



Fort Myers Beach Town Council

**Town Hall Council Chambers
2731 Oak Street
Fort Myers Beach, FL 33931**

Agenda

Monday, April 15, 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**
 - A. Presentation: Friends of the Mound House
- VII. ADVISORY COMMITTEES ITEMS / REPORTS / APPOINTMENTS**
- VIII. APPROVAL OF MINUTES**
 - A. Town Council - April 1, 2024
 - B. Management & Planning Session - April 4, 2024
 - C. Town Council Special Meeting - April 4, 2024
- IX. CONSENT AGENDA**
 - A. Special Event: 4th of July Bridge Closure
Approve closing of Matanzas Pass Bridge on July 4, 2024, from 10:00am to 11:30am for the parade, and from 9pm to 11:30pm for traffic coming on the island.
 - B. STA #12; Axis Engineering
Approve Supplemental Task Authorizations #12 for continued Planning/Zoning services performed by Axis Engineering, and authorize the Town Manager to execute the required documentation.
 - C. Resolution 24-74, Final Renewal of Environmental Engineering Firms Under RFQ-20-06-AD
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING AND AUTHORIZING THE TOWN MANAGER TO EXECUTE AN AMENDMENT TO EXTEND THE

PROFESSIONAL SERVICES AGREEMENTS BETWEEN THE TOWN AND 1) COASTAL ENGINEERING CONSULTANTS, 2) COASTAL SYSTEMS INTERNATIONAL, 3) EDGEWATER RESOURCES, 4) HANS WILSON & ASSOCIATES, 5) TAYLOR ENGINEERING, AND 6) TURRELL HALL & ASSOCIATES, WHICH ARE THE ENVIRONMENTAL ENGINEERING FIRMS SELECTED UNDER RFQ-20-06-AD "ENVIRONMENTAL ASSESSMENTS AND MARINE ENGINEERING" FOR AN ADDITIONAL YEAR; AND PROVIDING AN EFFECTIVE DATE

- D. Resolution 24-78; STA #11, Coastal Engineering Consultants, Inc.
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING SUPPLEMENTAL TASK AGREEMENT #11 OF CONTRACT RFQ-21-09-EN BETWEEN THE TOWN AND COASTAL ENGINEERING CONSULTANTS, INC. FOR CONSTRUCTION PHASE SERVICES FOR SAND RENOURISHMENT FOR THE ESTERO ISLAND NORTH BERM TRUCK HAUL PROJECT, FOR A COST OF \$59,550; AN PROVIDING FOR AN EFFECTIVE DATE.
- E. Resolution 24-77; Sole Source Steward Mine 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 53,000 TONS OF BEACH COMPATIBLE SAND FOR \$628,050.00 AS A SOLE SOURCE PROVIDER; AND PROVIDING FOR AN EFFECTIVE DATE.
- F. Resolution 24-73; Concrete Work for Bay Oaks Recreation Campus
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, RATIFYING EXPENDITURES IN EXCESS OF \$25,000 FOR CONCRETE WORK FOR BAY OAKS RECREATIONAL CAMPUS AND PROVIDING FOR AN EFFECTIVE DATE
- G. Resolution 24-75, Restroom Trailer for Newton Beach Park
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING THE PURCHASE OF A PORTABLE RESTROOM TRAILER FROM READY2GO RESTROOM TRAILERS SALES LLC AND AUTHORIZING THE TOWN MANAGER TO EXECUTE A PURCHASE ORDER IN THE AMOUNT NOT TO EXCEED \$70,256.62; AND PROVIDING FOR AN EFFECTIVE DATE.

X. ITEMS REMOVED FROM CONSENT AGENDA

XI. PUBLIC HEARINGS

- A. Ordinance 24-08; Downtown Building Height
First Reading and Public Hearing on an Ordinance entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 34, ARTICLE III., DIVISION 5, SECTIONS 34-675 BUILDING SIZE TO 1) CHANGE BUILDING HEIGHT FROM 2 STORIES TO 3 STORIES FOR PROPERTIES THAT FRONT ON TIMES SQUARE

AND BAYFRONT PEDESTRIAN PLAZAS, THE NORTH SIDE OF FIRST STREET, THE SOUTH SIDE OF ESTERO BOULEVARD BETWEEN OLD SAN CARLOS BOULEVARD AND THE MAIN PEDESTRIAN CROSSING; AND 2) CHANGE BUILDING HEIGHT FROM 2 STORIES TO 3 STORIES FOR PROPERTIES THAT FRONT ON LAGOON STREET, CRESCENT STREET, FIRST, SECOND, THIRD AND FIFTH STREETS (EAST OF SKY BRIDGE ONLY); PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND AN EFFECTIVE DATE. Open the public hearing and schedule for second reading and final adoption on May 6, 2024 at 9:00 AM

B. Ordinance 24-06; Expedited Variance, Extension and Condition Review

First Reading and Public Hearing on an Ordinance entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING SECTION 34-232 "REQUIRED HEARINGS" OF DIVISION 5 "PUBLIC HEARINGS AND REVIEW" OF ARTICLE II "ZONING PROCEDURES" OF CHAPTER 34 "ZONING DISTRICTS, DESIGN STANDARDS AND NONCONFORMITIES" TO REQUIRE ONLY ONE PUBLIC HEARING BEFORE THE LOCAL PLANNING AGENCY ("LPA") FOR VARIANCES, EXTENSIONS, AND SATISFACTION OF CONDITIONS OF PREVIOUSLY APPROVED LAND USE APPROVALS IF THE DECISION BY THE LPA IS UNANIMOUS AND THE TOWN CLERK DOES NOT RECEIVE A REQUEST BY ANYONE FOR AN ADDITIONAL HEARING BEFORE THE TOWN COUNCIL WITHIN 10 BUSINESS DAYS AFTER THE LPA DECISION; A PUBLIC HEARING BEFORE THE TOWN COUNCIL IS REQUIRED FOR VARIANCES, EXTENSIONS, OR SATISFACTION OF CONDITIONS IF THE DECISION BY THE LPA IS NOT UNANIMOUS OR IF ANYONE REQUESTS SUCH HEARING WITHIN 10 BUSINESS DAYS AFTER THE LPA DECISION; PROVIDING FOR CODIFICATION, SEVERABILITY, SCRIVENER ERRORS, CONFLICTS OF LAW AND AN EFFECTIVE DATE. Open the public hearing and schedule for second reading and final adoption on May 6, 2024 at 9:00 AM

C. Ordinance 24-04; Emergency Temporary Uses

First reading and Public Hearing of an Ordinance Entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING AND RESTATING ORDINANCE 23-05 TO PERMIT TEMPORARY USES IN CERTAIN ZONING DISTRICTS IN RESPONSE TO, AND AS A PART OF THE TOWN'S RECOVERY EFFORTS FOLLOWING A NATURAL DISASTER OR OTHER EMERGENCY SITUATION: 1) BY A GOVERNMENTAL ENTITY FOR THE BENEFIT OF THE PUBLIC; 2) FOR RESIDENTIAL MANUFACTURED HOMES, MOBILE HOMES, MOTOR HOMES, RECREATIONAL VEHICLES OR OTHER TEMPORARY DWELLINGS FOR RESIDENTIAL PURPOSES; AND 3) FOR MOVEABLE COMMERCIAL STRUCTURES FOR THE DELIVERY AND SALE OF GOODS AND SERVICES TO THE PUBLIC; PROVIDING FOR CONFLICT OF LAW, SCRIVENER'S ERRORS, SEVERABILITY, AND PROVIDING

FOR AN EFFECTIVE DATE. Open the public hearing and schedule for second reading and final adoption on May 6, 2024 at 9:00 AM

D. Ordinance 24-11, Purchasing Policy Amendments

First Reading and Public Hearing of an Ordinance Entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING DIVISION 1 PURCHASING OF GOODS AND SERVICES POLICIES AND PROCEDURES OF ARTICLE V FINANCE OF THE TOWN OF FORT MYERS BEACH TO TRANSFER PURCHASING TO THE TOWN MANAGER OR DESIGNEE FROM THE FINANCE DEPARTMENT, TO INCREASE THE AUTHORITY OF THE TOWN MANAGER FOR PURCHASES OF GOODS AND SERVICES, TO CLARIFY EXISTING REGULATIONS, AND TO IMPLEMENT RECOMMENDATIONS PROVIDED TO THE TOWN BASED ON THE DISASTER READINESS ASSESSMENT AND ABATEMENT PLAN PREPARED BY THE FLORIDA DIVISION OF EMERGENCY MANAGEMENT; PROVIDING FOR CONFLICT OF LAW, SCRIVENER'S ERRORS AND SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE. Open the public hearing and schedule for second reading and final adoption on May 6, 2024 at 9:00 AM

E. Ordinance 24-12; Elections

1st Reading and Public Hearing on an Ordinance entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA REAFFIRMING ITS PRIOR AMENDMENT OF THE QUALIFYING PERIOD FOR TOWN COUNCIL CANDIDATES FOR THE NOVEMBER 2024 ELECTION TO NOON ON THE 71ST DAY (JUNE 10, 2024) TO NOON OF THE 67TH DAY (JUNE 14, 2024) PRIOR TO THE AUGUST PRIMARIES TO BE HELD ON AUGUST 20, 2024; PROVIDING FOR SCRIVENER'S ERRORS; CONFLICTS OF LAW; SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE. Open the public hearing and schedule for second reading and final adoption on May 6, 2024 at 9:00 AM

XII. ADMINISTRATIVE AGENDA

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

Town Hall Council Chambers
2731 Oak Street
Fort Myers Beach, FL 33931

Minutes

Monday, April 1, 2024

9:00 AM

ORDER OF BUSINESS

DRAFT

I. CALL TO ORDER

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

I. INVOCATION

Town Clerk Baker.

II. PLEDGE OF ALLEGIANCE

III. APPROVAL OF FINAL AGENDA

Council Member King moved to approve the final agenda with items A., B., E., F., G., H., and I. pulled for discussion, seconded by Council Member Safford. The motion carried unanimously.

IV. PUBLIC COMMENT

Kathy Turner, on behalf of the Estero Island Garden Club, reported on activities and noted that plants were installed behind the wavy wall, which took four hours. She thanked Beach Talk Radio for raising \$8,000.00 and providing tools for the project. She thanked the 60 volunteers for participating. She offered to lead future projects and noted that the Royal Palms in Times Square needed water immediately. She reviewed the initiatives presented in August.

Joseph Pugliese, resident, commented on the Newton Park construction site. He indicated that lead paint and asbestos were mixed with the sand in the sifter machine and put back on the beach. When the structure was demolished, the excavator operator hit the underground power line and caught his house on fire. Now, a backhoe shakes his house all day, and his foundation is cracked. He asked who was going to pay to repair his house.

Jack Kegelmeyer, staying in the Mooring Field, was told that Harbormaster Gilchrist was no longer with the town, and he expressed his support for him. He encouraged the council to reconsider his termination because he was the best Harbormaster he had ever seen. He listed his attributes and stated he was extremely diligent and knowledgeable and personally greeted every visitor. He felt the town was losing a gem and it was a huge loss to the town. He shared a petition and Town Clerk Baker entered it into the record.

Mark Kincaid from Coastal Engineering Consultants spoke on behalf of Harbormaster Gilchrist and stated he was a stand-up guy, and the town was losing a valuable person for the town.

Mary Alozzio from SunPalace Vacations represented owners who requested that the town approve their weekly short-term rental on June 1, 2025.

Isabelle Wells, resident, would like a dog park on the island.

V. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Town Manager Andy Hyatt noted that the Chamber of Commerce recognized the employees of the Town of Fort Myers Beach. President and CEO of the Fort Myers Beach Chamber of Commerce Jackie Liszak described the Outstanding Service Award and noted that the 2022 and 2023 awards were combined this year. She thanked them for their hard work.

Council Member King thanked Beach Talk Radio for assisting with planting behind the wavy wall and congratulated the Friends of the Mound House for their successful fundraiser.

Vice Mayor Atterholt agreed with Council Member King and recognized Fort Myers Beach Community Foundation and Keep America Beautiful for picking up trash on Saturday. He thanked everyone involved in that effort.

Council Member Woodson thanked the town employees for going above and beyond over the last 18 months. She appreciated the Chamber for their acknowledgment.

Council Member Safford echoed Council Member King.

Mayor Allers recognized and thanked all the non-profits on the island and the donors.

VI. ADVISORY COMMITTEES ITEMS / REPORTS / APPOINTMENTS

Sam Lurie, Chair of the Anchorage Advisory Committee, thanked Mr. Kincaid for his support of Harbormaster Gilchrist. He reported that the Mooring Field was almost at capacity and the upland services needed an upgrade. He commented that there were numerous opportunities for an upland provider and asked that they consider proximity to the dinghy dock, the trolley and the entertainment district.

He commented that Harbormaster Gilchrist was a true leader and took on everything that came across his desk. He listed his attributes, especially after Ian. He stated that he would be missed by many.

Vice Mayor Atterholt reported that he spoke to Commissioner Sandelli about utilizing Bowditch Point to house the boats and pump-out station. He was hopeful the town could partner with the county. Mayor Allers suggested that Chair Lurie contact Moss Marina regarding upland services.

VII. APPROVAL OF MINUTES**A. Town Council - March 18, 2024**

Council Member King moved to approve the minutes, seconded by Council Member Woodson.

The motion carried unanimously.

VIII. CONSENT AGENDA

Council Member Safford moved to approve C. and D. of the consent agenda, seconded by Council Member Woodson.

The motion carried unanimously.

A. Special Event: Extension of Farmers Market at Moss Marina

Extend Farmers Market at Moss Marina until the end of May 2024.

Mayor Allers moved to approve an extension, seconded by Vice Mayor Atterholt.

The motion carried unanimously.

B. Sole Source: Monitoring and relocation of marine turtle nests.

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA TO WAIVE COMPETITIVE BID REQUIREMENTS IN THE TOWN CODE OF ORDINANCES AND APPROVE A PROPOSAL FROM TURTLE TIME INC. AS A SOLE SOURCE PROVIDER FOR TURTLE MONITORING SERVICES IN THE AMOUNT OF \$40,000.00; AUTHORIZING THE TOWN MANAGER TO SIGN ANY NECESSARY DOCUMENTS; AND PROVIDING AN EFFECTIVE DATE.

Environmental Projects Manager Chadd Chustz reviewed the resolution and noted the cost to the town was \$6,000.00.

Council Member King moved to approve the resolution, seconded by Council Member Woodson.

The motion carried unanimously.

C. Resolutions 24-60 through 24-64; 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 Safford moved to approve the resolution, seconded by Council Member Woodson.

The motion carried unanimously.

- D. Resolutions 24-65 through 24-69; 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 Safford moved to approve the resolution, seconded by Council Member Woodson.

The motion carried unanimously.

- E. Resolution 24-59; Utility Billing Software

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH AUTHORIZING THE TOWN MANAGER TO PURCHASE SOFTWARE NEEDED FOR THE TOWN'S WATER UTILITY SYSTEM IN THE AMOUNT OF 436,850.00 FROM CONTINENTAL UTILITY SOLUTIONS, INC. REPRESENTING AN INITIAL STARTUP FEE OF \$15,250.00 AND MONTHLY CHARGES OF \$1,800.00 FOR THE FIRST YEAR; AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers pointed out an error and noted the software cost \$43,685.00. Public Works & Utilities Director Mark Ashton explained how the current billing program was antiquated and why new software was needed to generate required reports. Finance Director Joe Onzick stated the new software would automatically generate journal entry imports and provide more accurate information to residents.

Council Member King moved to approve the resolution, seconded by Mayor Allers.

The motion carried unanimously.

- F. Resolution 24-15; ILA w/Lee County for Construction of the Renourishment Project

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING AN INTERLOCAL AGREEMENT BETWEEN THE TOWN AND LEE COUNTY FOR THE CONSTRUCTION OF THE ESTERO ISLAND BEACH SHORELINE PROTECTION PROJECT.

Projects Manager Chustz reviewed the background of the request as stated on the blue sheet. Mike Poff from Coastal Engineering Consultants addressed the timeline of the truck haul and dredging projects. He indicated he would meet with the contractors tomorrow about reducing issues at Newton Park. Projects Manager Chustz noted that he would continue working with Mr. Pugliese to try to mitigate his issues.

Vice Mayor Atterholt moved to approve the resolution, seconded by Mayor Allers.

The motion carried unanimously.

- G. Resolution 24-71, CEC STA #9 Sand Renourishment and Dune Plantings North Estero Cat. G Project

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING SUPPLEMENTAL TASK AGREEMENT #9 OF CONTRACT RFQ-21-09-EN BETWEEN THE TOWN AND COASTAL ENGINEERING CONSULTANTS, INC. FOR CONSTRUCTION PHASE SERVICES FOR SAND RENOURISHMENT AND DUNE PLANTINGS FOR ESTERO ISLAND NORTH FEMA CATEGORY G PROJECT, FOR A COST OF \$56,930; AND PROVIDING AN EFFECTIVE DATE.

Projects Manager Chustz reviewed the background of the request as stated on the blue sheet.

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

The motion carried unanimously.

- H. Resolution 24-70; CEC STA #10-Construction Phase Services for Sand Renourishment

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING SUPPLEMENTAL TASK AGREEMENT #10 OF CONTRACT RFQ-21-09-EN BETWEEN THE TOWN AND COASTAL ENGINEERING CONSULTANTS, INC. FOR CONSTRUCTION PHASE SERVICES FOR SAND RENOURISHMENT FOR ESTERO ISLAND SHORE PROTECTION PROJECT, FOR A COST OF \$495,600; AND PROVIDING AN EFFECTIVE DATE.

Projects Manager Chustz reviewed the background of the request as stated on the blue sheet.

Council Member Safford moved to approve the resolution, seconded by Council Member Woodson.

The motion carried unanimously.

- I. Resolution 27-72; Change Order #1 Earth Tech Enterprises, Inc.

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING CHANGE ORDER #1 OF CONTRACT ITB-24-02-EN BETWEEN THE TOWN AND EARTH TECH ENTERPRISES, INC. TO CONSTRUCT A SAND BERM AND FILL SCOURS ALONG THE NORTH ESTERO ISLAND BEACH SEGMENT, LOCATED BETWEEN FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION REFERENCE MONUMENTS R-174.5 TO R-182, FOR A COST OF \$1,183,430.

Projects Manager Chustz reviewed the background of the request as stated on the blue sheet.

Council Member Woodson moved to approve the resolution, seconded by Council Member Woodson.

The motion carried unanimously.

IX. PUBLIC HEARINGS

Town Attorney Stuparich explained quasi-judicial procedures. Town Clerk Baker confirmed that the agenda items were properly noticed, and she swore in those providing testimony.

A. Ordinance 24-03; Flood

Second Reading and Final Public Hearing of an ordinance entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING ARTICLE IV OF CHAPTER 6 OF THE LAND DEVELOPMENT CODE OF THE TOWN OF FORT MYERS BEACH TO 1) REQUIRE ALL MANUFACTURED HOMES INSTALLED OR REPLACED IN SPECIAL FLOOD HAZARD AREAS TO BE ELEVATED AT OR ABOVE AT LEAST THE BASE FLOOD ELEVATION PLUS 1 FOOT; 2) ADOPT THE NOVEMBER 17, 2022 FLOOD INSURANCE STUDY FOR LEE COUNTY FLORIDA AND INCORPORATED AREAS; 3) CHANGE TO SUBSTANTIAL IMPROVEMENT AND SUBSTANTIAL DAMAGE DETERMINATIONS; AND 4) AMEND THE DEFINITIONS OF MARKET VALUE AND SUBSTANTIAL DAMAGE, IN ORDER TO COMPLY WITH RECENT CHANGES TO THE COMMUNITY RATING SYSTEM NECESSARY TO RETAIN A CLASS 8, WHICH ASSIST THE TOWN IN MAINTAINING ITS CLASS 5 COMMUNITY RATING SYSTEM DESIGNATION; PROVIDING FOR CODIFICATION, SEVERABILITY, SCRIVENER ERRORS, CONFLICTS OF LAW AND AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Flood Plain Manager Kristin Schumacher reviewed the background of the request as stated on the blue sheet.

No public comment.

Council Member King moved to approve the ordinance, seconded by Mayor Allers.

The motion carried unanimously by roll call vote.

B. Ordinance 24-07; TECO Franchise Agreement

Second Reading and Final Public Hearing of an Ordinance Entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA GRANTING TO PEOPLES GAS SYSTEM, INC., ITS SUCCESSORS AND ASSIGNS, A NON-EXCLUSIVE NATURAL GAS FRANCHISE AGREEMENT TO USE THE PUBLIC RIGHTS OF WAY OF THE TOWN OF FORT MYERS BEACH FLORIDA, AND PRESCRIBING THE TERMS AND CONDITIONS UNDER WHICH SAID FRANCHISE MAY BE EXERCISED; PROVIDING FOR FINDINGS; SEVERABILITY, AND PROVIDING AN EFFECTIVE DATE.

Mayor Allers read the title of the ordinance. Carlo Fassi, External Affairs Manager for Teco Peoples Gas, indicated that the pipeline ran from the northwest and as far south as Donora Blvd. with between 100–150 meters. He added that the company was comfortable with an aggregate cap on damages of \$10 million.

No public comment.

Council Member King moved to approve the ordinance, seconded by Vice Mayor Atterholt.

The motion carried unanimously by roll call vote.

C. Ordinance 24-05; CPD 20230194, 3051 Estero Blvd

Second Reading and Final 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 3051 ESTERO BLVD. GENERALLY IDENTIFIED AS STRAP NUMBERS 29-46-24-W1-0120C.0100 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. No ex parte communications were disclosed. The applicant confirmed receipt of the agenda and backup materials.

Community Development Planner Sarah Propst reviewed the background of the request as stated on the blue sheet. She noted there were several conditions listed in the staff report. The LPA unanimously recommended approval.

Ken Gallander respectfully requested approval.

No public comment.

Council Member King moved to approve the ordinance with conditions, seconded by Vice Mayor Atterholt.

The motion carried unanimously by roll call vote.

D. Resolution 24-56; SEZ20230302, 450 Harbor Court - Rude Shrimp

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING SPECIAL EXCEPTION SEZ20230302, REQUESTING CONSUMPTION ON PREMISES FOR A RESTAURANT WITH A BAR/ COCKTAIL LOUNGE THAT IS VISIBLE FROM THE EXTERIOR OF THE RESTAURANT PER SEC. 34-1264(B)(2)A.3., FOR THE PROPERTY LOCATED AT 450 HARBOR COURT; PROVIDING FOR CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Ex parte communications: Council Member King - none. The remaining council members all received emails in opposition and support, spoke to the owner and opposition and they were familiar with the property. The applicant confirmed receipt of the agenda and backup materials.

Planner Propst reviewed the background of the request as stated on the blue sheet. Staff suggested nine conditions of approval if the town council approved the request. Several letters of objections were received with one in support.

