in controversial or emerging areas for which there is a lack of authoritative guidance or consensus. The Town's policies relative to the timing of recording of transactions are consistent with GAAP and typical government organizations.

TOWN OF FORT MYERS BEACH, FLORIDA

AUDITOR'S DISCUSSION AND ANALYSIS

SEPTEMBER 30, 2022

Management Judgments and Accounting Estimates

Accounting estimates are an integral part of the preparation of financial statements and are based upon management's current judgment. The process used by management encompasses their knowledge and experience about past and current events and certain assumptions about future events. Management has informed us they used all the relevant facts available to them at the time to make the best judgments about accounting estimates and we considered this information in the scope of our audit. We considered this information and the qualitative aspects of management's calculations in evaluating the Town's significant accounting policies. Estimates significant to the financial statements include valuations of investments.

Financial Statement Disclosures

The footnote disclosures to the financial statements are also an integral part of the financial statements. The process used by management to accumulate the information included in the disclosures was the same process used in accumulating the financial statements, and the accounting policies described above are included in those disclosures. The overall neutrality, consistency and clarity of the disclosures was considered as part our audit and in forming our opinion on the financial statements.

Significant Difficulties Encountered in Performing the Audit

We encountered no difficulties in dealing with management relating to the performance of the audit.

Audit Adjustments

During our audit of the Town's basic financial statements as of and for the year ended September 30, 2022, there were auditor adjustments proposed and posted to the Town's records.

Uncorrected Misstatements

We had no passed adjustments.

Disagreements with Management

We encountered no disagreements with management over the application of significant accounting principles, the basis for management's judgments on significant matters, the scope of the audit or significant disclosures to be included in the financial statements.

TOWN OF FORT MYERS BEACH, FLORIDA

AUDITOR'S DISCUSSION AND ANALYSIS

SEPTEMBER 30, 2022

Representation from Management

We requested written representations from management relating to the accuracy of information included in the financial statements and the completeness and accuracy of various information requested by us, during the audit. Management provided those written representations without delay and in an organized manner.

Management's Consultations with Other Accountants

We are not aware of any consultations management had with other accountants about accounting or auditing matters.

Significant Issues Discussed with Management

There were no significant issues discussed with management related to business conditions, plans or strategies that may have affected the risk of material misstatement of the financial statements. We are not aware of any consultations management had with us or other accountants about accounting or auditing matters. No major issues were discussed with management prior to our retention to perform the aforementioned audit.

Independence

We are independent of the Town of Fort Myers Beach, and all related organizations, in accordance with auditing standards promulgated by the American Institute of Public Accountants and *Government Auditing Standards*, issued by the Comptroller General of the United States.

Other Information in Documents Containing Audited Financial Statements

We are not aware of any other documents that contain the audited basic financial statements. If such documents were to be published, we would have a responsibility to determine that such financial information was not materially inconsistent with the audited statements of the Town.

Required Supplementary Information

We applied certain limited procedures to the Town's RSI as identified in the table of contents, which are required supplementary information (RSI) that supplements the basic financial statements. Our procedures consisted of inquiries of management regarding the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We did not audit the RSI and do not express an opinion or provide any assurance on the RSI.

TOWN OF FORT MYERS BEACH, FLORIDA

AUDITOR'S DISCUSSION AND ANALYSIS

SEPTEMBER 30, 2022

ACCOUNTING RECOMMENDATIONS AND RELATED MATTERS

Other Matters for Communication to the Town Commission and Management

During our audit of the financial statements as of and for the year ended September 30, 2022, we noted other matters which we wish to communicate to you in an effort to keep the Town abreast of accounting matters that could present challenges in financial reporting in future periods.

Current Year Management Point only reported within this AD&A

While performing current year journal entry and cash disbursements testing, we noted the Town was unable to locate some supporting documents due to Hurricane Ian. As a result, we were unable to agree certain transaction details to the proper supporting documentation. Based on the information that we were able to attain the transactions were recorded properly but we do recommend the Town implement a record storage system that will remain protected even in the event of a natural disaster to be able to support all transactions of the Town.

New Governmental Accounting Standard Board (GASB) Standards and Pronouncements



As has been the case for the past ten years, GASB has issued several other new pronouncements which will be effective in future years. The following is a brief summary of the new standards:

- a) **Statement No. 91, *Conduit Debt Obligations*** was issued in May 2019 and is effective for the first reporting period beginning after December 15, 2020, meaning for those with year-ends of December 31, 2021 and beyond. However, in light of the COVID-19 pandemic, in May 2020 the GASB issued Statement No. 95 (*Postponement of the Effective Dates of Certain Authoritative Guidance*) which changed the effective date of Statement No. 91 to reporting periods beginning after December 15, 2021.

The primary objectives of this statement are to provide a single method of reporting conduit debt obligations by issuers and eliminate diversity in practice associated with: (1) commitments extended by issuers, (2) arrangements associated with conduit debt obligations, and (3) related note disclosures. This statement achieves those objectives by clarifying the existing definition of a conduit debt obligation; establishing that a conduit debt obligation is not a liability of the issuer; establishing standards for accounting and financial reporting of additional commitments and voluntary commitments extended by issuers and arrangements associated with conduit debt obligations; and improving required note disclosures.

TOWN OF FORT MYERS BEACH, FLORIDA

AUDITOR'S DISCUSSION AND ANALYSIS

SEPTEMBER 30, 2022

A conduit debt obligation is defined as a debt instrument meeting all of the following characteristics:

- There are at least three parties involved: (1) an issuer, (2) a third-party obligor, and (3) a debt holder (or a debt trustee);
- The issuer and the third-party obligor are not within the same financial reporting entity;
- The debt obligation is not a parity bond of the issuer, nor is it cross-collateralized with other debt of the issuer;
- The third-party obligor (or its agent), not the issuer, ultimately receives the proceeds from the debt issuance;
- The third-party obligor, not the issuer, is primarily obligated for the payment of all amounts associated with the debt obligation (debt service payments).

All conduit debt obligations involve the issuer making a limited commitment. Some issuers extend additional commitments or voluntary commitments to support debt service in the event the third-party is, or will be, unable to do so.

An issuer should not recognize a conduit debt obligation as a liability. However, an issuer should recognize a liability associated with an additional commitment or a voluntary commitment to support debt service if certain recognition criteria are met. As long as a conduit debt obligation is outstanding, an issuer that has made an additional commitment should evaluate at least annually whether those criteria are met. An issuer that has made only a limited commitment should evaluate whether those criteria are met when an event occurs that causes the issuer to reevaluate its willingness or ability to support the obligor's debt service through a voluntary commitment.

This statement also addresses arrangements – often characterized as leases – that are associated with conduit debt obligations. In those arrangements, capital assets are constructed or acquired with the proceeds of a conduit debt obligation and used by third-party obligors in the course of their activities. Payments from third-party obligors are intended to cover and coincide with debt service payments. During those arrangements, issuers retain the titles to the capital assets. Those titles may or may not pass to the obligors at the end of the arrangements.

Issuers should not report those arrangements as leases, nor should they recognize a liability for the related conduit debt obligations or a receivable for the payments related to those arrangements. In addition, the following provisions apply:

- If the title passes to the third-party obligor at the end of the arrangement, an issuer should not recognize a capital asset.
- If the title does not pass to the third-party obligor and the third-party has exclusive use of the entire capital asset during the arrangement, the issuer should not recognize a capital asset until the arrangement ends.

TOWN OF FORT MYERS BEACH, FLORIDA

AUDITOR'S DISCUSSION AND ANALYSIS

SEPTEMBER 30, 2022

- If the title does not pass to the third-party obligor and the third party has exclusive use of only portions of the capital asset during the arrangement, the issuer should recognize the entire capital asset and a deferred inflow of resources at the inception of the arrangement. The deferred inflow of resources should be reduced, and an inflow recognized, in a systematic and rational manner over the term of the arrangement.

This statement requires issuers to disclose general information about their conduit debt obligations, organized by type of commitment, including the aggregate outstanding principal amount of the issuers' conduit debt obligations and a description of each type of commitment. Issuers that recognize liabilities related to supporting the debt service of conduit debt obligations also should disclose information about the amount recognized and how the liabilities changed during the reporting period.

- b) Statement No. 94, *Public-Private and Public-Public Partnerships and Availability Payment Arrangements*** was issued in March 2020 and is effective for fiscal years beginning after June 15, 2022 which means year-ends of June 30, 2023 and following.

This statement was issued by the GASB to address a gap in generally accepted accounting principles: how do we account for these type arrangements that do not meet the definition of a service concession arrangement (SCA) covered by GASB Statement No. 60.

Statement No. 94 requires that Public-Private Partnerships and Public-Public Partnerships ("PPPs") that meet the definition of a lease apply the guidance in Statement No. 87, *Leases* if: (a) existing assets of the transferor are the only underlying PPP assets, (b) improvements are not required to be made by the operator to those existing assets as part of the PPP arrangement, and (c) the PPP does not meet the definition of an SCA. All other PPPs that will not apply the guidance in Statement No. 87 will generally use the accounting guidance contained in Statement No. 60 which was superseded by this new standard.

Statement No. 94 also establishes accounting and financial reporting requirements for availability payment arrangements (APAs). As defined in this statement, an APA is an arrangement in which a government compensates an operator for services that may include designing, constructing, financing, maintaining, or operating an underlying nonfinancial asset for a period of time in an exchange or exchange-like transaction. An APA that is related to designing, constructing, and financing a nonfinancial asset in which ownership of the asset transfers by the end of the contract should be accounted for by the government as a financed purchase of the underlying asset.

TOWN OF FORT MYERS BEACH, FLORIDA

AUDITOR'S DISCUSSION AND ANALYSIS

SEPTEMBER 30, 2022

- c) **Statement No. 96, *Subscription-Based Information Technology Arrangements*** was issued in May 2020 and is effective for fiscal years beginning after June 15, 2022 which means year-ends of June 30, 2023 and following.

This statement provides guidance on the accounting and financial reporting for subscription-based information technology arrangements (SBITAs) for government end users (governments). This statement: (1) defines a SBITA; (2) establishes that a SBITA results in a right-to-use subscription asset – an intangible asset – and a corresponding subscription liability; (3) provides the capitalization criteria for outlays other than subscription payments, including implementation costs of a SBITA; and (4) requires note disclosures regarding a SBITA. To the extent relevant, the standards for SBITAs are based on the standards established in Statement No. 87, *Leases*, as amended.

A SBITA is defined as a contract that conveys control of the right to use another party's (a SBITA vendor's) information technology (IT) software, alone or in combination with tangible capital assets (the underlying IT assets), as specified in the contract for a period of time in an exchange or exchange-like transaction.

