Fort Myers Beach Town Council

Bay Oaks Recreation Center
2731 Oak Street
Fort Myers Beach, FL 33931

Agenda **Tuesday, February 20, 2024** **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

VIII. APPROVAL OF MINUTES

A. Town Council - February 5, 2024

IX. ADMINISTRATION OF THE OATH OF OFFICE

A. Oath of Office
Seat #5 (Safford)

X. CONSENT AGENDA

A. Resolution 24-36: CDBG-DR Program Applications
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AUTHORIZING THE MAYOR, TOWN MANAGER, OR A DESIGNEE THEREOF TO APPLY FOR AND ADMINISTER A GRANT FROM THE LEE COUNTY CDBG-DR RECOVERY AND RESILIENCY PLANNING PROGRAM FOR COMPREHENSIVE PLANNING EFFORTS; AUTHORIZING THE MAYOR, TOWN MANAGER, OR DESIGNEE TO EXECUTE RELATED DOCUMENTS AND FOR RELATED PURPOSES; PROVIDING AN EFFECTIVE DATE.

B. Resolution 24-37: FDEM LAP Grant for Sea Turtle Lighting
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, ACCEPTING A $7,766,387 AMENDED LAP GRANT AGREEMENT WITH THE FLORIDA DIVISION OF EMERGENCY MANAGEMENT FOR THE PURCHASE AND INSTALLATION OF SEA

TURTLE LIGHTS ON ESTERO BOULEVARD; AUTHORIZING A RELATED BUDGET ADJUSTMENT; AND PROVIDING AN EFFECTIVE DATE.

C. 24-38 Resolution: Ratifying FP&L Sea Turtle Lighting Contract

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, TO RATIFY AND APPROVE A CONTRACT AGREEMENT WITH FPL ENERGY SERVICES, INC. TO INSTALL ISLAND-WIDE SEA TURTLE FRIENDLY STREET LIGHTING IN THE AMOUNT OF $7,766,387; AND PROVIDING FOR AN EFFECTIVE DATE

D. Resolution 24-39, Budget Amendment for Beach Renourishment

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING BUDGET AMENDMENT FOR BEACH RENOURISHMENT; EFFECTIVE DATE.

E. FY 2024 TDC Request

Authorize the Town Manager to apply for Tourist Development Council Grants in Fiscal Year 2024 for beach and shoreline maintenance and related projects; and providing an effective date.

F. Surplus Items

Declare listed items as surplus and authorize staff to dispose of these items utilizing a municipal government auction service.

G. Special Event - Pickleball Tournament

Use of Bay Oaks for Pickleball Tournament

H. FMB Non-Exclusive Right of Way Agreements

Authorize the Mayor to execute two Non-Exclusive Right of Way Agreements with the Fort Myers Beach Chamber of Commerce and Bandes Construction Company, Inc.

XI. ITEMS REMOVED FROM CONSENT AGENDA

XII. ADMINISTRATIVE AGENDA

A. CDBG-DR Planning & Infrastructure Evaluation Committee Appointment

Provide staff with direction on appointing a citizen to the CDBG-DR Planning & Infrastructure Evaluation Committee to represent the Town of Fort Myers Beach.

B. MPO Citizen Advisory Committee

Provide staff with direction to seek a community member to represent the Town of Fort Myers Beach

XIII. FINAL PUBLIC COMMENT

XIV. TOWN MANAGER'S ITEMS

XV. TOWN ATTORNEY'S ITEMS

XVI. COUNCILMEMBERS ITEMS AND REPORTS

XVII. ADJOURNMENT

NOTE: THIS MEETING IS STREAMED LIVE ON 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

Bay Oaks Recreation Center
2731 Oak Street
Fort Myers Beach, FL 33931

Minutes **Monday, February 5, 2024** **9:00 AM**

ORDER OF BUSINESS

DRAFT

I. CALL TO ORDER

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

II. INVOCATION

Town Clerk Baker.

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF FINAL AGENDA

Council Member King moved to approve the final agenda with items D. and I. pulled for discussion; seconded by Mayor Allers.
The motion carried unanimously.

V. PUBLIC COMMENT

Kurt Petry supported the Rude Shrimp and stated he lived on a boat 100 feet away from them and did not hear any disruption or excessively loud music. He noted they were great neighbors and was glad they were there. He thanked the town council for their hard work.

Marcus Free thanked the town council for building the town back. He lived on a boat next to the Rude Shrimp and described how nice the owners were. He did not think that the noise was an issue.

Bill Veach, resident, supported Barbara Hill for the town council position and described her experience. He felt she would be a great asset.

Chris Hayes supported the Rude Shrimp and described his experience riding out the hurricane. He stated that the decibel level of a generator was much louder than the music from the Rude Shrimp.

Steve Johnson, resident, represented the mosquito control district and thanked the town council for their support against the forced merger. He noted that the bill was tabled and was unsure what would happen next.

Grace Workman, resident, asked whether she could build five single-family homes on top of hers for year-round residents to help with increased costs. She requested that each council member stop by her house to discuss her project. Marty Bartow, resident, questioned what was going on regarding the Outrigger presentation and why it was so far out of right field.

VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Council Member Woodson expressed excitement for the new year and commended everyone for their hard work, resiliency, and positive attitude.

Vice Mayor Atterholt recognized the applicants for the open town council position. He thanked them for their willingness to step into the arena. He thanked the residents and visitors who were utilizing the pedestrian walkover.

Council Member King thanked those who submitted their names to apply for the vacant position on the town council. He appreciated them for stepping up.

No items from Mayor Allers.

A. Proclamation

Mayor Allers read the proclamation to recognize Kim and Ed Ryan as honorary citizens for their ongoing contributions. Mr. Ryan accepted the proclamation. Vice Mayor Atterholt described many of their contributions and thanked them for all they do. Council Member King noted they went above and beyond and thanked them. Council Member Woodson praised Mr. Ryan's interview techniques and appreciated all both have done for the town. Mayor Allers thanked Mr. Ryan for getting accurate information to the public, especially after the hurricane.

VII. ADVISORY COMMITTEES ITEMS / REPORTS / APPOINTMENTS

Public Safety Committee

Jim Bougoulas provided an update from their meeting and one topic was how to improve emergency response time after a hurricane. One idea was to establish a two-way communication system with existing code-red subscribers. His presentation included Improve Emergency Response After Hurricanes, How it Can Work for Residents and Guests of FMB, and Next Steps. Mayor Allers suggested expanding the idea to include hotels and how much space would be available to triage people. Council Member Woodson suggested adding short-term rentals and Council Member King suggested contacting the condos.

Marine & Environmental Resources Task Force

Steve Johnson, Chair, noted that MERTF recommended using a herbicide in late March in the EC (Environmentally Critical) zone to eliminate sand spurs and mechanical removal. They recommended the removal of Australian Pines in the EC zone and on private property with permission. They also recommended a limited use of a herbicide to paint larger stumps. Mr. Johnson commented on the appointment of a new commissioner on the mosquito board.

VIII. APPROVAL OF MINUTES

A. Town Council - January 22, 2024

No recording.

IX. CONSENT AGENDA

Council Member Woodson moved to approve the consent agenda with items D. and I. pulled for discussion; seconded by Council Member King.
The motion carried unanimously.

A. Resolutions 24-23 through 24-26; Extending State of Local Emergency 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 Woodson moved to approve the resolution; seconded by Council Member King.
The motion carried unanimously.

B. Resolutions 24-27 through 24-30; Extending State of Local Emergency 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 Woodson moved to approve the resolution; seconded by Council Member King.
The motion carried unanimously.

C. Resolution 24-21; Amendment #2 to Permissive Use License Agreement

A RESOLUTION AMENDING THE PERMISSIVE USE LICENSE AGREEMENT BETWEEN THE TOWN OF FORT MYERS BEACH AND THE FORT MYERS BEACH FIRE CONTROL DISTRICT FOR USE OF DISTRICT PROPERTY AS A TOWN HALL UNTIL MARCH 31, 2024; AND PROVIDING AN EFFECTIVE DATE.

Council Member Woodson moved to approve the resolution; seconded by Council Member King.
The motion carried unanimously.

D. Resolution 24-22: 2024 Sheriff Traffic Detail

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, TO RATIFY AND APPROVE A CONTRACT AGREEMENT WITH LEE COUNTY SHERIFF'S OFFICE FOR EXTRA-DUTY TRAFFIC DETAIL SERVICES IN THE AMOUNT OF $68,800; AND PROVIDING FOR AN EFFECTIVE DATE.

The recording skipped the discussion. Council Member Woodson questioned the status of training staff to assist in traffic control. Operations and Compliance Director Frankie Kropeck replied that training would start in a week.

Council Member King moved to approve the resolution; seconded by Council Member Woodson.
The motion carried unanimously.

E. Resolution 24-32, Special Magistrate Services

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING AN AGREEMENT WITH THE FLORIDA DEPARTMENT OF ADMINISTRATIVE HEARINGS AND MONICA SCHMUCKER FOR SPECIAL MAGISTRATE SERVICES; AND PROVIDING FOR AN EFFECTIVE DATE.

Council Member Woodson moved to approve the resolution; seconded by Council Member King.
The motion carried unanimously.

F. Resolution 24-31; Stewart Materials

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING A SOLE SOURCE PURCHASE AGREEMENT BETWEEN THE TOWN AND STEWART MINE MATERIALS FOR THE PURCHASE OF 170,000 TONS OF BEACH COMPATIBLE SAND FOR $2,014,500.00 AS A SOLE SOURCE PROVIDER; AND PROVIDING FOR AN EFFECTIVE DATE.

Council Member Woodson moved to approve the resolution; seconded by Council Member King.
The motion carried unanimously.

G. Special Event - Shrimp Festival Parade

Approve the special event permit for the 2024 Shrimp Festival 5K run and parade, contingent on approval of FDOT, FMB Fire District, Lee County Sheriffs Office regarding the event and closure of the Matanzas Pass Bridge.

Council Member Woodson moved to approve the resolution; seconded by Council Member King.
The motion carried unanimously.

H. Persaud Properties FL Investments LLC

Authorize the Town Manager to execute approval of the Letter of Credit received from Persaud Properties, LLC as required by paragraph 3 of the Settlement Agreement between Persaud Properties, LLC and the Town of Fort Myers Beach, dated December 27,2023.

Council Member Woodson moved to approve the resolution; seconded by Council Member King.
The motion carried unanimously.

I. Settlement Agreement

Approve and Authorize the Mayor to Execute a Settlement Agreement with Florida Audubon Society, Squeeze Me Inn, LLC and Texas Hold'Em, LLC related to Case No. 23-CA-5506, Filed in the Twentieth Judicial Circuit, In and For Lee County, Florida.

Town Attorney Stuparich explained the reason for the action and recommended that the town consider approving it.

Council Member King moved to approve the agreement; seconded by Council Member Woodson.
The motion carried unanimously.

X. PUBLIC HEARINGS

Town Clerk Baker stated the items were properly noticed. Mayor Allers disclosed a conflict of interest with item A. Town Clerk Baker swore in those providing testimony.

A. Ordinance 24-01; Amendment to revise previously approved conditions of approval contained in ord. 18-04 and 23-09

Second Reading and Public Hearing of an Ordinance entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING TOWN OF FORT MYERS BEACH ORDINANCE NO. 18-04, AND AMENDING THE CONDITIONS FOR THE COMMERCIAL PLANNED DEVELOPMENT ZONING FOR THE PROPERTY LOCATED AT 1170, 1180/1192, 1204/1206 ESTERO BLVD., 251 CRESCENT ST., 1150 FIFTH ST. AND UNADDRESSED PARCELS, PARCELS GENERALLY IDENTIFIED AS STRAP NUMBERS 24-46-23-W3-00205.0070 (MCP PARCEL #3), 24-46-23-W3-00006.0000 (MCP PARCEL #1), 24-46-23-W3-00206.0060 (MCP PARCEL #1), 24-46-23-W3-00009.0000 (MCP PARCELS #2 AND #5), 19-46-24-W4-U0494.2609 (MCP PARCEL #2), 24-46-23-W3-00205.0070, 19-46-24-W4-U0491.2610 (MCP PARCEL #2), 19-46-24-W4-0140B.0070 (MCP PARCELS #2 AND #5), 19-46-24-W4-U0496.2608 (MCP PARCEL #2), AND 19-46-24-W4-U0498.2607 (MCP PARCELS #2 AND #6) FORT MYERS BEACH; PROVIDING FOR OTHER 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 ordinance. Ex parte communications: Vice Mayor Atterholt had a conversation with the owner. No disclosures from other

members. The applicant confirmed receipt of the agenda and materials.
Community Development Planner Sarah Propst reviewed the background of the request as stated in the blue sheet and described the changes made.
She indicated that the LPA (Local Planning Agency) unanimously recommended approval.
Tom Torgerson, applicant, indicated that the LPA spent a lot of time on the issue and did a great job tweaking their request. He was available for questions.
No public comment.

Vice Mayor Atterholt moved to approve the ordinance; seconded by Council Member King.
The motion carried 3-1 by roll call vote, with Mayor Allers abstaining.

B. Ordinance 24-02; DCI Rezoning 20230160, 1301 Estero Blvd

Second Reading and Public Hearing of an Ordinance entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING THE COMMERCIAL PLANNED DEVELOPMENT (CPD) ZONING FOR THE PROPERTY LOCATED AT 1301 ESTERO BLVD. GENERALLY IDENTIFIED AS STRAP NUMBERS 19-46-24-W4-0060B.0160 FORT MYERS BEACH; PROVIDING FOR OTHER 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 ordinance. Ex parte communications: Mayor Allers and Council Member Woodson were familiar with the property. No disclosures from other members. The property owner confirmed receipt of the agenda and materials.
Planner Propst reviewed the background of the request as stated in the blue sheet. She noted the LPA recommended approval with conditions. She indicated that the new master plan was in the file, which included the new dumpster location.
Ken Delander, Certified Planner, distributed his presentation after adding slides to the original presentation. The new slides included the New Orientation of the Dumpster, the Turning Movements to Access the Dumpster, and a Representation of Plantings for a Type A Buffer on Santos. He stated they would increase the dumpster height per deviation eight and agreed with the staff report recommendations. All town council members thanked Mr. Delander and the group for listening to the public and doing a great job.
No public comment.

Council Member King moved to approve the ordinance; seconded by Council Member Woodson.
The motion carried unanimously by roll call vote.

XI. ADMINISTRATIVE AGENDA

A. Resolution 24-34; Boxx Modular

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, RATIFYING ACTION BY THE TOWN REGARDING LEASING OF FURNITURE FOR USE IN TOWN HALL; APPROVING THE LEASE WITH BOXX MODULAR FOR 48 MONTHS AT A MONTHLY RENTAL RATE OF $2,586.00 AND A ONE TIME INSTALLATION AND DELIVERY FEE OF $11,050.00; AND PROVIDING AN EFFECTIVE DATE.

Director Kropocek stated this was a continuance to set up the trailers. Mayor Allers read the title of the resolution.

Council Member King moved to approve the resolution; seconded by Council Member Woodson.
The motion carried unanimously.

B. Resolution 24-33; Ratify Renewal of Annual Granicus Software Subscription

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH RATIFYING THE APPROVAL AND PAYMENT OF AN ANNUAL GRANICUS SOFTWARE SUBSCRIPTION FOR USE WITH THE TOWN'S SHORT-TERM RENTAL PROGRAM PURSUANT TO THE TERMS AND CONDITIONS OF THE EXISTING UNEXPIRED HOST AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Finance Director Joe Onzick explained the reason why the software was needed and why the payment was missed. He stated there was no late charge and revenue from the short- term rental program paid the invoice. Director Kropocek described how the software worked.

Council Member Woodson moved to approve the resolution; seconded by Mayor Allers.
The motion carried unanimously.

C. Resolution 24-35; Angie Brewer & Associates Inc.

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, APPROVING A FIRST AMENDMENT TO AN AGREEMENT BETWEEN THE TOWN OF FORT MYERS BEACH AND ANGIE BREWER & ASSOCIATES, INC. TO EXTEND THE TERM OF THE CONSULTANT AGREEMENT FOR FUNDING MANAGEMENT SERVICES FOR SRF OR OTHER GRANTS AND OR LOANS AVAILABLE TO THE TOWN, TO JUNE 9, 2024 BY THE EXERCISE OF ONE OF TWO RENEWAL OPTIONS; APPROVING SUPPLEMENTAL TASK AUTHORIZATION NO. 4 FOR THE UNINTERRUPTED CONTINUATION OF THESE SERVICES; AUTHORIZING THE MAYOR TO SIGN THE AMENDMENT AND SUPPLEMENTAL TASK AUTHORIZATION AND THE TOWN MANAGER TO EXPEND BUDGETED FUNDS; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Director Onzick revealed that Angie Brewer & Associates had worked for the town for over a year without a contract and payment. He explained that the agreement would make them whole and continue their services through June 9, 2024. Vice Mayor Atterholt questioned whether the cost was reasonable. Director Kopocek replied that it was absolutely reasonable and described why.

Vice Mayor Atterholt moved to approve the resolution; seconded by Council Member Woodson.
The motion carried unanimously.

XII. FINAL PUBLIC COMMENT

No public comment.

XIII. TOWN MANAGER'S ITEMS

Town Manager Hyatt expected the trailers to be ready for their March meeting and explained what was left to do. The PIO (Public Information Officer) search was ongoing. He felt the meetings in Tallahassee were fruitful and he indicated that he, Mayor Allers and Director Kropocek were going to Washington to talk about funding that the town never applied for. A meeting will be held next week regarding the Tier 1 project and Director Kropocek stated the town was committed to completing the project. Information will be uploaded to the town's website. He added that the town was working on a solution concerning the unsafe structures in the town. There was no update from FP&L (Florida Power & Light) but there was a meeting scheduled on Friday.

XIV. TOWN ATTORNEY'S ITEMS

No items.

XV. COUNCILMEMBERS ITEMS AND REPORTS

Council Member Woodson stated that she would present the town's resolution to the Lee County Commissioners and the TDC (Tourist Development Council).
No items from other members.

A. Filling of Vacancy

Town Attorney Stuparich reviewed the appointment process.
Jim Boan discussed his experience and skills and stated why he would like to serve on the town council.
Barbara Hill noted her application, resume and interview with Ed Ryan spoke to her interest in filling the vacancy and working with the team.
Sal Pedone expressed his love of the town and mentioned his vast experiences and talent for analyzing problems.
Ed Schoonover stated that he previously told council members how he felt and had nothing to add.
Scott Safford was not in attendance.
Town Council members voted for their preference.

Town Attorney Stuparich stated that Mr. Safford received two votes, which was not a majority. A second vote was taken with the same results. Town Manager Hyatt suggested that a public interview with council members might be helpful. Town Attorney Stuparich agreed.
Scott Safford arrived and described how critical the next few months would be. He felt his previous experience with the LPA and the Margaritaville CPD would help the town council.
A third vote was taken with no change.
Town Attorney Stuparich reviewed the options to move forward.

Mayor Allers moved to schedule a special meeting after the M&P meeting on the 15th with the five applicants; seconded by Council Member Woodson.
The motion carried unanimously.

XVI. ADJOURNMENT

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

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

Town of Fort Myers Beach

Agenda Item Summary

Blue Sheet Number: **2024-1475**

1. **Requested Motion:**

Meeting Date: February 20, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AUTHORIZING THE MAYOR, TOWN MANAGER, OR A DESIGNEE THEREOF TO APPLY FOR AND ADMINISTER A GRANT FROM THE LEE COUNTY CDBG-DR RECOVERY AND RESILIENCY PLANNING PROGRAM FOR COMPREHENSIVE PLANNING EFFORTS; AUTHORIZING THE MAYOR, TOWN MANAGER, OR DESIGNEE TO EXECUTE RELATED DOCUMENTS AND FOR RELATED PURPOSES; PROVIDING AN EFFECTIVE DATE.

Why the action is necessary:

Council approval requested to move forward with the grant request.

What the action accomplishes:

Designates signatory authority and authorization to apply for and manage CDBG-DR funding requests.

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

4. **Submitter of Information:**

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5. **Background:**

Lee County CDBG-DR Recovery and Resiliency Planning Program

The Town of Fort Myeres Beach is planning on applying to the Lee County CDBG-DR Recovery and Resiliency Planning Program. The Recovery and Resiliency Planning Program will provide funding for the local governments to facilitate high quality planning for recovery from Hurricane Ian and Resiliency for future storms. This program is not designed to benefit individual members of the community directly but to create a community wide plan for the entire Island to recover through multiple pathways such as Infrastructure, Economic Revitalization, and Housing.

Lee County has allocated $25,000,000.00 to the Recovery and Resiliency Planning Program for competitive application available to municipalities within Lee County. All projects under this program are considered to meet a HUD National Objective as outlined by Lee County in the Action Plan. Applications are due to Lee County on or before February 23, 2024. Projects must be broadly based in nature and cannot focus on one specific project or small area of recovery.

The Town of Fort Myers Beach is actively seeking funding through the Community Development Block Grant Disaster Recovery (CDBG-DR) program to support island-wide recovery and resilience planning initiatives. The proposed funding will enable the creation of an updated comprehensive plan that thoroughly evaluates the current conditions, outlines a forward-looking vision for the community, and specifies actionable steps towards realizing this vision. The planning process will prioritize recovery and redevelopment strategies that mitigate future risks, ensure continuity of critical services, protect vulnerable populations, and strengthen the community's resilience against natural and climate-related hazards.

Attachments:

1. 24-36 CDBG-DR Application Authorization
2. Lee County Subrecipient Agreement Exhibit B - SIGNATURE NEEDED FROM TOWN

3. Single Audit Certification Form - LEE CDBG

Financial Impact:
Lee County has allocated $25,000,000.00 to the Recovery and Resiliency Planning Program for competitive application available to municipalities within Lee County.

6. **Alternative Action**
Do not approve.

7. **Management Recommendations:**
To approve.

8. **Recommended Approval:**

Jason Freeman, Legislative Liaison / Deputy Town Clerk	Created/Initiated - 2/12/2024
Frankie Kropacek, Operations & Compliance Director	Approved - 2/12/2024
Nancy Stuparich, Town Attorney	Approved - 2/15/2024
Amy Baker, Town Clerk	Approved - 2/15/2024
Andy Hyatt, Town Manager	Final Approval - 2/15/2024

RESOLUTION NUMBER 24-36

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, LEE COUNTY FLORIDA, AUTHORIZING TOWN OFFICIALS TO APPLY FOR AND ADMINISTER CDBG-DR PROJECT FUNDING REQUESTS AS DESIGNATED TOWN REPRESENTATIVES AND EXECUTE ANY RELATED DOCUMENTS; PROVIDING 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 resolution as may be required for the proper governing of the Town; and

WHEREAS, the Town is planning on applying to the Lee County CDBG-DR Recovery and Resiliency Planning Program; and

WHEREAS, the Town is actively seeking funding through the Community Development Block Grant Disaster Recovery (CDBG-DR) program to support island-wide recovery and resilience planning initiatives; and

WHEREAS, the Town needs to designate authorized representatives of the Town for the program and associated applications.

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

Section 1. The above recitals are true and correct and are hereby incorporated by reference as though fully set forth herein.

Section 2. Authorization is given to the Town Manager and his designee Frank Kropacek to apply for and administer projects related to CDBG-DR funding as representatives of the Town.

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 a motion by _________ and seconded by ______________, and upon being put to a roll call vote, the result was as follows:

Dan Allers, Mayor	___
Jim Atterholt, Vice Mayor	___
John R. King, Council Member	___
Scott Safford, Council Member	___
Karen Woodson, Council Member	___

ADOPTED this 20th day of February 2024 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 February 2024.

EXHIBIT B (SIGNATURE REQUIRED)
CERTIFICATIONS
CDBG-DR COMPLIANCE PROVISIONS

This Exhibit to the Community Development Block Grant Disaster Recovery ("CDBG-DR") Program Subrecipient Agreement contains supplementary compliance conditions for use with procured contracts and subrecipient agreements that are funded in whole or in part by the U.S. Department of Housing and Urban Development ("HUD") under Title I of the Housing and Community Development Act of 1974 (Pub. L. 93-383) as amended.

This Exhibit shall be included as part of the terms of the agreement for all procured contracts and subrecipient agreements funded fully or in part by the CDBG-DR Program by Lee County and the selected contractor or subrecipient.

By signing this Exhibit, the applicant certifies they understand that all the below compliance provisions will apply to all projects that are awarded CDBG-DR funds.

1. NATIONAL OBJECTIVES

In accordance with 24 CFR 570.208, Section 104(b)(3) of the Housing and Community Development Act of 1974, all CDBG-DR funded activities must meet a National Objective. Under Section 101(c) of the authorizing Act (42 U.S.C. 5301), all CDBG-DR Activities must satisfy one of the named National Objectives.

1. Benefit to Low-to-Moderate Income Persons (LMI)
2. Urgent Need (UN)
3. Elimination of Slum and Blight (SB)

Planning Exemption

Planning activities are presumed to meet a National Objective. HUD's Federal Register Notice (88 FR 32046) governing the CDBG-DR funds describes planning efforts as addressing the National Objectives without the limitation of any circumstances. In the CDBG Entitlement Program, these more general planning activities are presumed to meet a national objective under the requirements at 24 CFR 570.208(d)(4). HUD notes that almost all effective recoveries in the past have relied on some form of area-wide or comprehensive planning activity to guide overall redevelopment, independent of the ultimate source of implementation funds. To assist state grantees, HUD is waiving the requirements at 24 CFR 570.483(b)(5) and (c)(3), which limit the circumstances under which the planning activity can meet a low- and moderate-income or slum-and-blight national objective. Instead, as an alternative requirement, 24 CFR 570.208(d)(4) applies to states when funding disaster recovery-assisted, planning-only grants, or when directly administering planning activities that guide disaster recovery. In addition, 42 U.S.C. 5305(a)(12) is waived to the extent necessary so the types of planning activities that states may fund or undertake are expanded to be consistent with those of CDBG Entitlement grantees identified at 24 CFR 570.205.

Upon completion of approved activity(ies) funded under this Agreement and prior to the funding expiration date of this Agreement, whichever comes first, the Subrecipient must document that the approved activity(ies) met the approved National Objective, as necessary.

For Subrecipients with a National Objective requirement, the County shall review the actual National Objective achievements of the activity. If the Subrecipient does not or cannot satisfactorily document the National Objective achievement of an approved activity(ies), the activity(ies) may be deemed ineligible, and repayment of funds may be required of the Subrecipient.

2. DUPLICATION OF BENEFITS

A Duplication of Benefits (DOB) occurs when a person, household, business, or other entity receives disaster assistance from multiple sources for a cumulative amount that exceeds the total need for a particular recovery purpose. The amount of the duplication is the amount of assistance provided in excess of the total need for the same purpose. It is the County's responsibility to ensure that CDBG-DR programs provide assistance only to the extent that the disaster recovery need has not been fully met by funds that have already been paid, or will be paid, from another source.

The Subrecipient or Contractor must report all funds obtained for the same activity from any source from the date of the disaster until the activity is completed.

The Subrecipient or Contractor agrees to repay to the County, immediately upon demand, any assistance later received for the same purpose as the CDBG-DR funds and that exceeds the total need for the particular recovery purpose.