The LPA recommended approval. Planner Propst revealed that the applicant would present a new site plan and staff did not necessarily recommend approval due to the location of the coastal AE flood zone and location of the structure.

Kara Stewart represented the applicants and distributed the proposed new site plan layout. She stated that the site plan represented what was currently on site and confirmed that the tent was seaward of the coastal A. The applicant was willing to work with staff to resolve the issue and an evacuation plan to remove the equipment was provided. She noted they could go forward as a temporary use and either acknowledge that the structures would have to be evacuated or install flood vents and tie downs. The speakers were angled towards the water and sound meters were installed. Ms.

Stewart added that the applicants agreed to return in six months for review and agreed with the rest of the conditions. Discussion was held regarding continuing the matter to a date certain of April 4, 2024.

Public comment:

Jay Bonnema, resident, clarified that she did not have a personal vendetta against the Rude Shrimp. She indicated that if they had been good neighbors from the beginning, they would not be here today. She thanked Mr. Freeland for stepping in to help resolve the issue and stated the noise had improved. She hoped that the Rude Shrimp would honor their commitment to be good neighbors.

Public comment closed.

Mayor Allers moved to continue with a special meeting on Thursday, April 4, 2024 at 11:00 a.m., seconded by Council Member King.

The motion carried unanimously by roll call vote.

E. Resolution 24-41; SEZ20230202 1028 Fifth Street

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING SPECIAL EXCEPTION SEZ20230202, REQUESTING CONSUMPTION ON PREMISES TO ALLOW A BAR/COCKTAIL LOUNGE WITHIN 500 FEET OF A PARK, FOR THE PROPERTY LOCATED AT 1028 FIFTH STREET; PROVIDING FOR CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Ex parte communications: Council Member King spoke to the owner. No disclosures from other members. Attorney Keith Long represented the applicant and reviewed his qualifications. The applicant confirmed receipt of the agenda and backup materials.

Council Member Safford moved to accept Mr. Long as an expert witness in his field, seconded by Council Member King.

The motion carried unanimously.

Community Development Senior Planner Jason Smalley reviewed the background of the request as stated on the blue sheet. He indicated that the LPA unanimously recommended a conditional approval that they continue to serve food even when the receipts did not hit 51% of food and the applicant agreed. Staff recommended approval with the conditions proposed by the LPA.

Attorney Long described the 51% food sales requirement. He said it was the same license that Margaritaville was using. The applicant would have to request approval from the town to facilitate package sales. He indicated that a condition could be added to require that they serve full-service meals at all times.

No public comment.

Mayor Allers moved to approve the resolution with conditions as set forth in the staff report, seconded by Council Member Safford.

The motion carried unanimously by roll call vote.

F. Resolution 24-57, VAR20240046, 718 Estero Boulevard

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING VARIANCE VAR20240046, REQUESTING A VARIANCE FROM LDC TABLE 34-3 OF 15-FEET, PROVIDING A 10-FOOT FRONT SETBACK. THE LDC REQUIRES A SINGLE-FAMILY HOME IN RM ZONING DISTRICT TO PROVIDE A MINIMUM 25-FOOT STREET SETBACK, FOR THE PROPERTY LOCATED AT 718 ESTERO BOULEVARD; PROVIDING FOR CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. No ex parte communications were disclosed.

Attorney Zachary Liebetreu with Roetzel & Andress reviewed his experience in law.

Council Member King moved to accept Mr. Liebetreu as an expert in his field, seconded by Council Member Woodson.

The motion carried unanimously.

The applicant confirmed receipt of the agenda and backup materials. Planner Propst reviewed the background of the request as stated on the blue sheet. The LPA unanimously recommended approval.

Attorney Liebetreu represented the applicant and distributed his PowerPoint presentation, which included Placement of CCCL, Aerial View and Requested Variance. He requested a waiver of the variance application fee of \$1,800.00 since it was paid last year.

No public comment.

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

The motion carried unanimously by roll call vote.

Vice Mayor Atterholt moved to waive the variance fee, seconded by Council Member Woodson.

The motion carried unanimously by roll call vote.

G. Resolution 24-58; VAR20240027, 250 Tropical Shores Way

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING VARIANCE VAR20240027, REQUESTING A 4-FOOT VARIANCE FROM SEC. 34-638(5)(A)(1) WHICH REQUIRES AN ADDITIONAL 12-FEET OF STREET SETBACKS FOR RESIDENCES WIDER THAN 65-FEET, INSTEAD PROVIDING AN ADDITIONAL 8-FEET OF STREET SETBACK FOR THE PROPERTY LOCATED AT 250 TROPICAL SHORES WAY; PROVIDING FOR CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the variance. Ex parte communications: Vice Mayor Atterholt spoke to a neighbor who supported the request. There were no disclosures from other members. The applicant confirmed receipt of the agenda and backup materials.

Senior Planner Smalley reviewed the background of the request as stated on the blue sheet. He noted that the applicants submitted their design after the code change despite what was indicated in their application. Staff reviewed the request as a design choice and the LPA voted 6-0 to recommend approval of the request.

Attorney Ken Gallander represented the applicant and distributed his PowerPoint presentation. Slides included the Project Team, Presentation Overview, Background & Request, Property Location, Site Location, Front Elevation, Right & Left Elevation, Findings & Conclusion and Conclusion. Mayor Allers noted that the house was designed after the hurricane and should not be used as an excuse for a variance.

No public comment.

Mayor Allers moved to deny the request because there were no exceptional circumstances, the conditions justifying the variance were the result of actions of the applicant, it was not a minimum variance that would relieve the applicant of an unreasonable burden and the variance would be injurious to the neighborhood. The motion failed for lack of a second.

Council Member Woodson moved to approve the request with the two conditions, seconded by Council Member King.

The motion passed 4-1 by roll call vote, with Mayor Allers dissenting.

X. ADMINISTRATIVE AGENDA**A. CHNEP Policy Committee****Designation of a Council representative and alternate to the Coastal & Heartland National Estuary Partnership (CHNEP) Policy Committee**

Town Manager Hyatt indicated that the committee meets quarterly for half a day and the next meeting was May 23, 2024. Projects Manager Chustz was the alternate.

Council Member Woodson moved to designate Council Member King, seconded by Council Member Safford.

The motion carried unanimously.

B. Contract for Sale, 6231 Estero Blvd.**Accept an offer to sell and approve a FAR/BAR Commercial Contract for the purchase of real property located at 6231 Estero Blvd. currently owned by 6231 Estero LLC for the eventual use as a new Town Hall , AND authorize the Mayor or Town Manager to sign any and all documents needed to close the transaction tentatively scheduled for July 8, 2024 once all contingencies (title, survey, etc.) have been satisfied.**

Town Manager Hyatt reported that the existing structure had minimal damage and would be a good location for Town Hall. The seller accepted the offer of \$7 million. Mayor Allers questioned the impact on staff regarding the location on the south end. Town Manager Hyatt replied that he would try to find the best possible solution. He indicated that all the mechanicals were working and there were minimal upgrades to do. Repairing the elevator and funding from the state were added to the conditions of the sale. Town Manager Hyatt noted that he was investigating parking alternatives. He reported that it would cost the town at least \$25 million to rebuild Town Hall. He described the future of the trailers if the offer goes through and felt it would take four to six months to move in. Town Attorney Stuparich stated that the required affidavit showing that the legal entity was an LLC was in the packet. Town Manager Hyatt indicated they had discussed using the old Town Hall property as a parking lot, but discussions would continue. Operations and Compliance Director Frankie Kropacek reported that they did have contingency plans to finance the building if the governor vetoed the appropriation request.

Council Member Woodson moved to approve the contract and authorize Town Manager Hyatt to negotiate and execute the closing documents, seconded by Council Member King.

The motion carried unanimously.

C. Resolution 24-73; Development Agreement with Deviations

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA; MAKING FINDINGS; APPROVING AN ADMINISTRATIVE CODE SETTING FORTH PROCEDURES FOR THE APPLICATION AND APPROVAL OF DEVELOPMENT AGREEMENTS WITH DEVIATIONS; AND PROVIDING AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Town Attorney Stuparich explained why the action was necessary and discussed details as stated on the blue sheet. She added that the changes recommended by the LPA were on page 783 of the packet. Planner Propst was not clear how it would work procedurally or the impacts. She asked whether additional language would be created for the LDC (Land Development Code). Town Attorney Stuparich thought only the procedures would change to provide another tool to help specific projects. She suggested adding the fee schedule to the M&P session on Thursday. Senior Planner Smalley brought up increasing the property value and then selling it. Council Member Safford stated that the intent was to help smaller businesses rebuild quickly and reduce costs and time. Mayor Allers commented that a consequence could be that the owner potentially gets more than allowed to increase their property's value and then sells it. Planner Propst expressed concern regarding the role of planning staff and the procedures to ensure that everybody came together at the end of a project that could be built. Town Attorney Stuparich stated that they were voting on procedural rules to allow the use of the existing tool.

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

The motion carried unanimously.

Council Member Safford moved to discuss the development agreements with deviations at the M&P session on Thursday, April 4, 2024, seconded by Council Member Woodson.

The motion carried unanimously.

XI. FINAL PUBLIC COMMENT

Mr. Pugliese stated that he asked the supervisor last week to move the heavy equipment a little further from his house, but he moved it closer to his house. The supervisor also told him that they would be gone by Tuesday, but he was not. He suggested that the town do something immediately.

XII. TOWN MANAGER'S ITEMS

Town Manager Hyatt will email council members regarding dates for strategic planning. The open house scheduled for Thursday will be postponed.

XIII. TOWN ATTORNEY'S ITEMS

No items.

XIV. COUNCILMEMBERS ITEMS AND REPORTS

Council Member Safford asked whether the town would revive the 1/2 price tree program on Arbor Day. Director Kropacek replied that it was too late for this year, but they will plan for next year.

Council Member Woodson questioned the status of the food truck ordinance. Town Attorney Stuparich said she would try to have something for the LPA this month.

Council Member King stated he moved here with his wife three years ago.

Mayor Allers received support for adding beautifying Estero Blvd. to a future M&P session.

No items from Vice Mayor Atterholt.

XV. ADJOURNMENT

Council Member King moved to adjourn, seconded by Council Member Safford. The motion carried unanimously.

The meeting was adjourned at 12:39 p.m.



Fort Myers Beach Management & Planning Session

Town Hall Council Chambers
2731 Oak Street
Fort Myers Beach, FL 33931

Minutes

Thursday, April 4, 2024

9:00 AM

ORDER OF BUSINESS

DRAFT

I. CALL TO ORDER

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

II. PLEDGE OF ALLEGIANCE

III. ITEMS FOR DISCUSSION

A. Comp Plan Discussion - Condo and Resort District

Comp Plan Discussion - Condo and Resort District

Community Development Planner Sarah Propst noted it was late in the process to add another land use district. She requested clarification on the concept and the goal. Mayor Allers questioned whether there was a need for it. Planner Propst replied that if there was an interest in having additional large condos, there could be a use for an additional land use district. She remarked that the comprehensive plan did not control height. Vice Mayor Atterholt read a section of the comprehensive plan regarding height and asked Planner Propst what she thought of the language and what would happen in the future. Planner Propst did not have the language available, but she referred to a portion of section 34. She noted that it did not limit their ability to allow a building to be taller than the zoning district through a CPD, but the surrounding uses had to be evaluated.

Vice Mayor Atterholt questioned whether the commercial boulevard zone could be changed to retail. Planner Propst replied that additional uses were allowed in the commercial boulevard zone a couple of years ago and additional uses will be added to the LDC (Land Development Code). She noted the goal was to change it to allow for more normal commercial uses in that district, like offices, restaurants and retail.