The subscription term includes the period during which a government has a noncancellable right to use the underlying IT assets. The subscription term also includes periods covered by an option to extend (if it is reasonably certain that the government or SBITA vendor will exercise that option) or to terminate (if it is reasonably certain that the government or SBITA vendor will not exercise that option).

Under this statement, a government generally should recognize a right-to-use subscription asset – an intangible asset – and a corresponding subscription liability. A government should recognize the subscription liability at the commencement of the subscription term, which is when the subscription asset is placed into service. The subscription liability should be initially measured at the present value of subscription payments expected to be made during the subscription term. Future subscription payments should be discounted using the interest rate the SBITA vendor charges the government, which may be implicit, or the government's incremental borrowing rate if the interest rate is not readily determinable. A government should recognize amortization of the discount on the subscription liability as an outflow of resources (for example, interest expense) in subsequent financial reporting periods.

The subscription asset should be initially measured as the sum of: (1) the initial subscription liability amount, (2) payments made to the SBITA vendor before commencement of the subscription term, and (3) capitalizable implementation costs, less any incentives received from the SBITA vendor at or before the commencement of the subscription term. A government should recognize amortization of the subscription asset as an outflow of resources over the subscription term.

TOWN OF FORT MYERS BEACH, FLORIDA

AUDITOR'S DISCUSSION AND ANALYSIS

SEPTEMBER 30, 2022

Activities associated with a SBITA, other than making subscription payments, should be grouped into the following three stages, and their costs should be accounted for accordingly:

- Preliminary Project Stage: including activities such as evaluating alternatives, determining needed technology, and selecting a SBITA vendor. Outlays in this stage should be expensed as incurred.
- Initial Implementation Stage: including all ancillary charges necessary to place the subscription asset into service. Outlays in this stage generally should be capitalized as an addition to the subscription asset.
- Operation and Additional Implementation Stage: including activities such as subsequent implementation activities, maintenance, and other activities for a government's ongoing operations related to a SBITA. Outlays in this stage should be expensed as incurred unless they meet specific capitalization criteria.

In classifying certain outlays into the appropriate stage, the nature of the activity should be the determining factor. Training costs should be expensed as incurred, regardless of the stage in which they are incurred.

- d) **Statement No. 97, *Certain Component Unit Criteria, and Accounting and Financial Reporting for Internal Revenue Code Section 457 Deferred Compensation Plans*** was issued in June 2020 and is effective for fiscal years beginning after June 15, 2021 (year-ends of June 30, 2022 and following).

The primary objectives of this statement are to: (1) increase consistency and comparability related to the reporting of fiduciary component units in circumstances in which a potential component unit does not have a governing board and the primary government performs the duties that a governing board typically would perform; (2) mitigate costs associated with the reporting of certain defined contribution pension plans, defined contribution other post-employment benefit (OPEB) plans, and employee benefit plans other than pension plans or OPEB plans (other employee benefit plans) as fiduciary component units in fiduciary fund financial statements; and (3) enhance the relevance, consistency, and comparability of the accounting and financial reporting for Internal Revenue Code (IRC) Section 457 deferred compensation plans (Section 457 plans) that meet the definition of a pension plan and for benefits provided through those plans.

This statement requires that for purposes of determining whether a primary government is financially accountable for a potential component unit, except for a potential component unit that is a defined contribution pension plan, a defined contribution OPEB plan, or an other employee benefit plan (for example, certain Section 457 plans), the absence of a governing board should be treated the same as the appointment of a voting majority of a governing board if the primary government performs the duties that a governing board typically would perform. This statement also requires that the financial burden criterion in paragraph 7 of Statement No. 84,

TOWN OF FORT MYERS BEACH, FLORIDA

AUDITOR'S DISCUSSION AND ANALYSIS

SEPTEMBER 30, 2022

Fiduciary Activities, be applicable to only defined benefit pension plans and defined benefit OPEB plans that are administered through trusts.

This statement: (1) requires that a Section 457 plan be classified as either a pension plan or an other employee benefit plan depending on whether the plan meets the definition of a pension plan and (2) clarifies that Statement 84, as amended, should be applied to all arrangements organized under IRC Section 457 to determine whether those arrangements should be reported as fiduciary activities.

e) **Statement No. 99, *Omnibus 2022*** was issued in April 2022 and contains multiple different effective dates for the guidance based on the differing topics. The practice issues addressed by this statement are as follows:

- Classification and reporting of derivative instruments within the scope of Statement No. 53, *Accounting and Financial Reporting for Derivative Instruments*, that do not meet the definition of either an investment derivative instrument or a hedging derivative instrument.
- Clarification of provisions in Statement No. 87, *Leases*, as amended, related to the determination of the lease term, classification of a lease as a short-term lease, recognition and measurement of a lease liability and a lease asset, and identification of lease incentives.
- Clarification of provisions in Statement No. 94, *Public-Private and Public-Public Partnerships and Availability Payment Arrangements*, related to the determination of the public-private and public-public partnership (PPP) term and recognition and measurement of installment payments and the transfer of the underlying PPP asset.
- Clarification of provisions in Statement No. 96, *Subscription-Based Information Technology Arrangements*, related to the subscription-based information technology arrangement (SBITA) term, classification of a SBITA as a short-term SBITA, and recognition and measurement of a subscription liability.
- Extension of the period during which the London Interbank Offered Rate (LIBOR) is considered an appropriate benchmark interest rate for the qualitative evaluation of the effectiveness of an interest rate swap that hedges the interest rate risk of taxable debt.
- Accounting for the distribution of benefits as part of the Supplemental Nutrition Assistance Program (SNAP).
- Disclosures related to nonmonetary transactions.
- Pledges of future revenues when resources are not received by the pledging government.
- Clarification of provisions in Statement No. 34, *Basic Financial Statements — and Management's Discussion and Analysis — for State and Local Governments*, as amended, related to the focus of the government-wide financial statements.
- Terminology updates related to certain provisions of Statement No. 63, *Financial Reporting of Deferred Outflows of Resources, Deferred Inflows of Resources, and Net Position*.

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- Terminology used in Statement 53 to refer to resource flows statements.

The requirements of Statement 99 are effective as follows:

- The requirements related to extension of the use of LIBOR, accounting for SNAP distributions, disclosures of nonmonetary transactions, pledges of future revenues by pledging governments, clarification of certain provisions in Statement 34, as amended, and terminology updates related to Statement 53 and Statement 63 are effective upon issuance.
- The requirements related to leases, PPPs, and SBITAs are effective for fiscal years beginning after June 15, 2022, and all reporting periods thereafter.
- The requirements related to financial guarantees and the classification and reporting of derivative instruments within the scope of Statement 53 are effective for fiscal years beginning after June 15, 2023, and all reporting periods thereafter.

- f) **Statement No. 100, *Accounting Changes and Error Corrections*** was issued in June 2022 and is effective for accounting changes and error corrections made in fiscal years beginning after June 15, 2023, and all reporting periods thereafter.

The primary objective of this statement is to enhance accounting and financial reporting requirements for accounting changes and error corrections to provide more understandable, reliable, relevant, consistent, and comparable information for making decisions or assessing accountability.

This statement defines *accounting changes* as changes in accounting principles, changes in accounting estimates, and changes to or within the financial reporting entity and describes the transactions or other events that constitute those changes. As part of those descriptions, for: (1) certain changes in accounting principles, and (2) certain changes in accounting estimates that result from a change in measurement methodology, a new principle or methodology should be justified on the basis that it is preferable to the principle or methodology used before the change. That preferability should be based on the qualitative characteristics of financial reporting — understandability, reliability, relevance, timeliness, consistency, and comparability. This statement also addresses corrections of errors in previously issued financial statements.

This statement prescribes the accounting and financial reporting for: (1) each type of accounting change, and (2) error corrections. This statement requires that: (a) changes in accounting principles and error corrections be reported retroactively by restating prior periods, (b) changes to or within the financial reporting entity be reported by adjusting beginning balances of the current period, and (c) changes in accounting estimates be reported prospectively by recognizing the change in the current period. The requirements of this statement for changes in accounting principles apply to the implementation of a new pronouncement in absence of specific transition provisions in the new pronouncement. This statement also requires that the aggregate amount

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of adjustments to and restatements of beginning net position, fund balance, or fund net position, as applicable, be displayed by reporting unit in the financial statements.

This statement requires disclosure in notes to financial statements of descriptive information about accounting changes and error corrections, such as their nature. In addition, information about the quantitative effects on beginning balances of each accounting change and error correction should be disclosed by reporting unit in a tabular format to reconcile beginning balances as previously reported to beginning balances as restated.

Furthermore, this statement addresses how information that is affected by a change in accounting principle or error correction should be presented in required supplementary information (RSI) and supplementary information (SI). For periods that are earlier than those included in the basic financial statements, information presented in RSI or SI should be restated for error corrections, if practicable, but not for changes in accounting principles.

- g) **Statement No. 101, *Compensated Absences*** was issued in June 2022 and is effective for fiscal years beginning after December 15, 2023, and all reporting periods thereafter. This statement requires that liabilities for compensated absences be recognized for: (1) leave that has not been used, and (2) leave that has been used but not yet paid in cash or settled through noncash means. A liability should be recognized for leave that has not been used if: (a) the leave is attributable to services already rendered, (b) the leave accumulates, and (c) the leave is more likely than not to be used for time-off or otherwise paid in cash or settled through noncash means. Leave is attributable to services already rendered when an employee has performed the services required to earn the leave. Leave that accumulates is carried forward from the reporting period in which it is earned to a future reporting period during which it may be used for time off or otherwise paid or settled. In estimating the leave that is more likely than not to be used or otherwise paid or settled, a government should consider relevant factors such as employment policies related to compensated absences and historical information about the use or payment of compensated absences. However, leave that is more likely than not to be settled through conversion to defined benefit postemployment benefits should not be included in a liability for compensated absences.

This statement requires that a liability for certain types of compensated absences — including parental leave, military leave, and jury duty leave — not be recognized until the leave commences. This statement also requires that a liability for specific types of compensated absences not be recognized until the leave is used.

This statement also establishes guidance for measuring a liability for leave that has not been used, generally using an employee's pay rate as of the date of the financial statements. A liability for leave that has been used but not yet paid or settled should be measured at the amount of the cash payment or noncash settlement to be made. Certain salary-related payments that are directly and incrementally associated with payments for leave also should be included in the measurement of the liabilities.