3. EQUAL EMPLOYMENT OPPORTUNITY

The obligations undertaken by the Subrecipient or Contractor include, but are not limited to, the obligation to comply with all Federal laws and regulations described in Subpart K of 24 CFR Part 570 and specifically with each of the following, among other things, as the same may be amended from time to time:

a. **Title VI of the Civil Rights Act of 1964:** This act provides that no person shall be excluded from participation, denied program benefits, or subject to discrimination based on race, color, and/or national origin under any program or activity receiving Federal financial assistance.

b. **Title VII of the Civil Rights Act of 1968 (The Fair Housing Act):** This act prohibits discrimination in housing on the basis of race, color, religion, sex and/or national origin. This law also requires actions which affirmatively promote fair housing.

c. **Restoration Act of 1987:** This act restores the broad scope of coverage and clarifies the application of the Civil Rights Act of 1964. It also specifies that an institution which receives Federal financial assistance is prohibited from discriminating on the basis of race, color, national origin, religion, sex, disability or age in a program or activity which does not directly benefit from such assistance.

d. **Section 109 of Title 1 of the Housing and Community Development Act of 1974 [42 U.S.C. 5309]:** This Section of Title 1 provides that no person shall be excluded from participation (including employment), denied program benefits, or subject to discrimination on the basis of race, color, national origin, or sex under any program or activity funded in whole or in part under Title 1 of the Act.

e. **The Fair Housing Amendment Act of 1988:** This act amended the original Fair Housing Act to provide for the protection of families with children and people with disabilities, strengthen punishment for acts of housing discrimination, expand the Justice Department jurisdiction to bring suit on behalf of victims in federal district courts, and create an exemption to the provisions barring discrimination on the basis of familial status for those housing developments that qualify as housing for persons age 55 or older.

f. **The Age Discrimination Act of 1975:** This act provides that no person shall be excluded from participation, denied program benefits, or subject to discrimination on the basis of age under any program or activity receiving federal funding assistance. Effective January 1987, the age cap of 70 was deleted from the laws. Federal law preempts any State law currently in effect on the same topic.

g. **Section 504 of the Rehabilitation Act of 1973:** It is unlawful to discriminate based on disability in Federally assisted programs. This Section provides that no otherwise qualified individual shall, solely by reason of his or her disability, be excluded from participation (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving federal funding assistance.

h. **The Americans with Disabilities Act of 1990 (ADA):** This act modifies and expands the Rehabilitation Act of 1973 to prohibit discrimination against "a qualified individual with a disability" in employment and public accommodations. The ADA requires that an individual with a physical or mental impairment who is otherwise qualified to perform the essential functions of a job, with or without reasonable accommodation, be afforded equal employment opportunity in all phases of employment.

i. **Executive Order 11063:** This executive order provides that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin in housing and related facilities provided with Federal assistance and lending practices with respect to residential property when such practices are connected with loans insured or guaranteed by the Federal government.

j. **Executive Order 12259:** This executive order provides that the administration of all Federal programs and activities relating to housing and urban development be carried out in a manner to further housing opportunities throughout the United States.

k. **The Equal Employment Opportunity Act:** This act empowers the Equal

Employment Opportunity Commission (EEOC) to bring civil action in Federal court against private sector employers after the EEOC has investigated the charge, found "probable cause" of discrimination, and failed to obtain a conciliation agreement acceptable to the EEOC. It also brings Federal, state, and local governments under the Civil Rights Act of 1964.

l. **The Uniform Guidelines on Employee Selection Procedures adopted by the Equal Employment Opportunity Commission in 1978:** This manual applies to employee selection procedures in the areas of hiring, retention, promotion, transfer, demotion, dismissal, and referral. It is designed to assist employers, labor organizations, employment agencies, licensing, and certification boards in complying with the requirements of Federal laws prohibiting discriminatory employment.

m. **The Vietnam Era Veterans' Readjustment Act of 1974 (revised Jobs for Veterans Act of 2002):** This act was passed to ensure equal employment opportunity for qualified disabled veterans and veterans of the Vietnam War. Affirmative action is required in the hiring and promotion of veterans.

n. **Executive Order 11246:** This executive order applies to all Federally-assisted construction contracts and subcontracts. It provides that no person shall be discriminated against on the basis of race

4. CERTIFICATION OF NONSEGREGATED FACILITIES

(applicable to contracts and subcontracts over $10,000)

The Subrecipient or Contractor and its subcontractor(s) certifies that the entity does not maintain or permit employees to perform their services at any location where segregated facilities are maintained. The Subrecipient or Contractor certifies further that it shall not maintain or provide for employees any segregated facilities at any of its establishments and will not permit employees to perform their services at any location under its control where segregated facilities are maintained. The Subrecipient or Contractor and its subcontractor(s) agrees that a breach of this certification is a violation of the equal opportunity clause of this contract.

As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated by explicit dlirective or are, in fact, segregated on the basis of race, color, religion, or national origin because of habit, local custom, or any other reason.

The Subrecipient or Contractor further agrees that (except where it has obtained for specific time periods) it will obtain identical certification from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the equal opportunity clause; that it will retain such certifications in project files; and will provide notice to such proposed subcontractors (except where proposed subcontractors have submitted identical certifications for specific time periods).

5. ENVIRONMENTAL PROTECTION AND ACTS

a. **National Environmental Protection Act (NEPA):** All Federally funded activities are subject to the National Environmental Policy Act of 1969 (NEPA) and its regulations under 40 CFR 1500 – 1508. Additionally, 24 CFR 58.22 prohibits committing or spending HUD or non-HUD funds on any activity that could have an adverse environmental impact or limit the choice of reasonable alternatives prior to completion of an environment review once a project has Federal funding, in full or in part. This prohibition on "choice-limiting actions" prohibits physical activity, including acquisition, rehabilitation, and construction, as well as contracting for or committing to any of these actions, prior to completion of the environmental review. Awarded activities must have completed an environmental review to demonstrate compliance with NEPA, as well as 24 CFR 58.

b. **Clean Air and Water Acts:** *(applicable to contracts and subcontracts exceeding $100,000)* The Subrecipient or Contractor and all subcontractors shall comply with the requirements of the Clean Air Act, as amended, 42 USC 1857 et seq., the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq., and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR Part 15, as amended.

c. **Flood Disaster Protection:** The Subrecipient or Contractor shall comply with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001). The Subrecipient shall assure that for activities located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, that flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).

d. **Energy Efficiency:** The Subrecipient or Contractor shall comply with mandatory standards and policies relating to energy efficiency under the Energy Policy and Conservation Act (Public Law 94-163).

e. **Procurement of Recovered Materials:** Per 2 CFR 200.323, a non-Federal entity that is a state agency or an agency of a political subdivision of a state, and its contractors, must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

6. CONTRACTING WITH SMALL AND MINORITY FIRMS, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS

The Subrecipient or Contractor will take necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used in subcontracting when possible. Steps include:

- **a.** Placing qualified small and minority businesses and women's business enterprises on solicitation lists:
- **b.** Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources:
- **c.** Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
- **d.** Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises; and
- **e.** Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

7. POLITICAL ACTIVITY

The Subrecipient or Contractor will comply with the provisions of the Hatch Act (5 U.S.C. 1501 et seq.), which limits the political activity of employees.

8. BYRD ANTI-LOBBYING AMENDMENT

The Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) requires that Contractors that apply or bid for an award exceeding $100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier, up to the non-Federal award.

The Contractor certifies, to the best of his or her knowledge and belief that:

1) No Federally appropriated funds have been paid or will be paid by, or on behalf of, the contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan,

the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2) If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

9. CONFLICT OF INTEREST

No officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed. Further, the Subrecipient or Contractor shall cause to be incorporated in all subcontracts the language set forth in this paragraph prohibiting conflict of interest.

No member of, or delegate to, Congress, or any Resident Commissioner, shall be admitted to any share or part of any contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to any contract if made with a corporation for its general benefit.

10. DOMESTIC PREFERENCES FOR PROCUREMENTS.

Per 2 CFR 200.322, as appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

For purposes of this section: (1) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. (2) “Manufactured products” means items and construction materials composed in whole, or in part, of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; or aggregates such as concrete; glass, including optical fiber; and lumber.

11. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT.

Per 2 CFR 200.216, Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to (1) Procure or obtain; (2) Extend or renew a contract to procure or obtain; or (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

As described in Public Law 117–328, section 208, subsection (a), covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country, is prohibited.

12. AGREEMENTS BETWEEN SUBRECIPIENTS AND CONTRACTORS

a. The Subrecipient shall not enter into any agreement, written or oral, with any contractor or other party without the prior determination that the contractor or other party is eligible to receive federal funds and is not listed on the Federal Consolidated List of Debarred, Suspended, and Ineligible contractors.

The terms “other party” is defined as public or private nonprofit agencies or organizations and certain (limited) private for-profit entities who receive grant funds from a Subrecipient to undertake Approved Activities.

b. An agreement between the Subrecipient and any contractor or other party shall require:

1) Compliance with all State and Federal requirements described in this Agreement including, without limitation, those that pertain to labor standards, nondiscrimination, Americans with Disabilities Act, Equal Employment Opportunity and Drug Free Workplace, and prevailing wages.

2) Maintenance of at least the minimum State required Workers' Compensation Insurance for those employees who will perform the Approved Activities.

3) Maintenance, as required by law, of unemployment insurance, disability insurance and liability insurance, which is reasonable to compensate any person, firm, or corporation, who may be injured or damaged by the contractor, or any subcontractor, in performing the Approved Activities.

4) Compliance with the applicable Equal Opportunity Requirements described in Section 3 of this Exhibit.

c. Contractors shall:

1) Perform Activities in accordance with Federal, state, and local regulations, as applicable.

13. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT

If a Federal award meets the definition of "funding agreement" under 37 CFR 401.2(a) and the Subrecipient or Contractor wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment, or performance, the Subrecipient or Contractor must comply with requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulation issued by the awarding agency.

14. PATENTS

a. The Subrecipient or Contractor shall hold and save the Owner and its officers, agents, servants, and employees harmless from liability of any nature or kind, including cost and expenses for, or on account of any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the contract including its use by the Owner, unless otherwise specifically stipulated in the Contract Document.

b. License or Royalty Fees: License and/or Royalty Fees for the use of a process which is authorized by the Owner of the project must be reasonable, and paid to the holder of the patent, or his authorized license, direct by the Owner and not by or through the Subrecipient or Contractor.

c. If the Subrecipient or Contractor uses any design device or materials covered by letters, patents or copyrights, he shall provide for such use by suitable agreement with the owner of such patented or copy-righted design device or material. It is mutually agreed and understood, that without exception the contract prices shall include all royalties or costs arising from the use of such design, device, or materials, in any way involved in the work. The Subrecipient or Contractor and/or his Sureties shall indemnify and save harmless the Owner of the project from any and all claims for infringement by reason of the use of such patented or copy-righted design, device, materials, or any trademark or copy-right in connection with work agreed to be performed under this contract, and shall indemnify the Owner for any cost, expense, or damage which it may be obliged to pay by reason of such infringement at any time during the prosecution of the work or after completion of the work.

15. COPYRIGHT

No materials, to include but not limited to reports, maps, or documents produced as a result of this contract, in whole or in part, shall be available to the Subrecipient or Contractor for copyright purposes. Any such materials produced as a result of this contract that might be subject to copyright shall be the property of the Owner and all such rights shall belong to the Owner.

16. DRUG-FREE WORKPLACE ACT OF 1988

a. Publish and give a policy statement to all covered employees informing them that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the covered workplace and specifying the actions that will be taken against employees who violate the policy.

b. Establish a drug-free awareness program to make employees aware of a) the dangers of drug abuse in the workplace; b) the policy of maintaining a drug-free workplace; c) any available drug counseling, rehabilitation, and employee assistance programs; and d) the penalties that may be imposed upon employees for drug abuse violations.

c. Notify employees that as a condition of employment on a Federal contract or grant, the employee must a) abide by the terms of the policy statement; and b) notify the employer, within 5 calendar days, if he or she is convicted of a criminal drug violation in the workplace.

d. Notify the contracting or granting agency within 10 days after receiving notice that a covered employee has been convicted of a criminal drug violation in the workplace.

e. Impose a penalty on or require satisfactory participation in a drug abuse assistance or rehabilitation program by any employee who is convicted of a reportable workplace drug conviction.

f. Make an ongoing, good faith effort to maintain a drugfree workplace by meeting the requirements of the act.

17. SPECIAL CONDITIONS PERTAINING TO HAZARDS, SAFETY STANDARDS, AND ACCIDENT PREVENTION

a. Use of Explosives: When the use of explosives is necessary for the prosecution of the work, the contractor shall observe all local, state, and Federal laws in purchasing and handling explosives. The contractor shall take all necessary precautions to protect completed work, neighboring property, water lines, or other underground structures. Where there is danger to structures or property from blasting, the charges shall be reduced, and the material shall be covered with suitable timber, steel, or rope mats.

b. The contractor shall notify all owners of public utility property of intention to use explosives at least 8 hours before blasting is done close to such property. Any supervision or direction of use of explosives by the engineer does not in any way reduce the responsibility of the contractor or his Surety for damages that may be caused by such use.

c. Danger Signals and Safety Devices: The contractor shall make all necessary precautions to guard against damages to property and injury to persons. The contractor shall put up and maintain in good condition, sufficient red or warning lights at night, suitable barricades, and other devices necessary to protect the public.

d. Protection of Lives and Health: The contractor shall exercise proper precautions at all times for the protection of persons and property and shall be responsible for all damages to persons or property, either on or off the worksite, which occur as a result of prosecution of the work. The safety provisions of applicable laws and building and construction codes, in addition to specific safety and health regulations described by Chapter XIII, Bureau of Labor Standards, Department of Labor, Part 1518, Safety and Health Regulations for Construction, as outlined in the Federal Register, Volume 36, No. 75, Saturday, April 17, 1971, Title 29 - LABOR, shall be observed and the contractor shall take, or cause to be taken,, such additional safety and health measures as the Developer may determine to be reasonably necessary.

18. PROHIBITION AGAINST PAYMENTS OF BONUS OR COMMISSION

The assistance provided under this Agreement shall not be used in the payment of any bonus or commission for the purpose of:

a. Obtaining the County's approval of the Application for such assistance; or,

b. Any other approval or concurrence of the County required under this Agreement, Title I of the Housing and Community Development Act of 1974, or State regulations with respect thereto; provided, however, that reasonable fees for bona fide technical, consultant, managerial or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as program costs.

19. CONFIDENTIAL FINDINGS

All of the reports, information, data, etc., prepared or assembled by the Subrecipient or Contractor under any Agreement are confidential, and the Subrecipient or Contractor agrees that they shall not be made available to any individual or organization without prior written approval of the Owner.

20. ACCESS TO RECORDS - MAINTENANCE OF RECORDS

Lee County, the Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Subrecipient or Contractor which are directly pertinent to this specific contract, for the purpose of audits, examinations, and making excerpts and transcriptions. All records connected with any contract will be maintained in a central location by the unit of local government and will be maintained for a period of five (5) years from the official date of the County’s final closeout of the grant.

21. INSPECTION

The authorized representative and agents of Lee County and the Department of Housing and Urban Development shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials, and other relevant data and records.

22. PROVISIONS REQUIRED BY LAW DEEMED INSERTED

Each and every provision of law and clause required by law to be inserted in any contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the contract shall forthwith be physically amended to make such insertion or correction.

BY:

____ ________________
Signature Date

____
Name (print)

Signature **Name (Print)** **Date**

Appendix 3- Single Audit Certification

Single Audit Certification

Applicant: Tax ID or EIN: Most Recent Fiscal Year End Date:

Total amount of funds expended from ALL entities during the fiscal year above: Federal Funds (Total): State Funds (Total):

Lee County requires all Applicants, Recipients, and Subrecipients, to complete this Single Audit Certification for each fiscal year that the entity has an active/open agreement with Lee County.

Federal Single Audit Requirements	State Single Audit Requirements
If $750,000 or more in total federal funding from all sources is expended during the fiscal year, Applicants, Recipients, and Subrecipients (at any tier), **MUST** have a single or program-specific audit conducted for that year. If an organization is required to comply with Federal Single Audit Requirements, the audits must be uploaded to the Federal Audit Clearinghouse (https://www.fac.gov/ within 30 days after receiving the audit report from the auditor, or 9 months after the end of the fiscal year, whichever is sooner. See 2 C.F.R. Part 200, Subpart F for more information.	If $750,000 or more in state funding from all sources is expended during the fiscal year, Applicants, Recipients, and Subrecipients (at any tier), **MUST** have a single or program-specific audit conducted for that year. If an organization is required to comply with State Single Audit Requirements, the audits must be emailed to Lee County within 30 days after receiving the audit report from the auditor, or 9 months after the end of the fiscal year, whichever is sooner. See Section 215.97, F.S. for more information.

I understand and acknowledge the federal and state audit requirements above and:

- ☐ My organization is a **FLORIDA STATE AGENCY** and is audited during the State of Florida's annual single audit for the year cited above.
- ☐ My organization **WAS NOT** subject to the federal **OR** state audit requirements for the fiscal year cited above. (Full Exemption)
- ☐ My organization **WAS** subject to only the **FEDERAL** audit requirements for the fiscal year cited above. (State Audit Exemption)
- ☐ My organization **WAS** subject to only the **STATE** audit requirements for the fiscal year cited above. (Federal Audit Exemption)
- ☐ My organization **WAS** subject to **BOTH** the federal and state audit requirements for the fiscal year cited above.

Date:

1. **Requested Motion:**

Meeting Date: February 20, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, ACCEPTING A $7,766,387 AMENDED LAP GRANT AGREEMENT WITH THE FLORIDA DIVISION OF EMERGENCY MANAGEMENT FOR THE PURCHASE AND INSTALLATION OF SEA TURTLE LIGHTS ON ESTERO BOULEVARD; AUTHORIZING A RELATED BUDGET ADJUSTMENT; AND PROVIDING AN EFFECTIVE DATE.

Why the action is necessary:

This action is necessary to provide advance funding for the sea turtle lighting project for Estero Boulevard and its side streets.

What the action accomplishes:

Provides advance funding for the sea turtle lighting for Estero Boulevard and its side streets

2. **Agenda:**
CONSENT AGENDA

3. **Requirement/Purpose:**
Resolution

4. **Submitter of Information:**
Andy Hyatt, Town Manager, Frankie Kropacek, Operations & Compliance Director

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5. **Background:**

The Town has been involved with a long-standing island-wide street lighting project to address streetlights across the island. The current statement of work (SOW) will provide for installation of lighting along Estero Boulevard, Town side streets, and the Downtown area. The project is expected to be completed early next year.

During the 2023 Legislative Session, the Florida legislature appropriated $350,000,000 for the Hurricane Ian and Nicole Grant Recovery Program to help local governments mitigate local and county revenue losses and operating deficits; make infrastructure repairs and replacements including road and sewer and water facilities; conduct beach nourishment; and complete debris removal.

On November 7, 2023, the Lee County Board of Commissioners accepted an award from the Florida Division of Emergency Management that included a grant sub-award of $7,766,387 to be provided to the Town of Fort Myers Beach as a sub-recipient through Lee County acting as a pass-through-entity for installation of sea turtle lights on Estero Boulevard and its side streets.

The Florida Division of Emergency Management and Lee County agreed to amend the Grant Agreement so that the $7,766,387 grant for sea turtle lighting for Estero Boulevard and its side streets would be awarded directly to the Town of Fort Myers Beach rather than through Lee County, thus eliminating Lee County as the pass-through-entity.

Attachments:

1. 24-37 Accepting State LAP Grant for Sea Turtle Lights on Estero
2. D1496 Lee County State-Funded LAP Agreement
3. D1496 Lee County State-Funded LAP Agreement - Modification

Financial Impact:

Acceptance of this amended grant agreement will not only provide funding for the sea turtle light project on Estero Boulevard and its side streets, but it will enable the town to receive the $7,766,387 grant in advance of incurring the expenditures which will alleviate any cash flow concerns regarding this project.

6. **Alternative Action**

Do not accept the grant.

7. **Management Recommendations**:

Staff recommends acceptance of this amended grant agreement.

8. **Recommended Approval**:

Jason Freeman, Legislative Liaison / Deputy Town Clerk	Created/Initiated - 2/12/2024
Frankie Kropacek, Operations & Compliance Director	Approved - 2/13/2024
Nancy Stuparich, Town Attorney	Approved - 2/15/2024
Amy Baker, Town Clerk	Approved - 2/15/2024
Andy Hyatt, Town Manager	Final Approval - 2/15/2024

RESOLUTION NO. 24-37

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, ACCEPTING A $7,766,387 AMENDED LAP GRANT AGREEMENT WITH THE FLORIDA DIVISION OF EMERGENCY MANAGEMENT FOR THE PURCHASE AND INSTALLATION OF SEA TURTLE LIGHTS ON ESTERO BOULEVARD; AUTHORIZING A RELATED BUDGET ADJUSTMENT; AND PROVIDING AN EFFECTIVE DATE.

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

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

WHEREAS, during the 2023 Legislative Session, the Florida legislature appropriated $350,000,000 for the Hurricane Ian and Nicole Grant Recovery Program to help local governments mitigate local and county revenue losses and operating deficits; make infrastructure repairs and replacements including road and sewer and water facilities; conduct beach nourishment; and complete debris removal; and

WHEREAS, on November 7, 2023, the Lee County Board of Commissioners accepted an award from the Florida Division of Emergency Management that included a grant sub-award of $7,766,387 to be provided to the Town of Fort Myers Beach as a sub-recipient through Lee County acting as a pass-through-entity for installation of sea turtle lights on Estero Boulevard and its side streets; and

WHEREAS, the Florida Division of Emergency Management and Lee County agreed to amend the Grant Agreement so that the $7,766,387 grant for sea turtle lighting for Estero Boulevard and its side streets would be awarded directly to the Town of Fort Myers Beach rather than through Lee County, thus eliminating Lee County as the pass-through-entity; and

WHEREAS, the Florida Division of Emergency Management has clarified that the Town would be receiving the $7,766,387 grant as a one-time payment in advance rather than be paid out on a reimbursement basis; and

WHEREAS, the Town finds that it is in the best interests of the health, safety, and welfare of the Town's residents and visitors to accept this amended Grant Agreement.

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

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

Section 2. The Town Council authorizes the Town Manager to execute the Amended Grant Agreement in the amount of $7,766,387, authorizes the Town Manager to expend matching funds and other budgeted funds for the Project, and authorizes the Town Manager to administer the Grant Agreement.

Section 3. The Town Council authorizes the following adjustment to the Fiscal Year 2024 budget:

40.31.541.33446	Capital-Public Works: FDEM State Funded LAP Grant	$7,766,387
40.31.541.63330	Capital-Public Works: Lighting Systems	$7,766,387

Section 4. If any section or portion of a section of this Resolution proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other section or part of this Resolution.

Section 5. This resolution shall take effect immediately upon its adoption.

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

Dan Allers, Mayor	___
Jim Atterholt, Vice Mayor	___
John King, Council Member	___
Scott Safford, Council Member	___
Karen Woodson, Council Member	___

ADOPTED this 20th day of February 2024, 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 20th day of February 2024.

Agreement Number: D1496

STATE-FUNDED LAP GRANT AGREEMENT

THIS AGREEMENT is entered into by the State of Florida, Division of Emergency Management, with headquarters in Tallahassee, Florida (hereinafter referred to as the "Division"), and **Lee County**, Florida (hereinafter referred to as the "Recipient").

THIS AGREEMENT IS ENTERED INTO BASED ON THE FOLLOWING REPRESENTATIONS:

A. The Recipient represents that it is fully qualified and eligible to receive these grant funds to provide the services identified herein; and

B. The Division has received these grant funds from the State of Florida, and has the authority to subgrant these funds to the Recipient upon the terms and conditions below; and

C. The Division has statutory authority to disburse the funds under this Agreement.

THEREFORE, the Division and the Recipient agree to the following:

(1) LAWS, RULES, REGULATIONS, AND POLICIES

a. As required by section 215.971(1), Florida Statutes, this Agreement includes:

i. A provision specifying a scope of work that clearly establishes the tasks that the Recipient is required to perform.

ii. A provision dividing the agreement into quantifiable units of deliverables that must be received and accepted in writing by the Division before payment. Each deliverable must be directly related to the scope of work and specify the required minimum level of service to be performed and the criteria for evaluating the successful completion of each deliverable.

iii. A provision specifying the financial consequences that apply if the Recipient fails to perform the minimum level of service required by the agreement.

iv. A provision specifying that the Recipient may expend funds only for allowable costs resulting from obligations incurred during the specified agreement period.

v. A provision specifying that any balance of unobligated funds which has been advanced or paid must be refunded to the Division.

vi. A provision specifying that any funds paid in excess of the amount to which the Recipient is entitled under the terms and conditions of the agreement must be refunded to the Division.

b. In addition to the foregoing, the Recipient and the Division shall be governed by all applicable State and Federal laws, rules and regulations, including those identified in Attachment B. Any express reference in this Agreement to a particular statute, rule, or regulation in no way implies that no other statute, rule, or regulation applies.

(2) CONTACT

a. In accordance with section 215.971(2), Florida Statutes, the Division's Grant Manager shall be responsible for enforcing performance of this Agreement's terms and conditions and shall serve as the Division's liaison with the Recipient. As part of his/her duties, the Grant Manager for the Division shall:

i. Monitor and document Recipient performance; and,

ii. Review and document all deliverables for which the Recipient requests payment.

b. The Division's Grant Manager for this Agreement is:

Berenice Hernandez Avila
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399
Telephone: 850-4206
Email: Berenice.Hernandez@em.myflorida.com

c. The name and address of the representative of the Recipient responsible for the administration of this Agreement is:

Lucy Cancel
P.O. Box 398, Fort Myers
FL 33902-0398
Telephone: 239-533-2437
Email: LCancel@leegov.com

d. In the event that different representatives or addresses are designated by either party after execution of this Agreement, notice of the name, title and address of the new representative will be provided to the other party.

(3) TERMS AND CONDITIONS

This Agreement contains all the terms and conditions agreed upon by the parties.

(4) EXECUTION

This Agreement may be executed in any number of counterparts, any one of which may be taken as an original.

(5) MODIFICATION

Either party may request modification of the provisions of this Agreement. Changes which are agreed upon shall be valid only when in writing, signed by each of the parties, and attached to the original of this Agreement.

(6) SCOPE OF WORK

The Recipient shall perform the work in accordance with the Budget and Scope of Work, Attachment A of this Agreement.

(7) PERIOD OF AGREEMENT

This Agreement shall begin upon execution by both parties and shall end on **March 31, 2025,** unless terminated earlier in accordance with the provisions of Paragraph (16) TERMINATION. In accordance with section 215.971(1)(d), Florida Statutes, the Recipient may expend funds authorized by this Agreement “only for allowable costs resulting from obligations incurred during” the period of agreement.

(8) FUNDING

a. This is a one-time grant Agreement, subject to the availability of legislatively appropriated funds.

b. The State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature, and subject to any modification in accordance with either chapter 216, Florida Statutes, or the Florida Constitution.

c. The Division will grant funds to the Recipient only for allowable costs that will be incurred by the Recipient in the successful completion of each deliverable or for loss of revenue.

d. The Division will review any request for grant funding by comparing the documentation provided by the Recipient against a performance measure, outlined in Attachment A, which clearly delineates:

i. The required minimum acceptable level of service to be performed; and,

ii. The criteria for evaluating the successful completion of each deliverable.

e. The Division’s Grant Manager, as required by section 215.971(2)(c), Florida Statutes, shall reconcile and verify all funds received against all funds expended during the period of agreement and produce a final reconciliation report. The final report must identify any funds paid in excess of the expenditures incurred by the Recipient.

f. For the purposes of this Agreement, the term “improper payment” means or includes:

i. Any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements; and,

ii. Any payment to an ineligible party, any payment for an ineligible good or service, any duplicate payment, any payment for a good or service not received (except for such payments where authorized by law), any payment that does not account for credit for applicable discounts, and any payment where insufficient or lack of documentation prevents a reviewer from discerning whether a payment was proper.

g. All funds shall be placed in an interest-bearing account and the interest shall be returned to the Division quarterly until the completion of all deliverables. The interest shall be returned to the Division’s General Revenue Fund.