Vice Mayor Atterholt questioned how to address the shortage of retail space. Planner Propst responded that it was through the LDC and the code could be changed if the council requested. She received support to make the appropriate changes. Discussion was held regarding building a restaurant on the beach in a residential zone. Planer Propst stated that, at this point, adding a future land use district to the map would slow everything down. Mayor Allers felt that it made more sense to allow more uses within the mixed residential district to allow a coffee shop or some other unobtrusive business.

Planner Propst requested clarification on whether they wanted changes to the CB zoning district or whether they wanted a complete overhaul of the uses code. She cautioned that they needed to look at any changes comprehensively and the residents had to be involved because they would be impacted. She added that they had to be aware of flood zone issues because some places would be difficult to develop.

B. Lighting

Per Council's request, a discussion on the Town's lighting ordinance.

Town Manager Hyatt suggested reviewing the ordinance to see whether changes were needed. Mayor Allers did not think the ordinance was consistent and referred to particular sections. He felt that any light visible from the beach had to comply with it. He did not believe that the town should require people to prove that their windows met the 45% tint and questioned whether they wanted to be in the business of inspecting window coverings.

Vice Mayor Atterholt commented that educating the community regarding the Dark Skies initiative and being turtle-compliant would be helpful. He brought up cumulative light from the bay side that could potentially be seen from the beach and noted it was subjective and difficult to enforce. He felt they should prioritize addressing flagrant violations on the beach rather than cumulative light issues. Town Manager Hyatt said he planned to add code compliance officers to inspect the beach at night.

Mayor Allers suggested adding a light schedule instead of just a light plan. Vice Mayor Atterholt questioned whether property owners were allowed to install a different level of lighting during the non-turtle season. Mayor Allers replied negatively and felt that it did not make sense and should be changed.

IV. AGENDA MANAGEMENT

A. April 2024

Add Strategic Planning meeting on April 29, 2024.

V. ADJOURNMENT

Council Member King moved to adjourn, seconded by Vice Mayor Atterholt. The motion carried unanimously.

The meeting was adjourned at 10:12 a.m.



Fort Myers Beach Town Council

Town Hall Council Chambers
2731 Oak Street
Fort Myers Beach, FL 33931

Minutes Thursday, April 4, 2024 11:00 AM

ORDER OF BUSINESS

DRAFT

I. CALL TO ORDER

Members present: Mayor Allers, Vice Mayor Atterholt, Council Member King, Council Member Safford 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, seconded by Council Member Woodson.
The motion carried unanimously.

V. PUBLIC COMMENT

No public comment.

VI. PUBLIC HEARINGS

- A. Continued from April 1, 2024; Resolution 24-56, SEZ20230302 450 Harbor Court - Rude Shrimp

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING SPECIAL EXCEPTION SEZ20230302, REQUESTING CONSUMPTION ON PREMISES FOR A RESTAURANT WITH A BAR/ COCKTAIL LOUNGE THAT IS VISIBLE FROM THE EXTERIOR OF THE RESTAURANT PER SEC. 34-1264(B)(2)A.3., FOR THE PROPERTY LOCATED AT 450 HARBOR COURT; PROVIDING FOR

CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Ex parte communications:

Council Member King visited the property and received correspondence from several residents regarding the noise. The remaining council members have not received additional communication since Monday.

Community Development Planner Sarah Propst stated that she sent the agenda and backup materials to the applicant. She reviewed the background of the request as stated on the blue sheet. The staff received several letters of objection and support. Town Attorney Stuparich indicated that they were voting on the use of the outside bar with conditions. Planner Propst noted that the same conditions were applied to The Whale.

Lisa Lahners, applicant, requested a special exception. Council Member Woodson questioned whether she was okay with the conditions. She agreed and noted that speakers would be hard-wired and face the Matanzas Bridge. No public comment.

Planner Propst stated that no fees were required with the six-month review.

Council Member Woodson moved to approve the resolution with conditions, seconded by Vice Mayor Atterholt.

The motion carried unanimously by roll call vote.

VII. ADMINISTRATIVE AGENDA**A. Fees****Discussion on Development Agreement or Site Plan with Deviations
Fees**

Town Attorney Stuparich stated there was not enough time to research neighboring communities, but existing fees charged for other types of applications were included in their packet. Planner Propst noted that currently, the same type of variances would be charged one fee while different variances would be charged separately. They would be charged separately if a special exception was requested, along with a variance. She indicated that Hillsborough charged \$2,500.00 for anything up to one acre and individual components were charged separately. She questioned whether the town was interested in charging the same. Mayor Allers wanted to make sure the staff's time was covered. Planner Propst did not fully understand the process. Town Attorney Stuparich explained that it depended on the size and complexity of the project. She stated that the criteria were basically the same as rezoning. She recommended that they determine a number and give direction to staff.

Council Member Safford thought negotiations would include requiring relief from parking and increasing height and density. He supported starting with a flat fee. Mayor Allers was not comfortable using square footage because there was a chance it would end up being smaller through negotiations.

Planner Propst was not clear on the role of staff and how much time would be required.

Town Attorney Stuparich indicated that the town manager would be involved in negotiations and that the staff would advise the town manager regarding what the code required. Mayor Allers questioned why there should be a separate fee if the review time with a development agreement was the same as a CPD (Commercial Planning Development). Town Attorney Stuparich suggested that the fee be comparable to a CPD if the development agreement required a rezoning. Planner Propst stated that the town's current fee for development agreements was \$5,000.00 and amendments were \$2,500.00.

Mayor Allers suggested a discussion regarding a sliding scale with \$5,000.00 to start. Planner Propst indicated another option was to require the applicant to put money into an account and pull from that when needed to cover staff expenses. She described the difference between using in-house staff and third-party entities. CPD costs started at \$8,000.00 with \$1,000.00 per additional acre. Planner Propst noted that one option was to determine costs after an initial project review.

Council Member Safford suggested that the cost of development agreements be half the price of a CPD. Mayor Allers remarked that it could be changed later, but he preferred to give staff more time for research. Town Attorney Stuparich agreed and added that staff was working on the application. Vice Mayor Atterholt felt that symmetry with neighboring communities and what they charged would be helpful.

Council Member Safford supported the draw system. Town Attorney Stuparich noted it could be more burdensome, but a volunteer system to deposit funds could be an option. Staff will research the topic.

B. FEMA National Flood Insurance Program (NFIP)

To authorize the Town Manager or his designee(s) to investigate the impact of FEMA's recent determination communicated to Lee County regarding a change in the National Flood Insurance Program CRS rating and to take any and all necessary steps to mitigate any potential financial impact on residents of Fort Myers Beach, and to authorize the Mayor to sign any and all needed documents to implement needed action.

Town Manager Hyatt stated that they had not received official notice from FEMA. He provided a timeline of communications from February 13, 2023, to now. Mayor Allers read the timeline into the record. Town Manager Hyatt read a list of 105 properties that FEMA identified and will provide it to the town clerk for the record. He indicated that the town did everything that FEMA required. Mayor Allers stated that the town was told in the beginning that as long as they followed procedures in place before the storm, they would be compliant with FEMA. He stated they were trying to get information regarding what they thought the town did wrong. Town Manager Hyatt noted that a representative in Atlanta told them that the decision was final and they did not have to answer questions.

Vice Mayor Atterholt moved to authorize the mayor, town manager and town attorney to take whatever action was necessary to reverse the decision, seconded by Mayor Allers.

The motion carried unanimously.

VIII. FINAL PUBLIC COMMENT

No public comment.

IX. ADJOURNMENT

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

The meeting was adjourned at 12:16 p.m.

DRAFT

1. **Request:**

Meeting Date: April 15, 2024

Approve closing of Matanzas Pass Bridge on July 4, 2024, from 10:00am to 11:30am for the parade, and from 9pm to 11:30pm for traffic coming on the island.

Why the action is necessary:

Council approval is needed to acquire a permit from the Florida Department of Transportation to close the bridge.

What the action accomplishes:

Once Council approves the closing of the bridge, the FDOT permit will be sent in for approval.

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

The Mantanzas bridge will be required to be closed in order to have fireworks and a parade.

4. **Submitter of Information:**

5. **Background:**

Council approval is needed to acquire a permit from the Florida Department of Transportation to close the bridge.

Attachments:

1. 4th of July 2024 Permit Application

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

Jeff Hauge, Culture, Parks & Recreation Director
Jeff Hauge, Culture, Parks & Recreation Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 4/1/2024
Approved - 4/9/2024
Approved - 4/9/2024
Approved - 4/10/2024
Final Approval - 4/10/2024



Town of Fort Myers Beach

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

Name of event Town of Fort Myers Beach 4th of July Parade

Date(s) and times of event: July 4, 2024 7:30 am – 12:00pm – Parade will begin at 10:00am

Address of event Bay Road to Old San Carlos on Estero Blvd

Expected # of participants/attendees 20,000

Sponsoring Organization Town of Fort Myers Beach

Organization address 2731 Oak Street, Fort Myers Beach, FL 33931

Contact Person/Phone# Jeff Hauge 239-788-7766

E-mail jhaug@fmbgov.com

Amplified Music Y ☒ N ☐ 500 Ft Notifications _____ Copy of Letter _____

Renting Town Property Y ☐ N ☒ Renting Parking Spaces Y ☐ N ☒

How many Spaces? _____ How many hours _____

Extension of Premises? ☐ N ☒ ABT Form _____ **How many days?** _____ (Over 3 days need to go to Council)

Letters of Permission to use Parking _____ Parking Plan _____

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

Requesting Water Y ☐ N ☒ Electric Y ☐ N ☒

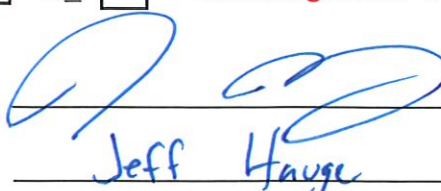
Requires Council Approval:

Waiver of open container Y ☐ N ☒ Waiver of Town parking fees Y ☐ N ☒

Waiver of Noise Ordinance Y ☒ N ☐ Recurring Event Y ☐ N ☒

Applicant Signature

Printed Name


Jeff Hauge

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: Waste Management

No. of dumpsters: 1 Type of dumpsters: 20 yard

Who is responsible for clean-up and payment: Town of Fort Myers Beach

City right-of-way Parking Use: No 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: _____

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

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

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

FOR MAJOR EVENTS ONLY CONTACT

Kelly Cramer

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

Email: kelly.cramer@floridadep.gov

Florida DEP remarks: _____

Check list: Application _____ Site Plan _____ Description _____

Florida DEP approval: _____ Date: _____

Turtle Time Inc.: Eve Haverfield

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

Turtle Season is May 1 through October 31

Turtle Time remarks: _____

Turtle Time approval: _____ Date: _____

FORT MYERS BEACH FIRE DEPT

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

15650 Pine Ridge Road, Fort Myers, FL 33908

Tel (239)477-1830 Fax (239)432-0268

Parking: _____

Deputies (how many?) _____

Traffic Control: _____

Fees: _____

Special Arrangements: _____

Print Name

Approval Signature

Date



Fort Myers Beach Fire Control District

Life Safety Branch

100 Voorhis Street · Fort Myers Beach, Florida 33931

Phone (239) 590-4210 • Email: prevention@FMBFirefl.gov

Special Events Application and Guidebook

Event Type:

☐ Small Outdoor/Indoor Event	☒ Large Outdoor/Indoor Event	☐ Firework Display
Date of Application: October 29, 2023		Date of Event: July 4 th , 2024
Location: Bay Road to Old San Carlos on Estero Blvd. Parade staging will be in the area of Bay Oaks recreation center, FMB School, FMB Library and Bay Street.		
Event Start Date/Time: July 4, 2024 7:30am – Staging / 10:00am Parade starts		Event End Date/Time: July 4 th 2024 12:30pm
Setup Date: July 4 th	Setup Time: 7:30am	Inspection Time: 8:30am – 9:30am
Event Sponsor: Town of Fort Myers Beach		
Sponsor Contact: Jeff Hauge	Sponsor Phone #: 239-788-7766	Sponsor Email: jhaug@fmbgov.com
Anticipated Number of Attendees: 20,000		Anticipated Number of Event Workers: 20
Will there be carnival or mechanical rides: No		Number of Stages: 0
Total Number of Vendors: 0		Total Number of Hot Food Vendors: 0
Number of Tents larger than 20 x 20: 0		Number of 10 x 10 Tents: 0

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

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

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

Applications shall include the following:

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

<u>Jeff Hauge</u> Submitting Party Name (Print)	<u>[Signature]</u> Submitting Party Name (Sign)
<u>3.25.24</u> Date:	

OUTDOOR FESTIVAL and SPECIAL EVENT GUIDEBOOK

The purpose of this guidebook is to establish responsibilities for event promoters, sponsors, and vendors.