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h) Other Pending or Current GASB Projects. As noted by the numerous pronouncements issued by GASB over the past decade, the GASB continues to research various projects of interest to governmental units. Subjects of note include:

- **Re-Examination of the Financial Reporting Model.** GASB has added this project to its technical agenda to make improvements to the existing financial reporting model (established via GASB 34). Improvements are meant to enhance the effectiveness of the model in providing information for decision-making and assessing a government's accountability. GASB anticipates issuance of a final standard in late 2023 or early 2024.
- **Revenue and Expense Recognition** is another long-term project where the GASB is working to develop a comprehensive application model for recognition of revenues and expenses from non-exchange, exchange, and exchange-like transactions. The final standard is expected in mid-2027.
- **Going Concern Uncertainties and Severe Financial Stress** is a major project where the goal is to address issues related to disclosures regarding going concern uncertainties and severe financial stress. The project will consider: (1) improvements to existing guidance for going concern considerations to address diversity in practice and clarify the circumstances under which disclosure is appropriate, (2) developing a definition of severe financial stress and criteria for identifying when governments should disclose their exposure to severe financial stress, and (3) what information about a government's exposure to severe financial stress is necessary to disclose. This technical topic is being examined by the GASB due to a wide diversity in practice regarding required presentation on the face of the financial statements, disclosures, etc. An exposure draft on this topic is expected by mid-2025.

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COMPLIMENTARY CONTINUING EDUCATION AND NEWSLETTERS FOR GOVERNMENTAL CLIENTS

Complimentary Continuing Education. We provide complimentary continuing education for all of our governmental clients. Each quarter, we pick a couple of significant topics tailored to be of interest to governmental entities. We have been providing these complimentary services virtually to allow for a wider array of clients to attend. We obtain the input and services of experienced outside speakers along with providing the instruction utilizing our in-house professionals. We hope the Town staff and officials can participate in this opportunity, and that it will be beneficial to them. Examples of subjects addressed in the past include:

- Accounting for Debt Issuances
- ACFR Preparation (several times including a two day hands-on course)
- Achieving Excellence in Financial Reporting
- Best Budgeting Practices, Policies and Processes
- Capital Asset Accounting Processes and Controls
- Component Units
- Cybersecurity Risk Management
- Evaluating Financial and Non-Financial Health of a Local Government
- Financial Report Card – Where Does Your Government Stand?
- Financial Reporting Model Improvements
- GASB No. 84, Fiduciary Activities
- GASB No. 87, Leases
- GASB Projects & Updates (ongoing and several sessions)
- Grants (Accounting and Auditing)
- Human Capital Management
- Information Technology (IT) Risk Management
- Internal Controls Over Accounts Payable, Payroll and Cash Disbursements
- Internal Controls Over Receivables & the Revenue Cycle
- Internal Revenue Service (IRS) Compliance Issues, Primarily Payroll Matters
- Legal Considerations for Debt Issuances & Disclosure Requirements
- Policies and Procedures Manuals
- Presenting Financial Information to Non-Financial People
- Procurement Card Red Flags
- Risk, Efficiency, & Effectiveness in Governments
- Segregation of Duties
- Single Audits for Auditees
- Uniform Grant Guidance

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Governmental Newsletters. We periodically produce newsletters tailored to meet the needs of governments. The newsletters have addressed a variety of subjects and are intended to be timely in their subject matter. The newsletters are authored by Mauldin & Jenkins employees and are not purchased from an outside party. The newsletters are intended to keep you informed of current developments in the government finance environment.

In the past several years, the following topics have been addressed in our monthly newsletters:

- Are Your Government's Funds Secure?
- COVID-19 Updates (several)
- Cybersecurity Awareness
- Employee vs Independent Contractor
- Federal Funding and Accountability Transparency Act
- Forensic Audit or Financial Audit?
- GASB Invitation to Comment – the New Financial Reporting Model
- Grants Management
- OMB Compliance Supplements
- Property Tax Assessments
- Remote Auditing Best Practices
- Refunding Debt
- Rotating or Not Rotating Auditors
- Sales Tax Collections and Remittances by the State
- SAS Clarity Standards and Group Audits
- Single Audit, including Uniform Guidance (several)
- Various GASB statements

Communication. In an effort to better communicate our complimentary continuing education plans and newsletters, please email Paige Vercoe at pvercoe@micpa.com and provide to her individual names, mailing addresses, email addresses, and phone numbers of anyone you wish to participate and be included in our database.

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CLOSING

If you have any questions regarding any items set forth in this memorandum, we will be pleased to discuss it with you at your convenience. This information is intended solely for the use of the Town of Fort Myers Beach's management, and others within the Town's organization and is not intended to be and should not be used by anyone other than these specified parties.

We appreciate the opportunity to serve the Town of Fort Myers Beach and look forward to serving the Town in the future. Thank you.

1. **Requested Motion:**

Meeting Date: December 18, 2023

Authorize the Town Manager to execute the Engagement Letters with Mauldin & Jenkins to provide independent external auditor services for Fiscal Year 2023

Why the action is necessary:

The Town is required by state statute and federal regulations to complete certain annual audits by certain deadlines.

What the action accomplishes:

This action ensures that the audits will begin as soon as possible in order for the Town to meet its statutory deadlines regarding the audits.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

Joe Onzick, Finance Director

5. **Background:**

The Town Council has charged the Audit Committee with the responsibility of serving in an advisory capacity to the Town Council in the periodic selection of an external auditor to conduct the Town's annual financial audit as required by the State and federal regulations. The audits are to be performed in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in Government Auditing Standards, issued by the Comptroller General of the United States; Title 2 U.S. Code of Federal Regulations Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance); and Chapter 10.550, Rules of the Auditor General for the State of Florida.

On December 11, 2023, the Audit Committee unanimously voted to recommend to the Town Council that the Town Manager be authorized to execute the Engagement Letters with Mauldin & Jenkins in order to conduct the required annual audits for Fiscal Year 2023.

Attachments:

1. 2023 Audit Engagement Letter - Town of Fort Myers Beach
2. Addendums for Audit Engagement Letters - Revised
3. 2023 Examination Engagement Letter - Town of Fort Myers Beach
4. Addendums for Audit Engagement Letters - Revised

Financial Impact:

The fee for audit services will be \$49,900 for the year ended September 30, 2023. If a Single Audit is necessary (either federal or state), an additional \$5,000 will be applied per major program. It is estimated that a Single Audit will be necessary for at least two major programs (Drinking Water and Stormwater SRF Loans), resulting in a fee of \$10,000 for the Single Audit. The total combined fee is therefore estimated to be \$59,900.

6. **Alternative Action**

7. **Management Recommendations:**

The Audit Committee unanimously recommended at their December 11, 2023 meeting that the

Town Council Authorizes the Town Manager to execute the Engagement Letters with Mauldin & Jenkins to conduct the required audits of Fiscal Year 2023.

8. Recommended Approval:

Joe Onzick, Finance Director
Joe Onzick, Finance Director
Nancy Stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 12/11/2023
Approved - 12/12/2023
Approved - 12/13/2023
Approved - 12/13/2023
Final Approval - 12/13/2023

November 2, 2023

Honorable Mayor and Town Council
Town of Fort Myers Beach, Florida
2523 Estero Boulevard
Fort Myers Beach, Florida 33931

Attention: Andy Hyatt, Town Manager and Joe Onzick, Finance Director

We are pleased to confirm our understanding of the services we are to provide the Town of Fort Myers Beach, Florida (the "Town") for the year ended September 30, 2023.

Audit Scope and Objectives

We will audit the financial statements of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information, including the disclosures, which collectively comprise the basic financial statements, of the Town of Fort Myers Beach, Florida as of and for the year then ended. These statements will include the budgetary comparison information for the General Fund, the Gas Tax Fund, the Building Fund, and the Beach Access Fund. Accounting standards generally accepted in the United States of America (GAAP) provide for certain required supplementary information (RSI), such as management's discussion and analysis (MD&A), to supplement the Town's basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. As part of our engagement, we will apply certain limited procedures to the Town's RSI in accordance with auditing standards generally accepted in the United States of America (GAAS). These limited procedures will consist of inquiries of management regarding the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We will not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance. The following RSI is required by GAAP and will be subjected to certain limited procedures, but will not be audited:

1. Management's Discussion and Analysis (MD&A).
2. Schedule of Changes in the Total OPEB Liability and Related Ratios.

We have also been engaged to report on supplementary information other than RSI that accompanies the Town's financial statements. We will subject the following supplementary information to the auditing procedures applied in our audit of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures in accordance with GAAS and will provide an opinion on it in relation to the financial statements as a whole in a report combined with our auditor's report on the financial statements:

1. Schedule of expenditures of federal awards and state financial assistance (if necessary).
2. Combining and individual fund statements.

The objectives of our audit are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and issue an auditor's report that includes our opinions about whether your financial statements are fairly presented, in all material respects, in conformity with GAAP, and report on the fairness of the supplementary information referred to in the second paragraph when considered in relation to the financial statements as a whole. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with GAAS and *Government Auditing Standards* will always detect a material misstatement when it exists. Misstatements, including omissions, can arise from fraud or error and are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment of a reasonable user made based on the financial statements. The objectives also include reporting on:

- Internal control over financial reporting and compliance with the provisions of laws, regulations, contracts and award agreements, noncompliance with which could have a material effect on the financial statements in accordance with *Government Auditing Standards*.
- Internal control over compliance related to major programs and an opinion (or disclaimer of opinion) on compliance with federal statutes, regulations, and the terms and conditions of federal awards that could have a direct and material effect on each major program in accordance with the Single Audit Act Amendments of 1996 and Title 2 U.S. *Code of Federal Regulations* (CFR) Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) or on each major state project in accordance with the Florida State Single Audit Act and the *Department of Financial Services State Projects Compliance Supplement*, as applicable.

Auditor's Responsibilities for the Audit of the Financial Statements and Single Audit

We will conduct our audit in accordance with GAAS; the standards for financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; the Single Audit Act Amendments of 1996; and the provisions of the Uniform Guidance, and will include tests of accounting records, a determination of major program(s) in accordance with the Uniform Guidance, and other procedures we consider necessary to enable us to express such opinions. As part of an audit in accordance with GAAS and *Government Auditing Standards*, we will exercise professional judgment and maintain professional skepticism throughout the audit.

We will evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management. We will also evaluate the overall presentation of the financial statements, including the disclosures, and determine whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation. We will plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether from: (1) errors, (2) fraudulent financial reporting, (3) misappropriation of assets, or (4) violations of laws or governmental regulations that are attributable to the government or to acts by management or employees acting on behalf of the government. Because the determination of waste and abuse is subjective, *Government Auditing Standards* do not expect auditors to perform specific procedures to detect waste or abuse in financial audits nor do they expect auditors to provide reasonable assurance of detecting waste or abuse.