(9) RECORDS

a. As a condition of receiving state financial assistance, and as required by sections 20.055(6)(c) and 215.97(5)(b), Florida Statutes, the Division, the Chief Inspector General of the State of Florida, the Florida Auditor General, or any of their authorized representatives, shall enjoy the right of access to any documents, financial statements, papers, or other records of the Recipient which are pertinent to this Agreement, in order to make audits, examinations, excerpts, and transcripts. The right of access also includes timely and reasonable access to the Recipient's personnel for the purpose of interview and discussion related to such documents. For the purposes of this section, the term "Recipient" includes employees or agents, including all subcontractors or consultants to be paid from funds provided under this Agreement.

b. The Recipient shall maintain all records related to this Agreement for the period of time specified in the appropriate retention schedule published by the Florida Department of State. Information regarding retention schedules can be obtained at: http://dos.myflorida.com/library-archives/records-management/general-records-schedules/.

c. Florida's Government in the Sunshine Law (Section 286.011, Florida Statutes) provides the citizens of Florida with a right of access to governmental proceedings and mandates three, basic requirements: (1) all meetings of public boards or commissions must be open to the public; (2) reasonable notice of such meetings must be given; and (3) minutes of the meetings must be taken and promptly recorded. The mere receipt of public funds by a private entity, standing alone, is insufficient to bring that entity within the ambit of the open government requirements. However, the Government in the Sunshine Law applies to private entities that provide services to governmental agencies and that act on behalf of those agencies in the agencies' performance of their public duties. If a public agency delegates the performance of its public purpose to a private entity, then, to the extent that private entity is performing that public purpose, the Government in the Sunshine Law applies. For example, if a volunteer fire department provides firefighting services to a governmental entity and uses facilities and equipment purchased with public funds, then the Government in the Sunshine Law applies to board of directors for that volunteer fire department. Thus, to the extent that the Government in the Sunshine Law applies to the Recipient based upon the funds provided under this Agreement, the meetings of the Recipient's governing board or the meetings of any subcommittee making recommendations to the governing board may be subject to open government requirements. These meetings shall be publicly noticed, open to the public, and the minutes of all the meetings shall be public records, available to the public in accordance with chapter 119, Florida Statutes.

d. Florida's Public Records Law provides a right of access to the records of the state and local governments as well as to private entities acting on their behalf. Unless specifically exempted from disclosure by the Legislature, all materials made or received by a governmental agency (or a private entity acting on behalf of such an agency) in conjunction with official business which are used to perpetuate, communicate, or formalize knowledge qualify as public records subject to public inspection. The mere receipt of public funds by a private entity, standing alone, is insufficient to bring that entity within the ambit of the public record requirements. However, when a public entity delegates a public function to a private entity, the records generated by the private entity's performance of that duty become public records. Thus, the nature and scope of the services provided by a private entity determine whether that entity is acting on behalf of a public agency and is therefore subject to the requirements of Florida's Public Records Law.

e. The Recipient shall maintain all records for the Recipient and for all subcontractors or consultants to be paid from funds provided under this Agreement, including documentation of all program costs, in a form sufficient to determine compliance with the requirements and objectives of the Budget and Scope of Work - Attachment A - and all other applicable laws and regulations.

IF THE RECIPIENT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE RECIPIENT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: (850) 815-4156, Records@em.myflorida.com, or 2555 Shumard Oak Boulevard, Tallahassee, FL 32399.

(10) AUDITS

a. In accounting for the receipt and expenditure of funds under this Agreement, the Recipient shall follow Generally Accepted Accounting Principles ("GAAP"). As defined by 2 C.F.R. §200.49, GAAP "has the meaning specified in accounting standards issued by the Government Accounting Standards Board (GASB) and the Financial Accounting Standards Board (FASB)."

b. When conducting an audit of the Recipient's performance under this Agreement, the Division shall use Generally Accepted Government Auditing Standards ("GAGAS"). As defined by 2 C.F.R. §200.50, GAGAS, "also known as the Yellow Book, means generally accepted government auditing standards issued by the Comptroller General of the United States, which are applicable to financial audits."

c. If an audit shows that all or any portion of the funds disbursed were not spent in accordance with the conditions of this Agreement, the Recipient shall be held liable for reimbursement to the Division of all funds not spent in accordance with these applicable regulations and Agreement provisions within thirty (30) days after the Division has notified the Recipient of such non-compliance.

d. The Recipient shall have all audits completed by an independent auditor, which is defined in section 215.97(2)(i), Florida Statutes, as "an independent certified public accountant licensed under chapter 473." The independent auditor shall state that the audit complied with the applicable provisions noted above. The audits must be received by the Division no later than nine (9) months from the end of the Recipient's fiscal year.

e. The Recipient shall send copies of reporting packages required under this paragraph directly to each of the following:

i. The Division of Emergency Management

DEMSingle_Audit@em.myflorida.com

DEMSingle_Audit@em.myflorida.com

OR

Office of the Inspector General

2555 Shumard Oak Boulevard

Tallahassee, Florida 32399-2100

ii. The Auditor General

Room 401, Claude Pepper Building

111 West Madison Street

Tallahassee, Florida 32399-1450

(11) REPORTS

a. The Recipient shall provide the Division with quarterly reports and a close-out report. These reports shall include the current status and progress by the Recipient and all Sub-Recipients and subcontractors in completing the work described in the Scope of Work and the expenditure of funds under this Agreement, in addition to any other information requested by the Division.

b. Quarterly reports are due to the Division no later than thirty (30) days after the end of each quarter of the program year and shall be sent each quarter until submission of the administrative close-out report. The ending dates for each quarter of the program year are March 31, June 30, September 30, and December 31.

c. The close-out report is due sixty (60) days after termination of this Agreement or sixty (60) days after completion of the activities contained in this Agreement, whichever occurs first.

d. If all required reports and copies are not sent to the Division or are not completed in a manner acceptable to the Division, the Division may withhold further payments or FEMA Public Assistance funds until they are completed or may take other action as stated in Paragraph (15) REMEDIES. "Acceptable to the Division" means that the work product was completed in accordance with the Budget and Scope of Work.

e. The Recipient shall provide additional program updates or information that may be required by the Division.

f. The Recipient shall obtain engineering inspection reports for any new construction or installation. The Recipient shall furnish the reports to the Division within fifteen (15) days of receipt of the completed report.

(12) MONITORING

a. The Recipient shall monitor its performance under this Agreement, as well as that of its subcontractors and/or consultants who are paid from funds provided under this Agreement, to ensure that time schedules are being met, the Schedule of Deliverables and Scope of Work are being accomplished within the specified time periods, and other performance goals are being achieved. A review shall be done for each function or activity in Attachment A to this Agreement and reported in the quarterly report.

b. In addition to reviews of audits conducted in accordance with paragraph (10) AUDITS above, monitoring procedures may include, but not be limited to, on-site visits by Division staff, limited scope audits, or other procedures. The Recipient agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Division. In the event that the Division determines that a limited scope audit of the Recipient is appropriate, the Recipient agrees to comply with any additional instructions provided by the Division to the Recipient regarding such audit. The Recipient further agrees to comply and cooperate with any inspections, reviews, investigations or audits deemed necessary by the Florida Chief Financial Officer or Auditor General. In addition, the Division will monitor the performance and financial management by the Recipient throughout the period of agreement to ensure timely completion of all tasks.

(13) LIABILITY

a. Unless Recipient is a state agency or subdivision, as defined in section 768.28, Florida Statutes, the Recipient is solely responsible to parties it deals with in carrying out the terms of this Agreement and shall hold the Division harmless against all claims of whatever nature by third parties arising from the work performed under this Agreement. For purposes of this Agreement, Recipient agrees that it is not an employee or agent of the Division but is an independent contractor.

b. Any Recipient which is a state agency or subdivision, as defined in section 768.28, Florida Statutes, agrees to be fully responsible for its negligent or tortious acts or omissions which result in claims or suits against the Division, and agrees to be liable for any damages proximately caused by the acts or omissions to the extent set forth in section 768.28, Florida Statutes. Nothing herein is intended to serve as a waiver of sovereign immunity by any party to which sovereign immunity applies. Nothing herein shall be construed as consent by a state agency or subdivision of the State of Florida to be sued by third parties in any matter arising out of this agreement.

(14) DEFAULT

If any of the following events occur ("Events of Default"), all obligations on the part of the Division to make further payment of funds shall, if the Division elects, terminate and the Division has the option to exercise any of its remedies set forth in Paragraph (15) REMEDIES. However, the Division may make payments or partial payments, if applicable, after any Events of Default without waiving the right to exercise such remedies, and without becoming liable to make any further payment:

a. If any warranty or representation made by the Recipient in this Agreement or any previous agreement with the Division is or becomes false or misleading in any respect, or if the Recipient fails to keep or perform any of the obligations, terms or covenants in this Agreement or any previous agreement with the Division and has not cured them in timely fashion, or is unable or unwilling to meet its obligations under this Agreement;

b. If material adverse changes occur in the financial condition of the Recipient at any time during the period of agreement, and the Recipient fails to cure this adverse change within thirty (30) days from the date written notice is sent by the Division.

c. If any reports required by this Agreement have not been submitted to the Division or have been submitted with incorrect, incomplete or insufficient information;

d. If the Recipient has failed to perform and complete on time any of its obligations under this Agreement.

(15) REMEDIES

If an Event of Default occurs, then the Division shall, after thirty (30) calendar days written notice to the Recipient and upon the Recipient's failure to cure within those thirty (30) days, exercise any one or more of the following remedies, either concurrently or consecutively:

a. Terminate this Agreement, provided that the Recipient is given at least thirty (30) days prior written notice of the termination. The notice shall be effective when placed in the United States, first class mail, postage prepaid, by registered or certified mail-return receipt requested, to the address in paragraph (2) CONTACT herein;

b. Begin an appropriate legal or equitable action to enforce performance of this Agreement;

c. Withhold or suspend payment of all or any part of a request for payment;

d. Require that the Recipient refund to the Division any monies used for ineligible purposes under the laws, rules and regulations governing the use of these funds.

e. Exercise any corrective or remedial actions, to include but not be limited to:

i. request additional information from the Recipient to determine the reasons for or the extent of non-compliance or lack of performance,

ii. issue a written warning to advise that more serious measures may be taken if the situation is not corrected,

iii. advise the Recipient to suspend, discontinue or refrain from incurring costs for any activities in question or

iv. require the Recipient to reimburse the Division for the amount of costs incurred for any items determined to be ineligible;

f. Exercise any other rights or remedies which may be available under law.

Pursuing any of the above remedies will not stop the Division from pursuing any other remedies in this Agreement or provided at law or in equity. If the Division waives any right or remedy in this Agreement or fails to insist on strict performance by the Recipient, it will not affect, extend or waive any other right or remedy of the Division, or affect the later exercise of the same right or remedy by the Division for any other default by the Recipient.

(16) TERMINATION.

a. The Division may terminate this Agreement for cause after thirty (30) days written notice. Cause can include misuse of funds, fraud, lack of compliance with applicable rules, laws and regulations, failure to perform on time, and refusal by the Recipient to permit public access to any document, paper, letter, or other material subject to disclosure under chapter 119, Florida Statutes., as amended.

b. The Division may terminate this Agreement for convenience or when it determines, in its sole discretion, that continuing the Agreement would not produce beneficial results in line with the further expenditure of funds, by providing the Recipient with thirty (30) calendar days prior written notice.

c. The parties may agree to terminate this Agreement for their mutual convenience through a written amendment of this Agreement. The amendment will state the effective date of the termination and the procedures for proper closeout of this Agreement.

d. In the event this Agreement is terminated, the Recipient will not incur new obligations for the terminated portion of this Agreement after the Recipient has received the notification of termination. The Recipient will cancel as many outstanding obligations as possible. Costs incurred after receipt of the termination notice will be disallowed. The Recipient shall not be relieved of liability to the Division because of any breach of this Agreement by the Recipient. The Division may, to the extent authorized by law, withhold payments to the Recipient for the purpose of set-off until the exact amount of damages due the Division from the Recipient is determined.

(17) SUBCONTRACTS

If the Recipient subcontracts any of the work required under this Agreement, a copy of the unsigned subcontract must be forwarded to the Division for review and approval before it is executed by the Recipient. The Recipient agrees to include in the subcontract that (i) the subcontractor is bound by the terms of this Agreement, (ii) the subcontractor is bound by all applicable state and federal laws and regulations, and (iii) the subcontractor shall hold the Division and Recipient harmless against all claims of whatever nature arising out of the subcontractor's performance of work under this Agreement, to the extent allowed and required by law. The Recipient shall document in the quarterly report the subcontractor’s progress in performing its work under this Agreement.

For each subcontract, the Recipient shall provide a written statement to the Division as to whether that subcontractor is a minority business enterprise, as defined in section 288.703, Florida Statutes..

(18) ATTACHMENTS

a. All attachments to this Agreement are incorporated as if set out fully.

b. In the event of any inconsistencies or conflict between the language of this Agreement and the attachments, the language of the attachments shall control, but only to the extent of the conflict or inconsistency.

c. This Agreement has the following attachments:

Exhibit 1 - Funding Sources

Attachment A – Proposed Budget and Scope of Work

Attachment B – Program Statutes and Regulations

Attachment C – Statement of Assurances

Attachment D – Warranties and Representations

Attachment E – Certification Regarding Debarment

Attachment F – Foreign Country of Concern Affidavit

(19) PAYMENTS

a. Invoices shall be submitted at least quarterly and shall include the supporting documentation for all costs of the project or services. The final invoice shall be submitted within sixty (60) days after the expiration date of the agreement. An explanation of any circumstances prohibiting the submittal of quarterly invoices shall be submitted to the Division grant manager as part of the Recipient's quarterly reporting as referenced in paragraph (11) REPORTS of this Agreement.

b. If the Recipient is a county or municipality that is a rural community or rural area of opportunity as those terms are defined in section 288.0656(2), Florida Statutes, the Division may issue payment of submitted invoices for verified and eligible performance that has been completed in accordance with the terms and conditions set forth in this Agreement to the extent that federal or state law, rule, or other regulation allows such payments. The Recipient may elect in writing to exercise this provision as long as the Recipient is a county or municipality which is a rural community or rural area of opportunity, as defined in section 288.0656(2), Florida Statutes, and demonstrates financial hardship. A county or municipality located within a financially constrained county, as defined in section 288.67(1), Florida Statutes, is deemed to have demonstrated a financial hardship for the purposes of this provision.

c. If the necessary funds are not available to fund this Agreement as a result of action by the United States Congress, the federal Office of Management and Budgeting, the State Chief Financial Officer or under paragraph 8 of this Agreement, all obligations on the part of the Division to make any further payment of funds shall terminate, and the Recipient shall submit its closeout report within thirty (30) days of completion of the last deliverable.

(20) REPAYMENTS

All refunds, repayments, or interest due to the Division under this Agreement are to be made payable to the order of "Division of Emergency Management," and mailed directly to the following address:

Division of Emergency Management
Cashier
2555 Shumard Oak Boulevard
Tallahassee FL 32399-2100

In accordance with section 215.34(2), Florida Statutes, if a check or other draft is returned to the Division for collection, Recipient shall pay the Division a service fee of $15.00 or 5% of the face amount of the returned check or draft, whichever is greater.

(21) MANDATED CONDITIONS

a. The validity of this Agreement is subject to the truth and accuracy of all the information, representations, and materials submitted or provided by the Recipient in this Agreement, in any later submission or response to a Division request, or in any submission or response to fulfill the requirements of this Agreement. All of said information, representations, and materials is incorporated by reference. The inaccuracy of the submissions or any material changes shall, at the option of the Division and with thirty (30) days written notice to the Recipient, cause the termination of this Agreement and the release of the Division from all its obligations to the Recipient.

b. This Agreement shall be construed under the laws of the State of Florida, and venue for any actions arising out of this Agreement shall be in the Circuit Court of Leon County. If any provision of this Agreement is in conflict with any applicable statute or rule, or is unenforceable, then the provision shall be null and void to the extent of the conflict, and shall be severable, but shall not invalidate any other provision of this Agreement.

c. Any power of approval or disapproval granted to the Division under the terms of this Agreement shall survive the term of this Agreement.

d. This Agreement may be executed in any number of counterparts, any one of which may be taken as an original.

e. The Recipient agrees to comply with the Americans With Disabilities Act (Public Law 101-336, 42 U.S.C. Section 12101 et seq.), which prohibits discrimination by public and private entities on the basis of disability in employment, public accommodations, transportation, State and local government services, and telecommunications.

f. Those who have been placed on the convicted vendor list following a conviction for a public entity crime or on the discriminatory vendor list may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with a public entity, and may not transact business with any public entity in excess of $25,000.00 for a period of thirty-six (36) months from the date of being placed on the convicted vendor list or on the discriminatory vendor list.

g. Any Recipient which is not a local government or state agency, and which receives funds under this Agreement from the state government, certifies, to the best of its knowledge and belief, that it and its principals:

i. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a federal department or agency;

ii. Have not, within a five-year period preceding this Agreement been convicted of or had a civil judgment rendered against it for fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

iii. Are not presently indicted or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any offenses enumerated in paragraph (21)(g)(ii) of this certification; and

iv. Have not within a five-year period preceding this Agreement had one or more public transactions (federal, state or local) terminated for cause or default.

If the Recipient is unable to certify to any of the statements in this certification, then the Recipient shall attach an explanation to this Agreement.

In addition, the Recipient shall send to the Division (by email or by facsimile transmission) the completed "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion" (Attachment E) for each intended subcontractor that Recipient plans to fund under this Agreement. The form must be received by the Division before the Recipient enters into a contract with any subcontractor.

h. The State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature, and subject to any modification in accordance with Chapter 216, Florida Statutes, or the Florida Constitution.

i. All bills for fees or other compensation for services or expenses shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof.

j. Use of grant funds for travel is not authorized.

k. The Division reserves the right to unilaterally cancel this Agreement if the Recipient refuses to allow public access to all documents, papers, letters or other material subject to the provisions of Chapter 119, Florida Statutes, which the Recipient created or received under this Agreement.

l. If the Recipient is allowed to temporarily invest any advances of funds under this Agreement, any interest income shall either be returned to the Division or be applied against the Division's obligation to pay the contract amount.

m. The State of Florida will not intentionally award publicly funded contracts to any contractor who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324a(e) [Section 274A(e) of the Immigration and Nationality Act ("INA")]. The Division shall consider the employment by any contractor of unauthorized aliens a violation of Section 274A(e) of the INA. Such violation by the Recipient of the employment provisions contained in Section 274A(e) of the INA shall be grounds for unilateral cancellation of this Agreement by the Division.

n. The Recipient is subject to Florida's Government in the Sunshine Law (Section 286.011, Florida Statutes) with respect to the meetings of the Recipient's governing board or the meetings of any subcommittee making recommendations to the governing board. All of these meetings shall be publicly noticed, open to the public, and the minutes of all the meetings shall be public records, available to the public in accordance with chapter 119, Florida Statutes.

o. All expenditures of state financial assistance shall be in compliance with the laws, rules and regulations applicable to expenditures of State funds, including but not limited to, the Reference Guide for State Expenditures.

p. This Agreement may be charged only with allowable costs resulting from obligations that will be incurred during the period of agreement.

q. Any balances of unobligated cash that have been advanced or paid that are not authorized to be retained for direct program costs in a subsequent period must be refunded to the State.

r. Section 287.05805, Florida Statutes, requires that any state funds provided for the purchase of or improvements to real property are contingent upon the contractor or political subdivision granting to the state a security interest in the property at least to the amount of state funds provided for at least five (5) years from the date of purchase or the completion of the improvements or as further required by law.

s. The Division may, at its option, terminate the Contract if the Contractor is found to have submitted a false certification as provided under section 287.135(5), Florida Statutes., or 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 been engaged in business operations in Cuba or Syria, or to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.

t. The Recipient shall attest in Attachment F of this agreement, it is not an entity owned by the government of a Foreign Country of Concern, no government of a Foreign Country of Concern has a controlling interest in the entity, and the entity has not been organized under the laws of or has its principal place of business in a Foreign Country of Concern pursuant to Section 287.138, Florida Statutes.

(22) LOBBYING PROHIBITION

a. Section 216.347, Florida Statutes, prohibits “any disbursement of grants and aids appropriations pursuant to a contract or grant to any person or organization unless the terms of the grant or contract prohibit the expenditure of funds for the purpose of lobbying the Legislature, the judicial branch, or a state agency.”

b. No funds or other resources received from the Division under this Agreement may be used directly or indirectly to influence legislation or any other official action by the Florida Legislature or any state agency.

(23) COPYRIGHT, PATENT AND TRADEMARK

EXCEPT AS PROVIDED BELOW, ANY AND ALL PATENT RIGHTS ACCRUING UNDER OR IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT ARE HEREBY RESERVED TO THE STATE OF FLORIDA. ANY AND ALL COPYRIGHTS ACCRUING UNDER OR IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT ARE HEREBY TRANSFERRED BY THE RECIPIENT TO THE STATE OF FLORIDA.

a. If the Recipient has a pre-existing patent or copyright, the Recipient shall retain all rights and entitlements to that pre-existing patent or copyright unless this Agreement provides otherwise.

b. If any discovery or invention is developed in the course of or as a result of work or services performed under this Agreement, or in any way connected with it, the Recipient shall refer the discovery or invention to the Division for a determination whether the State of Florida will seek patent protection in its name. Any patent rights accruing under or in connection with the performance of this Agreement are reserved to the State of Florida. If any books, manuals, films, or other copyrightable material are produced, the Recipient shall notify the Division. Any copyrights accruing under or in connection with the performance under this Agreement are transferred by the Recipient to the State of Florida.

c. Within thirty (30) days of execution of this Agreement, the Recipient shall disclose all intellectual properties relating to the performance of this Agreement that he or she knows or should know could give rise to a patent or copyright. The Recipient shall retain all rights and entitlements to any pre-existing intellectual property that is disclosed. Failure to disclose will indicate that no such property exists. The Division shall then, under Paragraph (b), have the right to all patents and copyrights that accrue during performance of this Agreement.

d. If the Recipient qualifies as a state university under Florida law, then, pursuant to section 1004.23, Florida Statutes, any invention conceived exclusively by the employees of the Recipient shall become the sole property of the Recipient. In the case of joint inventions, that is inventions made jointly by one or more employees of both parties hereto, each party shall have an equal, undivided interest in and to such joint inventions. The Division shall retain a perpetual, irrevocable, fully paid, nonexclusive license, for its use and the use of its contractors of any resulting patented, copyrighted or trademarked work products, developed solely by the Recipient, under this Agreement, for Florida government purposes.

(24) LEGAL AUTHORIZATION.

The Recipient certifies that it has the legal authority to receive the funds under this Agreement and that its governing body has authorized the execution and acceptance of this Agreement. The Recipient also certifies that the undersigned person has the authority to legally execute and bind Recipient to the terms of this Agreement.

(25) ASSURANCES.

The Recipient shall comply with any Statement of Assurances incorporated as Attachment C.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

RECIPIENT: Lee County, Florida

By: Dave Harner II

Name and Title: Dave Harner II County Manager

Date: 11/16/2023

FID# 59-6000702

STATE OF FLORIDA
DIVISION OF EMERGENCY MANAGEMENT

By: Ian Guidicelli

Name and Title: **Kevin Guthrie, Director, or Ian Guidicelli, Response Bureau Chief, as Authorized Representative.**

Date: 11/28/2023

EXHIBIT – 1

STATE RESOURCES AWARDED TO THE RECIPIENT PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:

SUBJECT TO S SB 2500 (2023), ITEM 2676A:

State Project -

State awarding agency **Florida Division of Emergency Management**

Amount of State Funding: **$350,000,000**

2676A LUMP SUM
HURRICANE RECOVERY GRANT PROGRAM
FROM GENERAL REVENUE FUND 350,000,000

Funds in Specific Appropriation 2676A are provided for hurricane repair and recovery related to projects within counties designated in the Federal Emergency Management Agency disaster declarations for Hurricanes Ian and Nicole. The Executive Office of the Governor, Division of Emergency Management is authorized to request budget amendments up to $350,000,000 requesting release of funds pursuant to chapter 216, Florida Statutes, to provide resources to fund gaps in: mitigation of local and county revenue losses and operating deficits; infrastructure repair and replacement, including road, sewer, and water facilities; beach renourishment; and debris removal. The division is authorized to approve requests for resources by local governments, independent special districts, and school boards, including charter schools. A local government may submit a request for resources to administer infrastructure repair or beach renourishment grants within the jurisdiction of the local government, provided that the grant program requires matching funds by grantees of at least 50 percent of project costs. Requests for the release of funds shall include certification that includes, but is not limited to:

1. That funding requested by the local government, independent special district, and school board, including a charter school, is necessary to maintain services or infrastructure essential to support health, safety, and welfare functions, and to reimburse the local government, independent special district, school board, or charter school for unanticipated expenses related to responding to Hurricane Ian or Nicole or for the loss of revenues related to the impact of Hurricane Ian or Nicole.

2. That insufficient state funds, federal funds, private funds, or insurance proceeds are available and that should sufficient funds subsequently become available to meet the need of the original budget amendment, the local government or entity has agreed to reimburse the state in the amount of such funds subsequently received.

The division shall coordinate with other state agencies and the local government or entity to ensure there is no duplication of benefits between these funds and other funding sources such as insurance proceeds and any other federal or state programs, including Public Assistance requests to the Federal Emergency Management Agency and Community Development Block Grant Disaster Recovery grants. Requests approved by the division for funding that are for projects ineligible for any other funding sources, whether federal or state programs, may be provided as grants. Requests approved by the division for funding that are for projects that are eligible for other funding sources shall be provided as loans which shall be repaid up to the amount of funds subsequently received. Any funds reimbursed to the state shall be deposited in the General Revenue Fund.

ATTACHMENT A

Proposed Budget and Scope of Work

I. PROPOSED BUDGET

Category	**Anticipated Expenditure Amount**
Turtle Safe Lighting	$7,766,387
Legislative Appropriation Funds	$7,766,387
Total Expenditures	$7,766,387

II. BACKGROUND

As documented by the Hurricane Ian and Nicole Grant Recovery Program, $350 million dollars were appropriated to help local governments mitigate local and county revenue losses and operating deficits; make infrastructure repairs and replacements including road and sewer and water facilities; conduct beach nourishment; and complete debris removal. Funding can be requested by local governments, independent special districts, and school boards, including charter schools.

The Town of Fort Myers Beach sits on Estero Island on the West Coast of Florida. This project proposes to address the problems for the sea turtles caused by improper lighting on Town of Fort Myers Beach utility poles. Lee County is awarded a one-time payment of $7,766,387 on behalf of the Town of Fort Myers Beach for the Turtle Safe Lighting Project.

Below is the project that will be funded under this funding agreement:

Turtle Safe Lighting:
The amber lights mitigate the harmful effects from the light generated by regular light bulbs have on the threatened and endangered, federal protected species of sea turtles during their reproductive phase. With the current lighting, sea turtle hatchlings can make their way onto roadways, especially Estero Blvd, Fort Myers Beach, FL. The project consists of the purchase and installation of up to 442 Visionaire LEP Amber Fixtures on Estero Boulevard, and the purchase and installation of up to 258 Cree LED Amber Fixtures on the Estero side streets.

III. SCOPE OF WORK

A. Funds have been allocated to the Recipient for the Turtle Safe Lighting Project. Funds shall be utilized in accordance with all local, state, and federal regulations.

B. Eligible costs include necessary permits, design costs, and the purchase and installation of amber lights on the public utility light poles on Estero Boulevard and the Estero side streets.

C. The project's measurable outcomes are the purchase and installation of up to 442 Visionaire LEP Amber Fixtures on Estero Boulevard, and the purchase and installation of up to 258 Cree LED Amber Fixtures on the Estero side streets as per the Design Drawings for the Turtle Safe Lighting project.