Event Sponsor: The Event Sponsor assumes overall responsibility for overseeing the setup and activities of the event, and ensures compliance with all applicable fire and life safety codes.

The Event Sponsor shall:

1. Ensure completion and approval of all required permits from the Fort Myers Beach Fire District, Town of Fort Myers Beach and/or Lee County.
2. Provide a site plan to the FMBFD with the following information:
 - a. Name of all streets and areas that are included in the event.
 - b. Location(s) of fire lanes (minimum 20 feet) width.
 - c. Location of all stages, non-food booth vendors, food vendors, and all displays. Provide details for cooking operations and displays that use heat-producing appliances.
 - d. Identify all emergency exits.
 - e. Identify any fire hydrants that are in the vicinity of the event.
 - f. A list of all food vendors with the type of food and cooking method is required.
 - g. Event Sponsor is responsible for distributing a copy of the Fire District's requirements to the hot food vendors.
 - h. Event radios (if used) shall be provided with a list of assigned channels.
 - i. **PARADE FLOATS:** Refer to float inspection/checklist provided on page 6 of this document.

Event Vendors: Event Vendors are responsible for the safe operation of their booth, display and/or attraction. All vendors shall coordinate with the Event Sponsor on the event setup, take down times, and ensure their setup complies with the following:

1. Fire lanes, fire department connections, and building access is clear and unobstructed.
2. Be prepared, at any time, for a fire inspection and correct any cited deficiencies prior to event start time.
3. Shall ensure all fire and life safety code requirements are maintained for the duration of the event.

Fire Department Special Event Staff: FMBFD staff will conduct an inspection on the special event prior to the scheduled start day and time. If required, correction notices shall be issued and a follow-up inspection will be required prior to opening.

Fire inspections will include, but is not limited to, the following:

1. Hot food vendors – cooking operations, setup, extinguishing systems, fire extinguishers.
2. Fire Department Access – minimum 20 foot width; vertical clearance of 13.5 foot.
3. Access to fire hydrants, fire department connections, fire alarm panels, and command centers.
4. Event egress – accessible exits, required signage.
5. Rides and displays – inspect for safety and proper state certification tags.
6. Generators and propane tanks – location of fuel, stable base provided.
7. Stages – location of stage setup, extension cords used, fire extinguisher provided.
8. Non-Food vendors – setup, required fire extinguisher provided operations.
9. Beer and wine gardens – setup, exits marked, required fire extinguisher provided.
10. Pyrotechnic displays and open flame effects. **REQUIRES SEPARATE PERMIT** – Refer to permit application/checklist provided on page 8 of this document.

Pyrotechnic Displays and Open Flame Effects: Pyrotechnic displays require a separate permit from the FMBFD. Refer to permit application and checklist provided on page 7 of this document. The FMBFD shall review all open flame and theatrical flame effects. Open flame effects shall include, but are not limited to the following:

1. Fire dancing
2. Stage props and effects
3. Fire eating
4. Magic acts

Access for Fire Apparatus: During large events, it is important to maintain access points for apparatus. This includes not only fire trucks for suppression, but also other emergency vehicles including medical units. To ensure a safe event, all fire access requirements shall be enforced at all times.

Access through the event shall include the following:

1. A designated fire lane, no less than 20 feet wide with a vertical clearance of no less than 13.5 feet.
2. Access roads that exceed 150 feet with no exit, shall be provided with a means to turn around. A FMBFD representative shall approve all turning radiuses.
3. Any designated fire accesses shall be clearly identified with signage indicating "Fire Access – No Parking".

Access to Structures: Access to structures and walkways shall be provided as required by FMBFD. Identified access points shall be reviewed at the time of permit submittal and may vary depending on the building and the venue. Access to the following shall be required:

1. All exterior doors and openings
2. Fire control rooms
3. Fire pump rooms
4. Parking structures
5. Exterior utility distribution vaults

Access to Water Supplies: Event Sponsors, Vendors, and all other event staff shall be required to maintain a 15-foot clearance around all fire hydrants and other water supply connections. If a setup is found to be blocking access to water supplies the set-up shall be immediately relocated. Access to the following shall be maintained at all times:

1. Fire Hydrants
2. Fire Department Connections
3. Post indicator valves – fire backflows – OS&Y valves

Event Egress: This section shall apply to two (2) types of events:

1. Fenced events – commonly located in parks or other large open areas.
2. Blocked streets – commonly done at events where main streets and cross streets are closed.

Fenced Events: These events typically take place in a park or other large open area where the designated area for the event is closed off by temporary fencing.

1. The number of exits shall be in addition to what is defined as the main entrance of the event. Three (3) exits shall be provided when the site accommodates 1,000 to 3,000 attendees and four (4) exits shall be provided when the site accommodates more than 3,000 attendees.
2. Exits shall be spaced equally along the perimeter of the fence. The maximum travel distance between exits shall not exceed 400 feet of travel. Additional exits shall be added, if needed.
3. The width of exits on temporary fencing shall be no less than 48 inches or approximately one (1) panel width.
 - A. A member of security shall staff every exit. The security provider shall be able to provide a gate assignment roster upon request.
4. Emergency exits shall be marked by one (1) of the following:
 - A. Exit signs shall have a white background with contrasting red letters.
 - B. Exit signs shall measure, at a minimum, 18 inches x 24 inches.
 - C. Sign letters shall measure 12 inches in height.
 - D. Signs shall be placed at the top center of exit panels.

Blocked Streets: Some events will require that main or cross streets be blocked from vehicular traffic. These types of closures shall account for fire and emergency vehicles and public egress.

1. Exits shall be located at each end of any street closure. Cross streets shall also have emergency exit access.
2. A fire lane, no less than 20 feet wide and no less than 13.5 feet high, shall be maintained as designed by FMBFD.

TENTS, CANOPIES and TEMPORARY MEMBRANE STRUCTURES

Tents and canopies used for occupancy and/or cooking operations are subject to a fire inspection.

Sources of Ignition: Smoking is prohibited in or around tents, canopies, and temporary membrane structures. "No Smoking" signs shall be clearly posted. Fireworks, open flames, and any other device that is capable of igniting combustible materials shall not be used in any area in or around tents, canopies, and temporary membrane structures as well as around any combustible material. **Propane heaters are not permitted inside any enclosed area.**

Applications for any tent, canopy, or temporary membrane structure shall include the following:

1. A site plan with the proposed location of the tent including measurements showing distances to surrounding buildings, and/or property lines. A minimum 20-foot separation and fire access is required.
2. Proposed floor plan of the tent, showing the location and number of exits, fire extinguishers, stages, seating arrangements, tables and, any other items.
3. Certificates of flame retardant shall be submitted with the application and should be the manufacturers' documentation attesting to the certification.
4. Any cooking and/or open flames.
5. Heaters and ventilation.
6. Items specific to the event should be included for review.

FMBFD MAY REQUEST APPLICANTS TO SUBMIT A LIFE SAFETY EVALUATION ALONG WITH A SPECIAL EVENT APPLICATION. Life Safety Evaluation:

1. Name of event, participants, and projected number of attendees.
2. Access and egress movement, including crowd density problems.
3. Medical emergency mitigation plan.
4. Fire hazards.
5. Permanent and temporary structural systems.
6. Severe weather mitigation plan.
7. Civil or other disturbances mitigation plan.
8. Mitigation plan for a hazardous material incident within or near the facility.
9. Relationships among facility management, event participants, emergency response agencies, and others that have a role in the events taking place in the facility.
- 10.10.

Please ensure that all items are addressed, any missing and/or incomplete evaluations will result in a delay and/or denial of the submitted application.

TENT INSPECTION CHECKLIST

☐	Fire extinguishers shall be provided by each vendor with a current state inspection tag from a licensed contractor. (Minimum size permitted is 2A:10BC). Operations conducting deep-frying shall have a K Class fire extinguisher with a current state inspection tag.
☐	Propane tanks shall be installed not less than 5 feet from tents, properly secured, and identified.
☐	"No Smoking" signs shall be clearly posted.
☐	Tents larger than 10x10 shall have the manufacturer's flame retardant tag affixed and visible.
☐	Cooking under tents will be permitted <u>ONLY</u> when a manufacturer's flame retardant tag is affixed to the tent, the tent is not enclosed (on any side), and only persons preparing food are permitted under the tent. Any size tent that fails to have the affixed flame retardant tag may not be used to cook under.
☐	Heavy duty <u>grounded type only</u> extension cords may be used. Wiring shall not be frayed, damaged, or spliced.
☐	Temporary lights or lamps may be used, but must be UL Listed. Wiring shall not be frayed, damaged, or spliced.
☐	Exit signs and/or emergency lights (if required) must be clearly visible.
☐	Occupant load sign (if required) must be clearly visible.
☐	Tents shall not obstruct any fire department access.

Please be advised that FMBFD inspects tents for the safety of all parties involved. These are minimum safety requirements and all parties must be in compliance.

HOT FOOD VENDOR REQUIREMENTS

The use of food booths or food trucks is regulated by FMBFD. These requirements shall apply to single vendors, freestanding booths, and food trucks. Cooking within tents containing seating is subject to additional requirements. All food vendors are subject to inspection prior to the start of the event. *Failure to comply with the following regulations may result in closure until compliance is met.*

Flame Retardant Requirements: All sidewalls, drops, and tops of tents and canopies, shall be of flame resistant material or treated with a flame retardant application as recommended by the manufacturer.

Portable Fire Extinguishers: Each food booth shall have, at a minimum, one (1) – 2A:10BC fire extinguisher with a current state inspection tag from a licensed contractor. If there will be any deep fat frying or cooking that produces grease-laden vapors, a Class K fire extinguisher with a current state inspection tag from a licensed contractor, shall be provided in addition to the ABC type.

Vendor Location: Food booths shall have a clearance of at least 20 feet on two (2) sides. The booth shall not be located within 10 feet of any rides or devices. Cooking that produces sparks and/or grease-laden vapors shall not be conducted within 10 feet of a structure or combustible overhang.

Cooking Appliances: Any cooking appliance used shall be listed for its intended use.

1. Deep fat fryers are not permitted to be used under tents and shall be located at least 18 inches from the outside wall of the tent. If a fryer is to be used in conjunction with a Barbeque (BBQ), it shall be at least three (3) feet away from the BBQ. Use of fryers also requires a Class K fire extinguisher as outlined above.
2. BBQ's are not permitted to be used in food booths. In addition, any fuels are to be kept at least 10 feet away from any heat source. BBQ's that are in use shall be located at least 10 feet from a structure, combustible materials, and overhangs. BBQ's and other open flame devices located outside of a structure, shall be secured from falling and kept away from contact by the public.