Because of the inherent limitations of an audit, combined with the inherent limitations of internal control, and because we will not perform a detailed examination of all transactions, there is an unavoidable risk that some material misstatements or noncompliance may not be detected by us, even though the audit is properly planned and performed in accordance with GAAS and *Government Auditing Standards*. In addition, an audit is not designed to detect immaterial misstatements or violations of laws or governmental regulations that do not have a direct and material effect on the financial statements or on major programs. However, we will inform the appropriate level of management of any material errors, any fraudulent financial reporting or misappropriation of assets that come to our attention. We will also inform the appropriate level of management of any violations of laws or governmental regulations that come to our attention, unless clearly inconsequential. We will include such matters in the reports required for a Single Audit. Our responsibility as auditors is limited to the period covered by our audit and does not extend to any later periods for which we are not engaged as auditors.

We will also conclude, based on the audit evidence obtained, whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the government's ability to continue as a going concern for a reasonable period of time.

Our procedures will include tests of documentary evidence supporting the transactions recorded in the accounts, tests of the physical existence of inventories, and direct confirmation of receivables and certain other assets and liabilities by correspondence with selected individuals, funding sources, creditors, and financial institutions. We will request written representations from your attorneys as part of the engagement, and they may bill you for responding to this inquiry.

According to GAAS, significant risks include the risk of management's override of internal controls. Accordingly, we have considered this item as a significant risk.

We may, from time to time and depending on the circumstances, use third-party service providers in serving your account. We may share confidential information about you with these service providers but remain committed to maintaining the confidentiality and security of your information. Accordingly, we maintain internal policies, procedures, and safeguards to protect the confidentiality of your personal information. In addition, we will secure confidentiality agreements with all service providers to maintain the confidentiality of your information and we will take reasonable precautions to determine that they have appropriate procedures in place to prevent the unauthorized release of your confidential information to others. In the event that we are unable to secure an appropriate confidentiality agreement, you will be asked to provide your consent prior to the sharing of your confidential information with the third-party service provider. Furthermore, we will remain responsible for the work provided by any such third-party service providers.

Audit Procedures—Internal Control

We will obtain an understanding of the government and its environment, including the system of internal control, sufficient to identify and assess the risks of material misstatement of the financial statements, whether due to error or fraud, and to design and perform audit procedures responsive to those risks and obtain evidence that is sufficient and appropriate to provide a basis for our opinions. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentation, or the override of internal control. Tests of controls may be performed to test the effectiveness of certain controls that we consider relevant to preventing and detecting errors and fraud that are material to the financial statements and to preventing and detecting misstatements resulting from illegal acts and other noncompliance matters that have a direct and material effect on the financial statements. Our tests, if performed, will be less in scope than would be necessary to render an opinion on internal control and, accordingly, no opinion will be expressed in our report on internal control issued pursuant to *Government Auditing Standards*.

As required by the Uniform Guidance, we will perform tests of controls over compliance to evaluate the effectiveness of the design and operation of controls that we consider relevant to preventing or detecting material noncompliance with compliance requirements applicable to each major federal award program. However, our tests will be less in scope than would be necessary to render an opinion on those controls and, accordingly, no opinion will be expressed in our report on internal control issued pursuant to the Uniform Guidance.

An audit is not designed to provide assurance on internal control or to identify significant deficiencies or material weaknesses. Accordingly, we will express no such opinion. However, during the audit, we will communicate to management and those charged with governance internal control related matters that are required to be communicated under AICPA professional standards, *Government Auditing Standards*, and the Uniform Guidance.

Audit Procedures—Compliance

As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, we will perform tests of the Town's compliance with provisions of applicable laws, regulations, contracts and agreements, including grant agreements. However, the objective of those procedures will not be to provide an opinion on overall compliance and we will not express such an opinion in our report on compliance issued pursuant to *Government Auditing Standards*.

The Uniform Guidance requires that we also plan and perform the audit to obtain reasonable assurance about whether the auditee has complied with federal statutes, regulations, and the terms and conditions of federal awards applicable to major programs. Our procedures will consist of tests of transactions and other applicable procedures described in the *OMB Compliance Supplement* for the types of compliance requirements that could have a direct and material effect on each of the Town's major programs. For federal programs that are included in the Compliance Supplement, our compliance and internal control procedures will relate to the compliance requirements that the Compliance Supplement identifies as being subject to audit. The purpose of these procedures will be to express an opinion on the Town's compliance with requirements applicable to each of its major programs in our report on compliance issued pursuant to the Uniform Guidance.

Other Services

We will also assist in preparing the financial statements, schedule of expenditures of federal awards, and related notes of the City in conformity with U.S. generally accepted accounting principles and the Uniform Guidance based on information provided by you. These nonaudit services do not constitute an audit under *Government Auditing Standards* and such services will not be conducted in accordance with *Government Auditing Standards*. We will perform these services in accordance with applicable professional standards. The other services are limited to the financial statements, schedule of expenditures of federal awards, and related notes services previously defined. We, in our sole professional judgement, reserve the right to refuse to perform any procedure or take any action that could be construed as assuming management responsibilities.

You agree to assume all management responsibilities relating to the financial statements, schedule of expenditures of federal awards, related notes, and any other nonaudit services we provide. You will be required to acknowledge in the management representation letter our assistance with preparation of the financial statements, schedule of expenditures of federal awards, and related notes and that you have reviewed and approved the financial statements, schedule of expenditures of federal awards, and related notes prior to their issuance and have accepted responsibility for them. Further, you agree to oversee the nonaudit services by designating an individual, preferably from senior management, who possesses suitable skill, knowledge, or experience; evaluate the adequacy and results of those services; and accept responsibility for them.

Responsibilities of Management for the Financial Statements and Single Audit

Our audit will be conducted on the basis that you acknowledge and understand your responsibility for: (1) designing, implementing, establishing, and maintaining effective internal controls relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error, including internal controls over federal awards, and for evaluating and monitoring ongoing activities, to help ensure that appropriate goals and objectives are met; (2) following laws and regulations; (3) ensuring that there is reasonable assurance that government programs are administered in compliance with compliance requirements; and (4) ensuring that management and financial information is reliable and properly reported. Management is also responsible for implementing systems designed to achieve compliance with applicable laws, regulations, contracts, and grant agreements. You are also responsible for the selection and application of accounting principles; for the preparation and fair presentation of the financial statements, schedule of expenditures of federal awards, and

all accompanying information in conformity with accounting principles generally accepted in the United States of America; and for compliance with applicable laws and regulations (including federal statutes) and the provisions of contracts and grant agreements (including award agreements). Your responsibilities also include identifying significant contractor relationships in which the contractor has responsibility for program compliance and for the accuracy and completeness of that information.

You are also responsible for making drafts of financial statements, schedule of expenditures of federal awards, all financial records and related information available to us and for the accuracy and completeness of that information (including information from outside of the general and subsidiary ledgers). You are also responsible for providing us with: (1) access to all information of which you are aware that is relevant to the preparation and fair presentation of the financial statements, such as records, documentation, identification of all related parties and all related-party relationships and transactions, and other matters, (2) access to personnel, accounts, books, records, supporting documentation, and other information as needed to perform an audit under the Uniform Guidance, (3) additional information that we may request for the purpose of the audit, and (4) unrestricted access to persons within the government from whom we determine it necessary to obtain audit evidence. At the conclusion of our audit, we will require certain written representations from you about the financial statements; schedule of expenditures of federal awards; federal award programs; compliance with laws, regulations, contracts, and grant agreements; and related matters.

Your responsibilities include adjusting the financial statements to correct material misstatements and confirming to us in the management representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements of each opinion unit taken as a whole.

You are responsible for the design and implementation of programs and controls to prevent and detect fraud, and for informing us about all known or suspected fraud affecting the government involving: (1) management, (2) employees who have significant roles in internal control, and (3) others where the fraud could have a material effect on the financial statements. Your responsibilities include informing us of your knowledge of any allegations of fraud or suspected fraud affecting the government received in communications from employees, former employees, grantors, regulators, or others. In addition, you are responsible for identifying and ensuring that the government complies with applicable laws, regulations, contracts, agreements, and grants. You are also responsible for taking timely and appropriate steps to remedy fraud and noncompliance with provisions of laws, regulations, contracts, and grant agreements that we report. Additionally, as required by the Uniform Guidance, it is management's responsibility to evaluate and monitor noncompliance with federal statutes, regulations, and the terms and conditions of federal awards; take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings; promptly follow up and take corrective action on reported audit findings; and to prepare a summary schedule of prior audit findings and a separate corrective action plan. The summary schedule of prior audit findings should be available for our review subsequent to the start of fieldwork.

You are responsible for identifying all federal awards received and understanding and complying with the compliance requirements and for the preparation of the schedule of expenditures of federal awards (including notes and noncash assistance received, and COVID-19 related concepts, such as lost revenues, if applicable) in conformity with the Uniform Guidance. You agree to include our report on the schedule of expenditures of federal awards in any document that contains and indicates that we have reported on the schedule of expenditures of federal awards. You also agree to include the audited financial statements with any presentation of the schedule of expenditures of federal awards that includes our report thereon or make the audited financial statements readily available to intended users of the schedule of expenditures of federal awards no later than the date the schedule of expenditures of federal awards is issued with our report thereon. Your responsibilities include acknowledging to us in the written representation letter that: (1) you are responsible for presentation of the schedule of expenditures of federal awards in accordance with the Uniform Guidance; (2) you believe the schedule of expenditures of federal awards, including its form and content, is stated fairly in accordance with the Uniform Guidance; (3) the methods of measurement or presentation have not changed from those used in the prior period (or, if they have changed, the reasons for such changes); and (4) you have disclosed to us any significant assumptions or interpretations underlying the measurement or presentation of the schedule of expenditures of federal awards.

You are also responsible for the preparation of the other supplementary information, which we have been engaged to report on, in conformity with U.S. generally accepted accounting principles. You agree to include our report on the supplementary information in any document that contains and indicates that we have reported on the supplementary information. You also agree to include the audited financial statements with any presentation of the supplementary information that includes our report thereon or make the audited financial statements readily available to users of the supplementary information no later than the date the supplementary information is issued with our report thereon. Your responsibilities include acknowledging to us in the written representation letter that: (1) you are responsible for presentation of the supplementary information in accordance with GAAP; (2) you believe the supplementary information, including its form and content, is fairly presented in accordance with GAAP; (3) the methods of measurement or presentation have not changed from those used in the prior period (or, if they have changed, the reasons for such changes); and (4) you have disclosed to us any significant assumptions or interpretations underlying the measurement or presentation of the supplementary information.

Management is responsible for establishing and maintaining a process for tracking the status of audit findings and recommendations. Management is also responsible for identifying and providing report copies of previous financial audits, attestation engagements, performance audits or other studies related to the objectives discussed in the Audit Scope and Objectives section of this letter. This responsibility includes relaying to us corrective actions taken to address significant findings and recommendations resulting from those audits, attestation engagements, performance audits, or studies. You are also responsible for providing management's views on our current findings, conclusions, and recommendations, as well as your planned corrective actions, for the report, and for the timing and format for providing that information.