D. The Recipient shall provide an initial timeline. Table SW-1, "Initial Timeline and Estimated Allocation Schedule" or other similar instrument as approved by the Division may be used.

IV. TASK PRODUCTS

A. Per Scope-of-Work Item III.D, Recipient shall prepare an initial timeline with key milestone activities/tasks schedule, including estimated start and end dates for each activity. Table SW-1 may be used to meet this deliverable.

B. The Recipient shall provide the Division with copies of photographs of before and after site conditions to document site work progress and completed site work.

C. The Recipient shall provide the Division with the procurement documents, if the Recipient went out to bid for the projects listed and receipts for all purchases.

D. The Recipient shall provide the Division with product specifications for the light bulbs purchased.

E. The Recipient shall provide the Division with the final project report to demonstrate project completion by the Florida Power and Light Company.

V. FINANCIAL CONSEQUENCES

If Recipient fails to comply with any term of the grant, the Division shall take one or more of the following actions, as appropriate in the circumstances:

1. Temporarily withhold cash payments pending correction of the deficiency by the recipient;
2. Disallow all or part of the cost of the activity or action not in compliance;
3. Withhold further funding; or,
4. Take other remedies that may be legally available.

VI. SCHEDULE OF WORK

A. No later than 30 days after the agreement's execution date, the Recipient shall provide the Division with Task Product IV.A for review and approval. Failure to supply the required documentation, or disapproval of this documentation by the Division, shall result in denial or reduction of funds at the sole discretion of the Division.

B. By April 30, 2024 and at least on a quarterly basis thereafter, Recipient shall report on progress in relation to the initial timeline and submit an invoice for work accomplished in accordance with the Division approved cost allocation table referenced in Task Product IV.A.

C. By mutually agreed upon date(s), the Recipient shall provide the Division with Task Products IV.B through E for review and approval. Failure to supply the required documentation, or disapproval of this documentation by the Division, shall result in denial or reduction of funds at the sole discretion of the Division.

D. By March 31, 2025, the Recipient shall provide a copy of the certificate of occupancy or completion or other appropriate written acceptance of completed work, or certification letter from the civil engineer showing that work meets specification of design, close-out documentation and final payment invoice.

Table SW-1. Initial Timeline and Estimated Allocation Schedule

Project Name(s): Turtle Safe Lighting

PROJECT PHASE	Start Date	End Date	LAP Funds (FY 2023-2024)
Board Contract Approval			
Architectural & Engineering Services Firm Selection			
Site Survey and Soil Testing			
Spatial Needs Assessment			
Preliminary Design, 100% complete			
Permits			
Regulatory Review			
Bid Document(s) Development & Award			
Notice to Proceed/Mobilization			
Construction Project Management & Special Inspections			
Construction 25% Complete			
Construction 50% Complete			
Construction 100% Complete			
Sub-Totals		$7,766,387	
TOTAL Estimated Project Cost			

A/E - Architectural and Engineering; DEM – Division of Emergency Management; FY - Fiscal Year

Attachment B

Program Statutes and Regulations

Section 215.422, Florida Statutes	Payments, warrants, and invoices; processing time limits; dispute limitation; agency or judicial branch compliance
Section 215.97, Florida Statutes	Florida Single Audit Act
Section 215.971, Florida Statutes	Agreements funded with federal and state assistance
Section 216.347, Florida Statutes	Disbursement of grant and aids appropriations for lobbying prohibited
Section 216.3475, Florida Statutes	Maximum rate of payment for services funded under General Appropriations Act or awarded on a noncompetitive basis
Section 287.056, Florida Statutes	Purchases from purchasing agreement and state term contract
Section 287.057, Florida Statutes	Procurement of commodities or contractual services
CFO MEMORANDUM NO. 04 (2005-06)	Compliance Requirements for Agreements
Section 553.844, Florida Statutes	Requirements for Roofs and Opening Protection
SB 2500 (2023), ITEM 2676A	Requirements for Hurricane Recovery Grant Program

Attachment C

Statement of Assurances

To the extent the following provisions apply to this Agreement, the Recipient certifies that:

(a) It possesses legal authority to enter into this Agreement and to carry out the proposed program;

(b) Its governing body has duly adopted or passed as an official act of resolution, motion or similar action authorizing the execution of the hazard mitigation agreement with the Division of Emergency Management (DEM), including all understandings and assurances contained in it, and directing and authorizing the Recipient's chief administrative officer or designee to act in connection with the application and to provide such additional information as may be required;

(c) No member of or delegate to the Congress of the United States, and no Resident Commissioner, shall receive any share or part of this Agreement or any benefit. No member, officer, or employee of the Recipient or its designees or agents, no member of the governing body of the locality in which this program is situated, and no other public official of the locality or localities who exercises any functions or responsibilities with respect to the program during his tenure or for one year after, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds, for work be performed in connection with the program assisted under this Agreement. The Recipient shall incorporate, in all contracts or subcontracts a provision prohibiting any interest pursuant to the purpose stated above;

(d) All Recipient contracts for which the State Legislature is in any part a funding source, shall contain language to provide for termination with reasonable costs to be paid by the Recipient for eligible contract work completed prior to the date the notice of suspension of funding was received by the Recipient. Any cost incurred after a notice of suspension or termination is received by the Recipient may not be funded with funds provided under this Agreement unless previously approved in writing by the Division. All Recipient contracts shall contain provisions for termination for cause or convenience and shall provide for the method of payment in such event;

(e) It will comply with:

(2) Contract Work Hours and Safety Standards Act of 1962, 40 U.S.C. 327 et seq., requiring that mechanics and laborers (including watchmen and guards) employed on federally assisted contracts be paid wages of not less than one and one-half times their basic wage rates for all hours worked in excess of forty hours in a work week; and

(3) Federal Fair Labor Standards Act, 29 U.S.C. Section 201 et seq., requiring that covered employees be paid at least minimum prescribed wage, and also that they be paid one and one-half times their basic wage rates for all hours worked in excess of the prescribed workweek.

(f) It will comply with

(1) Title VI of the Civil Rights Act of 1964 (P.L. 88-352), and the regulations issued pursuant thereto, which provides that no person in the United States shall on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Recipient received Federal financial assistance and will immediately take any measures necessary to effectuate this assurance. If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Recipient, this assurance shall obligate the Recipient, or in the case of any transfer of such property, any transferee, for the period during which the real property or

structure is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits;

(2) Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101-6107) which prohibits discrimination on the basis of age or with respect to otherwise qualifies handicapped individuals as provided in Section 504 of the Rehabilitation Act of 1973;

(3) Executive Order 11246, as amended by Executive Orders 11375 and 12086, and the regulations issued pursuant thereto, which provide that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in all phases of employment during the performance of federal or federally assisted construction contracts; affirmative action to insure fair treatment in employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff/termination, rates of pay or other forms of compensation; and election for training and apprenticeship;

(g) It will establish safeguards to prohibit employees from using positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties pursuant to Section 112.313 and Section 112.3135, Florida Statutes;

(h) It will comply with the Anti-Kickback Act of 1986, 41 U.S.C. Section 51 which outlaws and prescribes penalties for "kickbacks" of wages in federally financed or assisted construction activities;

(i) It will comply with the provisions of 18 U.S.C. 594, 598, 600-605 (further known as the Hatch Act) which limits the political activities of employees;

(j) It will comply with the flood insurance purchase and other requirements of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4002-4107, including requirements regarding the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area having special flood hazards. The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance;

For sites located within Special Flood Hazard Areas (SFHA), the Recipient must include a FEMA Model Acknowledgement of Conditions of Mitigation of Property in a Special Flood Hazard Area with FEMA Grant Funds executed by the title holder with the closeout request verifying that certain SFHA requirements were satisfied on each of the properties. The Model Acknowledgement can be found at www.fema.gov/governmenta/grant/sfha_conditions.shtm

(k) It will require every building or facility (other than a privately owned residential structure) designed, constructed, or altered with funds provided under this Agreement to comply with the "Uniform Federal Accessibility Standards," (AS) which is Appendix A to 41 CFR Section 101-19.6 for general type buildings and Appendix A to 24 CFR, Part 40 for residential structures. The Recipient will be responsible for conducting inspections to ensure compliance with these specifications by the contractor;

(1) It will, in connection with its performance of environmental assessments under the National Environmental Policy Act of 1969, comply with Section 106 of the National Historic Preservation Act of 1966 (U.S.C. 470), Executive Order 11593, 24 CFR, Part 800, and the Preservation of Archaeological and Historical Data Act of 1966 (16 U.S.C. 469a-l, et seq.) by:

(1) Consulting with the State Historic Preservation Office to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR, Section 800.8) by the proposed activity; and

(2) Complying with all requirements established by the State to avoid or mitigate adverse effects upon such properties.

(3) Abiding by the terms and conditions of the "Programmatic Agreement Among the Federal Emergency Management Agency, the Florida State Historic Preservation Office, the Florida Division of Emergency Management and the Advisory Council on Historic Preservation, (PA)" which addresses roles and responsibilities of Federal and State entities in implementing Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. 470(£), and implementing regulations in 36 CFR, Part 800.

(4) When any of the Recipient's projects funded under this Agreement may affect a historic property, as defined in 36 CFR, Part 800.16 (l)(1), the Federal Emergency Management Agency (FEMA) may require the Recipient to review the eligible scope of work in consultation with the State Historic Preservation Office (SHPO) and suggest methods of repair or construction that will conform with the recommended approaches set out in the Secretary of Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings 1992 (Standards), the Secretary of the Interior's Guidelines for Archeological Documentation (Guidelines) (48 Federal Register 44734-37), or any other applicable Secretary of Interior standards. If FEMA determines that the eligible scope of work will not conform with the Standards, the Recipient agrees to participate in consultations to develop, and after execution by all parties, to abide by, a written agreement that establishes mitigation and recondition measures, including but not limited to, impacts to archeological sites, and the salvage, storage, and reuse of any significant architectural features that may otherwise be demolished.

(5) The Recipient agrees to notify FEMA and the Division if any project funded under this Agreement will involve ground disturbing activities, including, but not limited to: subsurface disturbance; removal of trees; excavation of footings and foundations, and installation of utilities (such as water, sewer, storm drains, electrical, gas, leach lines and septic tanks) except where these activities are restricted solely to areas previously disturbed by the installation, replacement or maintenance of such utilities. FEMA will request the SHPO's opinion on the potential that archeological properties may be present and be affected by such activities. The SHPO will advise the Recipient on any feasible steps to be accomplished to avoid any National Register eligible archeological property or will make recommendations for the development of a treatment plan for the recovery or archeological data from the property.

If the Recipient is unable to avoid the archeological property, develop, in consultation with SHPO, a treatment plan consistent with the Guidelines and take into account the Advisory Council on Historic Preservation (Council) publication "Treatment of Archeological Properties". The Recipient shall forward information regarding the treatment plan to FEMA, the SHPO and the Council for review. If the SHPO and the Council do not object within fifteen (15) calendar days of receipt of the treatment plan, FEMA may direct the Recipient to implement the treatment plan. If either the Council or the SHPO object, Recipient shall not proceed with the project until the objection is resolved.

(6) The Recipient shall notify the Division and FEMA as soon as practicable: (a) of any changes in the approved scope of work for a National Register eligible or listed property; (b) of all changes to a project that may result in a supplemental DSR or modify a HMGP project for a National Register eligible or listed property; (c) if it appears that a project funded under this Agreement will affect a previously unidentified property that may be eligible for inclusion in the National Register or affect

a known historic property in an unanticipated manner. The Recipient acknowledges that FEMA may require the Recipient to stop construction in the vicinity of the discovery of a previously unidentified property that may eligible for inclusion in the National Register or upon learning that construction may affect a known historic property in an unanticipated manner. The Recipient further acknowledges that FEMA may require the Recipient to take all reasonable measures to avoid or minimize harm to such property until FEMA concludes consultation with the SHPO. The Recipient also acknowledges that FEMA will require, and the Recipient shall comply with, modifications to the project scope of work necessary to implement recommendations to address the project and the property.

(7) The Recipient acknowledges that, unless FEMA specifically stipulates otherwise, it shall not receive funding for projects when, with intent to avoid the requirements of the PA or the NHP A, the Recipient intentionally and significantly adversely affects a historic property, or having the legal power to prevent it, allowed such significant adverse effect to occur.

(m) It will comply with Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-1683 and 1685-1686) which prohibits discrimination on the basis of sex;

(n) It will comply with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, (42 U.S.C. 4521-45-94) relating to nondiscrimination on the basis of alcohol abuse or alcoholism;

(o) It will comply with 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records;

(p) It will comply with Lead-Based Paint Poison Prevention Act (42 U.S.C. 4821 et seq.) which prohibits the use of lead-based paint in construction of rehabilitation or residential structures;

(q) It will comply with the Energy Policy and Conservation Act (P.L. 94-163; 42 U.S.C. 6201-6422), and the provisions of the State Energy Conservation Plan adopted pursuant thereto;

(r) It will comply with the Laboratory Animal Welfare Act of 1966, (7 U.S.C. 2131-2159), pertaining to the care, handling, and treatment of warm-blooded animals held for research, teaching, or other activities supported by an award of assistance under this Agreement;

(s) It will comply with Title VIII of the Civil Rights Act of 1968, (42 U.S.C 2000c and 42 U.S.C. 3601-3619), as amended, relating to non-discrimination in the sale, rental, or financing of housing, and Title VI of the Civil Rights Act of 1964 (P.L. 88-352), which prohibits discrimination on the basis of race, color or national origin;

(t) It will comply with the Clean Air Act of 1955, as amended, 42 U.S.C. 7401-7642;

(u) It will comply with the Clean Water Act of 1977, as amended, 42 U.S.C. 7419-7626

(v) It will comply with the endangered Species Act of 1973, 16 U.S.C. 1531-1544;

(w) It will comply with the Intergovernmental Personnel Act of 1970, 42 U.S.C. 4728-4763;

(x) It will assist the awarding agency in assuring compliance with the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 270;

(y) It will comply with environmental standards which may be prescribed pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321-4347;

(z) It will assist the awarding agency in assuring compliance with the Preservation of Archeological and Historical Preservation Act of 1966, 16 U.S.C. 469a, et seq.;

(aa) It will comply with the Rehabilitation Act of 1973, Section 504, 29 U.S.C. 794, regarding non-discrimination;

(bb) It will comply with the environmental standards which may be prescribed pursuant to the Safe Drinking Water Act of 1974, 42 U.S.C. 300f-300j, regarding the protection of underground water sources;

(cc) It will comply with the requirements of Titles II and III of the Uniform Relocation Assistance and Property Acquisition Policies Act of 1970, 42 U.S.C. 4621-4638, which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or Federally assisted programs;

(dd) It will comply with the Wild and Scenic Rivers Act of 1968, 16 U.S.C. 1271-1287, related to protecting components or potential components of the national wild and scenic rivers system;

(ee) It will comply with the following Executive Orders: EO 11514 (NEPA); EO 11738 (violating facilities); EO 11988 (Floodplain Management); EO 11990 (Wetlands); and EO 12898 (Environmental Justice);

(ff) It will comply with the Coastal Barrier Resources Act of 1977, 16 U.S.C. 3510;

(gg) It will assure project consistency with the approved State program developed under the Coastal Zone Management Act of 1972, 16 U.S.C. 1451-1464; and

(hh) It will comply with the Fish and Wildlife Coordination Act of 1958, 16 U.S.C. 661-666.

(ii) With respect to demolition activities, it will:

(1) Create and make available documentation sufficient to demonstrate that the Recipient and its demolition contractor have sufficient manpower and equipment to comply with the obligations as outlined in this Agreement.

(2) Return the property to its natural state as though no improvements had ever been contained thereon.

(3) Furnish documentation of all qualified personnel, licenses and all equipment necessary to inspect buildings located in the Recipient's jurisdiction to detect the presence of asbestos and lead in accordance with requirements of the U.S. Environmental Protection Agency, the Florida Department of Environmental Protection and the County Health Department.

(4) Provide documentation of the inspection results for each structure to indicate:

a. Safety Hazard Present
b. Health Hazards Present
c. Hazardous Materials Present

(5) Provide supervision over contractors or employees employed by the Recipient to remove asbestos and lead from demolished or otherwise applicable structures.

(6) Leave the demolished site clean, level and free of debris.

(7) Notify the Division promptly of any unusual existing condition which hampers the contractor's work.

(8) Obtain all required permits.

(9) Provide addresses and marked maps for each site where water wells and septic tanks are to be closed along with the number of wells and septic tanks located on each site. Provide documentation of closures.

(10) Comply with mandatory standards and policies relating to energy efficiency which are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).

(11) Comply with all applicable standards, orders, or requirements issued under Section 112 and 306 of the Clean Air Act (42 U.S.C. 1857h), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and the U.S. Environmental Protection Agency regulations (40 CFR, Part 15 and 61). This clause shall be added to any subcontracts.

(12) Provide documentation of public notices for demolition activities.

Attachment D

Warranties and Representations

Financial Management

Recipient's financial management system must include the following:

(1) Accurate, current and complete disclosure of the financial results of this project or program

(2) Records that identify the source and use of funds for all activities. These records shall contain information pertaining to grant awards, authorizations, obligations, unobligated balances, assets, outlays, income and interest.

(3) Effective control over and accountability for all funds, property and other assets. Recipient shall safeguard all assets and assure that they are used solely for authorized purposes.

(4) Comparison of expenditures with budget amounts for each Request For Payment. Whenever appropriate, financial information should be related to performance and unit cost data.

(5) Written procedures to determine whether costs are allowed and reasonable under the provisions of the applicable OMB cost principles and the terms and conditions of this Agreement.

(6) Cost accounting records that are supported by backup documentation.

Competition

All procurement transactions shall be done in a manner to provide open and free competition. The Recipient shall be alert to conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure excellent contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such procurements. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the Recipient, considering the price, quality and other factors. Solicitations shall clearly set forth all requirements that the bidder or offeror must fulfill in order for the bid or offer to be evaluated by the Recipient. Any and all bids or offers may be rejected when it is in the Recipient's interest to do so.

Codes of Conduct.

The Recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by public grant funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the Recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. The standards of conduct shall provide for disciplinary actions to be applied for violations of the standards by officers, employees, or agents of the Recipient.

Business Hours

The Recipient shall have its offices open for business, with the entrance door open to the public, and at least one employee on site, from ____

____

Licensing and Permitting

All subcontractors or employees hired by the Recipient shall have all current licenses and permits required for all of the particular work for which they are hired by the Recipient.

Attachment E

Certification Regarding
Debarment, Suspension, Ineligibility
And Voluntary Exclusion

Subcontractor Covered Transactions

(1) The prospective subcontractor, ____________________________, of the Recipient certifies, by submission of this document, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the Recipient's subcontractor is unable to certify to the above statement, the prospective subcontractor shall attach an explanation to this form.

SUBCONTRACTOR:

____

By: ____________________________ Signature	________________________________ Recipient's Name
________________________________ Name and Title	________________________________ DEM Contract Number
________________________________ Street Address	________________________________ Project Number
________________________________ City, State, Zip	
________________________________ Date	

ATTACHMENT F
FOREIGN COUNTRY OF CONCERN AFFIDAVIT –
PERSONAL IDENTIFYING INFORMATION CONTRACT

Section 287.138, Florida Statutes, prohibits a Florida "Governmental entity"[1] from entering into or extending contracts with any other entity whereby such a contract, or extension thereof, could grant the other entity access to an individual's personal identifying information if that entity is associated with a "Foreign Country of Concern."[2] Specifically, section 287.138(2), Florida Statutes, prohibits such contracts with any entity that is owned by the government of a Foreign Country of Concern, any entity in which the government of a Foreign Country of Concern has a "controlling interest,"[3] and any entity organized under the laws of or which has its principal place of business in a Foreign Country of Concern.

As the person authorized to sign on behalf of Recipient, I hereby attest that the company identified below in the section entitled "Recipient" is not an entity owned by the government of a Foreign Country of Concern, no government of a Foreign Country of Concern has a controlling interest in the entity, and the entity has not been organized under the laws of or has its principal place of business in a Foreign Country of Concern.

I understand that pursuant to section 287.138, Florida Statutes, I am submitting this affidavit under penalty of perjury.

Recipient Name: ______________________________

Recipient FEIN: ______________

Recipient's Authorized Representative Name and Title: ______________________________

Address: ______________________________

City:______________ State:______________ Zip: ______________

Phone Number: ______________________________

Email Address:______________________________

Certified By: ______________________________

AUTHORIZED SIGNATURE

Print Name and Title: ______________________________

Date: ______________

[1] As defined in Section 287.138 (1)(d), Florida Statutes.
[2] As defined in Section 287.138 (1)(c), Florida Statutes.
[3] As defined in Section 287.138 (1)(a), Florida Statutes.

MODIFICATION TO STATE FUNDED LEGISLATIVE APPROPRIATION PROGRAM GRANT BETWEEN THE DIVISION OF EMERGENCY MANAGEMENT AND LEE COUNTY

This Modification is made and entered into by and between the State of Florida, Division of Emergency Management ("Division"), Lee County, and the Town of Fort Myers Beach, to modify Contract Number **D1496** ("Agreement").

WHEREAS, the Division and Lee County entered into the above referenced Funding Agreement, pursuant to which Lee County acted as a pass-through entity for legislatively appropriated funds for the benefit of the Town of Fort Myers Beach;

WHEREAS, these legislatively appropriate funds are managed by the Division; and

WHEREAS, the parties and the Town of Fort Myers Beach desire to modify the Agreement to substitute Lee County with the Town of Fort Myers Beach; and,

WHEREFORE, in consideration of mutual promises of the parties contained herein, the parties agree as follows:

1. The Town of Fort Myers Beach shall substitute Lee County as a party to the Agreement and assume all terms, duties, rights, and responsibilities therein.
2. Lee County shall no longer be a party and shall relinquish all responsibilities under this Agreement to the Town of Fort Meyers Beach.
3. All provisions of this Agreement remain in full force and effect and are to be performed at the level specified in the Agreement.

IN WITNESS WHEREOF, the parties have executed this Modification as of the dates set out below.

LEE COUNTY

By: ______________________________

Name and Title: David W. Harner II County Manager

Date: 1-22-24

TOWN OF FORT MYERS BEACH

By: ______________________________

Name and Title: ______________________________

Date: ______________________________

DIVISION OF EMERGENCY MANAGEMENT

By: ______________________________

Name and Title: **Kevin Guthrie, Director**

Date: 01-19-2024

Town of Fort Myers Beach
Agenda Item Summary

Blue Sheet Number: **2024-1432**

1. **Requested Motion:**

Meeting Date: February 20, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, TO RATIFY AND APPROVE A CONTRACT AGREEMENT WITH FPL ENERGY SERVICES, INC. TO INSTALL ISLAND-WIDE SEA TURTLE FRIENDLY STREET LIGHTING IN THE AMOUNT OF $7,766,387; AND PROVIDING FOR AN EFFECTIVE DATE

Why the action is necessary:
This Resolution ratifies the Town's action regarding acceptance and execution of an island-wide sea turtle friendly street lighting project.

What the action accomplishes:
Provides installation of turtle friendly street lighting across the island in response to a long-standing town lighting project.

2. **Agenda:**	3. **Requirement/Purpose:**	4. **Submitter of Information:**
CONSENT AGENDA	Resolution	Andy Hyatt, Town Manager, Frankie Kropacek, Operations & Compliance Director

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5. **Background:**

The Town has been involved with a long-standing island-wide street lighting project to address streetlights across the island. The current statement of work (SOW) will provide for installation of lighting along Estero Boulevard, Town side streets, and the Downtown area. The project is expected to be completed early next year.

During the 2023 Legislative Session, the Florida legislature appropriated $350,000,000 for the Hurricane Ian and Nicole Grant Recovery Program to help local governments mitigate local and county revenue losses and operating deficits; make infrastructure repairs and replacements including road and sewer and water facilities; conduct beach nourishment; and complete debris removal.

On November 7, 2023, the Lee County Board of Commissioners accepted an award from the Florida Division of Emergency Management that included a grant sub-award of $7,766,387 to be provided to the Town of Fort Myers Beach as a sub-recipient through Lee County acting as a pass-through-entity for installation of sea turtle lights on Estero Boulevard and its side streets.

The Florida Division of Emergency Management and Lee County agreed to amend the Grant Agreement so that the $7,766,387 grant for sea turtle lighting for Estero Boulevard and its side streets would be awarded directly to the Town of Fort Myers Beach rather than through Lee County, thus eliminating Lee County as the pass-through-entity.

With this funding in place, the Town is able to proceed with this project by ratifying the contract with FP&L Energy Services, Inc.

Attachments:

1. 24-38 Ratifying FP&L Sea Turtle Lighting Contract
2. Revised FPL agreement

Financial Impact:
The total cost of the sea turtle friendly lighting project is $7,766,387. The project will be fully funded through a state LAP grant from the Florida Department of Emergency Management.

6. **Alternative Action**
Do not ratify the action of the Town regarding contracting with FPL Energy Services, Inc.

7. **Management Recommendations**:
Staff recommends ratification of this contract.

8. **Recommended Approval**:

Jason Freeman, Legislative Liaison / Deputy Town Clerk	Created/Initiated - 2/12/2024
Frankie Kropacek, Operations & Compliance Director	Approved - 2/13/2024
Nancy Stuparich, Town Attorney	Approved - 2/15/2024
Amy Baker, Town Clerk	Approved - 2/15/2024
Andy Hyatt, Town Manager	Final Approval - 2/15/2024

RESOLUTION NUMBER 24-38

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, TO RATIFY AND APPROVE A CONTRACT AGREEMENT WITH FPL ENERGY SERVICES, INC. TO INSTALL ISLAND-WIDE SEA TURTLE FRIENDLY STREET LIGHTING IN THE AMOUNT OF $7,766,387; 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, island-wide sea turtle friendly lighting has been a long-standing need of the Town; and

WHEREAS, the lighting project will be fully funded through a state funded LAP grant from the Florida Department of Emergency Management; and

WHEREAS, FP&L Energy Services, Inc. as the energy provider of the island is ideally suited to provide sea turtle-friendly lighting.

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

<u>Section 1.</u> 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.

<u>Section 2.</u> This Resolution ratifies and approves the Town Manger's execution of a contract agreement with FP&L Energy Services, Inc. to provide sea turtle friendly lighting for Estero Boulevard and its side streets in the amount of $7,766,387.

<u>Section 3.</u> 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 a motion by Council Member ___________ and seconded by Council Member ____________, 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 ___
Scott Safford, Council Member ___
Karen Woodson, Council Member ___

ADOPTED this 20th day of February 2024 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 February 2024.

FPL Energy Services

License No. CGC062174

Statement of Work

Customer Name	Date (mm-dd-yy)	(Area Code) Phone Number	Email address
Town of Fort Myers Beach	11.15.23	239.765.0202	fkropacek@fmbgov.com

Street Address	City	Zip Code
2525 Estero Boulevard	Fort Myers Beach, FL.	33931

This Statement of Work ("SOW"), effective the date last signed below, between the customer named above ("Customer") and FPL Energy Services, Inc. ("Company"), is governed by the Services Terms and Conditions attached hereto as Attachment A ("Terms", together with the SOW, the "Agreement").

Lighting Scope of Equipment:

Service Location	Materials	Quantity	Description
Estero Blvd	Visionaire LED Amber Fixture	442	Visionaire -BLX-II-6
Estero Blvd	Hapco Lighting Poles	442	Breakaway Embed Poles
Estero Side Streets	Cree LED Amber Fixture	258	RSWX-A-HT
Estero Side Streets	Lighting Poles	258	See Design Drawing (as defined below)
Estero Side Streets	Arms	258	See Design Drawing (as defined below)
Town Square	Holophane Berms Fixtures	28	GBLF2 P10 AMB MVOLT FC3 QSM BK PR7E
Estero Blvd and Side Streets and Town Square	Smart Nodes	728	See Design Drawing (as defined below)
Estero Project	1.5 inch Lighting Conduit	24.62 Miles	130,000 Linear Feet (Est.)
Estero Project	6 & 10 gauge Lighting Conductor	24.62 Miles	130,000 Linear Feet (Est)
Estero Blvd	Directional Boring	13.25 Miles	70,000 (Est.)
Estero Blvd Side Streets	Directional Boring	11.36 Miles	60,000 (Est.)