Smoking: Smoking is prohibited at all times within food booths, or within 25 feet of any fuel source.

Generators: Generators shall be located a minimum of 20 feet from tents or canopies and isolated from the public by a means approved by the FMBFD.

1. Flammable liquid filled equipment shall not be used within temporary membrane structures, tents, or canopies.
2. Flammable and combustible liquids shall be stored outside and in approved/marked containers. Containers shall be located no less than 50 feet from temporary membrane structures, tents, or canopies.
3. Refueling shall be performed in an approved location not less than 20 feet from temporary membrane structures, tents, or canopies. **Refueling of hot generators is not permitted.**
4. A 2A:10BC fire extinguisher with a current state inspection tag is required for any operation with a generator.

Fuel: Fuel tanks (LPG) shall be stored outside of the structure. The tanks shall be secured (to prevent tipping) and located away from any public contact. The size of the tank is restricted to 25 pounds, unless prior approval is received from the FMBFD. Propane tanks, fittings, and hoses will be checked to ensure there are no leaks.

FLOAT INSPECTION CHECKLIST - N/A

It is recommended that owners and/or operators be advised of their compliance with these regulations.

☐	Exhaust pipes on vehicles shall not come in contact with anything flammable on floats.
☐	Exhaust pipes shall be kept clear allowing for proper ventilation of fumes and preventing a carbon monoxide hazard.
☐	All dried vegetation, or similar items being used shall be fire resistant or treated with fire retardant materials. Documentation shall be forwarded to FMBFD for review.
☐	No smoking is permitted on or around any floats.
☐	No re-fueling of generator while generator is running or hot.
☐	All generators shall be secured and provided with a shut-off switch that is easily visible and accessible.
☐	Gasoline containers shall be UL listed type safety cans.
☐	All pull behind trailers and floats shall be equipped with a 2A:10BC fire extinguisher with a current state inspection tag from a licensed contractor. The fire extinguisher shall be mounted so that it is visible and easily accessible.
☐	All seating shall be properly secured to float.
☐	Trailer hitches shall be secured in the locked position by a tie strap or bolt.
☐	Trailers must have safety chains attached to tow vehicle.
☐	All extension cords shall be listed and approved for outdoor use.

Please remember that this list is subject to change and additional fire and life safety requirements may be required.

PYROTECHNICS PERMIT APPLICATION

Please be advised that application must be filed at least 30 days prior to the scheduled event. All permit fees must be paid prior to approval. Permits are non-transferable.

Date of Application: _____

Sponsoring Organization: _____

Phone/Emergency Contact Number: _____

Applicant/Company Name: _____

Phone/Emergency Contact Number: _____

Name and Address of technician: _____

Name(s) of assistants: _____

A copy of the technician's driver's license must be included along with a resume and three (3) references. Please include a copy of all assistants' drivers' licenses indicating they are a minimum of 18 years of age.

Date, Time and expected length of show: _____

Location of Display: _____

(Attach aerial site map showing required fall out and safety zones)

DISCHARGE DETAILS: Displays are only permitted to be electronically fired. Please provide detail on quantity, size, type, number of bursts (single/multiple) as well as a description of the display in the space below:

QTY	Size	Type	# of burst	Description of Display

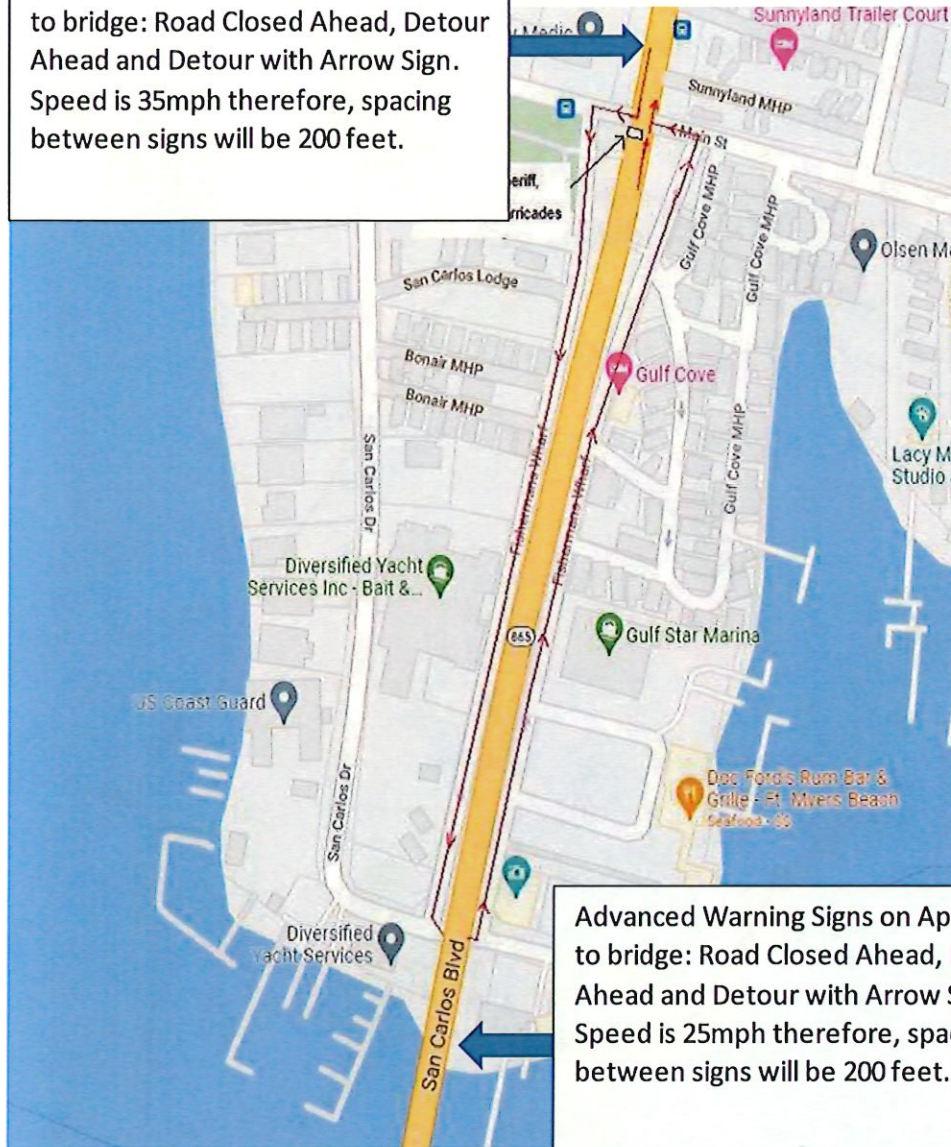
The following documents/information must be submitted along with completed application:

1. Event Itinerary
2. Security/Fire Watch Agreement (if required)
3. Coast Guard Application and Approval Letter (if required)
4. FAA Application and Approval Letter (if required)
5. Aerial Site Plan indicating minimum setbacks/required radius, per NFPA Standard

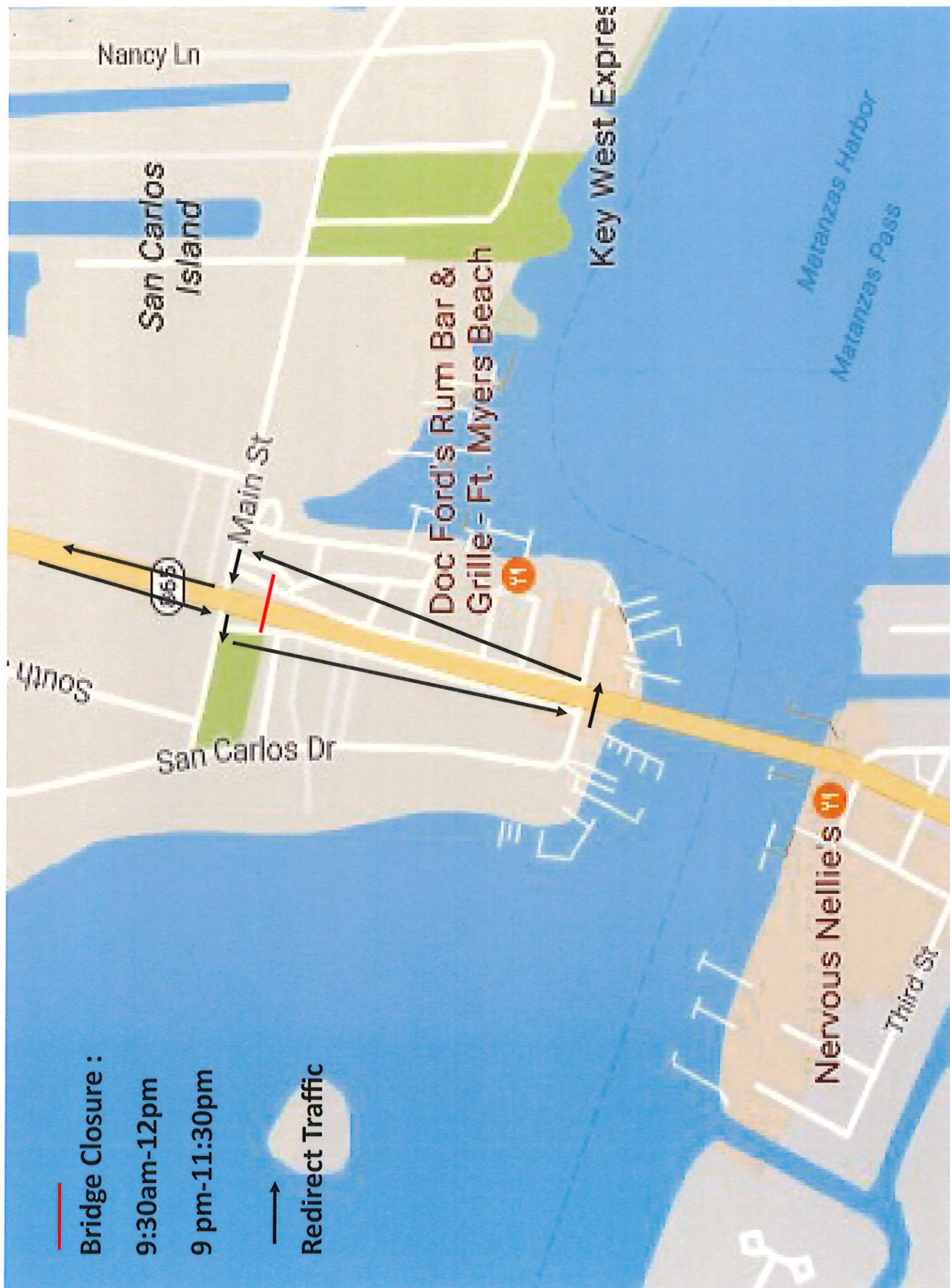
Notification shall be given prior to the Life Safety Division arriving at the site with transport vehicle. Final approval is subject to an onsite inspection. The FMBFD reserves the right to deny or revoke any permit for unsafe conditions, acts, or non-compliance with provisions of applicable standards. Shows may be cancelled or delayed based on changes in weather or other conditions as deemed necessary by the onsite Life Safety Division representative.