With regard to an exempt offering document with which Mauldin & Jenkins is not involved, you agree to clearly indicate in the exempt offering document that Mauldin & Jenkins is not involved with the contents of such offering document. In the event that Mauldin & Jenkins is requested to

be involved with an exempt offering document, you agree that the aforementioned auditor's report or reference to Mauldin & Jenkins will not be included without our prior permission or consent. Furthermore, any agreement to perform work in connection with an exempt offering document, including an agreement to provide permission or consent, will be a separate engagement.

With regard to the electronic dissemination of audited financial statements, including financial statements published electronically on your website, you understand that electronic sites are a means to distribute information and, therefore, we are not required to read the information contained in these sites or to consider the consistency of other information in the electronic site with the original document.

You acknowledge the Town will not utilize Mauldin & Jenkins, LLC to store documents, data, or records on behalf of the Town in accordance with the "Hosting Services" (see ET section 1.295.143) interpretation of the AICPA Code of Professional Conduct. The Town is solely responsible for maintaining its own data and records.

In that regard, SuraLink is used solely as a method of transferring data to Mauldin & Jenkins, LLC and is not intended for the storage of the Town's information. All information you will provide through SuraLink is a copy and you will maintain original documents and data as part of your records.

Engagement Administration, Fees, and Other

We understand that your employees will prepare all cash or other confirmations we request and will locate any documents selected by us for testing.

At the conclusion of the engagement, we will complete the appropriate sections of the Data Collection Form that summarizes our audit findings. It is management's responsibility to electronically submit the reporting package (including financial statements, schedule of expenditures of federal awards, summary schedule of prior audit findings, auditors' reports, and corrective action plan) along with the Data Collection Form to the federal audit clearinghouse. We will coordinate with you the electronic submission and certification. The Data Collection Form and the reporting package must be submitted within the earlier of 30 calendar days after receipt of the auditors' reports or nine months after the end of the audit period.

We will provide copies of our reports to the Town; however, management is responsible for distribution of the reports and financial statements. Unless restricted by law or regulation, or containing privileged and confidential information, copies of our reports are to be made available for public inspection.

The audit documentation for this engagement is the property of Mauldin & Jenkins and constitutes confidential information. However, subject to applicable laws and regulations, audit documentation and appropriate individuals will be made available upon request and in a timely manner to a federal agency providing direct or indirect funding, or the U.S. Government Accountability Office for purposes of a quality review of the audit, to resolve audit findings, or to carry out oversight responsibilities. We will notify you of any such request. If requested, access to such audit documentation will be provided under the supervision of Mauldin & Jenkins personnel. Furthermore, upon request, we may provide copies of selected audit documentation to

the aforementioned parties. These parties may intend, or decide, to distribute the copies or information contained therein to others, including other governmental agencies.

The audit documentation for this engagement will be retained for a minimum of five years after the report release date or for any additional period requested by a regulatory body. If we are aware that a federal awarding agency, pass-through entity, or auditee is contesting an audit finding, we will contact the party (ies) contesting the audit finding for guidance prior to destroying the audit documentation.

We expect to begin our audit fieldwork in April 2024 and to issue our reports no later than May 31, 2024. Wade P. Sansbury, CPA, is the engagement partner and is responsible for supervising the engagement and signing the reports or authorizing another individual to sign them. Our fee for these services will be \$49,900 for the year ended September 30, 2023. If a Single Audit is necessary (either federal or state) an additional \$5,000 will be applied per major program. Our hourly rates vary according to the degree of responsibility involved and the experience level of the personnel assigned to your audit. Our invoices for these fees will be rendered as work progresses and are payable upon presentation. The above fees are based on anticipated cooperation from your personnel (including complete and timely receipt by us of the information on the respective client participation listings to be prepared annually) and the assumption that unexpected circumstances (including scope changes) will not be encountered during the audit. If significant additional time is necessary, we will discuss it with management and arrive at a new fee estimate before we incur the additional costs.

As a result of our prior or future services to you, we might be requested or required to provide information or documents to you or a third party in a legal, administrative, arbitration, or similar proceeding in which we are not a party. If this occurs, our efforts in complying with such requests will be deemed billable to you as a separate engagement. We shall be entitled to compensation for our time and reasonable reimbursement for our expenses (including legal fees) in complying with the request. For all requests we will observe the confidentiality requirements of our profession and will notify you promptly of the request.

Reporting

We will issue written reports upon completion of our Single Audit. Our reports will be addressed to the members of the Town of Fort Myers Beach Council. We cannot provide assurance that unmodified opinions will be expressed. Circumstances may arise in which our report may differ from its expected form and content based on the results of our audit. Depending on the nature of these circumstances, it may be necessary for us to modify our opinions or add emphasis-of-matter or other-matter paragraphs to our auditor's report, or if necessary, withdraw from this engagement. If our opinions on the financial statements or the Single Audit compliance opinions are other than unmodified, we will discuss the reasons with you in advance. If, for any reason, we are unable to complete the audit or are unable to form or have not formed opinions, we may decline to express opinions or to issue reports or may withdraw from this engagement.

The *Government Auditing Standards* report on internal control over financial reporting and on compliance and other matters will state: (1) that the purpose of the report is solely to describe the scope of testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the entity's internal control or on compliance, and (2) that the report is an integral part of an audit performed in accordance with *Government Auditing*

Standards in considering the entity's internal control and compliance. The Uniform Guidance report on internal control over compliance will state that the purpose of the report on internal control over compliance is solely to describe the scope of testing of internal control over compliance and the results of that testing based on the requirements of the Uniform Guidance. Both reports will state that the report is not suitable for any other purpose.

We appreciate the opportunity to be of service to the Town of Fort Myers Beach, Florida and believe this letter accurately summarizes the significant terms of our engagement. If you have any questions, please let us know. If you agree with the terms of our engagement as described in this letter, please sign below and return it to us.

Sincerely,

MAULDIN & JENKINS, LLC



Wade P. Sansbury, CPA

RESPONSE:

This letter correctly sets forth the understanding of the Town of Fort Myers Beach, Florida.

Management signature: _____

Title: _____

Governance signature: _____

Title: _____

TOWN OF FORT MYERS BEACH, FLORIDA
CONTRACT ADDENDUM

THIS STANDARD CONTRACT ADDENDUM is made and entered into this 18th day of December, 2023, by and between the TOWN OF FORT MYERS BEACH, a Florida municipality, hereinafter referred to as the "Town", and Mauldin & Jenkins, LLC hereinafter referred to as "Contractor", concerning that certain Engagement Letter, and dated the 2nd day of November, 2023 ("Agreement").

WITNESSETH:

WHEREAS, Section 119.0701, Fla. Stat., requires that certain public agency contracts must include certain statutorily required provisions concerning a contractor's compliance with Florida's Public Records Act; and

WHEREAS, Section 768.28, Fla. Stat., sets forth certain mandatory limitations on indemnification and liability for Florida public agencies; and

WHEREAS, Florida law requires that public agency contracts be subject to non-appropriation and thereby contingent upon appropriation during the public agency's statutorily mandated annual budget approval process; and

WHEREAS, Section 448.095, Fla. Stat., imposes certain obligations on public agencies with regard to the use of the E-Verify system by their contractors and subcontractors; and

WHEREAS, Sections 287.133 and 287.135, Florida Statutes contain restrictions on local governments contracting with companies that are considered "Scrutinized Companies" or who appear on convicted vendor lists; and

WHEREAS, additional terms consistent with Sections 282.3185(5) and (6) related to data management and Section 287.05701 related to social government and corporate activism are also added by virtue of this Addendum

NOW, THEREFORE, in consideration of the covenants set forth herein, the parties agree to this addendum as follows:

1. Amendment. This Addendum hereby amends and supplements the terms of the Agreement. In the event of a conflict between the terms of the Agreement and terms of the Addendum, the terms of the Addendum shall prevail.

2. Public Records Compliance. Contractor agrees that, to the extent that it may "act on behalf" of the Town within the meaning of Section 119.0701(1)(a), Florida Statutes in providing its services under this Agreement, it shall:

- (a) Keep and maintain public records required by the public agency to perform the service.
- (b) Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the public agency.
- (d) Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the Town's custodian of public records, in a format that is compatible with the information technology systems of the Town.
- (e) Pursuant to Section 119.0701(2)(a), Fla. Stat., **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 AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**TOWN HALL
2525 ESTERO BLVD.
FORT MYERS BEACH, FL. 33931
(239)765-0202
AMY@FMBGOV.COM**

3. Public Records Compliance Indemnification. Contractor agrees to indemnify and hold the Town harmless against any and all claims, damage awards, and causes of action arising from the contractor's failure to comply with the public records disclosure requirements of Section 119.07(1), Florida Statutes, or by contractor's failure to maintain public records that are exempt or confidential and exempt from the public records disclosure requirements, including, but not limited to, any third party claims or awards for attorneys' fees and costs arising therefrom. Contractor authorizes the public agency to seek declaratory, injunctive, or other appropriate relief against Contractor in Lee County Circuit Court on an expedited basis to enforce the requirements of this section.

4. Compliance/Consistency with Section 768.28, Fla. Stat. Any indemnification or agreement to defend or hold harmless by Town specified in the Agreement shall not be construed as a waiver of Town's sovereign immunity, and shall be limited to such indemnification and liability limits consistent with the requirements of Section 768.28, Fla. Stat. and subject to the procedural requirements set forth therein. Any other purported indemnification by Town in the Agreement in derogation hereof shall be void and of no force or effect.

5. Non-appropriation. Town's performance and obligation to pay under this Agreement is contingent upon an appropriation during the Town's annual budget approval process. If funds are not appropriated for a fiscal year, then the Contractor shall be notified as soon as is practical by memorandum from the Town Manager or designee that funds have not been appropriated for continuation of the Agreement, and the Agreement shall expire at the end of the fiscal year for which funding has been appropriated. The termination of the Agreement at fiscal year end shall be without penalty or expense to the Town subject to the Town paying all invoices for services rendered during the period the Agreement was funded by appropriations.

6. E-Verify Compliance. By entering into this Agreement, the Contractor is obligated to comply with the provisions of Section 448.095, Florida Statutes "Employment Eligibility," as amended from time to time. This includes but is not limited to register with and use the E-Verify System to verify the work authorization status of all newly hired employees, and requiring all subcontractors to provide an affidavit to Contractor attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Contractor agrees to maintain a copy of such affidavit for the duration of this Agreement. Failure to comply with this paragraph will result in the termination of this Agreement as provided in Section 448.095, Florida Statutes, as amended and Contractor will not be awarded a public contract for at least one (1) year after the date on which the Agreement was terminated. Contractor will also be liable for any additional costs to the Town as a result of the termination of this Agreement in accordance with this paragraph. Contractor affirmatively states, under penalty of perjury, that in accordance with Section 448.095, Florida Statutes, Contractor is registered with and uses the E-Verify system to verify the work authorization status of all newly hired employees, that in accordance with such statute, Contractor requires from each of its subcontractors an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien, and that Contractor is otherwise in compliance with Sections 448.09 and 448.095, Florida Statutes.