Implementation Price: $7,766,387.00 The Implementation Price will be invoiced by Company pursuant to the table below. The Agreement has a not-to-exceed Implementation Price of $7,766,387.00. Implementation Price will not exceed this amount without an executed Change form mutually agreed upon between the parties.

- Agreement Execution: 25% of the Implementation Price ($1,941,600.00)
- Receipt of Estero Blvd Materials: 25% of the Implementation Price ($1,941,600.00)
- Receipt of Estero Blvd Side Streets Materials: 25% of the Implementation Price ($1,941,600.00)

- Final Acceptance Date: 25% of the Implementation Price ($1,941,587.00)

Company Responsibilities for Construction and Installation of the Equipment. Company, either itself or though its Subcontractor(s), shall install the Equipment in accordance with the Design Drawing (as defined below), including the following:

a) Provide labor and equipment to install the above Equipment in accordance with a detailed site plan design drawing with locations of fixtures, specifications etc. ("Design Drawing") to be provided by Company to Customer within 45 days after Company's receipt of 25% of Implementation Price per the above table, provided that a mutually agreed upon Change order will be required between the parties if the scope of Equipment is to be increased pursuant to the Design Drawing;
b) Provide from electrical point of service, the required number of electrical disconnects, meters, load centers, conduit and conductor, handholds, poles, arms, fixtures, nodes and any miscellaneous electrical hardware needed to complete installation of the system.
c) Make all necessary electrical connections to supply power to the Equipment;
d) Aim fixtures to create appropriate light levels per the Design Drawing;
e) Call for locates of underground utilities such as power, water, and gas (Excludes site-specific items such as irrigation systems, customer-owned power lines, customer-owned water lines, and customer-owned gas lines);
f) Install inline fused disconnects in each streetlight pole handhole or in junction box per the Design Drawing;
g) Provide all wire, conductor to connect the secondary electrical back bone to meter location;
h) Provide all necessary connectors in the handhold and in the pole base with inline fuses and connectors required to make the necessary connection to power and ground system.
i) Provide storage containers for materials (including driver enclosure boxes) as needed. Provide waste dumpsters on site for project waste;
j) Provide labor, equipment, and materials to off load Equipment at jobsite;
k) Ground the Equipment on poles per the NFPA 780 and NEC code;
l) Comply with applicable environmental laws and regulations regarding handling of hazardous substances and take appropriate measures to ensure the safe handling of such substances;
m) Provide and maintain such signs, barricades and warning lights as are necessary to always warn and protect the public, if affected by work operations;
n) Incidental related work shall include traffic control, safety checks, verification of supply voltage, and verification and updates to a streetlight database;
o) Return Jobsite to existing condition prior to installation of Equipment; and
p) Provide maintenance pursuant to Section 4.4 of the Services Terms and Conditions for the term of ten (10) years from the Final Acceptance Date ("Maintenance Service Term") for the LED Amber Fixture and Smart Nodes as specified in the Lighting Scope of Equipment table above, in a cost to Company not to exceed three-hundred thousand U.S. Dollars ($300,000) over the Maintenance Service Term.

Customer Responsibilities. Customer will:

a. Provide reasonable access to each Service Location for the design, delivery, and installation of the Equipment, including road and parking lot closures as necessary for Company deliver and installation of Equipment;
b. Provide and assist with all permits for service locations within Customers jurisdiction within 30 days of proper submittal by Company;
c. Make appropriate Customer personnel available as reasonably requested by the Company to assist the Company in performing Services;
d. Provide power to the point of installation by creating a service account with Florida Power & Light Company (FPL) of all Equipment
e. Provide Company with access to the above-referenced electrical service;
f. Provide adequate secured laydown area to protect delivered products from theft, vandalism, or damage prior to the completion of installation of the Equipment;
g. Provide structural engineering analysis upon request of Company;
h. Provide information on banners, scoreboards, speakers, or other objects that will hang below Equipment mounting areas, prior to commencement of installation of Equipment; and
i. Provide information on required Equipment mounting height from floor, as well as scoreboard dimensions and height, prior to commencement of installation of Equipment.

By signing below, Customer authorizes and agrees to be bound by the terms of the Agreement.

Customer/Agent (Please Print)	Relationship to Customer	Customer Signature	Customer Signature Date
Dan Allers	Mayor	Dan Allers Dan Allers (Nov 22, 2023 06:35 EST)	Nov 22, 2023
Company - Printed Name	**Company - Title**	**Company Approval Signature**	**Company Signature Date**
Town of Fort Myers Beach			

Attachment A

Services Terms and Conditions

1.0 Definitions.

1.1 Change means a request by the Customer that changes the Services, which may consist of modifications or additions to, or deletions from, any Services to be performed or materials to be provided by the Company, arising under this Agreement.

1.2 Confidential Information shall mean all information which is disclosed to the Customer or the Customer's agents in connection with this Agreement and including all reports, analyses, notes or other information that are based on, contain or reflect any such Confidential Information; however, Confidential Information shall not include the following: (a) information which is or becomes publicly available other than as a result of a violation of this Agreement; (b) information which is or becomes available on a non-confidential basis from a source which is not known to the Customer (after due inquiry) to be prohibited from disclosing such information pursuant to a legal, contractual or fiduciary obligation to the Company; or (c) information which the Customer can demonstrate was legally in its possession prior to disclosure by the Company.

1.3 Delayed Payment Rate means a rate of interest equal to one-and-one-half percent (1½%) per month, which applies to any unpaid amounts which the Customer may become obligated to pay to the Company under the terms of this Agreement.

1.4 Equipment means the equipment set forth in the SOW.

1.5 Force Majeure Event means an event which is beyond the reasonable control of, and not a result of the fault or negligence of, the affected Party, including but not limited to, acts of God, fire, flood, windstorm, war, terrorism, , epidemics, quarantine regulation, sabotage, revolution, acts of any government or governmental agency, strikes or other labor difficulty, insurrection, riot, strikes, telecommunications failures, unusually severe weather conditions by comparison with the ten-year county average, to the extent that performance of any such obligation is prevented or delayed by any such cause, existing or future.

1.6 Implementation Price means the cost to the Customer for the Services as set forth in the SOW. The Implementation Pirce is full compensation for Services and includes all federal, state and local taxes, if any, including sales, use and excise taxes, assessed with respect to the Services or with respect to the furnishing of equipment and materials thereunder.

1.7 Party means either Company or Customer.

1.8 Parties mean collectively Company and Customer.

1.9 Service Location means a facility legally owned or operated by the Customer at which the Customer desires the Company to perform Services.

1.10 Services mean the services provided or proposed to be provided by the Company to design, construct, install, maintain or otherwise implement the Equipment at specified Service Locations in accordance with the terms of a SOW.

1.11 Statement of Work or SOW means a document signed by both parties setting forth the scope of Services to be performed by Company at the identified Service Locations.

1.12 Subcontractor means a third-party subcontractor who is retained by the Company to perform installation or construction work at the Customer's Service Location(s) pursuant to a SOW.

2.0 Scope and Term. Subject to the terms and conditions of this Agreement, the Company agrees to furnish to the Customer, and the Customer agrees to purchase and receive from the Company, certain Services at the Customer's specified Service Locations pursuant to a SOW that is attached to or references this Agreement. This Agreement shall commence upon Effective Date and shall continue in effect until completion of the Services.

3.0 Final Acceptance and Payment.

3.1 Inspections and Notice of Completion. During the performance of Services under this Section 3, the Customer shall have the right to conduct reasonable inspections of the work of the Company or any Subcontractor at any time upon reasonable prior notice. Upon completion of construction and installation of the Equipment in accordance with the requirements of the applicable SOW, Company shall deliver to Customer a Certificate of Final Acceptance in the form set forth in Schedule A. If the Equipment are found to be complete, the Customer shall execute and return to the Company a Certificate of Final Acceptance within twenty (20) days following receipt by the Customer of the Certificate of Final Acceptance. If, upon inspection by the Customer, the Equipment are not found to be complete, then the Customer shall so notify the Company within such twenty (20) day period, and the Company shall promptly perform any necessary corrections and repairs. When the Company has completed such corrections and repairs, it shall again issue a Certificate of Final Acceptance to the Customer, and the foregoing procedure shall be repeated until such time as the Customer shall execute and return the Certificate of Final Acceptance; provided, however, that a failure of the Customer to respond altogether within any such twenty (20)-day period following the receipt of a the Certificate of Final Acceptance from the Company shall be deemed approval by Customer of the Certificate of Final Acceptance. The date on which the Customer approves, or is deemed to have approved, the Final Acceptance Certificate for the Equipment shall be the Final Acceptance Date for such Equipment ("Final Acceptance Date").

3.2 Payment Unconditional Upon Final Acceptance. The Customer acknowledges that, upon the Final Acceptance Date of the Equipment, the Customer's payment obligation of the Implementation Price set forth in the SOW for the Equipment is absolute, unconditional and irrevocable and shall not be affected by any circumstance whatsoever, including, without limitation, any set-off, abatement, counterclaim, suspension, recoupment, reduction, rescission, defense or other right. The Customer acknowledges that, upon the Final Acceptance Date of the Equipment, the Customer's recourse for any subsequent failure or deficiency of the Equipment is to seek and use the provisions of the warranty, in accordance with Section 4, Warranty, prior to the pursuance of further legal action.

3.3 Equipment Responsibility. Unless otherwise mutually agreed to by the Parties in the SOW, the Company assumes no responsibility for performance or maintenance of Equipment, which are to be insured by the Customer.

3.4 Training. If applicable, and if set forth in a SOW, the Company shall provide on-site training for a reasonable number of the Customer's operating personnel with respect to completed Equipment, and the Customer shall assist in such training, all as more fully specified in the SOW. Unless otherwise provided in the SOW, such training shall be conducted with respect to the Equipment following the Final Acceptance Date of the Equipment.

3.5 Implementation Price Payment. Customer shall pay all invoices received from the Company pursuant to Sections 1.7 and 3.2 within thirty (30) days following receipt of the invoice. Any overdue payment shall bear interest at the Delayed Payment Rate from the date such payment is due until and including the date of payment.

4.0 Warranty and Maintenance

4.1 Equipment Warranties. The Equipment to be installed pursuant to the SOW shall be protected by the retail seller and/or original equipment manufacturer written warranties covering parts and equipment performance as specified in and for the warranty periods set forth in Attachment B.

4.2 Labor Warranties. The Company warrants for a period of one (1) year following the Final Acceptance Date of the Equipment that all Services performed under this Agreement complies with customary, reasonable and prudent standards of care in accordance with standards in the industry and are performed in a professional manner and consistent with any Customer supplied specifications and standards. The Customer shall promptly notify the Company in writing of the discovery during the applicable warranty period of any claim against the Company's warranties under this Section 4.2. As the Customer's sole and exclusive remedy for any such claim against the Company's warranties, the Company shall, at its own cost and expense, as soon as reasonably possible following the Company's receipt of notice of any claim against any warranty or the Company's otherwise obtaining knowledge of any claim of warranty, cause the repair of defective construction workmanship and/or provide at the Company's expense any changes, modifications or additions to the work which the Company determines necessary due to a failure to perform any Services hereunder in accordance with the standards set forth in this Section 4.2. All costs incidental to the Company's rework and testing thereof shall be borne by the Company. The Company shall use reasonable efforts to perform such remedial actions and make any tests in a timely manner and at such times so as to minimize disruption of normal operations at the Customer's Service Location. The liabilities and obligations of the Company under Section 4.2 do not extend to any repairs, adjustments, alterations, replacements or maintenance which were not approved in writing by the Company or may be required as a result of wear and tear in the operation or use of the Equipment, or as a result of the Customer's failure to operate or maintain the Equipment in accordance with the operating manuals or instructions supplied by the Company, or in accordance with the training provided by the Company to Customer's personnel.

DA

Customer Initials: ______

Attachment A

Services Terms and Conditions

4.3 NO IMPLIED WARRANTIES. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, THE COMPANY MAKES NO WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, CONCERNING THE SERVICES OR ANY EQUIPMENT, AND THE COMPANY DISCLAIMS ANY WARRANTY IMPLIED BY LAW, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND IMPLIED WARRANTIES OF CUSTOM OR USAGE. THE COMPANY MAKES NO WARRANTIES OR GUARANTEES OF ANY NATURE WHATSOEVER CONCERNING THE ACTUAL REDUCTION IN THE CUSTOMER'S ENERGY USAGE AS A RESULT OF THE INSTALLATION AND OPERATION OF ANY EQUIPMENT.

4.4 Maintenance. During the Maintenance Service Term and at its expense, Company shall maintain the applicable portion of the Equipment (as specified in the SOW) in good operating condition. Company's maintenance responsibilities do not include (i) repair of damage to the Equipment due to improper usage, acts or omissions of Customer or third persons (other than Company or its subcontractors) or other risk of loss or damage for which Customer is responsible under the Agreement, or (ii) any maintenance, repair, or adjustments to the Equipment necessitated by a Casualty as defined in Section 5.2, or (iii) any repair or replacement of Equipment, or re-installation costs related thereto, as applicable, not covered by the Equipment warranty set forth in Section 4.1. If a required repair is Customer's responsibility under the Agreement, Customer shall perform such repair in accordance with Company's written instructions or, at Company's election, reimburse Company for the cost of the repair. If such repair is Company's responsibility under the Agreement, Company shall commence repair within five (5) business days of its receipt of notification from the electronic monitoring devices of the Equipment, and complete such repair within a commercially reasonable period of time not to exceed thirty (30) days from the date of electronic notification; provided, however, that (i) if such repair cannot be completed with commercially reasonable efforts within such period, the period shall be extended to forty-five (45) days or as otherwise agreed to between the Parties in writing, and (ii) if the failure entails a manufacturing defect that involves a significant portion of the Equipment then the Company's period of performance will be extended to a commercially reasonable period of time considering the totality of the circumstances . All replacements of, and alterations to, the Equipment by Company or as directed by Company will be with like-kind equipment. All replacements of, and alterations or additions to, the Equipment by either Party shall become part of the Equipment. The Customer shall not move, modify, remove, adjust, alter or change in any material way the Equipment, or any part thereof, during the term of the Agreement, without prior written direction or approval by Company, except in the event of an occurrence reasonably deemed by the Customer or Company to constitute a bona fide emergency.

5.0 Limitations of Liability and Risk of Loss.

5.1 Limitation of Liability. Neither Party shall be liable to the other Party for special, indirect, incidental, exemplay, consequential or punitive damages, including lost profits, even if the Party has been advised that such damages are possible. Except with respect to (i) indemnity obligations under this Agreement related to third party claims, and (ii) Company's warranty obligations under Section 4, Company's aggregate liability for direct damages shall not exceed ten percent (10%) of the fees paid or payable by Customer for the Services giving rise to such damages.

5.2 Risk of Loss. Customer shall bear all risk of loss, damage or theft of any kind with respect to all or any part of a Equipment located at a Service Location ("Casualty"), and Customer shall indemnify and pay Company for the repair or replacement of any Equipment or component subject to Casualty, unless such Casualty is caused by Company's or is subcontractor's willful misconduct or gross negligence. Any such Casualty directly caused by Company or its subcontractor shall be the responsibility of Company. Customer shall notify Company in writing of any Casualty within 5 days of its actual knowledge thereof and, if Customer is responsible for such Casualty under the Agreement, Customer shall at the option of Company: (a) permit Company to repair the Equipment, at Customer's cost, to good repair, condition and working order; (b) place the Equipment in good repair, condition and working order; or (c) replace the Equipment or Equipment component with a like-kind Equipment or Equipment component in a condition acceptable to Company, whereupon such Equipment or Equipment component shall be subject to the Agreement and be deemed the Equipment for purposes hereof. Company shall apply the proceeds of a Casualty received by Company toward the replacement or repair of the Equipment or the obligations of Customer hereunder. If Company elects to repair or replace such Casualty, it shall do so within the time periods specified in Section 4.4, and Customer shall, within thirty (30) days following demand, pay Company's reasonable charges therefor. The failure of the Equipment to operate in part or in whole due to a cause for which Customer is responsible under the Agreement shall not release Customer of any of its obligations hereunder or entitle Customer to any abatement, set-off, or withholding.

6.0 Access and Information.

6.1 Customer Cooperation. The Customer shall use reasonable efforts to assist the Company in performing the Services contemplated by this Agreement, including providing reasonable access to the Customer's Service Location(s), providing information concerning the Service Location(s), making appropriate Customer personnel available if requested by the Company to assist the Company in performing such Services, and taking any other actions the Company may reasonably request from time to time to achieve the purposes and intent of this Agreement.

6.2 Access to Service Locations. Upon the request of the Company, the Customer shall provide the Company and its Subcontractors with reasonable access to the Service Location(s) to enable the Company to perform all Services hereunder and to verify and confirm the operation of any installed Equipment following the Final Acceptance Date. The Company also shall have access to the Service Location(s) during the warranty period specified in Section 5 for purposes of performing its obligations thereunder. The Customer shall provide the Company with adequate storage and laydown areas at the Service Location(s), as applicable, during the installation of Equipment and shall make available any construction power and other utilities required by the Company and its Subcontractors to perform the Services. The Company and its Subcontractors shall observe all of the Customer's safety and security procedures at the Service Location(s), to the extent made known to the Company, and shall not unreasonably disturb or interrupt the Customer's operations at such location(s).

6.3 Requests for Information. The Customer shall promptly comply with all reasonable requests by the Company for information concerning the Service Location(s), as required by the Company to perform the Services.

6.4 Survival. Notwithstanding anything to the contrary, the obligations of the Parties under Sections 6.1 through 6.3 shall survive the termination of this Agreement.

7.0 Documents and Data.

7.1 Ownership Rights. Subject to Section 7.2, any SOW or other report or document furnished or to be furnished by the Company pursuant to this Agreement constitutes Confidential Information and shall remain the sole and exclusive property of the Company and may only be used by the Customer for the operation, maintenance, repair or alteration of any Equipment installed by the Company. The Customer shall not acquire any rights or interest with respect to the Company's or its Subcontractors' proprietary technology, know-how, processes or computer software or any other intellectual property that may be used in connection with the Services or the supply of equipment and materials hereunder.

7.2 No Use of Documents After Termination. If any SOW or other document prepared by the Company under this Agreement is terminated, in whole or in part, by the Customer prior to completion of the installation of the Equipment, then the Customer shall only be entitled to use, subject to Section 7.1, any such document upon full payment therefore pursuant to Section 3.5; provided however that, notwithstanding anything to the contrary in this Agreement, if Customer uses any such SOW or other document, in whole or in part, prepared by the Company to implement, by or through any third party, any Equipment addressed therein, then (i) such documents are provided "AS IS" without any warranty of any kind, express or implied, and (ii) Customer agrees to release Company from and against any losses, damages or liabilities of any kind resulting or arising from Customer's use thereof.

8.0 Insurance.

8.1 Insurance to Be Maintained by the Company. At any time that the Company is performing Services under this Agreement at any Service Location, the Company shall keep and maintain the following minimum insurance coverages, with insurance companies acceptable to Customer (insurers rated "A-, VII" or higher by A.M. Best's Key Rating Guide are deemed acceptable) that are licensed to do business in the State where the Work is performed or to be performed:

8.1.1 Statutory Workers' Compensation Insurance: Workers' compensation insurance as required by Applicable Laws where the Services are performed;

8.1.2 Employer's Liability Insurance with a limit of liability of (i) one million dollars ($1,000,000) for bodily injury per accident, (ii) One Million Dollars ($1,000,000) for bodily injury by disease per policy and (iii) One Million Dollars ($1,000,000) for bodily injury by disease per employee;.

8.1.3 General Liability Insurance: General Liability Insurance one million dollars ($1,000,000) combined single limit per occurrence for bodily injury, death and/or property damage for each occurrence;

DA

Customer Initials: ______

8.1.4 Automobile Liability Insurance: Automobile Liability Insurance which shall apply to all owned, non-owned, leased and hired automobiles in the amount of one million dollars ($1,000,000) combined single limit per occurrence for bodily injury and property damage for each accident; and

8.1.5 Excess Liability or Umbrella Liability: Excess liability or umbrella liability insurance in an amount not less than three million dollars ($3,000,000) per occurrence. Any excess liability or umbrella policy will be applicable to the general liability, auto liability, and employer's liability policies that are required.

8.2 The Company shall provide the Customer with insurance certificates which provide evidence of the insurance coverage under this Agreement. At least thirty (30) days prior written notice of cancellation or non-renewal of the above-noted insurance, with the exception of ten (10) days for nonpayment of premiums, shall be provided by the Company to the Customer. Company shall include Customer on all the policies shown in this Section 8.1 as an "Additional Insured" (with the exception of policies listed in Subsection (8.1.1)) for any liability or damage arising out of the performance of the obligations assumed by Company under this Agreement. Any coverage provided under these policies to Customer would be primary to any other coverage available to Customer. Notwithstanding, the failure to provide certificates or add Customer as an additional insured in accordance with this Section shall not release Company in any manner of any liability established under this Agreement.

8.3 Notwithstanding any other requirement set forth in this Section 8, Company may self-insure (the "Self-Insurance") to the extent Company or an affiliate of Company (the "Self Insurer") maintains a self-insurance program under which Company may be insured; provided that: (a) the Self-Insurer's Credit Rating is rated at BBB- or better, by Standard & Poor's, and Baa3 or better by Moody's, and (b) Company has provided the Customer with notice of its election to self-insure pursuant to this Section 8. For any period of time that the Self-Insurer is unrated by Standard & Poor's or the Self-Insurer's credit rating is rated at less than Investment Grade, Company shall comply with the insurance requirements applicable to it under this Section 8The Company shall provide the Customer with insurance certificates or letters of Self-Insurance to evidence the insurance coverage under this Agreement. At leastthirty (30) days prior written notice of cancellation or non-renewal of the above-noted insurance, with the exception of ten (10) days for nonpayment of premiums, shall be provided by the Company to the Customer.

8.4 Insurance to Be Maintained by the Customer. During and throughout the term of this Agreement and until all amounts payable to the Company pursuant to this Agreement are paid in full, the Customer shall maintain, as of the date of installation of the Equipment, the following minimum insurance coverages, with insurance companies acceptable to Company (insurers rated "A-, VII" or higher by A.M. Best's Key Rating Guide are deemed acceptable) that are licensed to do business in the State where the Work is performed or to be performed:

8.4.1 Statutory Workers' Compensation Insurance: Workers' compensation insurance as required by Applicable Laws where the Services are performed;

8.4.2. Employer's Liability Insurance with a limit of liability of (i) one million dollars ($1,000,000) for bodily injury per accident, (ii) One Million Dollars ($1,000,000) for bodily injury by disease per policy and (iii) One Million Dollars ($1,000,000) for bodily injury by disease per employee;

8.4.3 General Liability Insurance: General Liability Insurance one million dollars ($1,000,000) combined single limit per occurrence for bodily injury, death and/or property damage for each occurrence;

8.4.4 Automobile Liability Insurance: Automobile Liability Insurance which shall apply to all owned, non-owned, leased and hired automobiles in the amount of one million dollars ($1,000,000) combined policy limit per occurrence for bodily injury and property damage for each accident; and

8.4.5 Property Insurance: All-Risk Property Insurance, covering physical damage, on the Equipment on a replacement cost basis.

8.5 The Customer shall provide the Company with insurance certificates which provide evidence of the insurance coverage under this Agreement, in form and substance reasonably satisfactory to the Company. At least thirty (30) days prior written notice of cancellation or non-renewal of the above-noted insurance, with the exception of ten (10) days for nonpayment of premiums, shall be provided by the Customer to the Company. Customer shall include Company on all the policies shown in this Section 8.4 as an "Additional Insured" (with the exception of policies listed in Subsection (8.4.1)) for any liability or damage arising out of the performance of the obligations assumed by Customer under this Agreement. Any coverage provided under these policies to Company shall provide for a waiver of subrogation in favor of Company, its parent, subsidiaries and any affiliated company of NextEra Energy, Inc. and their respective officers, directors, agents and employees. All policies of insurance required to be maintained by Customer hereunder shall provide for a severability of interests clause and include a provision in such policies that Customer's insurance policies are to be primary and non-contributory to any other coverage available to Company. Notwithstanding, the failure to provide evidence of minimum coverage of insurance following Company's request, nor Company's decision to not make such a request, shall not release Customer in any manner of any liability established under this Agreement.

9.0 Indemnification.

9.1 Indemnity Obligations. The Company shall hold the Customer, its officers, agents, and employees harmless against claims by third parties to the extent resulting from the negligence of Company, its employees, representatives, or subcontractors.

9.2 Defense of Claims. Company shall have the right to defend Customer by counsel (including insurance counsel) of Company's selection reasonably satisfactory to the Customer, with respect to any claims within the indemnification obligations hereof. Customer shall give Company prompt written notice of any asserted claims or actions indemnified against hereunder and shall cooperate with Company in the defense of any such claims or actions. Company shall not settle any such claims or actions without prior written consent of the Customer.

9.3 Survival. The obligations of the respective Parties under this Section 9 shall survive the termination of this Agreement with respect to any claims or liability arising prior to such termination.

9.4 Remedies. The express remedies of this Section 9 are the sole and exclusive obligations of Indemnitor and the sole and exclusive remedies of the Indemnitee with respect to any third party claims within the scope of the indemnities set forth by Section 9.1.

10.0 Hazardous Materials. Except to the extent of hazardous materials brought to the Service Location by Company, the Customer shall have sole responsibility and liability with respect to the proper identification, removal and disposal of any hazardous materials (e.g., asbestos) or correction of any hazardous condition at a Service Location which affects the Company's performance of the Services under this Agreement. If, during the course of performing the Services, the Company becomes aware of any such hazardous materials or hazardous condition, the Company shall promptly report such matter to the Customer before disturbing (or further disturbing) such materials or condition. Work in the affected areas shall be resumed by the Company only upon the written notice from the Customer that such materials have been removed or such condition has been corrected, and then only if such continuation of work shall not violate any applicable law or permit. The Customer shall indemnify, defend and hold harmless the Company and its Subcontractors with respect to any liability, cost or expense of whatever nature incurred as a result of any such hazardous materials or hazardous condition.

11.0 Title, Risk of Loss, Security Interest and Taxes.

11.1 Passage of Title. Legal title to the installed Equipment, including all equipment and materials comprising a part thereof, shall pass to the Customer upon the Final Acceptance Date for the Equipment. Notwithstanding the foregoing, the Customer shall bear all risk of loss or damage of any kind with respect to all or any part of the Equipment located at a Service Location, whether installed or not, and the Customer shall indemnify and pay the Company for the repair or replacement of any Equipment or component thereof stolen, lost, destroyed or damaged at a Service Location, unless such loss or damage is directly caused by the Company or an Subcontractor retained by the Company. Loss or damage to the Equipment directly caused by the Company or its Subcontractor shall be the responsibility of the Company.

11.2 Warranty of Title. The Company warrants good title to the Equipment and components thereof (not including any licensed third party software components) furnished or installed by the Company or its Subcontractors, and the Company warrants that title to such Equipment and components (not including any licensed third party software components) shall pass to and vest in the Customer as set forth in Section 11.1 free and clear of all liens, claims, charges, security interests, encumbrances and rights of other parties arising as a result of the actions or failure to act of the Company, its Subcontractors, or their employees.