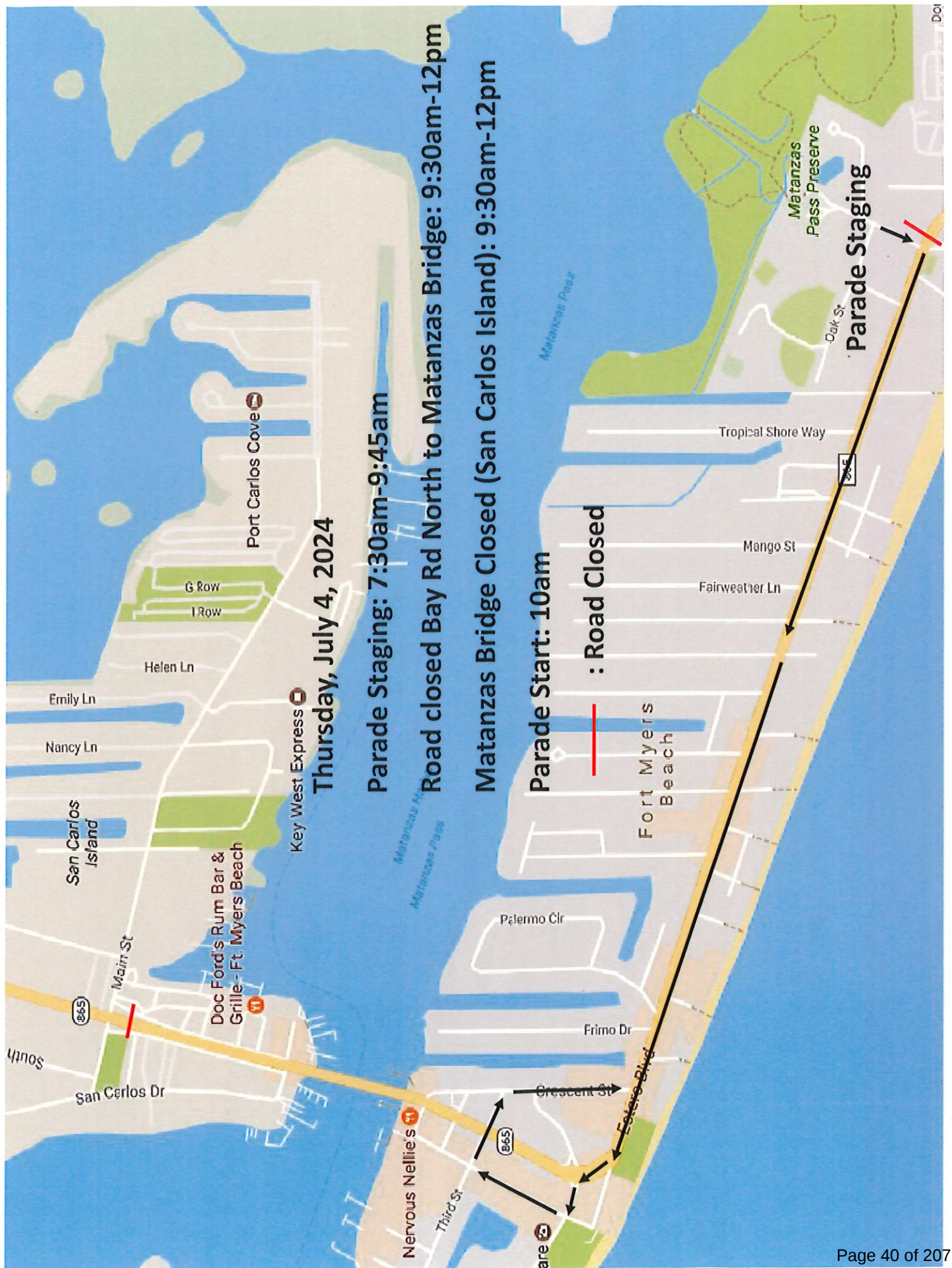
Town of Ft. Myers Beach
4th of July Parade
07/04/2024
Detour Route

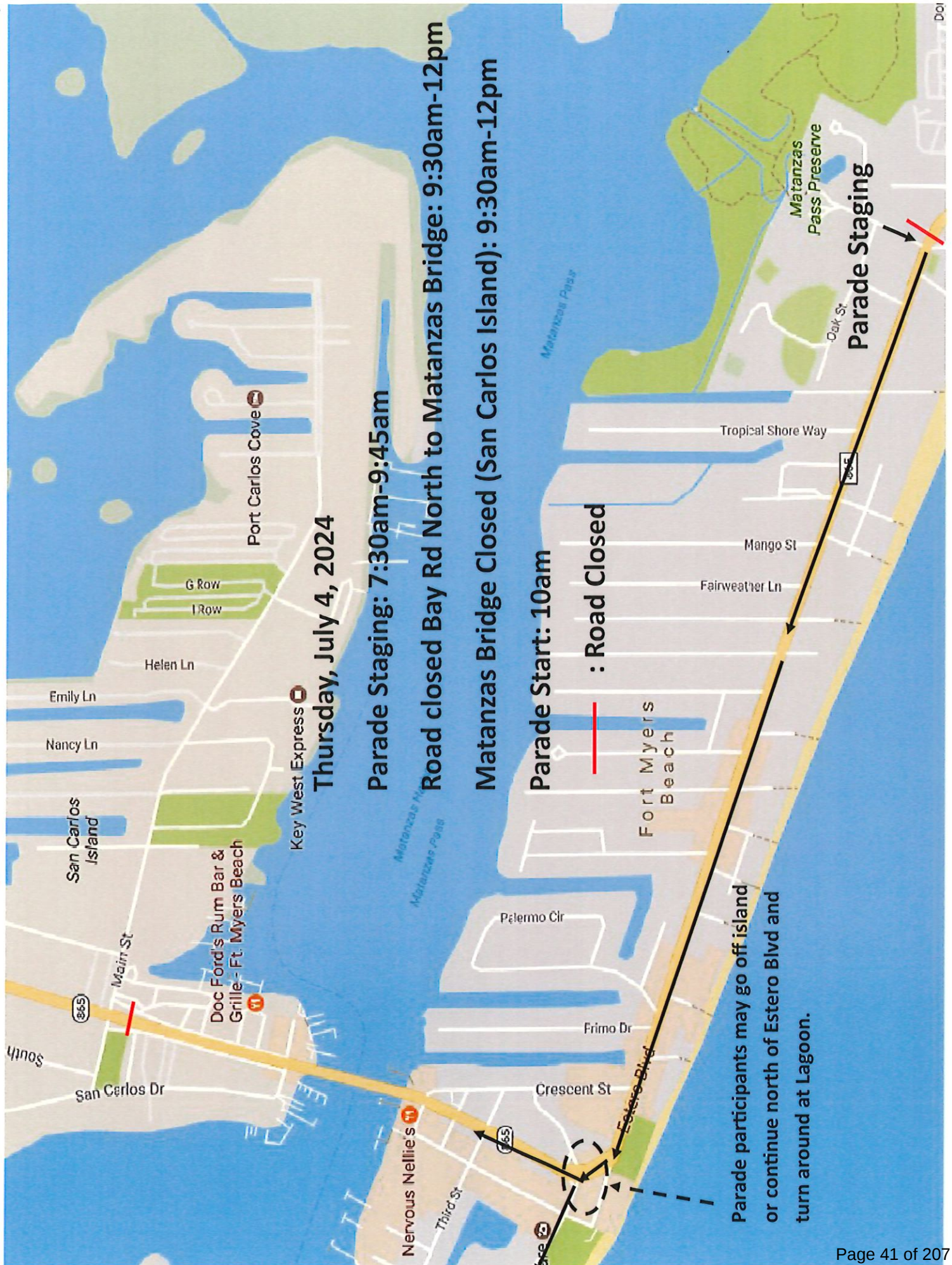
Advanced Warning Signs on Approach to bridge: Road Closed Ahead, Detour Ahead and Detour with Arrow Sign. Speed is 35mph therefore, spacing between signs will be 200 feet.

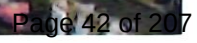


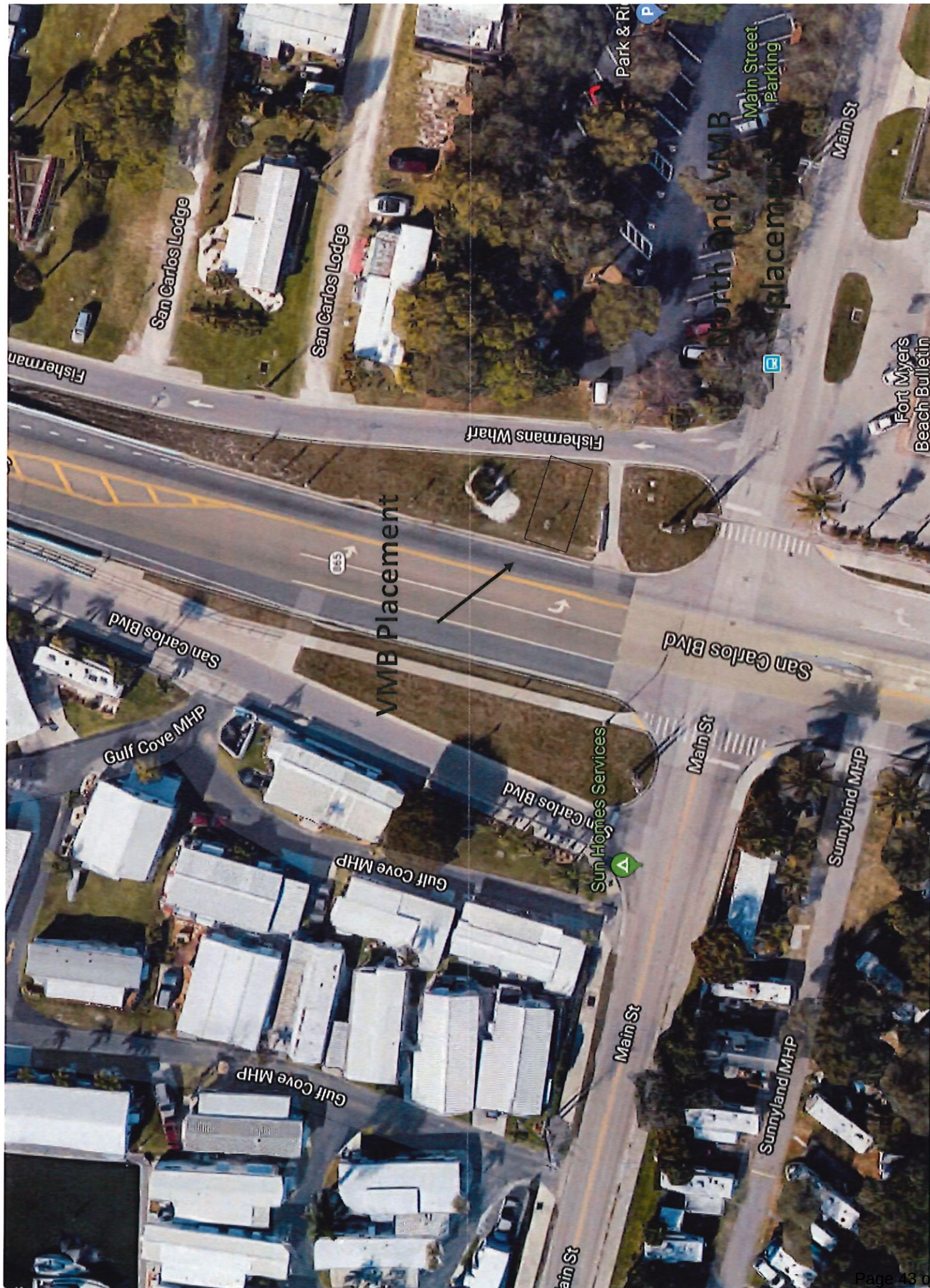
Advanced Warning Signs on Approach to bridge: Road Closed Ahead, Detour Ahead and Detour with Arrow Sign. Speed is 25mph therefore, spacing between signs will be 200 feet.