7. Compliance/Consistency with Scrutinized Companies Provisions of Florida Statutes. Section 287.135(2)(a), Florida Statutes, prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services of any amount if, at the time of contracting or renewal, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to section 215.4725, Florida Statutes, or is engaged in a boycott of Israel. Section 287.135(2)(b), Florida Statutes, further prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services over one million dollars (\$1,000,000) if, at the time of contracting or renewal, the company is on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, both created pursuant to section 215.473, Florida Statutes, or the company is engaged in business operations in Cuba or Syria. Contractor hereby certifies that Contractor is not listed on any of the following: (i) the Scrutinized Companies

that Boycott Israel List, (ii) Scrutinized Companies with Activities in Sudan List, or (iii) the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. Contractor further hereby certifies that Contractor is not engaged in a boycott of Israel or engaged in business operations in Cuba or Syria. Contractor understands that pursuant to section 287.135, Florida Statutes, the submission of a false certification may subject Contractor to civil penalties, attorney's fees, and/or costs. Contractor further understands that any contract with Town for goods or services of any amount may be terminated at the option of Town if Contractor (i) is found to have submitted a false certification, (ii) has been placed on the Scrutinized Companies that Boycott Israel List, or (iii) is engaged in a boycott of Israel. And, in addition to the foregoing, if the amount of the contract is one million dollars (\$1,000,000) or more, the contract may be terminated at the option of Town if the company is found to have submitted a false certification, has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has been engaged in business operations in Cuba or Syria.

8. Venue and Jurisdiction. Notwithstanding any of other provision to the contrary, this Agreement and the parties' actions under this Agreement shall be governed by and construed under the laws of the state of Florida, without reference to conflict of law principles. As a material condition of this Agreement, each Party hereby irrevocably and unconditionally: i) consents to submit and does submit to the jurisdiction of the Circuit Court in and for Lee County, Florida for any actions, suits or proceedings arising out of or relating to this Agreement; and ii) agrees to waive the right to file any action, suit or proceeding in, or remove any action, suit or proceeding to, any Federal Court.

9. Attorneys' Fees and Costs. Notwithstanding any of other provision to the contrary, if litigation ensues regarding this Agreement, each party hereto shall bear its own attorneys' fee and costs.

10. Public Entities Crime or Convicted Vendor List. Contractor agrees and assumes a continuous duty to disclose to the Town if the Contractor or any of its affiliates as defined by Section 287.133(1)(a), Florida Statutes are placed on the Convicted Vendor List or the Antitrust Violator Vendor List maintained by the Florida Department of Management Services.

11. Data Management; Notice of Breach. Contractor shall cooperate with the Town and provide timely incident reporting, response activities/fact gathering, public and agency notification, severity level assessment, after-action reports etc, which the Town must report in accordance with Sections 282.3185(5) & (6), Florida Statutes in the event of a data breach.

12. Environmental and Social Government and Corporate Activism. The Town has not given preference or requested documentation from the Contractor based on Contractor's social, political or ideological interest. Contractor agrees to similarly not request documentation or give preference to any subcontractor based on the subcontractor's social, political or ideological interests.

13. Taxes. The Town shall not be liable for any taxes and assessments imposed by a federal, state or local governmental agency as provided in Section 11.4 of the Agreement, to the

extent that the Town is exempt from same by Florida law, including but not limited to any sales or use tax.

14. Additional Terms. Notwithstanding any of other provision to the contrary, the parties agree as follows:

A. None.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this instrument on the days and year indicated below and the signatories below to bind the parties set forth herein.

Contractor:

Wade P Sansbury

Print Name: WADE P SANSBURY

Title: PARTNER

Company: Marldin + Jenkins, LLC

ATTEST:

Town of Fort Myers Beach

Amy Baker, Town Clerk

Dan Allers, Mayor

APPROVED AS TO FORM & SUFFICIENCY

Vose Law Firm, Town Attorney

November 2, 2023

Honorable Mayor and Town Council
Town of Fort Myers Beach, Florida
2523 Estero Boulevard
Fort Myers Beach, Florida 33931

Attention: Andy Hyatt, Town Manager and Joe Onzick, Finance Director

We are pleased to confirm our understanding of the services we are to provide for the Town of Fort Myers Beach, Florida (the "Town").

We will examine the Town's compliance with Section 218.415, Florida Statutes, regarding the investment of public funds as of and for the year ending September 30, 2023. The objectives of our examination are to: (1) obtain reasonable assurance about whether the Town complied with the specified requirements above; and (2) to express an opinion as to whether the Town complied with the specified requirements is fairly stated, in all material respects.

Our examination will be conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. Accordingly, it will include examining, on a test basis, your records and other procedures to obtain evidence necessary to enable us to express our opinion. We will issue a written report upon completion of our examination. Our report will be addressed to the Honorable Mayor and Members of the Town Council. We cannot provide assurance that an unmodified opinion will be expressed. Circumstances may arise in which it is necessary for us to modify our opinion. If our opinion is other than unmodified, we will discuss the reasons with you in advance. If, for any reason, we are unable to complete the examination or are unable to form or have not formed an opinion, we may decline to express an opinion or may withdraw from this engagement.

Because of the inherent limitations of an examination engagement, together with the inherent limitations of internal control, an unavoidable risk exists that some material misstatements may not be detected, even though the examination is properly planned and performed in accordance with the attestation standards.

You understand that the report is intended solely for the information and use of the Town and the Auditor General of the State of Florida and is not intended to be and should not be used by anyone other than those specified parties.

We will plan and perform the examination to obtain reasonable assurance about whether the Town complied with Section 218.415, Florida Statutes, regarding the investment of public funds is free from material misstatement. Our engagement will not include a detailed inspection of every transaction and cannot be relied on to disclose all material errors or known and suspected fraud or noncompliance with laws or regulations, or internal control deficiencies that may exist.

However, we will inform you of any known and suspected fraud and noncompliance with laws or regulations, internal control deficiencies identified during the engagement, and uncorrected misstatements that come to our attention unless clearly trivial.

We understand that you will provide us with the information required for our examination and that you are responsible for the accuracy and completeness of that information. We may advise you about appropriate criteria, but the responsibility for the subject matter remains with you.

You are responsible for compliance with Section 218.415, Florida Statutes, regarding the investment of public funds; and for selecting the criteria and determining that such criteria are appropriate for your purposes. You are responsible for, and agree to provide us with, a written assertion about whether the Town is in compliance with the above noted criteria. Failure to provide such an assertion will result in our withdrawal from the engagement. You are also responsible for providing us with: (1) access to all information of which you are aware that is relevant to the measurement, evaluation, or disclosure of the subject matter; (2) additional information that we may request for the purpose of the examination; and (3) unrestricted access to persons within the entity from whom we determine it necessary to obtain evidence.

At the conclusion of the engagement, you agree to provide us with certain written representations in the form of a representation letter.

We may from time to time, and depending on the circumstances, use third-party service providers in serving your account. We may share confidential information about you with these service providers, but we remain committed to maintaining the confidentiality and security of your information. Accordingly, we maintain internal policies, procedures, and safeguards to protect the confidentiality of your personal information. In addition, we will secure confidentiality agreements with all service providers to maintain the confidentiality of your information, and we will take reasonable precautions to determine that they have appropriate procedures in place to prevent the unauthorized release of your confidential information to others. In the event that we are unable to secure an appropriate confidentiality agreement, you will be asked to provide your consent prior to the sharing of your confidential information with the third-party service provider. Furthermore, we will remain responsible for the work provided by any such third-party service providers.

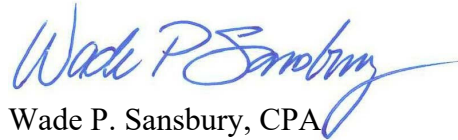
Wade P. Sansbury, CPA, is the engagement partner and is responsible for supervising the engagement and signing the report or authorizing another individual to sign it.

We expect to begin our examination in April 2024. Our fees for these services are included in the Town's annual audit engagement letter. If significant additional time is necessary, we will discuss it with you and arrive at a new fee estimate before we incur the additional costs. Our invoices for these fees will be rendered each month as work progresses and are payable on presentation. If we elect to terminate our services for nonpayment, our engagement will be deemed to have been completed upon written notification of termination, even if we have not completed our report. You will be obligated to compensate us for all time expended and to reimburse us for all out-of-pocket expenditures through the date of termination.

We appreciate the opportunity to be of service to you and believe this letter accurately summarizes the significant terms of our engagement. If you have any questions, please let us know. If you agree with the terms of our engagement as described in this letter, please sign below and return it to us.

Sincerely,

MAULDIN & JENKINS, LLC


Wade P. Sansbury, CPA

RESPONSE:

This letter correctly sets forth the understanding of the Town of Fort Myers Beach, Florida.

Management signature: _____

Title: _____

Governance signature: _____

Title: _____

TOWN OF FORT MYERS BEACH, FLORIDA
CONTRACT ADDENDUM

THIS STANDARD CONTRACT ADDENDUM is made and entered into this 18th day of December, 2023, by and between the TOWN OF FORT MYERS BEACH, a Florida municipality, hereinafter referred to as the "Town", and Mauldin & Jenkins, LLC hereinafter referred to as "Contractor", concerning that certain Engagement Letter, and dated the 2nd day of November, 2023 ("Agreement").

WITNESSETH:

WHEREAS, Section 119.0701, Fla. Stat., requires that certain public agency contracts must include certain statutorily required provisions concerning a contractor's compliance with Florida's Public Records Act; and

WHEREAS, Section 768.28, Fla. Stat., sets forth certain mandatory limitations on indemnification and liability for Florida public agencies; and

WHEREAS, Florida law requires that public agency contracts be subject to non-appropriation and thereby contingent upon appropriation during the public agency's statutorily mandated annual budget approval process; and

WHEREAS, Section 448.095, Fla. Stat., imposes certain obligations on public agencies with regard to the use of the E-Verify system by their contractors and subcontractors; and

WHEREAS, Sections 287.133 and 287.135, Florida Statutes contain restrictions on local governments contracting with companies that are considered "Scrutinized Companies" or who appear on convicted vendor lists; and

WHEREAS, additional terms consistent with Sections 282.3185(5) and (6) related to data management and Section 287.05701 related to social government and corporate activism are also added by virtue of this Addendum

NOW, THEREFORE, in consideration of the covenants set forth herein, the parties agree to this addendum as follows:

1. Amendment. This Addendum hereby amends and supplements the terms of the Agreement. In the event of a conflict between the terms of the Agreement and terms of the Addendum, the terms of the Addendum shall prevail.