11.4 Taxes. The Customer agrees to pay any taxes and assessments, whether real or personal, which are now or hereafter imposed or assessed by any governmental authority, whether it be federal, state or local, with respect to the installation, delivery, sale, use, operation or maintenance of the Equipment, and to make all filings in respect of any such taxes and assessments. The Company shall have no obligation or liability with respect to any property tax oor with respect to any income, excess profits, or revenue

Customer Initials: DA

tax charged or levied against the Customer as a result of this Agreement. The Company shall pay any sales and use taxes imposed on the Equipment prior to the Company's delivery or installation of the Equipment, as required by applicable law, subject to any sales and use tax exemptions available to the Company and the Customer.

12.0 Force Majeure. If a Party is prevented or delayed in the performance of any obligation by a Force Majeure Event, such Party shall immediately provide notice to the other Party of the circumstances preventing or delaying performance and the expected duration thereof. Such notice shall be confirmed in writing as soon as reasonably possible. The Party so affected by a Force Majeure Event shall endeavor, to the extent reasonable, to remove the obstacles which prevent performance and shall resume performance of its obligations as soon as reasonably practicable. Provided that the requirements of this Section 12 are satisfied by the affected Party, to the extent that performance of any obligation(s) is prevented or delayed by a Force Majeure Event, the obligation(s) of the affected Party that is obstructed or delayed shall be extended by the time period equal to the duration of the Force Majeure Event. Notwithstanding the foregoing, the occurrence of a Force Majeure Event shall not relieve the Customer of payment obligations set forth in Section 3.

13.0 Changes.

13.1 Customer Initiated Changes. Upon receiving such a request, the Company may at its sole option prepare and deliver a proposed Change Order to the Customer listing the price of the Changes. If the Customer fails to return an executed Change Order, the Company shall have no obligation to complete the Changes. The Company shall not be obligated to proceed with or perform any Change requested by the Customer hereunder until the Parties have agreed in writing upon any such adjustments resulting from the Change. Except to the extent a Change specifically results in an amendment or adjustment to one or more provisions of this Agreement, all provisions of this Agreement shall apply to all Changes, and no Change shall be implied as a result of any other Change.

13.2 Change in Laws and/or Permits. If the Company (i) encounters a change in applicable laws, rules or regulations or applicable permits that affect the Company's ability to perform the Services at a Service Location and (ii) any such change causes an increase or decrease in the Implementation Price or time of performance, then Company shall notify the Customer thereof no later than thirty (30) days after the date of such change in applicable laws, rules or regulations or applicable permits at the Service Location, and the Customer shall issue a Change Order to equitably adjust the time of performance and/or Implementation Price.

13.3 Customer-Caused Delay or Affect. Should the actions or inactions of the Customer or any of itsrepresentatives or agents cause a delay of, or any failure of the Customer or its representatives or agents to fulfill its obligations hereunder cause a materially adversely affect on, the Company's performance of the Services which affects the completion of the Services or an increase or decrease in the Implementation Price, the Company shall promptly notify, but in no event more than thirty (30) calendar days after the Company becomes aware of the Customer-caused delay or affect, Customer in writing. The Customer shall issue a Change Order to equitably adjust the time of performance and/or Implementation Price.

13.4 Unknown Conditions. If the Company (i) encounters any concealed subsurface conditions which a reasonable, experienced contractor would not foresee existing at the Service Location and which vary from the conditions shown in the SOW, if any, and (ii) any such condition causes an increase or decrease in the Implementation Price or time of performance, then Company shall notify the Customer thereof no later than thirty (30) days after the date of such unknown or concealed Service Location condition, and the Customer shall issue a Change Order to equitably adjust the time of performance and/or Implementation Price.

14.0 Termination

14.1 Termination by Either Party for Default. A Party shall have the right to terminate this Agreement for cause if: (a) any proceeding is instituted against a Party seeking to adjudicate such Party as bankrupt or insolvent, or if such Party makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of the insolvency of such Party, or if a Party files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up or composition or readjustment of debts and, in the case of any such proceeding instituted against such Party (but not by such Party) such proceeding is not dismissed within sixty (60) days of such filing; (b) the Customer fails to perform any payment obligation under this Agreement and fails to cure such obligation within thirty (30) days written notice from the Company; or (c) a Party substantially fails to perform any non-payment obligation under this Agreement and fails to cure or commence and diligently proceed to cure such obligation within thirty (30) days written notice from the other Party. The Customer shall pay the Company an amount (to the extent not already paid) equal to the sum of all of the Company's reasonable costs incurred in performing the Services up to the termination date, including all costs incurred with respect to any Subcontractors; provided that the Company makes available to the Customer all of the work product, equipment and materials produced or obtained by the Company in performing such Services (except any and all intellectual property of the Company or third parties).

14.2 Payment. All amounts payable by Customer pursuant to Section 3.0 shall be due within thirty (30) days following the submission by Company of an invoice therefore, which invoice shall include in reasonable detail an itemization of costs with respect to any amounts measured on the basis of reimbursable costs. Reimbursable costs also shall be subject to audit by the Customer, at the Customer's expense upon reasonable advance notice; provided that such audit shall be completed within sixty (60) days following the submission of the invoice. Amounts not paid by Customer to the Company when due hereunder shall bear interest from the date payment was due to and including the date of payment at the Delayed Payment Rate.

15.0 Assignment.

15.1 Agreement Binding. This Agreement and each SOW entered into by the Parties shall be binding upon, and shall inure to the benefit of, the Parties and their successors and permitted assigns.

15.2 Permitted Assignment. (a) The Customer may not assign this Agreement without the prior written consent of the Company. No such assignment by the Customer or consent by the Company to the Customer's assignment shall release the Customer of any of its obligations under this Agreement or any associated supplements or Schedules. (b) Company may, without the consent of Customer, assign this Agreement, Services, or any portion thereof, to (i) any wholly-owned affiliate of Company's parent company, NextEra Energy, Inc., without the right to further assign or transfer any rights, obligations, duties or other interest in this Agreement (except to any other wholly-owned affiliate of NextEra Energy, Inc.) without the consent of the Customer, which consent may be withheld in the Customer's sole and absolute discretion, or (ii) a successor corporation into which all or substantially all of assets of the Company are merged or otherwise consolidated, regardless of whether the Company is the surviving entity in such merger or consolidation. Upon such an assignment to a wholly-owned affiliate of NextEra Energy, Inc. and written notification to the Customer, Company shall be released from all obligations under the portions of this Agreement that have been assigned. (c) Any assignment which does not comply with the provisions of this Section 15.2 shall be null and void.

15.3 No Third Party Beneficiaries. Except as otherwise expressly provided herein, neither this Agreement nor any term or provision or obligation arising hereunder, shall be construed as being for the benefit of any Party not a signatory hereto.

16.0 General Provisions.

16.1 Entire Agreement. This Agreement, including the Schedules attached hereto and any exhibits attached thereto, sets forth the full and complete understanding of the Parties relating to the subject matter hereof as of the Effective Date of Agreement, and supersedes any and all negotiations, agreements and representations made or dated prior hereto with respect to the subject matter of this Agreement. Any actions or Services described in this Agreement which were performed or implemented by the Parties prior to the Effective Date of Agreement shall for all purposes be deemed to have been performed under this Agreement.

16.2 Amendments. No change, amendment or modification of this Agreement or Schedule or exhibits thereto shall be valid or binding upon the Parties unless such change, amendment or modification shall be in writing and duly executed by both Parties.

16.3 Status of the Parties. The Company and its Subcontractors shall be independent contractors with respect to the Services performed hereunder irrespective of whether such Subcontractors are approved by the Customer, and neither the Company nor its Subcontractors, nor the employees of either, shall be deemed to be the employees, representatives or agents of the Customer. Nothing in this Agreement shall be construed as inconsistent with the foregoing independent contractor status or relationship, or as creating or implying any partnership, joint venture, trust or other relationship between the Company and the Customer.

16.4 Customer & Company. The Parties hereby represents and warrants to the other Party that (i) the execution and delivery by a Party of this Agreement and the performance of its obligations hereunder have been duly authorized by all requisite actions and proceedings; are not inconsistent with and do not and will not contravene any provisions of a Party's organizational documents or any applicable law, rule or regulation; have been approved by all necessary persons or entities; and do not and will not conflict with or cause any

Customer Initials: DA

breach or default under any agreement or instrument to which a Party is a party or by which it or any of its properties is bound; and (ii) this Agreement has been duly executed and delivered by the Parties and constitutes the valid and legally binding obligation of each Party, enforceable against the other Party in accordance with its terms, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws and subject to general equitable principles.

16.5 Drafting Interpretations and Costs. Preparation and negotiation of this Agreement has been a joint effort of the Parties and the resulting document shall not be construed more severely against one of the Parties than against the other. Each Party shall be responsible for its own costs, including legal fees, incurred in negotiating and finalizing this Agreement.

16.6 Captions. The captions contained in this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of such document or the intent of any provision contained therein.

16.7 Severability/Divisible Contracts. (a) The invalidity of one or more phrases, sentences, clauses, Sections or Sections contained in this Agreement shall not affect the validity of the remaining portions thereof so long as the material purposes of such document can be determined and effectuated. (b) Each SOW under this Agreement shall constitute a separate and divisible contract which the Company may assign to one or more assignees, in whole or in part, and each and every such assignee of the Company shall be entitled to the benefits and rights of the Company under this Agreement, and shall be entitled to exercise the rights of the Company under this Agreement. No assignee shall be responsible for any obligations of the Company except as expressly assumed in writing by such assignee in accordance with the terms and conditions of Section 15.2.

16.8 Further Assurances. The Company and the Customer each agree to do such other and further acts and things, and to execute and deliver such additional instruments and documents, as either Party may reasonably request from time to time whether at or after the execution of this Agreement, in furtherance of the express provisions of this Agreement.

16.9 Applicable Law and Venue. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Florida, exclusive of conflicts of laws provisions. Any disputes resulting in litigation between the Parties shall be conducted in the state or federal courts of the State of Florida. Proceedings shall take place in the Circuit Court for Miami-Dade County or Palm Beach County, Florida or the United States District Court for the Southern District of Florida.

16.10 Counterparts. This Agreement may be signed in any number of counterparts and each counterpart shall represent a fully executed original as if signed by both Parties.

16.11 Waiver of Jury Trial. EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT EITHER OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HERON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, OR STATEMENTS (WHETHER ORAL, WRITTEN) OR ACTIONS OF EITHER PARTY HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS AGREEMENT.

16.12 No Waiver. The failure of a Party to enforce, insist upon, or comply with any of the terms, conditions or covenants of this Agreement, or a Party's waiver of the same in any instance or instances shall not be construed as a general waiver or relinquishment of any such terms, conditions or covenants, but the same shall be and remain at all times in full force and effect.

16.13 Notices. All notices, demands, offers or other written communications required or permitted to be given pursuant to this Agreement shall be in writing signed by the Party giving such notice and shall be hand-delivered, sent via certified mail, return receipt requested and postage prepaid, or sent via overnight courier as follows:

If to the Company:
FPL Energy Services, Inc.
Attention: Troy Rice
6001 Village Blvd.
West Palm Beach, FL 33407-0768

If to the Customer:
[Insert Customer Notice Information]

Each Party shall have the right to change the place to which notices shall be sent or delivered or to specify additional addresses to which copies of notices may be sent, in either case by similar notice sent or delivered in like manner to the other Party.

IN WITNESS WHEREOF, the Partieshereby agree to be bound by the terms and conditions of this Agreement, effective on the Effective Date.

FPL ENERGY SERVICES, INC.

BY: ____________________

NAME: ____________________

TITLE: ____________________

DATE: ____________________

TOWN OF FORT MYERS BEACH

BY: Dan Allers
Dan Allers (Nov 22, 2023 06:35 EST)

NAME: Dan Allers

TITLE: Mayor

DATE: November 20, 2023

Customer Initials: ______

Attachment A

Services Terms and Conditions

SCHEDULE A

FORM OF
CERTIFICATE OF FINAL ACCEPTANCE

Project Name: ____________________________
Service Location:
Equipment: ______________________
Company: FPL Energy Services, Inc.
Customer: ________________________
Company Representative:
Name: Winston Baugh
Address: FPL Energy Services, Inc.
6001 Village Blvd
West Palm Beach, Florida 33407
Telephone: 941-737-0091
Facsimile: (561) 681-3088
E-mail: Winston_Baugh@fpl.com
Customer Representative:
Name: Frankie Kropacek
Address:
2525 Estero Blvd
Fort Myers Beach, FL 33931
Telephone: ________________________
Facsimile: ________________________
E-mail: fkropacek@fmbgov.com

EFFECTIVE DATE OF FINAL ACCEPTANCE: ______________________________________ ("Effective Date of FAC")

This Certificate of Final Acceptance ("FAC") is issued by the Company to the Customer pursuant to that certain Statement of Work ("SOW"), effective as of _____ day of ________________, 20__, and the governing Services Terms and Conditions (the "Terms", collectively with the SOW, the "Agreement"). Initial capitalized words used herein but not defined shall have the meaning ascribed to such words in the Agreement.

The Customer certifies that as of the Effective Date of FAC, the Company has achieved final completion of the Equipment required pursuant to the SOW, all in strict accordance with the Agreement.

This FAC and the certifications of the Customer set forth herein and on any FAC may be relied on by the Company and by any assignee of the Company in connection with the furnishing of the Services financing to the Customer in accordance with the provisions of the Agreement. Any assignee of the Company shall be entitled to the rights, but not the obligations, of the Company under this FAC.

This FAC is being provided by the Company to the Customer, acknowledging final acceptance of the Equipment specified in this FAC. The Customer has examined and carefully studied all of this FAC, including the Agreement and all exhibits, appendices, specifications, terms and conditions. IN WITNESS WHEREOF, the Parties have executed this FAC as of the Effective Date of FAC.

FPL ENERGY SERVICES, INC.	TOWN OF FORT MYERS BEACH
BY: ______________________	BY: Dan Allers Dan Allers (Nov 22, 2023 06:35 EST)
NAME: ______________________	NAME: Dan Allers
TITLE: ______________________	TITLE: Mayor
DATE: ______________________	DATE: November 20, 2023

Customer Initials: DA

Attachment B

Equipment Warranties

Equipment Warranties will be provided by Company to Customer prior to the Final Acceptance Date.

Customer Initials: DA

1. **Requested Motion:**

Meeting Date: February 20, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING BUDGET AMENDMENT FOR BEACH RENOURISHMENT; EFFECTIVE DATE.

Why the action is necessary:

The action is ncessary in order to align the budget with this new source of funding for beach renourishment.

What the action accomplishes:

Amends the budget to recognize the $8,000,000 grant that was awarded to the Town for Beach Renourishment and establishes the related budget for expenditures.

2. **Agenda:**	3. **Requirement/Purpose:**	4. **Submitter of Information:**
CONSENT AGENDA	Resolution	Joe Onzick, Finance Director

5. **Background:**

The acceptance of an $8 million State-Funded LAP Grant Agreement from FDEM was authorized by the Town Council at their February 5, 2024 meeting, as well as a contract for the Estero Island Beach Sand Truck Haul Project. This new grant was not anticipated when the Fiscal Year 2024 budget was prepared. Therefore a budget adjustment is required.

Attachments:

1. 24-39, Budget Amendment for Beach Renourishment

Financial Impact:

Formally incorporates the additional $8 million funding for Beach Renourishment into the budget for Fiscal Year 2024.

6. **Alternative Action**

Do not approve the budget adjustment.

7. **Management Recommendations:**

Staff recommends approval of the budget adjustment.

8. **Recommended Approval:**

Joe Onzick, Finance Director	Created/Initiated - 2/13/2024
Joe Onzick, Finance Director	Approved - 2/13/2024
Nancy Stuparich, Town Attorney	Approved - 2/15/2024
Amy Baker, Town Clerk	Approved - 2/15/2024
Andy Hyatt, Town Manager	Final Approval - 2/15/2024

RESOLUTION NUMBER 24-39

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING BUDGET AMENDMENT FOR BEACH RENOURISHMENT; EFFECTIVE DATE.

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

WHEREAS, on September 25, 2023, the Town Council of the Town of Fort Myers Beach, following due public notice, adopted a final operating budget for fiscal year 2023-24, as set forth with greater specificity in Town Resolution 23-117; and

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

WHEREAS, Section 11.05(c) of Article XI of the Town Charter further provides that the Council shall take such action as it deems necessary to prevent or minimize any such deficit and for that purpose may, by resolution, reduce one or more appropriations; and

WHEREAS, the Town has received an $8 million LAP grant from the Florida Department of Emergency Management for beach renourishment; and

WHEREAS, the Town Manager has recommended that the Fiscal Year 2023-2024 Budget be amended to reflect this additional funding.

IT IS HEREBY RESOLVED by the Town Council of Fort Myers Beach, Florida as follows.

Section 1. The above recitals as set forth in the various "Whereas" clauses are hereby adopted by reference and incorporated into the body of this Resolution. Council hereby approves, adopts and accepts the Budget Amendment for Beach Renourishment, which is a formal amendment to the 2023-24 Town Budgets. The Town Council further finds that Budget Amendment for Beach Renourishment is consistent with the requirements of Section 11.05 (a), (c) and (d) of Article XI of the Town Charter in that such amendment is anticipated to prevent or minimize an anticipated revenue deficit.

Section 2. The Fiscal Year 2023-2024 Fiscal Year budget be amended as follows:

40.72.537.33446	Capital-Beach Renourishment: FDEM State Funded Lap Grant	$8,000,000
40.72.537.60000	Capital-Beach Renourishment: Capital Outlay	$8,000,000

Section 3. This resolution is effective immediately upon adoption.

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

Dan Allers, Mayor
Jim Atterholt, Vice Mayor
John R. King, Council Member
Scott Safford, Council Member
Karen Woodson, Council Member

ADOPTED this 20th day of February 2024 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:

____
Vose Law Firm, LLC, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ________ day of _____ 2024.

Town of Fort Myers Beach
Agenda Item Summary

Blue Sheet Number: **2024-1389**

1. **Requested Motion:**

Meeting Date: February 20, 2024

Authorize the Town Manager to apply for Tourist Development Council Grants in Fiscal Year 2024 for beach and shoreline maintenance and related projects; and providing an effective date.

Why the action is necessary:
Council approval needed to move forward with the grant request.

What the action accomplishes:
Allows Town Council to provide input on the grant requests for next year and auhtorizes the Town Manager to submit any grant applications before the March deadline.

2. **Agenda:**
CONSENT AGENDA

3. **Requirement/Purpose:**
Other

4. **Submitter of Information:**
Jeff Hauge, Culture, Parks & Recreation Director, Jason Freeman, Legislative Liaison / Deputy Town Clerk

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5. **Background:**
Lee County Tourist and Development Council

In 1982, Lee County citizens voted by referendum to form a tourism organization that would promote Lee County's off-season vacation assets in the United States and abroad. A two-percent tax on short-term accommodations was approved to support the new Lee County Tourist Development Council (TDC) and its promotions. In 1988, an additional one percent tourist tax was levied to a total of three percent to support the Beach & Shoreline Capital Improvement Program.
The Tourist Development Council is a nine-member Council appointed as an advisory committee to the Lee County Board of County Commissioners (BOCC). TDC members oversee the entire tourist development tax fund, provide direction on programs and budget, and review the expenditures of the Lee County Visitor & Convention Bureau (VCB) quarterly.

The TDC appointed seats are comprised of three elected officials, three representatives from accommodations collecting the tourist tax, and three representatives from tourism-related industries, as directed by Florida Statute 125.0104.

Each year the TDC approves funding for the maintenance of Lee County beaches, for beach renourishment projects, and for beach and shoreline capital projects such as piers, boardwalks, parks and re-vegetation.

In 2005, the BOCC approved an additional two percent tourist tax to a total of five percent in order to compete in an ever-changing world and an increasingly competitive travel market.

Our beaches and ecology are the main draw of visitors to Lee County, and the beach and shoreline program serves as a great enhancement to these assets with funding provided by the tourist development tax. Utilizing 26.4% of the five-cent bed tax, this program has provided more than $100 million dollars to variety of county wide projects related to beach maintenance, beach nourishment, and park development. Each of these projects represents a cooperative effort with governmental agencies in Lee County from our local municipalities to the federal government. With the countywide nature of the program, new recreational opportunities are being provided in areas of Lee County that our visitors have not historically frequented, thus encouraging further exploration.

This program provides direct benefits to visitors and residents alike, all with the goal of promoting tourism while preserving and enhancing our beaches and shoreline. Many of these projects have proven to have a major impact on visitor activity.

For more information, visit https://www.visitfortmyers.com/lee-vcb/funding-programs/beach-and-shoreline.

Attachments:

1. FY24-25 BSprogramtimeline
2. Beach and Shoreline Funding Program Guidelines

Financial Impact:

The TDC has provided the Town of Fort Myers Beach with millions of dollars of funding over the years for Beach Renourishment, Beach Monitoring and the Maintenance of the Beach Accesses including Mound House and Newton Beach Park properties.

6. **Alternative Action**

Do not approve.

7. **Management Recommendations:**

To approve and provide input to the grant requests.

8. **Recommended Approval:**

Jason Freeman, Legislative Liaison / Deputy Town Clerk	Created/Initiated - 2/14/2024
Nancy Stuparich, Town Attorney	Approved - 2/15/2024
Amy Baker, Town Clerk	Approved - 2/15/2024
Andy Hyatt, Town Manager	Final Approval - 2/15/2024

fort MYERS
LEE COUNTY TOURIST DEVELOPMENT COUNCIL

Application Timeline for
Fiscal Year 2024-2025
Lee County Beach & Shoreline Project Funding

Date	Activity
Thursday, January 18, 2024	Application webinar - 3:00 p.m. Register **HERE**
Friday, March 8, 2024	Application deadline - 5:00 p.m.
March 11-20, 2024	*Lee County staff / legal review*
Thursday, April 4, 2024	Coastal Advisory Council (CAC) Review Workshop* 9:00 a.m.
Wednesday, April 24, 2024	TDC Review Workshop** 2:00-4:00 p.m.
Thursday, May 9, 2024	Formalization of funding recommendations by TDC
September, 2024	Board of County Commissioners formalizes funding

Requesting agencies must participate in the Application webinar

Review Workshop Locations:

****April 4, CAC Workshop will be in Lee County Public Works- Conference Room 1B***
*****April 24, TDC Workshop will be in Lee County Admin East- Conference Room 118***

LEE COUNTY TOURIST DEVELOPMENT COUNCIL
BEACH & SHORELINE FUNDING
PROGRAM GUIDELINES

I. Background

Lee County collects a five percent (5%) Tourist Development Tax ("Bed Tax") on all overnight tourism accommodations in the County. This tax is levied on customers of hotels, motels, condominiums, campgrounds, apartments, and private homes that rent accommodations for less than six (6) months in duration.

The Lee County Board of County Commissioners ("BOCC") has developed a Tourist Development Plan as outlined in Lee County Ordinance 13-14 ("Plan") as amended to guide how these proceeds are spent. The Plan divides the potential uses of Bed Tax revenues into three (3) categories, one of the categories is allocated to Beach & Shoreline projects. Beach & Shoreline projects are allocated 26.4% of Bed Tax revenues collected each year. The County's objective in funding events is to attract tourists from outside of Lee County into the area; encourage overnight stays in Lee County motels and hotels; and perpetuate an environment for growth in the tourism industry in Lee County. The Tourist Development Council ("TDC") investments are focused on further developing exemplary existing programs and stimulating new activities.

The Beach & Shoreline Funding Program ("BSP") operates on an annual funding application cycle. These guidelines were developed to assist applicants seeking funding through the BSP.

II. Definitions

In the context of the Beach and Shoreline Funding Program Guidelines, the following definitions apply:

"Beach Nourishment" the process of adding additional sand or sediment on a beach or in the nearshore.

"Capital Project" shall mean any construction or improvement project authorized in the Lee County Tourist Development Plan and Section 125.0104, Florida Statutes that will enhance tourism.

"Eligible Applicant" shall mean the owner and/or operator of a Project and includes any of the following:

1. A public entity located in Lee County
2. An organization must be legally incorporated as a NOT-FOR-PROFIT corporation, with a designated tax exempt status under section 501(c)(3) of the United States Internal Revenue Code, or a unit of local government/municipality.

“Matching Funds” shall mean and include any of the following assets or expenditures by applicant incurred or available after the application date:

1. Cash funds.
2. In-kind contributions to the Project.
3. Costs of infrastructure improvements to real property necessary to complete the Project.
4. Capital Project design and engineering costs.
5. Capital equipment.

“Maintenance” shall mean the care and minor maintenance of Beach or Shoreline facilities and/or equipment utilized at those facilities. Equipment must be utilized 100% of the time for this purpose in order to be funded at 100%.

“Tourist” shall mean a person who participates in trade or recreational activities outside the county of his/her residence or who rents or leases transient accommodations in Lee County as described in Section 125.0104(3)(a), Florida Statutes.

III. Project Eligibility

A. To be eligible for funding, projects must be located within Lee County and demonstrate the ability to attract tourists and comply with the Lee County Tourist Development Plan.

B. Project funds may be used to construct, extend, enlarge, remodel, repair, maintain or improve public beach park facilities as authorized in Section 125.0104(5), Florida Statutes.

IV. Funding Standards

A. Applicants receiving project funding will be required to enter an agreement that has been prepared by the County Attorney’s Office.

B. The TDC BSP shall not be considered the sole source of funding for the proposed project. Applicants should thoroughly explore other funding sources prior to seeking support from this program.

C. All approved funding requests provided hereunder shall be on a reimbursement basis to the Applicant after completion of the Project upon submittal and review of supporting documentation as required in the funding agreement.

D. Any funding provided through the TDC BSP shall be limited to approved Project costs/expenditures incurred after the application filing date.

E. Project completion timelines may not exceed three (3) years from execution of BSP funding award agreement with the County. Any Capital Project or phase scheduled to be completed more than 3 years out shall require a separate BSP application.

F. Project funding may **<u>not</u>** be used in the categories listed below:

1. Legal, medical, accounting, auditing, planning, feasibility studies or other consulting services.
2. Salaries or supplements to salaries for existing or future staff, or employment of personnel not directly related to the project.
3. Real property or capital improvement to privately owned facilities.
4. Travel
5. Interest or reductions or deficits or loans, fines, or penalties.
6. Sales tax
7. Facilities not open to the public.
8. Expenditures not included in the applicant's original application as presented to and approved by the County.

G. Based on guidance from Attorney General Opinions and past Lee County Attorney reviews, applicants should avoid requests that include the following as they have previously been deemed ineligible:

1. Beach access security cameras
2. Concessionaires
3. Facilities not open to the public
4. Boat Ramps/kayak launches
5. Fencing/gates
6. General law enforcement
7. Picnic tables/grills/benches/bike racks
8. Recreational equipment/playgrounds/water fountains
9. Communication devices
10. Indirect costs
11. Uniforms

V. Application and Program Timeline

A. The annual BSP timeline, including application procedures and deadline shall be established, publicized, and implemented by VCB staff each year. All applications must be fully and timely completed, and the application together with supporting documentation as required must be submitted electronically online to the VCB Program Manager. Organizations that fail to complete the submittal process by the deadline will not be considered. An organization that submits a substantially incomplete application at the time of deadline, as deemed by county staff, will receive notification via email from the County as to the incomplete status of the application. Substantially incomplete applications will not be provided to TDC for consideration for funding.

B. The application cycle opens in January each year for the following fiscal year funding. VCB will hold a public information session for interested applicants of the program to provide detailed information, guidelines, and application forms, and respond to any questions. The informational meeting and the program will also be promoted through VCB's electronic tourism industry newsletter, and other communication tools available through resources at Lee County.

C. Out of cycle requests will only be considered if the Guidelines for Emergency Beach Renourishment funding have been met. Contact the VCB program manager for additional information.