2. Public Records Compliance. Contractor agrees that, to the extent that it may "act on behalf" of the Town within the meaning of Section 119.0701(1)(a), Florida Statutes in providing its services under this Agreement, it shall:

- (a) Keep and maintain public records required by the public agency to perform the service.
- (b) Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the public agency.
- (d) Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the Town's custodian of public records, in a format that is compatible with the information technology systems of the Town.
- (e) Pursuant to Section 119.0701(2)(a), Fla. Stat., **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 AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**TOWN HALL
2525 ESTERO BLVD.
FORT MYERS BEACH, FL. 33931
(239)765-0202
AMY@FMBGOV.COM**

3. Public Records Compliance Indemnification. Contractor agrees to indemnify and hold the Town harmless against any and all claims, damage awards, and causes of action arising from the contractor's failure to comply with the public records disclosure requirements of Section 119.07(1), Florida Statutes, or by contractor's failure to maintain public records that are exempt or confidential and exempt from the public records disclosure requirements, including, but not limited to, any third party claims or awards for attorneys' fees and costs arising therefrom. Contractor authorizes the public agency to seek declaratory, injunctive, or other appropriate relief against Contractor in Lee County Circuit Court on an expedited basis to enforce the requirements of this section.

4. Compliance/Consistency with Section 768.28, Fla. Stat. Any indemnification or agreement to defend or hold harmless by Town specified in the Agreement shall not be construed as a waiver of Town's sovereign immunity, and shall be limited to such indemnification and liability limits consistent with the requirements of Section 768.28, Fla. Stat. and subject to the procedural requirements set forth therein. Any other purported indemnification by Town in the Agreement in derogation hereof shall be void and of no force or effect.

5. Non-appropriation. Town's performance and obligation to pay under this Agreement is contingent upon an appropriation during the Town's annual budget approval process. If funds are not appropriated for a fiscal year, then the Contractor shall be notified as soon as is practical by memorandum from the Town Manager or designee that funds have not been appropriated for continuation of the Agreement, and the Agreement shall expire at the end of the fiscal year for which funding has been appropriated. The termination of the Agreement at fiscal year end shall be without penalty or expense to the Town subject to the Town paying all invoices for services rendered during the period the Agreement was funded by appropriations.

6. E-Verify Compliance. By entering into this Agreement, the Contractor is obligated to comply with the provisions of Section 448.095, Florida Statutes "Employment Eligibility," as amended from time to time. This includes but is not limited to register with and use the E-Verify System to verify the work authorization status of all newly hired employees, and requiring all subcontractors to provide an affidavit to Contractor attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Contractor agrees to maintain a copy of such affidavit for the duration of this Agreement. Failure to comply with this paragraph will result in the termination of this Agreement as provided in Section 448.095, Florida Statutes, as amended and Contractor will not be awarded a public contract for at least one (1) year after the date on which the Agreement was terminated. Contractor will also be liable for any additional costs to the Town as a result of the termination of this Agreement in accordance with this paragraph. Contractor affirmatively states, under penalty of perjury, that in accordance with Section 448.095, Florida Statutes, Contractor is registered with and uses the E-Verify system to verify the work authorization status of all newly hired employees, that in accordance with such statute, Contractor requires from each of its subcontractors an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien, and that Contractor is otherwise in compliance with Sections 448.09 and 448.095, Florida Statutes.

7. Compliance/Consistency with Scrutinized Companies Provisions of Florida Statutes. Section 287.135(2)(a), Florida Statutes, prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services of any amount if, at the time of contracting or renewal, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to section 215.4725, Florida Statutes, or is engaged in a boycott of Israel. Section 287.135(2)(b), Florida Statutes, further prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services over one million dollars (\$1,000,000) if, at the time of contracting or renewal, the company is on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, both created pursuant to section 215.473, Florida Statutes, or the company is engaged in business operations in Cuba or Syria. Contractor hereby certifies that Contractor is not listed on any of the following: (i) the Scrutinized Companies

that Boycott Israel List, (ii) Scrutinized Companies with Activities in Sudan List, or (iii) the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. Contractor further hereby certifies that Contractor is not engaged in a boycott of Israel or engaged in business operations in Cuba or Syria. Contractor understands that pursuant to section 287.135, Florida Statutes, the submission of a false certification may subject Contractor to civil penalties, attorney's fees, and/or costs. Contractor further understands that any contract with Town for goods or services of any amount may be terminated at the option of Town if Contractor (i) is found to have submitted a false certification, (ii) has been placed on the Scrutinized Companies that Boycott Israel List, or (iii) is engaged in a boycott of Israel. And, in addition to the foregoing, if the amount of the contract is one million dollars (\$1,000,000) or more, the contract may be terminated at the option of Town if the company is found to have submitted a false certification, has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has been engaged in business operations in Cuba or Syria.

8. Venue and Jurisdiction. Notwithstanding any of other provision to the contrary, this Agreement and the parties' actions under this Agreement shall be governed by and construed under the laws of the state of Florida, without reference to conflict of law principles. As a material condition of this Agreement, each Party hereby irrevocably and unconditionally: i) consents to submit and does submit to the jurisdiction of the Circuit Court in and for Lee County, Florida for any actions, suits or proceedings arising out of or relating to this Agreement; and ii) agrees to waive the right to file any action, suit or proceeding in, or remove any action, suit or proceeding to, any Federal Court.

9. Attorneys' Fees and Costs. Notwithstanding any of other provision to the contrary, if litigation ensues regarding this Agreement, each party hereto shall bear its own attorneys' fee and costs.

10. Public Entities Crime or Convicted Vendor List. Contractor agrees and assumes a continuous duty to disclose to the Town if the Contractor or any of its affiliates as defined by Section 287.133(1)(a), Florida Statutes are placed on the Convicted Vendor List or the Antitrust Violator Vendor List maintained by the Florida Department of Management Services.

11. Data Management; Notice of Breach. Contractor shall cooperate with the Town and provide timely incident reporting, response activities/fact gathering, public and agency notification, severity level assessment, after-action reports etc, which the Town must report in accordance with Sections 282.3185(5) & (6), Florida Statutes in the event of a data breach.

12. Environmental and Social Government and Corporate Activism. The Town has not given preference or requested documentation from the Contractor based on Contractor's social, political or ideological interest. Contractor agrees to similarly not request documentation or give preference to any subcontractor based on the subcontractor's social, political or ideological interests.

13. Taxes. The Town shall not be liable for any taxes and assessments imposed by a federal, state or local governmental agency as provided in Section 11.4 of the Agreement, to the

extent that the Town is exempt from same by Florida law, including but not limited to any sales or use tax.

14. Additional Terms. Notwithstanding any of other provision to the contrary, the parties agree as follows:

A. None.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this instrument on the days and year indicated below and the signatories below to bind the parties set forth herein.

Contractor:

Wade P Sansbury

Print Name: WADE P SANSBURY

Title: PARTNER

Company: Marldin + Jenkins, LLC

ATTEST:

Town of Fort Myers Beach

Amy Baker, Town Clerk

Dan Allers, Mayor

APPROVED AS TO FORM & SUFFICIENCY

Vose Law Firm, Town Attorney

1. **Requested Motion:**

Meeting Date: December 18, 2023

Adopt new name for Bayside Park that was chosen by public survey and includes a reference to the veterans memorial that is planned at the Park.

Why the action is necessary:

A veterans memorial is planned for Bayside Park and a new name that uses the word veteran is in order.

What the action accomplishes:

Changes the name of Bayside Park to reflect the tribute to veterans.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

Jeff Hauge, Culture, Parks &
Recreation Director

5. **Background:**

A veterans tribute is planned for Bayside Park and a public survey has been conducted over the past week with three choices to rename the park that include a reference to veterans. Town Council now needs to adopt the name that the survey revealed is the top choice of the public. The survey ends Sunday evening, December 17, and the public's top choice will be revealed at the Town Council meeting. The three choices provided to the public are 1) Bayside Veterans Memorial Park 2) Veterans Memorial at Bayside Park 3) Bayside Veterans Park

Attachments:

Financial Impact:

n/a

6. **Alternative Action**

Reject the name chosen by the public and propose new names.

7. **Management Recommendations:**

Select the name that is the top choice of the public.

8. **Recommended Approval:**

Jennifer Dexter, Social Media & Communications Coordinator
Nancy Stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 12/11/2023
Approved - 12/11/2023
Approved - 12/11/2023
Final Approval - 12/11/2023

1. **Requested Motion:**

Meeting Date: December 18, 2023

Review and discuss the proposed Settlement Agreement with Persaud Properties FL Investments, LLC, and if agreeable, a motion to approve the Settlement Agreement and authorize the Mayor to sign the Settlement Agreement.

Why the action is necessary:

Mr. Persaud has submitted a proposed settlement agreement of code cases to the Town, and it should be discussed and direction provided.

What the action accomplishes:

Resolution of pending code enforcement matters.

2. **Agenda:**

TOWN ATTORNEY'S ITEMS

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

5. **Background:**

Attachments:

1. Final Proposed Settlement Agreement TC 12182023

Financial Impact:

As provided in the Settlement Agreement

6. **Alternative Action**

Reject the proposed Settlement Agreement and provide direction.

7. **Management Recommendations:**

N/A

8. **Recommended Approval:**

Amy Baker, Town Clerk
Nancy Stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 12/13/2023
Approved - 12/13/2023
Approved - 12/13/2023
Final Approval - 12/13/2023

**FORT MYERS BEACH CODE ENFORCEMENT
SETTLEMENT AGREEMENT**

This **SETTLEMENT AGREEMENT** (“Agreement”) is entered into this ____ day of _____, 2023, by and between, Persaud Properties FL Investments, LLC, a Florida limited liability company, (“Persaud”) and the Town of Fort Myers Beach (“Town”), and collectively Persaud and Town are referred to herein as the “Parties.”

RECITALS

WHEREAS, Persaud is the current owner of certain parcels of real property located at 1028 Estero Boulevard (STRAP Number 24-46-23-W3-00017.0000) and 1046 Estero Boulevard (STRAP Number 24-46-23-W3-00016.0000) (collectively referred to herein as the “Sunset Beach Properties”); and

WHEREAS, all violations on the Sunset Beach Properties have been abated, and there are no existing violations on the Sunset Beach Properties; and

WHEREAS, Town filed seven (7) code enforcement liens against Persaud, as a result of Persaud’s noncompliance with Fort Myers Beach Code on one or more of the Sunset Beach Properties, which are summarized on Exhibit “A” and collectively referred to herein as the “Liens”; and

WHEREAS, there are three (3) pending code enforcement cases for which a Code Enforcement Order has been issued but no lien has been recorded, as a result of Persaud’s noncompliance with Fort Myers Beach Code on one or more of the Sunset Beach Properties, which are summarized on Exhibit “B” and collectively referred to herein as the “Pending Fines”; and

WHEREAS, Persaud is the current owner of certain parcels of real property located at 3050 Estero Boulevard (STRAP Number 29-46-24-W1-01000.0020) and 3056 Estero Boulevard (STRAP Number 29-46-24-W1-01000.0010), all of which have since been submitted to the condominium form of ownership with common elements assigned STRAP Number 29-46-24-W1-01000.00CE (collectively referred to herein as the “Junkanoo Properties”); and

WHEREAS, the Parties entered into a settlement agreement relative to the state case filed in the Twentieth Judicial Circuit in and for Lee County, Florida, Case No. 17-CA-000219 relative to the Junkanoo Properties (the “Settlement Agreement”), the terms of which contemplate a penalty/fine, though neither Party is aware of any such fines being imposed (hereinafter the “Proposed Fines”); and

WHEREAS, Persaud has been working diligently to comply with the terms of the Settlement Agreement but, at present, is unable to secure financing to fix the damage to the Junkanoo Properties caused by Hurricane Ian due to the Liens encumbering all properties owned by Persaud, including the Junkanoo Properties; and

WHEREAS, Persaud made a proposal of settlement in exchange for a release of the Liens,

dismissal of the Pending Fines, and agreement not to impose any Proposed Fines to the extent such is an available remedy to the Town, and the Town has accepted the proposed settlement.

NOW, THEREFORE, in exchange for the mutual promises contained herein and other good and valuable consideration, the Parties hereby agree as follows:

1. **RECITALS.** The above recitals are true and correct and are incorporated herein by reference.

2. **SETTLEMENT AMOUNT.** Persaud agrees to pay the Town the sum of Two Hundred Fifty Thousand Dollars and 00/100 (\$250,000.00) in full settlement of all outstanding code enforcement matters associated with the Sunset Beach Properties and the Junkanoo Properties and in exchange for a release of the Liens, dismissal of the Pending Fines, and agreement not to impose any Proposed Fines to the extent such is an available remedy to the Town, including but not limited to attorneys' fees and other costs incurred by the Town (the "Settlement Amount").

3. **GOOD FAITH PAYMENT.** Persaud agrees to operate the parking lot located at 1046 Estero Boulevard in accordance with the Town's codes and ordinances and further agrees to pay the Town the sum of Five Hundred Thousand Dollars and 00/100 (\$500,000.00) or provide a performance bond in the same amount by a bonding company and in a form agreed to by the Town, as a good faith security for his performance of same (the "Good Faith Payment"). If Persaud complies with the terms of this paragraph for a period of one (1) year, the Good Faith Payment, in its entirety, will be returned to Persaud. If Persaud does not comply with the terms of this paragraph during the one (1) year period from the date of this Agreement, the Good Faith Payment will be forfeited to the Town.

4. **COMPLIANCE.** The parties agree that the determination as to whether Persaud is in violation of this Agreement for failure to fulfill its obligations under this Agreement, as contemplated by Paragraph 3, shall be made through the code enforcement process in Chapter 2, Article V of the Town's Land Development Code. The issuance of a notice of violation under section 2-424 stays and holds in abeyance any determination relative to forfeiture of the Good Faith Payment until such time as the existence of the violation identified in the notice is determined by the Special Magistrate during a hearing governed by section 2-425, and the exhaustion of any appeals or the time for appeals has passed. If the Special Magistrate determines that a violation does exist, and Persaud chooses not to exercise his right to appeal, Persaud will have seven (7) days from the date of the Special Magistrate's written order to correct the violation as directed by the Special Magistrate. Only if the violation is not corrected within these seven (7) days, as determined by the Special Magistrate, will it be found that Persaud is in violation of this Agreement (the "Verified Violation") and the Good Faith Payment shall be forfeited to the Town. Persaud is entitled to a refund of the Good Faith Payment if there have been no Verified Violations as of the one (1) year anniversary of the date this Agreement is approved by Town Council.

5. **PAYMENT AND ESCROW TERMS.** Persaud will deposit the Settlement Amount (Paragraph 2) and the Good Faith Payment (Paragraph 3) in the Trust Account of Roetzel & Andress, LPA, 2320 First Street, Suite 1000, Fort Myers, FL 33901 (the "Escrow Agent"), within thirty (30) days after the approval of this Agreement by the Town. The Settlement Amount will be promptly thereafter released by the Escrow Agent to the Town, but the Good Faith Payment will

remain in the Trust Account until released as contemplated in this Agreement. In the event the Escrow Agent is in doubt as to its duties and liabilities under the provisions of this Agreement, the Escrow Agent may, in its sole discretion, continue to hold the Good Faith Payment until the Parties mutually agree in writing to disbursement of the Good Faith Payment, or until a judgment of a court of competent jurisdiction determines the rights of the Parties to the Good Faith Payment, or it may interplead the Good Faith Payment with the Clerk of the Circuit Court, and upon notifying all Parties concerning such action, all liability on the part of the Escrow Agent will fully cease and terminate, except to the extent of accounting for the Good Faith Payment delivered out of escrow. In the event of any suit between the Parties involving the Escrow Agent is made a Party by virtue of acting as the Escrow Agent, or in the event of any suit involving the Escrow Agent interpleads the Good Faith Payment, the Escrow Agent will be entitled to recover reasonable attorneys' fees and costs incurred, such fees and costs to be charged and assessed as court costs and paid from the Good Faith Payment, or held by the Clerk of the Circuit Court, as the case may be. Both Parties agree that the Escrow Agent will not be liable to any Party or person whomsoever for misdelivery to the Town or Persaud of the Good Faith Payment, unless such misdelivery is due to willful breach of this Agreement or gross negligence on the part of the Escrow Agent, nor will the Escrow Agent be liable for the failure of any financial institution in which the Good Faith Payment is placed. The Parties agree that the status of the Escrow Agent as counsel for the Town or Persaud, as the case may be, does not disqualify such law firm from representing such Party in connection with this transaction and in any dispute that may arise between the Parties concerning this transaction, including any dispute or controversy with respect to the Good Faith Payment. It will not be necessary for the Escrow Agent to execute this Agreement or any amendments to this Agreement. By delivery to and acceptance by the Escrow Agent of a fully executed copy of this Agreement along with the Good Faith Payment, the Escrow Agent agrees to be bound by the terms and provisions of this Agreement specifically relating to the Good Faith Payment. However, no amendments to this Agreement will adversely affect or impair the rights or duties, or increase the liability of the Escrow Agent hereunder without the Escrow Agent's prior written approval.

6. **RECORDATION OF SATISFACTION.** Within fourteen (14) days after the Town's receipt of the Settlement Amount, the Town will prepare and record a satisfaction and release as to all Liens, the Pending Fines, and the Proposed Fines in the Public Records of Lee County, Florida at the Town's sole cost and expense.

7. **WAIVER OF DEFENSES AND RELEASE OF THE TOWN.** Persaud has voluntarily dismissed the federal case filed in the United States District Court for the Middle District of Florida, Case No. 2:21-cv-384-JLB-NPM, together with the federal appeal filed in the United States Court of Appeals for the Eleventh Circuit, Case No. 23-10881. Persaud has voluntarily dismissed all claims arising out of the state cases filed in the Twentieth Judicial Circuit in and for Lee County, Florida, Case No. 17-CA-000219 and Case No. 17-CA-001026. Persaud has waived all causes of actions, damages, attorneys' fees, and litigation costs that arose, could have been brought, or could be brought as a result of the decision of the Second District Court of Appeals in *Persaud Properties FL Investments, LLC v. Town of Ft. Myers Beach*, 310 So. 3d 493 (2020), reh'g denied (Jan. 20, 2021) (the "Lawsuit"). Persaud will waive and not otherwise seek, and will release the Town from damages, attorneys' fees, and costs related to actions of the Town that could have been or were brought or may be brought in the future related to operative nucleus of facts in the cases specified in this paragraph.

8. **ENTIRE AGREEMENT.** The Parties acknowledge that this Agreement constitutes the entire agreement between them regarding the settlement of their dispute and any prior statements, whether oral or written, are merged herein. This Agreement may not be modified or amended without a written instrument signed by the party against whom enforcement is sought.

9. **AUTHORITY.** The signatories to this Agreement are expressly authorized to resolve their dispute as set forth herein and by their signatures here represent and affirm their authority to execute this Agreement.

10. **GOVERNING LAW.** The law of the State of Florida shall apply to this Agreement. Any dispute regarding this Agreement shall be litigated exclusively in the state courts of Lee County. The parties expressly agree that no action between the parties may be filed in, or removed to, Federal Court, and consent to exclusive jurisdiction and venue in the Circuit Court in Lee County and waive any objections thereto.

[Signatures on following pages.]

WHEREFORE, this Agreement is entered into as of the date of last execution below.

Persaud Properties FL Investments, LLC

Signature of Witness # 1

By:

_____, Manager

Print or type name

Signature of Witness #2

Print or type name

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 2023, by _____, Manager, of Persaud Properties FL Investments, LLC, who is personally known to me or who has produced _____ as identification.

[Notary Seal]

Notary Public

Name typed, printed or stamped

My Commission Expires: _____

FORT MYERS BEACH, FLORIDA

DAN ALLERS, MAYOR

**STATE OF FLORIDA
COUNTY OF LEE**

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 2023, by Dan Allers, Mayor, Town of Fort Myers Beach, who is personally known to me or who has produced _____ as identification.

[Notary Seal]

Notary Public

Name typed, printed or stamped
My Commission Expires: _____

**EXHIBIT “A”
LIENS**

	Case Number	Violation Address	Lien Recording Information
1	CE17-0659	1046 Estero Boulevard	2019000067153
2	CE17-0707	1046 Estero Boulevard	2019000136816
3	CE18-0234	1028 Estero Boulevard	2019000067165
4	CE18-0235	1046 Estero Boulevard	2019000067117
5	CE18-0446	1046 Estero Boulevard	2020000038310
6	CE20-0017	1046 Estero Boulevard	2020000061959 2021000069005
7	CE20-0018	1028 Estero Boulevard	2020000061962 2021000098193

**EXHIBIT “B”
PENDING FINES**

	Case Number	Violation Address	Order Recording Information
1	20220462	1028 Estero Boulevard	2022000239193
2	20220652	1046 Estero Boulevard	2022000239107
3	20220655	1046 Estero Boulevard	2022000239209

20527901 _10