D. Once budget approval has been made, the VCB will post TDC recommendations of BSP funding on their partner website: https://www.visitfortmyers.com/lee-vcb

VI. Required Documentation

FAILURE TO PROVIDE ALL OF THE FOLLOWING ITEMS (including the Application) MAY DISQUALIFY THE FUNDING REQUEST.

A. All applicants must attend an application webinar during which eligibility and guidelines will be presented. Access to the online application portal will be provided at the application webinar.

B. Explanation of "shovel readiness" of project; including explanation of design, permitting and construction status. (Provide preliminary drawings or completed architectural plans as an attachment)

C. A copy of the proposed facilities shoreline protection plan and water quality monitoring plan, if applicable.

D. The County reserves the right to request any additional information or documentation, it deems necessary to evaluate the return on investment of Bed Tax funding.

VII. Evaluation Process

Lee County staff, County Attorney and Coastal Advisory Council reviews the applications to ensure compliance with state statutes, county ordinance, these guidelines, and makes recommendations to the TDC. Review Criteria includes but is not limited to:

(a) Appropriate documentation of all funding sources
(b) Priority will be given to projects that are shovel ready (already designed and permitted, including that the applicant has received all government and/or regulatory permits)
(c) Non-Profit Citizens Support Organizations ("CSO") must provide proof of support from the entity (state/federal) that manages the land where the proposed project will be implemented.

A. The TDC shall host a public workshop to allow for discussion of funding recommendations. Prior to the workshop TDC members will individually review each request for funding. Applicants are encouraged to attend and be prepared, if asked, to respond to questions TDC members may have about their applications.

B. TDC will consider for approval, funding recommendations at a formal meeting after the review workshop, and funding is formalized when the BOCC approves the budget in September of each year. The BOCC, at its discretion, may approve or reject any application regardless of recommendations by the TDC. Only projects that receive a recommendation for approval from the TDC will be forwarded to the to the BOCC for funding consideration.

C. There are no guarantees that applicants will be awarded funding. Even though a project may qualify, limited funds may not allow all project to receive assistance. Decisions regarding the awarding of funds are at the sole discretion of Lee County and the BOCC.

VIII. Funding Procedures

Program funds will be dispersed only after the Funding Agreement has been fully executed by all parties. Recipients will be:

A. Required to provide quarterly project status updates to the VCB Program Manager.
B. Reimbursed for eligible expenditures as authorized by the Funding Agreement in the appropriate fiscal year.
C. Required to submit invoices to the VCB for payment. Payments will only be made as reimbursements to applicant contingent upon successful completion of the project and meeting the requirements of the agreement, not directly to third parties.
D. Required to keep the VCB Program Manager informed about any changes in the project that effect the provision of the agreement and project. All changes must be submitted prior to their implementation.

Town of Fort Myers Beach
Agenda Item Summary

Blue Sheet Number: **2024-1473**

1. **Requested Motion:**

Meeting Date: February 20, 2024

Declare listed items as surplus and authorize staff to dispose of these items utilizing a municipal government auction service.

Why the action is necessary:
Following policy for declaring items for surplus auction.

What the action accomplishes:
Items identified for surplus auction; efforts to achieve some revenue for item.

2. **Agenda:**	3. **Requirement/Purpose:**	4. **Submitter of Information:**
CONSENT AGENDA	Other	Mark Ashton, Public Works/Utilities Director

5. **Background:**
The list below presents the town's surplus items to be placed for auction. Assets are considered salvage when they are no longer operable and the cost for repair is more than the item is worth. Assets are obsolete when they are no longer being used, even if operable, because they are outmoded in style or design and replaced by newer technology.

From time to time, a department or division will identify town-owned property that is classified as salvage or obsolete. If other departments can find a use for any items in storage, the items can be reassigned. The governing body is required to declare these items surplus and authorize staff to sell them to the highest bidder. Any items that have no buyers will be destroyed. Items will be sent to auction once insurance, reimbursement, or other potential funding processes are complete and items are approved for auction. Town staff will be utilizing Royal Auction Group off of Alico Road and/or online at www.Govdeals.com once approved.

Surplus Items:

- 2 Kubota RTVs (damaged during Hurricane Ian)

Attachments:

Financial Impact:
Proceeds will return to their respective funds.

6. **Alternative Action**
Do not approve and store items.

7. **Management Recommendations:**

8. **Recommended Approval:**

Flor Lemmer, Administrative Officer	Created/Initiated - 2/13/2024
Mark Ashton, Public Works/Utilities Director	Approved - 2/13/2024
Nancy Stuparich, Town Attorney	Approved - 2/15/2024

Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Approved - 2/15/2024
Final Approval - 2/15/2024

Town of Fort Myers Beach
Agenda Item Summary

Blue Sheet Number: **2024-1451**

1. **Requested Motion:**

Meeting Date: February 20, 2024

Use of Bay Oaks for Pickleball Tournament

Why the action is necessary:
Ord. 20-17

What the action accomplishes:

2. **Agenda:**
CONSENT AGENDA

3. **Requirement/Purpose:**
Ord. 20-17

4. **Submitter of Information:**

---

5. **Background:**
FMB Community Foundation would like to have a fundraiser with a Pickleball Tournament at Bay Oaks on March 16, 2024 from 9am to 3 pm. This is a fundraiser with the proceeds going to FMB. Requesting waiver of all fees.

Attachments:
1. SE_240247_Pickleball Tournament Application

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

Patty Prevost, Code Supervisor/STR Coordinator	Created/Initiated - 1/26/2024
Frankie Kropacek, Operations & Compliance Director	Approved - 1/26/2024
Nancy Stuparich, Town Attorney	Approved - 2/15/2024
Amy Baker, Town Clerk	Approved - 2/15/2024
Andy Hyatt, Town Manager	Final Approval - 2/15/2024

Town of Fort Myers Beach

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

RECEIVED
JAN 26 2024
240247

Name of event DINKY PICKLEBALL TOURNAMENT
Attach separate sheet of paper with detailed description of event

Date(s) and times of event MARCH 16 2024 9-3

Address of event BAY OAKS REC CAMPUS 2731 OAK ST

Expected # of participants/attendees 80

Sponsoring Organization FMB COMMUNITY FOUNDATION

Organization address

Contact Person/Phone# JOY SULLIVAN 847-858-4320

E-mail JOYS4320@GMAIL.COM

Amplified Music Y [ ] N [X] 500 Ft Notifications ____ Copy of Letter ____

Renting Town Property Y [ ] N [X] Renting Parking Spaces Y [ ] N [X]

How many Spaces? ____ How many hours ____

Extension of Premises? Y [ ] N [X] ABT Form ____ How many days? 1 (Over 3 days needs to go to Council)

Letters of Permission to use Property yes

Letters of Permission to use Parking yes Parking Plan ____

Site Plan ____ Insurance ____ (Naming Town of FMB as Certificate Holder)

Requesting Water Y [ ] N [X] Electric Y [ ] N [X]

Requires Council Approval:

Waiver of open container Y [ ] N [X] Waiver of Town parking fees Y [ ] N [X]

Waiver of Noise Ordinance Y [ ] N [X] Recurring Event Y [ ] N [X]

Applicant Signature Joy Sullivan

Printed Name JOY SULLIVAN

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

Applicant to Complete:

Company managing trash removal: BAY OAKS STAFF

No. of dumpsters: — **Type of dumpsters:** —

Who is responsible for clean-up and payment: —

____

City right-of-way Parking Use: — **Number of spaces:** —

To be completed by Town Hall employees:

FMB Public Works:

Public Works remarks: ______________________________

____

____

Approval: ______________________________ **Date:** __________

FMB Environment Science: **Tel (239)765-0202**

FMB Environmental Sciences remarks: ______________________________

____

Approval: ______________________________ **Date:** __________

FORT MYERS BEACH FIRE DEPT

100 Voorhis Street · Fort Myers Beach, Florida 33931 Tel (239) 590-4210

Fire Guards: (how many?) ______________________________

Fee: ______________________________

Flammable Vegetation: ______________________________

First Aid Equipment: ______________________________

Fire Extinguishing Equipment: ______________________________

Special Arrangements: ______________________________

____

______________ ______________ ______________

Print Name **Approval Signature** **Date**

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

LEE COUNTY SHERIFF'S DEPT

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**

Dinky PickleBall Tournament at Bay Oaks with FMB Community Foundation. All Proceeds Go to FMB!!

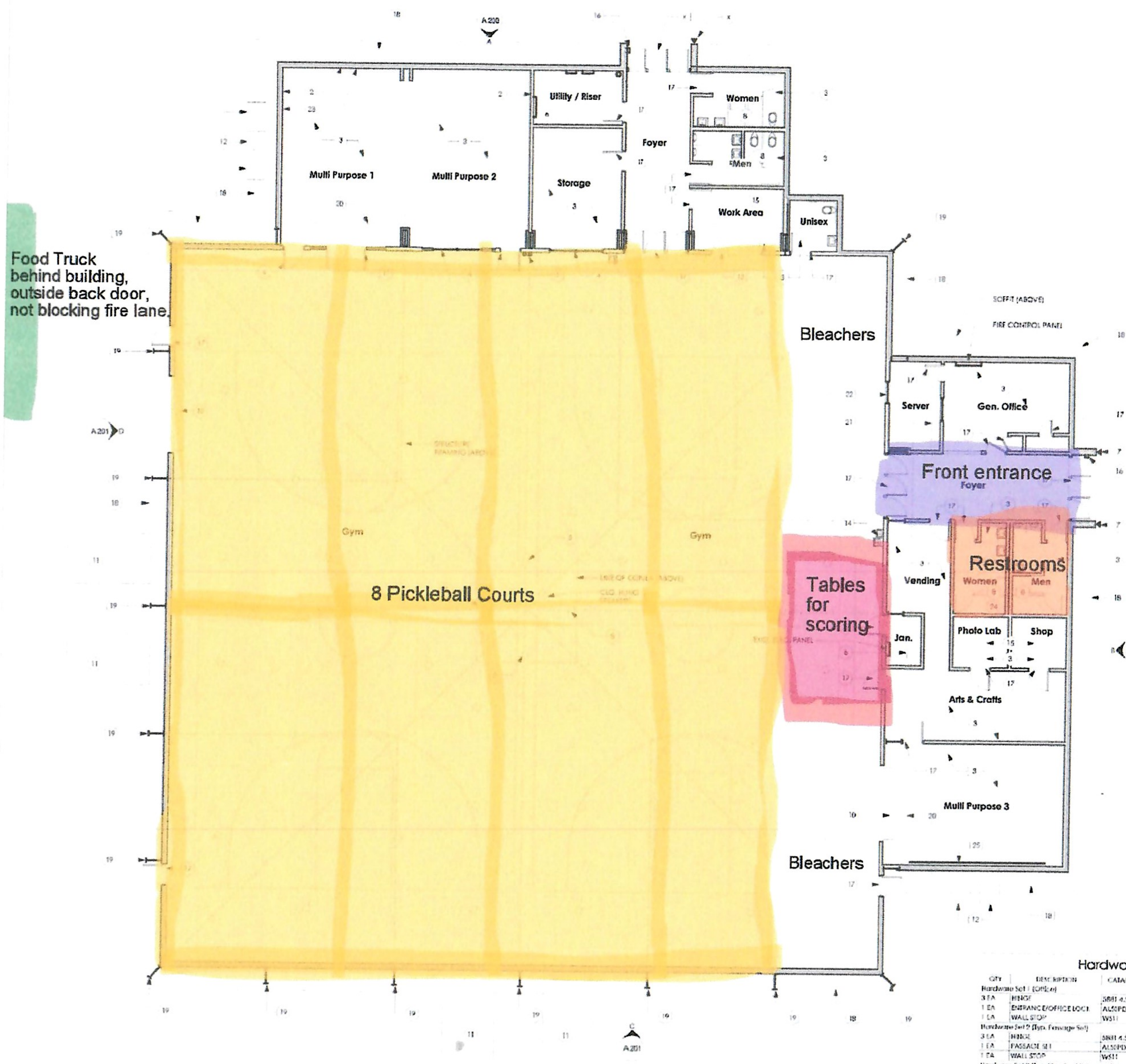
- Have an indoor tournament with 8 courts with 2 sessions.
  - First session for beginners, below 3.0 from 9am to 11
  - Second for 3.0 and up from 1 to 3
  - Max = 64 players
  - Volunteer Needs = 1 for each court (8), 4 for table/ registration/ keeping score board
- Players would be given a number 1 to 32 and assigned a partner. Scoring would be kept on an individual basis meaning your team score for a given match would be recorded for each player on a tally board.
- Each match would be played to 11 or 10 minutes, whatever comes first.
- After each match, players rotate, playing with a new partner. Rotation would be managed/ assisted by volunteers.
- We should be able to get 10 matches in the allotted 120 minutes. That provides a 2 minute break between matches. If we go over a minute, we should be fine. The 8 court volunteers will write down the numbers and scores to take over to the white board. We will use a whistle or microphone to announce the time limit. All matches will use the same time.
- Scoring on the honor system, no referees.
- At the end of 2 hours, add up the scores and give 1st, 2nd, and 3rd place winners.
- Also have tee shirts made up the for event.
- Look at having a food truck
- Charge? $40 entry fee? or more?
- Bay Oaks will wave the rental fee and will help with promotion. They are opening indoor courts tomorrow.
- Need to apply for a Special Event Permit from the town. Also need to obtain liability insurance. Ed Ryan provided info about www.theeventhelper.com. I submitted and received a proposal.
- Registration would need to be on-line, so need help from our web master. Not sure how much that costs.

Dinky PickleBall Tournament at Bay Oaks with FMB Community Foundation. All Proceeds Go to FMB!!

Income Statement Alternatives

All Estimated	Alt 1 @ $40	Alt 2 @ $50		
Registration	$2,560	$3,200		
Shirts SWAG	-$640	-$640		
White Board	-$66	-$66		
Water	-$15	-$15		
Web Master Fee	-$200	-$200		
Insurance	-$335	-$335		
Balls	-$31	-$31		
Permit	-$100	-$100		
Costs	-$1,387	-$1,387		
Net	$1,173	$1,813		

2



Key Notes

1. AUDIO / VIDEO TO BE INSPECTED BY ELECTRICIAN & DETERMINE WHETHER IT IS IN FUNCTIONING ORDER. IF ELECTRICIAN DETERMINES IT IS DEFECTIVE G.C. TO REPLACED SYSTEM
2. WALL MIRRORS ARE TO BE REPLACED
3. REPLACE LIGHT FIXTURES IN ACT. G.C. TO VE. CONDITION OF LIGHT FIXTURE. REPLACE IF NOT WORKING
4. DISSEMBLE EXIST. WD. STUD WALLS & FRAMED IN WINDOWS. WALLS TO BE RECONSTRUCTED MATCH EXIST. CONDITIONS PRIOR TO STORM DAMAGE
5. CENTER GYM (NEAR THE CUPOLA) SPEAKER SYSTEMS, & SCORE BOARDS ARE TO BE INSPECTED BY ELECTRICIAN & DETERMINE WHETHER IT IS IN FUNCTIONING ORDER. IF ELECTRICIAN DETERMINES IT IS DEFECTIVE G.C. TO REPLACE SYSTEM.
6. 40 GAL WATER HEATER TO BE REPLACED
7. G.C. TO VER. EXTERIOR FLOOD LIGHT CONDITION. IF IT IS DETERMINED THAT ITEM(S) NEED TO BE REPLACED G.C. TO CONSULT CITY FOR DIRECTION ON SCOPE. IF EXPANSIONS OF SCOPE ARE APPROVED BY CITY, ELECTRICIAN & G.C. ARE TO COORDINATE W/ POWER COMPANY FOR INSTALLATION PROCESS.
8. ALL RESTROOM PARTITIONS ARE TO BE REMOVED & REPLACED W/ PLASTIC PARTITIONS & RELATED ACCESSORIES.
9. G.C. TO INSPECT EXISTING ROOF FOR DAMAGE. CITY TO BE NOTIFIED IF DAMAGES ARE PRESENT. IN SUCH AN EVENT SAID CITY TO DIRECT CONTRACTOR ON HOW TO PROCEED.
10. EXIST. 10'X12' O.H. DOORS ARE TO BE MADE OPERATIONAL WHILE NEW DOORS ARE MANUFURED. ONCE BOTH DOORS ARE SHIPPED EXISTING O.H. DOORS ARE TO BE REMOVED & REPLACED W/ NEW O.H. DOORS.
11. EXIST. 25 TON A/C UNITS ARE TO BE ASSESSED FOR REPAIRS. IF REPAIRS ARE NOT FEASIBLE G.C. TO DISCUSS REPLACING A/C UNITS WITH CITY
12. EXIST. A/C UNITS ARE TO BE REMOVED & REPLACED - INCLUDING AHU (G.C. TO VERIFY SCOPE OF REPLACEMENT)
13. ROLL UP WINDOW IN WORK AREA ARE TO BE REMOVED & REPLACED.
14. REMOVE & REPLACE ALL DRINKING FOUNTAINS
15. G.C. TO VER. WORK AREA SINK(S) CONDITION. IF IT IS DETERMINED THAT ITEM(S) NEED TO BE REPLACED G.C. TO CONSULT CITY FOR DIRECTION ON SCOPE. IF EXPANSIONS OF SCOPE ARE APPROVED BY CITY, G.C. ARE TO REPLACE EXIST. PLUMBING FIXTURE(S) W/ EQUIVALENT OR SIMILAR FIXTURE(S) THAT WILL ADEQUATELY FIT WITHIN SPACE AND/OR CASEWORK (V.I.F.)
16. G.C. TO VER. CARD READER CONDITION. IF IT IS DETERMINED THAT ITEM(S) NEED TO BE REPLACED G.C. TO CONSULT CITY FOR DIRECTION ON SCOPE. IF EXPANSIONS OF SCOPE ARE APPROVED BY CITY, ELECTRICIAN & G.C. ARE TO COORDINATE W/ CITY VENDOR TO ACCOMDATE THE EXIST. SYSTEM.
17. REPLACE DOORS SLABS W/ NEW H.M. DOORS & HARDWARE: REPAIR & REPAINT ALL DOOR FRAMES.
18. REPAIR ALL EXTERIOR SOFFITS & FASCIAS- G.C. TO ADD 6" BATT INSULATION WITHIN AREA OF OVERHANG.
19. PREP & PAINT ALL EXTERIOR STRUCTURAL FRAMING WHERE EXPOSED. FULL HGT. TO MATCH EXIST. COLORS.
20. REPAIR INTERIOR SOFFIT AS NEEDED.
21. EXAMINE THE CONDITION OF WOOD SHELVING & SILLS. REPAIR IF REQ'D.
22. REMOVE EXIST BLINDS & HANG NEW BLINDS
23. WEIGHT ROOM TO RECIEVE DIAMOND PLATE WAINSCOATING (MATCH EXIST. LOCATIONS AND HEIGHT)
24. REPLACE WOMEN'S BATHROOM CLG.
25. WALL MURAL TO RE-MAIN & PROVIDE A LAYER OF CLEAR COAT PROTECTION

CEILING GRID SPECS	
CEILING TILES:	2' X 2' TILES IN LAY-IN GIRD
MANUF:	ARMSTONG (BASIS-OF-DESIGN)
EDGE PROFILE:	SQAURE
GRID SIZE:	1 5/16"
NOTE:	PROVIDE VINYL COATED CLG. TILES IN FOOD SERVICE AREAS

DOOR HARDWARE SET SCHEDULES

Hardware Sets

QTY	DESCRIPTION	CATALOG NUMBER	MANUFACTURER
Hardware Set 1 (Office)			
3 EA	HINGE	5BB1 4.5 x 4.5	IVES/ 652
1 EA	ENTRANCE/OFFICE LOCK	AL50PD SAT	SCH / 626
1 EA	WALL STOP	WS11	IVE / 626
Hardware Set 2 (Typ. Passage Set)			
3 EA	HINGE	5BB1 4.5 x 4.5	IVES/ 652
1 EA	PASSAGE SET	AL50PD SAT	SCH / 626
1 EA	WALL STOP	WS11	IVE / 626
Hardware Set 2 (Typ. Storefront Entrance Door - Exterior)			
1 EA		WEATHERSTRIP BY DOOR/FRAME MANUF.	
Hardware Set 3 (Entry / Foyer)			
3 EA	HINGE	112HD	IVES / 628
1 EA	PANIC HARDWARE	24-R-NL-OP-1439	FAL / 626
1 EA	RIM CYLINDER	20-021	SCH / 626
1 EA	90 DEG OFFSET PULL	8190HD 10" O	IVE / 630
1 EA	SADDLE THRESHOLD	425	NGP / 719
			WEATHERSTRIP BY DOOR/FRAME MANUF.

Hardware Sets

QTY	DESCRIPTION	CATALOG NUMBER	MANUFACTURER
Hardware Set 1 (Office)			
3 EA	HINGE	5BB1 4.5 x 4.5	IVES/ 652
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1 EA	SADDLE THRESHOLD	425	NGP / 719
			WEATHERSTRIP BY DOOR/FRAME MANUF.

KRIEGER KLATT
ARCHITECTS
2120 E. 11 Mile Rd. | Royal Oak, MI 48067
P: 248.414.9270 F: 248.414.9275
www.kriegerklatt.com

Client:
City Of Fort Myers
2200 Second St.
Fort Myers, FL 33901

Project:
Fort Myers Community Center
2731 Oak St.
Fort Myers Beach, FL 33931

Issued	Description	By
2023-06-29	Coordination Review	RK
2023-07-03	Permits	RK

Seal:

Note:
Do not scale drawings. Use calculated dimensions only. Verify existing conditions in field.

North Arrow:

Sheet Title:
Floor Plan

Project Number:
23-087

Scale:
As indicated

Sheet Number:
A.100

To Whom It May Concern,

I am writing this letter to give the Community Foundation permission to use the space of Bay Oaks Recreation Center and its parking lot for a fundraiser pickleball tournament, located at 2731 Oak Street, Fort Myers Beach, FL 33931, on March 16, 2024 from 8AM – 4PM.

If you have any questions about the event or the permission allowed for the Community Foundation to use Bay Oaks Recreational Campus for their special event, please contact me at (239) 313 – 1542.

Best,

Nicole Berzin

Nicole Berzin

Parks and Recreation, Campus Manager

Town of Fort Myers Beach
Agenda Item Summary
Blue Sheet Number: **2024-1482**

Meeting Date: February 20, 2024

1. **Requested Motion:**

Authorize the Mayor to execute two Non-Exclusive Right of Way Agreements with the Fort Myers Beach Chamber of Commerce and Bandes Construction Company, Inc.

Why the action is necessary:

Allows the Licensees to utilize Town right of way for proposed purposes within the agreements.

What the action accomplishes:

Authorizes the Mayor to execute two Non-Exclusive Right of Way License Agreements with the Fort Myers Beach Chamber of Commerce and Bandes Construction Company.

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

4. **Submitter of Information:**

---

5. **Background:**

The Fort Myers Beach Chamber of Commerce agreement is for the use of Town right of way for the location of an information trailer in the downtown Times Square area.

The Bandes Construction Company agreement is for the use of 11 Town parking spaces for construction equipment and dumpsters.

Attachments:

1. FMB LICENSE AGREEMENT - Information trailer - FMB Chamber of Commerce Times Square
2. FMB LICENSE AGREEMENT - Parking Spaces 1232024 Edited

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

Authorize the Mayor to execute

8. **Recommended Approval:**

Jason Freeman, Legislative Liaison / Deputy Town Clerk	Created/Initiated - 2/15/2024
Amy Baker, Town Clerk	Approved - 2/15/2024
Nancy Stuparich, Town Attorney	Approved - 2/15/2024
Amy Baker, Town Clerk	Approved - 2/15/2024
Andy Hyatt, Town Manager	Final Approval - 2/15/2024

For Recording Purposes Only

THIS INSTRUMENT PREPARED BY
AND AFTER RECORDING RETURN TO:

Nancy Stuparich, Esq.
Vose Law Firm LLP
324 W. Morse Blvd.
Winter Park, FL 32789

NON-EXCLUSIVE RIGHT OF WAY LICENSE AGREEMENT

THIS NON-EXCLUSIVE RIGHT OF WAY LICENSE AGREEMENT, (hereinafter "Agreement"), is entered into as of _______________, 2024, by and between **FORT MYERS BEACH CHAMBER OF COMMERCE,** their successors and assigns, (collectively hereinafter the "Licensee"), and the **TOWN OF FORT MYERS BEACH** (hereinafter, the "Licensor"), a political subdivision of the State of Florida.

RECITALS

WHEREAS, the Licensor owns property located at 1046 Estero Blvd, Fort Myers Beach, which is shown on Exhibit "A" ("the Property") to this agreement; and

WHEREAS, the Licensee desires to obtain a non-exclusive right of way license agreement to allow the use of the Property for the location of an information trailer, which will remain on the Property, subject to the terms of this Agreement; and

WHEREAS, the information trailer provides a public benefit by being centrally with information available for visitors to Estero Island and it is in the best interest of the Town of Fort Myers Beach to enter into this Agreement; and

NOW, THEREFORE, in consideration of the foregoing and of the terms and conditions set forth herein, the parties agree as follows:

1. **RECITALS**. The foregoing recitals are true and form a material part of this Agreement.

2. **NON-EXCLUSIVE RIGHT-OF-WAY USE PERMIT**. This Agreement shall serve as a Non-Exclusive Right of Way Use Permit for the benefit of Licensee. Licensee will not cause, or allow to be caused any damage to the Property and shall maintain the area free of trash and debris.

Licensee shall not install or make any permanent changes to the Property without the prior approval of Licensor. If the Licensee allows the Property to fall into disrepair, or does not adequately maintain same, the Licensor shall have the right, after three (3) days written notice to the Licensee, to take appropriate actions to repair or maintain the Property, and the Licensee shall be responsible for the reimbursement of the Licensor for the costs of such repair, maintenance or removal. Nothing contained herein or by virtue of the issuance of a Permit shall give or grant the Licensee any property rights to the Property, other than as may be provided herein.

3. **REMOVAL/RELOCATION/EMERGENCIES**. If, in the opinion of the Licensor, the use of the Property interferes with any construction, reconstruction, repairs, alteration or improvement which the Licensor desires to perform on, around or under the Property, Licensee, upon receipt of a written notice from the Licensor, shall remove or relocate information trailer as requested by the Licensor within fifteen (15) days of receipt of said notice. In the event the Licensee does not remove or relocate the information trailer as provided herein, the Licensor shall have the right, but not the obligation, to remove the information trailer at the sole expense of the Licensee, and the Licensor shall have no obligation to safeguard or otherwise preserve the information trailer that is removed by the Licensor. In the event of the need for emergency repairs, as determined by the Licensor at its sole discretion, the Licensor shall have the right to remove the information trailer without advance notice to Licensee. The Licensor shall in no event be liable to the Licensee for the preservation or condition of the information trailer that is removed due to actions of the Licensor or its agents.

4. **INDEMNIFICATION**. Licensee agrees and shall indemnify the Licensor and hold it harmless from and against all claims, damages, losses and expenses, including reasonable attorney's fees and costs arising out of, or resulting from, the performance of their respective responsibilities under this Agreement, or to the extent the existence of the information trailer on the Property, or any hazard caused by the information trailer, or any damages which are the result in any mishap or accident on the site of the information trailer. Licensee shall indemnify and hold harmless the Licensor from and against all expenses, costs or claims for any damages to the information trailer, which may result from the use of the Property by the Licensor or other governmental body or authority for maintenance, construction, installation, or other proper use within the Property.

5. **INSURANCE**. Throughout the period of time the Licensee continues to have the information trailer on Licensor's Property under this Agreement, Licensee shall obtain and possess Commercial General Liability coverage for all operations under this Agreement not less than $1,000,000 Combined Single Limit (CSL) or its equivalent. Prior to the location of the information trailer on the Property, Licensee shall provide Certificates of Insurance to the Licensor to verify coverage. A reference to this specific Agreement, and the type and amount of coverage provided, shall be clearly stated on the face of the Certificates of Insurance. The insurance coverage shall name the Town of Fort Myers Beach as an additional insured, and shall contain a provision which forbids any cancellation, changes, material alterations, or non-renewal of coverage without providing thirty (30) days' prior written notice to the Licensor.

6. **NOTICES.** Notices required or permitted under this Agreement shall be made by written document delivered as follows:

To the Licensor:

By hand delivery to the Town of Fort Myers Beach, Town Hall, Attention: Town Manager.

To the Licensee:

By hand delivery (or posting on the door) at 100 Lover's Lane Fort Myers Beach 33931, FL

7. **DURATION**. This Agreement shall remain in effect until terminated by the parties.

IN WITNESS WHEREOF, the parties have caused this Agreement to be made and executed as of the day and date first above written.

WITNESSES:

LICENSEE: Fort Myers Beach Chamber of Commerce

____
Print Name:___________________________

____
Print Name:___________________________

____
Print Name: __________________________
Title: ______________________________

LICENSOR: 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 BY THE TOWN OF FORT MYERS BEACH ONLY:

____
Vose Law Firm, Town Attorney

For Recording Purposes Only

THIS INSTRUMENT PREPARED BY
AND AFTER RECORDING RETURN TO:

Nancy Stuparich, Esq.
Vose Law Firm LLP
324 W. Morse Blvd.
Winter Park, FL 32789

NON-EXCLUSIVE RIGHT OF WAY LICENSE AGREEMENT

THIS NON-EXCLUSIVE RIGHT OF WAY LICENSE AGREEMENT, (hereinafter "Agreement"), is entered into as of Wednesday, February 14, 2024, by and between **Bandes Construction Company Inc,** their successors, and assigns, (collectively hereinafter the "Licensee"), and the **TOWN OF FORT MYERS BEACH** (hereinafter, the "Licensor"), a political subdivision of the State of Florida.

RECITALS

WHEREAS, the Licensor owns property located at the corner of Old San Carlos Blvd & Estero Blvd, Fort Myers Beach, currently used for (11) metered parking spaces, in the Licensor right of way, which is shown on Exhibit "A" ("the Property") to this agreement; and

WHEREAS, the Licensee desires to obtain a non-exclusive right of way license agreement to allow the use of the Property for the location of construction equipment & dumpsters, which will remain on the Property, subject to the terms of this Agreement; and

WHEREAS, the construction equipment & dumpsters provide a public benefit by facilitating the rebuilding of property located within the Town, which is in the in the best interest of the Town in rebuilding the Town following Hurricane Ian to enter into this Agreement.

NOW, THEREFORE, in consideration of the foregoing and of the terms and conditions set forth herein, the parties agree as follows:

1. **RECITALS**. The foregoing recitals are true and form a material part of this Agreement.

2. **NON-EXCLUSIVE RIGHT-OF-WAY USE PERMIT**. This Agreement shall serve as a Non-Exclusive Right of Way Use Permit for the benefit of Licensee. Licensee will not cause, or allow to be caused, any damage to the Property and shall maintain the area free of trash and debris.

Licensee shall not install or make any permanent changes to the Property without the prior approval of the Licensor. If the Licensee allows the Property to fall into disrepair, or does not adequately maintain same, the Licensor shall have the right, after three (3) days written notice to the Licensee, to take appropriate actions to repair or maintain the Property, and the Licensee shall be responsible for the reimbursement of the Licensor for the costs of such repair, maintenance or removal. Nothing contained herein or by virtue of the issuance of a Permit shall give or grant the Licensee any property rights to the Property, other than as may be provided herein.

3. **REMOVAL/RELOCATION/EMERGENCIES**. If, in the opinion of the Licensor, the use of the Property interferes with any construction, reconstruction, repairs, alteration or improvement which the Licensor desires to perform on, around or under the Property, Licensee, upon receipt of a written notice from the Licensor, shall remove or relocate construction equipment & dumpsters as requested by the Licensor within fifteen (15) days of receipt of said notice. In the event the Licensee does not remove or relocate the construction equipment & dumpsters as provided herein, the Licensor shall have the right, but not the obligation, to remove the construction equipment & dumpsters at the sole expense of the Licensee, and the Licensor shall have no obligation to safeguard or otherwise preserve the construction equipment & dumpsters that is removed by the Licensor. In the event of the need for emergency repairs, as determined by the Licensor at its sole discretion, the Licensor shall have the right to remove the construction equipment & dumpsters without advance notice to Licensee. The Licensor shall in no event be liable to the Licensee for the preservation or condition of the construction equipment & dumpsters that is removed due to actions of the Licensor or its agents.

4. **INDEMNIFICATION**. Licensee agrees and shall indemnify the Licensor and hold it harmless from and against all claims, damages, losses and expenses, including reasonable attorney's fees and costs arising out of, or resulting from, the performance of their respective responsibilities under this Agreement, or to the extent the existence of the construction equipment & dumpsters on the Property, or any hazard caused by the construction equipment & dumpsters, or any damages which are the result in any mishap or accident on the site of the construction equipment & dumpsters. Licensee shall indemnify and hold harmless the Licensor from and against all expenses, costs or claims for any damages to the construction equipment & dumpsters, which may result from the use of the Property by the Licensor or other governmental body or authority for maintenance, construction, installation, or other proper use within the Property.

5. **INSURANCE**. Throughout the period of time the Licensee continues to have the construction equipment & dumpsters on Licensor's Property under this Agreement, Licensee shall obtain and possess Commercial General Liability coverage for all operations under this Agreement not less than $1,000,000 Combined Single Limit (CSL) or its equivalent. Prior to the location of the construction equipment & dumpsters on the Property, Licensee shall provide Certificates of Insurance to the Licensor to verify coverage. A reference to this specific Agreement, and the type and amount of coverage provided, shall be clearly stated on the face of the Certificates of Insurance. The insurance coverage shall name the Town of Fort Myers Beach as an additional insured, and shall contain a provision which forbids any cancellation, changes, material alterations, or non-renewal of coverage without providing thirty (30) days' prior written notice to the Licensor.

6. **NOTICES.** Notices required or permitted under this Agreement shall be made by written document delivered as follows:

To the Licensor:

By hand delivery to the Town of Fort Myers Beach, City Hall, Attention: Town Manager.

To the Licensee:

By hand delivery (or posting on the door) at 151 Old San Carlos Blvd.

7. **DURATION**. This Agreement shall remain in effect until terminated on or before Friday March 15, 2024.

8. **FEE**. Licensee agrees to pay $4000.00 for the rights contained in this agreement, which shall be due at the time this agreement is signed by the last party.

IN WITNESS WHEREOF, the parties have caused this Agreement to be made and executed as of the day and date first above written.

WITNESSES:

Print Name:____________________________

Print Name:____________________________

LICENSEE: Bandes Construction Company Inc.

Print Name: ___________________________

Title: _________________________________

LICENSOR: 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 BY THE TOWN OF FORT MYERS BEACH ONLY:

____

Vose Law Firm, Town Attorney

Town of Fort Myers Beach
Agenda Item Summary

Blue Sheet Number: **2024-1462**

Meeting Date: February 20, 2024

1. **Requested Motion:**
Provide staff with direction on appointing a citizen to the CDBG-DR Planning & Infrastructure Evaluation Committee to represent the Town of Fort Myers Beach.

Why the action is necessary:

What the action accomplishes:
Fills the Town's seat on the CDBG-DR Planning & Infrastructure Evaluation Committee and provides for Town representation.

2. **Agenda:**
ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

4. **Submitter of Information:**

---

5. **Background:**
Lee County contacted the Town and requested a nomination for an applicant for committee membership to the CDBG-DR Planning & Infrastructure Evaluation Committee. Members appointed may include the following:

a. Subject Matter Experts in the Fields of Infrastructure, Engineering or Other Public Works Related Field
b. Members of Local Professional Organizations for Public Works Related Fields
c. Community Members with a Special Interest in Infrastructure and Planning Projects

The attached Lee County enabling resolution adopted by the BoCC to create the committee specifies its makeup and who is eligible to serve. Please consult paragraphs 3-5 in particular for eligibility criteria. Applicants will need to complete the Lee County Advisory Committee Application in full as the selected nominee.

The Town is seeking guidance and approval of how to nominate and/or select an appointee to represent the Town of Fort Myers Beach on this important committee. **Voting members shall not be elected officials or employees of Lee County or any of its municipalities.**

The County has requested the Town to submit our nominee's application by Friday, March 1st for potential appointment during the BoCC's March 5, 2024 meeting and to plan to submit the application no later than Friday, March 15th, as later appointees will miss at least one evaluation cycle.

Attachments:
1. Executed Resolution 24-01-07 CDBG-DR Evaluation Committee
2. AdvisoryCmtApp

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

Appoint someone to serve on the committee or provide direction on the preferred appointment process.

8. **Recommended Approval:**

Jason Freeman, Legislative Liaison / Deputy Town Clerk	Created/Initiated - 2/8/2024
Nancy Stuparich, Town Attorney	Approved - 2/15/2024
Amy Baker, Town Clerk	Approved - 2/15/2024
Andy Hyatt, Town Manager	Final Approval - 2/15/2024

RESOLUTION NO. 24-01-07

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA, ESTABLISHING THE CDBG-DR INFRASTRUCTURE AND PLANNING NOTICE OF FUNDING AVAILABILITY EVALUATION COMMITTEE AS AN ADVISORY COMMITTEE TO REVIEW PROPOSALS AND MAKE FUNDING RECOMMENDATIONS FOR COMMUNITY DEVELOPMENT BLOCK GRANT DISASTER RECOVERY INFRASTRUCTURE AND PLANNING PROJECTS.

WHEREAS, the Board of County Commissioners is the governing body in and for Lee County, a political subdivision of the State of Florida; and,

WHEREAS, the United States Department of Housing and Urban Development directly allocated Community Development Block Grant – Disaster Recovery Funds (CDBG-DR) to Lee County for Hurricane Ian recovery; and,

WHEREAS, the Board has determined it would be in the public's best interest to establish an advisory committee to review proposals from applicants seeking funding for infrastructure and planning projects through CDBG-DR funds; and,

WHEREAS, the creation and function of Advisory Committees follows the procedures outlined in Administration Code AC-2-3.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners, Lee County, Florida, that:

1. There is hereby designated and established an Evaluation Committee for CDBG-DR Infrastructure and Planning Program Notices of Funding Availability, which shall have no more than eleven (11) appointed members and one (1) ex officio non-voting chairperson.
2. The Committee membership will include the following:

a. One appointed representative nominated by each County Commissioner.

b. One appointed representative nominated by each of the following municipalities:

   i. City of Bonita Springs

   ii. City of Cape Coral

   iii. City of Fort Myers

   iv. City of Sanibel

   v. Town of Fort Myers Beach

   vi. Village of Estero

c. One ex officio non-voting chairperson appointed by the Lee County Manager.

3. Voting members shall not be elected officials or employees of Lee County or any of its municipalities.

4. Members appointed may include the following:

   a. Subject Matter Experts in the Fields of Infrastructure, Engineering or Other Public Works Related Field

   b. Members of Local Professional Organizations for Public Works Related Fields

   c. Community Members with a Special Interest in Infrastructure and Planning Projects

5. Appointed members must be free from real or perceived conflict of interest and may not participate in the NOFA process through submission of an application, or have intent to attain contracts, subcontracts, or other financial benefit.

6. All members will be appointed for a one-year term with the option to serve successive terms upon approval by the Board of County Commissioners. All terms shall begin in

January of each year or as soon thereafter as possible.

7. The Board of County Commissioners is authorized to remove any member of the Committee, with or without cause, upon written notice thereto. The Board of County Commissioners shall fill any vacancy on the panel after the vacancy occurs. The Committee may declare a position vacant if any member has two consecutive unexcused absences.
8. Six (6) appointed members shall constitute a quorum.
9. The function of the Evaluation Committee is to review and recommend proposals for CDBG-DR infrastructure and planning projects in an objective and fair manner. Committee members are required to abide by the following guiding principles:
    a. Review and rank proposals based on greatest overall benefit to Lee County residents.
    b. Base funding recommendations on CDBG-DR resources allocated within the Public Action Plan.
10. The ex officio non-voting chairperson shall facilitate each meeting.
11. The Committee shall serve at the pleasure of the Board of County Commissioners and shall serve without compensation. The committee shall be solely an advisory committee and shall have no governmental powers. Members of the committee shall follow such rules of procedure during meetings to accomplish its duties as provided in the Lee County Administrative Code or as further requested by the Board of County Commissioners, County Manager, or Assistant County Manager. A majority vote of the committee shall be required for the approval of any proposed funding recommendations to the Board of County Commissioners.
12. The CDBG-DR Infrastructure and Planning Notice of Funding Availability Evaluation

Committee and the provisions of this resolution shall sunset upon the close out of the Hurricane Ian CDBG-DR grant or September 30, 2029, whichever occurs first.

13. The provisions of this Resolution are severable, and it is the intention to confer to the whole or any part of this Resolution, the powers herein provided for. If any provision of this Resolution is held unconstitutional by a court of competent jurisdiction, the decision of such court shall not affect or impair the remaining provisions of this Resolution. It is hereby declared to be the Board's legislative intent that this Resolution would have been adopted had such an unconstitutional provision not been included herein.

14. To the extent that there are typographical and/or administrative errors that do not change the tone, tenor, or concept of this Resolution, this Resolution may be revised without subsequent approval by the Board of County Commissioners.

15. This Resolution shall become effective immediately upon its adoption by the Board of County Commissioners.

[The remainder of this page intentionally left blank.]

Commissioner Pendergrass made a motion to adopt the foregoing resolution, seconded by Commissioner Ruane. The vote was as follows:

Kevin Ruane	Aye
Cecil L Pendergrass	Aye
Ray Sandelli	Aye
Brian Hamman	Aye
Mike Greenwell	Aye

DULY PASSED AND ADOPTED this 16th day of January, 2024.

ATTEST:
KEVIN C. KARNES
CLERK OF CIRCUIT COURT

BOARD OF COUNTY COMMISSIONERS
LEE COUNTY

BOARD OF COUNTY COMMISSIONERS
SEAL
LEE COUNTY, FLORIDA

BY:

Chairman

CHRIS JAGODZINSKI
DEPUTY CLERK

APPROVED AS TO FORM FOR THE RELIANCE OF LEE COUNTY ONLY

BY:
Office of County Attorney

ATTACHMENT 1

NEW COMMITTEE CHECKLIST:

ESTABLISHED BY: (CHECK ONE AND ATTACH ESTABLISHING DOCUMENT (SEE BELOW))

ORDINANCE	☐
RESOLUTION	☒
BOARD ACTION	☐
ADMINISTRATIVE CODE	☐
INTERLOCAL AGREEMENT	☐
FLORIDA STATUTE	☐
OTHER	☐

ESTABLISHING DOCUMENT SHALL CONTAIN THE FOLLOWING:

CATEGORY: (CHECK ONE)

STANDING	☐
SPECIAL (WITH ESTABLISHED SUNSET DATE)	☒

COMMITTEE NAME: CDBG-DR Infrastructure and Planning NOFA Evaluation Committee

NUMBER OF MEMBERS: 12

HOW APPOINTED:

AT LARGE (CAN BE APPOINTED BY ANY COMMISSIONER)	☐
AT LARGE/AT LARGE BY CATEGORY (CAN BE APPOINTED BY ANY COMMISSIONER CAN BE APPOINTED BY ANY COMMISSIONER AND MUST QUALIFY FOR THE LISTED CATEGORY*)	☐
CATEGORY (MUST QUALIFY FOR THE LISTED CATEGORY*)	☐
DISTRICT SENSITIVE (CAN ONLY BE APPOINTED BY SPECIFIED DISTRICT COMMISSIONER)	☒
DISTRICT SENSITIVE/AT LARGE BY CATEGORY/ AT LARGE (CAN ONLY BE APPOINTED BY SPECIFIED DISTRICT COMMISSIONER* CAN BE APPOINTED BY ANY COMMISSIONER AND MUST QUALIFY FOR THE LISTED CATEGORY* CAN BE APPOINTED BY ANY COMMISSIONER	☐

AC-2-3 (Continued)

DISTRICT SENSITIVE/BY CATEGORY ☐
(CAN ONLY BE APPOINTED BY SPECIFIED
DISTRICT COMMISSIONER AND MUST QUALIFY
FOR THE LISTED CATEGORY*)

DISTRICT SENSITIVE/DISTRICT ROTATING ☐
(CAN ONLY BE APPOINTED BY SPECIFIED
DISTRICT COMMISSIONER*
ROTATES BETWEEN COMMISSION DISTRICTS
LIST SCHEDULE OF APPOINTMENTS)

AT LARGE/CITY ROTATING ☒
(CAN BY APPOINTED BY ANY COMMISSIONER BUT
MUST FOLLOW ROTATING CITY APPOINTMENT
SCHEDULE
LIST SCHEDULE OF APPOINTMENTS)

NOT BOARD APPOINTED ☐

OTHER ☐

***LIST CATEGORIES AND DISTRICT SPECIFIC APPOINTMENTS**

LENGTH OF TERM 1 **YEARS**

FORM 1 FINANCIAL DISCLOSURE REQUIRED:

YES ☐
NO ☒

ANNIVERSARY MONTH January
(IF DIFFERENT FROM THE MONTH ESTABLISHED)

COUNTY LIAISON NAME Sandra Ryan

LIAISON DEPARTMENT/DIVISION Office of Strategic Resources and Government Affairs

LIAISON PHONE NUMBER 239-533-2315

SUNSET DATE (IF APPLICABLE) September 20, 2029 or Closeout of CDBG-DR

PURPOSE:

This special advisory committee will review proposals from applicants seeking funding from CDBG-DR for infrastructure and planning projects. The committee will rank applications and make funding recommendations to the BoCC.

Lee County Southwest Florida

Lee County Advisory Committee Application

Thank you for your interest in serving Lee County. Complete and submit this application, and any supporting documentation, to be considered for a Lee County advisory board or committee appointment.

Applications must be complete and signed to be valid. Applications will not be processed unless each section has been completed. Section IV. Conflict of Interest must be completed by all applicants, new and reappointed.

Return completed application to:

Regular Mail:	Lee County Administration Advisory Committees P.O. Box 398 Fort Myers, FL 33902-0398	Fax: E-mail:	(239) 485-2262 advisorycommittees@leegov.com

Note: All information contained in this application becomes Public Record once submitted to Lee County.

☐ **Go Paperless:** I agree to receive communications concerning my membership via e-mail.

I. Name of Advisory Committee You are Applying for:

Find current or upcoming vacancies on the Lee County website- www.leegov.com/bocc/advisorycommittees

Committee:				
Commission District:				
☐ 1 – Ruane	☐ 2 – Pendergrass	☐ 3 – Sandelli	☐ 4 – Hamman	☐ 5 – Greenwell

II. Personal Information

Title:	◉ Mr. ○ Mrs. ○ Ms. ○ Other:		
Name:			
	Last	First	Middle Initial
Home Address:			
	Street	City	Zip Code
Business Address:			
	Street	City	Zip Code
Mailing Address:			
	Street	City	Zip Code
Phone:			
	Home	Cell	Business
E-mail Address:			
Employer Address:			
	Street	City	Zip Code
Employer Phone:			

Do you have any family members currently serving on this Advisory Committee? If 'Yes', list below.	◯ Yes ◯ No
Do you, or anyone in your immediate family, have any business or contractual relationships with the County? If 'Yes', explain the relationship and, if applicable, identify the family relationship (mother, father, son, daughter, etc.)	◯ Yes ◯ No
Have you ever been convicted of any felony or misdemeanor offense? If 'Yes', explain below (You may omit minor traffic violations & any offense committed as a minor.)	◯ Yes ◯ No
Have you ever worked for the Lee County Board of County Commissioners? If 'Yes', list position, department, start & end date.	◯ Yes ◯ No
Do you have any relatives currently working for the Lee County Board of County Commissioners? If 'Yes', list name(s) & department(s).	◯ Yes ◯ No

III. Qualifications

For Domestic Animal Services Advisory Committee Only

Select the category you are interested in representing:

- ☐ Animal Breeder
- ☐ Service Animal Industry
- ☐ Animal Advocate/Rescue
- ☐ Licensed/Practicing Veterinarian
- ☐ Cattlemen's Association

List special qualifications to be eligible (for all committees):

If applicable, attach a resume of additional personal and professional qualifications and experience.

IV. Conflict of Interest

Florida law prohibits certain business relationships on the part of public officers and employees, including those serving on advisory boards and committees. In general, advisory committee members are prohibited from entering into business transactions with Lee County, including contracts or transactions between Lee County government and you, your employer, or any business in which you have a material interest. Consult the *Guide to the Sunshine Amendment and Code of Ethics for Public Officers and Employees* for assistance in answering the questions below. This guide can be found on the Florida Commission on Ethics website - https://ethics.state.fl.us/PublicInformation/Publications.aspx.

All applicants, new or reappointment, must fill out this section and submit with the application.

Advisory Committee:		
Appointed by:		
Name:		**Phone:**
Mailing Address:		
Street	City	Zip Code
Email:		
Employer/ Business:		
Employer Address:		
Street	City	Zip Code

See page 5 of this application for information on Prohibited Employment and Business Relationships. If you have questions about a potential conflict, contact the Lee County Attorney's Office at (239) 533-2236.

Are you aware of a potential conflict of interest that may result from your service as a member of a Lee County advisory committee? ◯ **Yes** ◯ **No**

If yes, explain the nature of the conflict of interest. Identify contracts or business transactions you have with the County, the position you hold with your employer if your employer has a contract or business relationship with the County, identify the business entity you own or have a material interest in, and any other information necessary to explain the nature of the conflict of interest:

If you have a potential conflict but think that one of the statutory exemptions applies to your situation, indicate the specific exemption (see Section 112.313(12), Florida Statutes):

Waiver of Conflicts of Interest: A member of an advisory board or committee may have a conflict of interest waived by the Board of County Commissioners. Submit Florida Commission on Ethics Form 4A (Disclosure of Business Transaction, Relationship or Interest) along with this application to County Administration for consideration. Waiver requests will be forwarded to the County Attorney's Office for review. Form 4A can be found on the Lee County website - https://www.leegov.com/bocc/advisorycommittees.

Advisory Committee members have a continuing duty to disclose potential conflicts of interest.

V. Statutorily Created Required Committee Reporting Data

Lee County complies with Federal, State and Local laws, regulations and guidelines that prohibit discrimination based on race, sex, color, national origin, handicap, age or marital status.

Lee County is required by the State of Florida to collect and maintain the information requested below for statistical reporting purposes only. This information will be maintained separately from your application and will not be considered in the application evaluation process.

The information provided is required by State Statute, however, you have the right not to disclose any or all of this information. This form **must** be returned with your application.

Gender:	☐	Male	☐	Female	☐	Choose Not to Disclose
Handicapped / Disabled:	☐	Yes	☐	No	☐	Choose Note to Disclose

Racial / Ethnic Data (Check One)

☐	**WHITE (Not of Hispanic Origin):** All persons having origins in any of the original people of Europe, North Africa or the Middle East.
☐	**BLACK (Not of Hispanic Origin):** All persons having origins in any of the Black racial groups of Africa.
☐	**ASIAN OR PACIFIC ISLANDER:** All persons having origins in any of the original Peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands. This area includes, for example: China, Japan, Korea, the Philippine Islands and Samoa
☐	**AMERICAN INDIAN OR ALASKAN NATIVE:** All persons having origins in any of the original Peoples of North America and who maintain cultural identification through tribal affiliation or community recognition.
☐	**HISPANIC:** All persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin regardless of race.
☐	CHOOSE NOT TO DISCLOSE

Lee County, an Equal Opportunity Employer, considers the selection and appointment of persons to advisory committees in a non-discriminatory manner consistent with the requirements of Federal, State and Local non-discrimination laws.

Some board and committee members appointed by the Lee County Board of County Commissioners are required to comply with Chapter 112, Florida Statutes, Financial Disclosure Law, and you may be required to file a Form 1 Statement of Financial Interests

By signing, I confirm that the information provided in this application is true and complete.

Signature _______________ Date _______________

PROHIBITED EMPLOYMENT AND BUSINESS RELATIONSHIPS[1]

1. Doing Business With One's Agency
   a. You may not purchase, rent, or lease any realty, goods, or services for the County from a business entity in which you, your spouse or child own more than a 5% interest. (Sec. 112.313(3), Fla. Stat.)
   b. You may not rent, lease or sell any realty, goods, or services to the County. [Sec. 112.313(3), Fla. Stat.]
2. Conflicting Employment or Contractual Relationship
   a. You may not be employed by or contract with businesses or agencies regulated by or doing business with the County. (Sec. 112.313(7), Fla. Stat.)
   b. You may not hold any employment or have a contractual relationship that will pose a frequently recurring conflict between your private interests and public duties, or which will impede the full and faithful discharge of your public duties. (Sec. 112.313(7), Fla. Stat.)
   c. Limited exceptions to this prohibition have been created (see Sec. 112.313(7)(a) and (b), Fla. Stat.).
3. Exemptions - Pursuant to Sec. 112.313(12), Fla. Stat., the prohibitions against doing business with the County and having conflicting employment may not apply:
   a. When the business is rotated among all qualified suppliers in the County.
   b. When the business is awarded by sealed, competitive bidding and neither you, your spouse, nor child have attempted to persuade County personnel to enter the contract.
      i. NOTE: Ethics Commission Form 3A must be filed with the Supervisor of Elections prior to or at the time of bid submission.
   c. When the purchase or sale is for legal advertising, utilities service, or for passage on a common carrier.
   d. When an emergency purchase must be made to protect the public health, safety, or welfare.
   e. When the business entity is the only source of supply within the County and there is full disclosure of your interest to the governing body on Commission Form 4A.
   f. When the aggregate of business transactions does not exceed $500 in a calendar year.
   g. When the business transacted is the deposit of County funds in a bank of which you are an officer, director, or stockholder, so long as County records show that the Board of County Commissioners has determined that you did not favor your bank over other qualified banks.

[1] Adapted from, Guide to the Sunshine Amendment and Code of Ethics for Public Officers and Employees, State of Florida Commission on Ethics (2012).

Town of Fort Myers Beach
Agenda Item Summary

Blue Sheet Number: **2024-1467**

1. **Requested Motion:**

Meeting Date: February 20, 2024

Provide staff with direction to seek a community member to represent the Town of Fort Myers Beach

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**
ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

4. **Submitter of Information:**

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5. **Background:**
MPO board members appoint local citizens to the CAC. Bringing the public's perspective to the decision-making process, the CAC's members make recommendations to the MPO board about project priorities for state and federal funding in FDOT's five year work program, proposed long-range transportation plans, project plans, program plans, and other transportation issues. The CAC usually meets on the first Thursday of the month at 3:00 p.m. in the Green Room of the Cape Coral Public Works Building, 815 Nicholas Parkway East, Cape Coral, FL.

The Lee County Metropolitan Organization is asking the Town of Fort Myers Beach for a replacement for their Citizen Advisory Committee (CAC) member, Mr. Tom Gressman. Mr. Gressman has not attended CAC meetings for over three years and in such time the Town of Fort Myers Beach and its citizens have gone unrepresented on the CAC. We understand that the Town is going through a time of rebuilding, and this makes having representatives from the Town even more important.

Attachments:

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

Amy Baker, Town Clerk	Created/Initiated - 2/8/2024
Nancy Stuparich, Town Attorney	Approved - 2/15/2024
Amy Baker, Town Clerk	Approved - 2/15/2024
Andy Hyatt, Town Manager	Final Approval - 2/15/2024