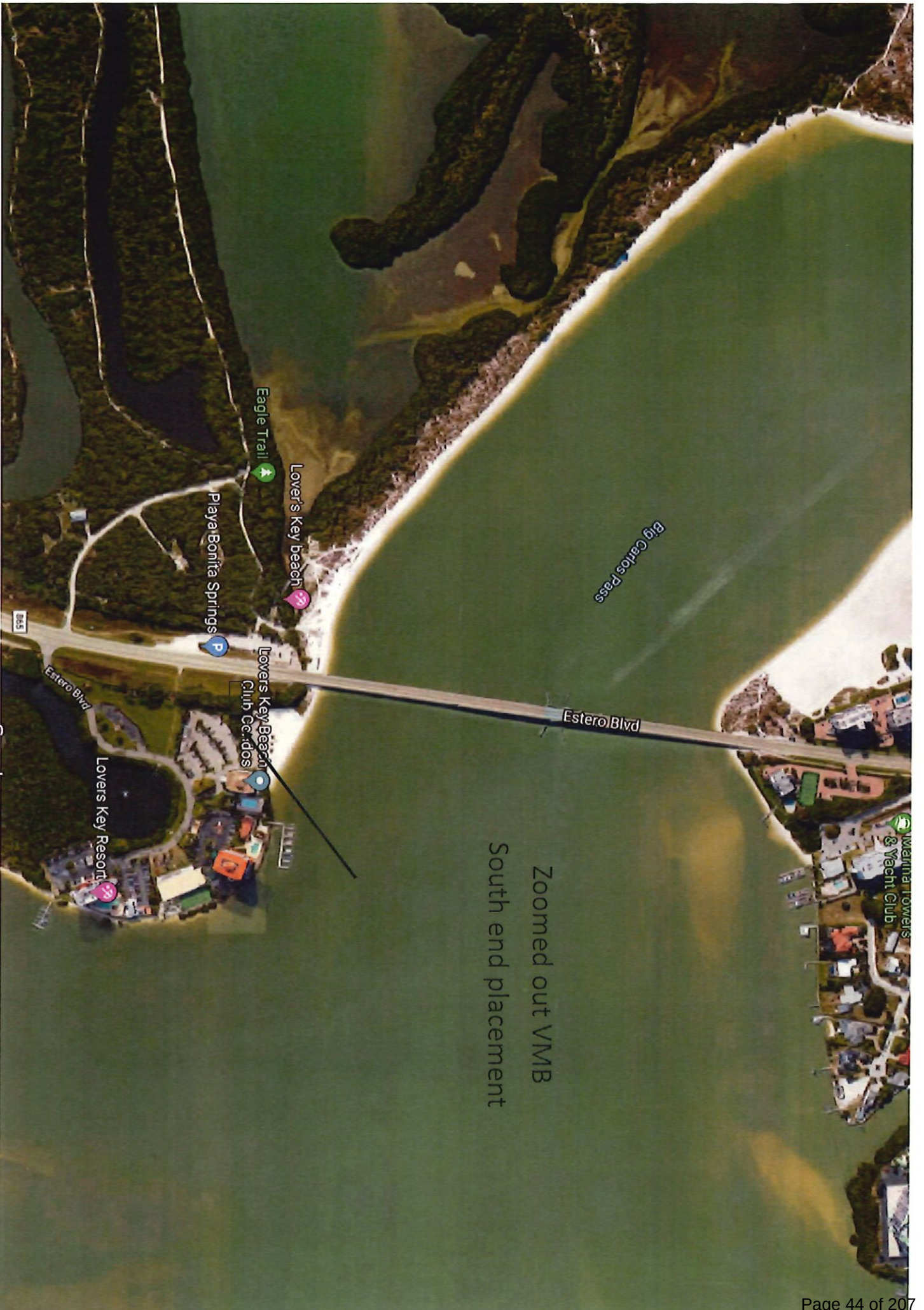












Zoomed out VMB
South end placement



1. **Request:**

Meeting Date: April 15, 2024

Approve Supplemental Task Authorizations #12 for continued Planning/Zoning services performed by Axis Engineering, and authorize the Town Manager to execute the required documentation.

Why the action is necessary:

This contract will provide continued professional services for Community Development in Planning and Zoning

What the action accomplishes:

This will provide continued professional services for the Town in Planning & Zoning.

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

Frankie Kropacek, Operations &
Compliance Director

5. **Background:**

The following STA exceeds \$25,000 and therefore require Town Council approval. In accordance with RFQ-20-22-AD, approve STA # 12 with Axis Infrastructure (Jason Green & Sarah Propst) in the not to exceed annual amount of \$186,880 for Professional Services in the area of Planning/Zoning and authorize the Town Manager to execute the required documentation.

Attachments:

1. STA 12 Planning GIS and Technical Support Additional Planning FY 24 (002)

Financial Impact:

6. **Alternative Action**

Do not approve

7. **Management Recommendations:**

Approve the STA with Axis

8. **Recommended Approval:**

Amy Baker, Town Clerk
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 4/9/2024
Approved - 4/9/2024
Approved - 4/10/2024
Final Approval - 4/10/2024

X Supplemental Task Authorization NO.: STA # 12

CONTRACT/PROJECT NAME: Technical Support, GIS, Special Project Management, Additional Planning Services for FY 23/34

CONSULTANT: Axis Infrastructure PROJECT NO.: _____

SOLICIT NO.: RFQ #-20-22-AD CONTRACT NO.: _____

REQUESTED BY: Frankie Kropacek, Ops/Compliance DATE OF REQUEST: March 21, 2024

PURCHASE ORDER NUMBER: _____

EXHIBIT "A"	SCOPE OF PROFESSIONAL SERVICE:	DATED: <u>March 21, 2024</u>
EXHIBIT "B"	COMPENSATION & METHOD OF PAYMENT:	DATED: <u>March 21, 2024</u>
EXHIBIT "C"	TIME AND SCHEDULE OF PERFORMANCE:	DATED: <u>March 21, 2024</u>
EXHIBIT "D"	CONSULTANT'S/PROVIDER'S ASSOCIATED SUB-CONSULTANT(S)/SUB-CONTRACTORS:	DATED: <u>March 21, 2024</u>

EXHIBIT A

SCOPE OF PROFESSIONAL SERVICES

Technical Support, GIS, Special Project Management, Additional Planning Services for FY 23/24

Overview

STA NO. 7: Planning and Zoning Technical Support, GIS, Special Project Management, Additional Planning Services for FY 23/24

The following services will be provided by Axis Infrastructure:

- 1:** Planning and Zoning staff, permit review, technical analysis as required by the Comprehensive Plan and Land Development Code.
- 2:** Coordinate with Town departments, advisory boards, and Town Council public hearings.
- 3:** Coordinate special projects, staff training, and assist with project assignments from the Town Manager or designee.
- 4:** Coordinate with Town Manager and Town Council to assist in developing strategies to support and implement priority planning and development issues.

Hourly Breakdown:

Senior Planner/Planning Manager	\$120
Planner/GIS	\$100

Total Cost (of Job): *\$186,000.00*

EXHIBIT B

Date: 3/21/2024

COMPENSATION AND METHOD OF PAYMENT FOR

Technical Support, GIS, Special Project Management, Additional Planning Services for FY 23/24

Section 1. BASIC SERVICES/TASK(S)

The TOWN shall compensate the CONSULTANT for providing and performing the Task(s) set forth and enumerated in EXHIBIT "A", entitled "SCOPE OF PROFESSIONAL SERVICES", as follows:

NOTE: A Lump Sum (L.S.) or Not-to-Exceed (N.T.E.) amount of compensation to be paid the CONSULTANT should be established and set forth below for each task or sub-task described and authorized in Exhibit "A". In accordance with Agreement Article 5.02(2) "Method of Payment", tasks to be paid on a Work-in-Progress payment basis should be identified (WIPP).

Task Number	Task Title	Amount of Compensation	Indicate Basis of Compensation LS or NTE	If Applicable Indicate (W.I.P.P.)
#1	<u>Technical Support, GIS, Special Project Management, Additional Planning Services for FY 23/24</u>	\$186,000	NTE	WIPP
TOTAL (Unless list is continued on next page)		\$186,000	NTE	

Section 2. ADDITIONAL SERVICES

The TOWN shall compensate the CONSULTANT for such ADDITIONAL SERVICES as are requested and authorized in writing for such amounts or on such a basis as may be mutually agreed to in writing by both parties to this Agreement. The basis and/or amount of compensation to be paid the CONSULTANT for ADDITIONAL SERVICES requested and authorized in writing by the TOWN shall be as set forth in Article 4 of this Agreement.

Should it be mutually agreed to base compensation for ADDITIONAL SERVICES on an hourly rate charge basis for each involved professional and technical employee's wage rate classification, the applicable hourly rates to be charged are as set forth and contained in ATTACHMENT NO. 1 hereto dated 10/1/2021, entitled "CONSULTANT'S PERSONNEL HOURLY RATE SCHEDULE".

Section 3. REIMBURSABLE EXPENSES AND COSTS

When the CONSULTANT'S compensation and method of payment is based on an hourly rate for professional and/or technical personnel, the CONSULTANT shall, in addition to such hourly rates as are set forth in Attachment No. 1 hereto, be entitled to reimbursement of out-of-pocket, non-personnel expenses and costs as set forth in ATTACHMENT NO. 2 hereto 10/01/2021 entitled "NON-PERSONNEL REIMBURSABLE EXPENSES AND COSTS".

ATTACHMENT NO. 1 TO EXHIBIT B

Date: 3/21/2022

CONSULTANT'S PERSONNEL HOURLY RATE SCHEDULE FOR Permitting and Technical Support, GIS, Special Project Management, Additional Planning Services for FY 23/24

Consultant or Sub-consultant Name: Axis Infrastructure
(A separate Attachment No. 1 should be included for each Sub-Consultant)

[illegible]

*NOTE: Direct Payroll hourly rate means the actual gross hourly wage paid.

****NOTE:** Indicate applicable multiplier for indirect personnel costs, general administrative & overhead costs, and profit.

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

ATTACHMENT NO. 2 TO EXHIBIT B

Date: 3/21/2024

NON-PERSONNEL REIMBURSABLE EXPENSES AND COSTS FOR
Technical Support, GIS, Special Project Management, Additional Planning Services for FY 23/24

CONSULTANT OR SUB-CONSULTANT NAME: Axis Infrastructure
(A separate Attachment No. 2 should be included for each Sub-Consultant)

[illegible]

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

EXHIBIT C

Date: 4/25/2023

TIME AND SCHEDULE OF PERFORMANCE FOR

Technical Support, GIS, Special Project Management, Additional Planning Services for FY 23/24

This EXHIBIT "C" establishes times of completion for the various phases and tasks required to provide and perform the services and work set forth in EXHIBIT "A" of this Agreement. The times and schedule of performance set forth hereinafter is established pursuant to this Agreement.

Phase and/or Task Reference As Enumerated in EXHIBIT "A"	NAME OR TITLE Of Phase and/Task	Number Of Calendar Days For Completion Of Each Phase And/or Task	Cumulative Number Of Calendar Days For Completion From Date of Notice to Proceed
#1	Technical Support, GIS, Special Project Management, Additional Planning Services	180	180 days

EXHIBIT DDate: 3/21/2024

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

Technical Support, GIS, Special Project Management, Additional Planning Services for FY 23/24

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

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

Service and/or Work to be Provided or Performed	Name and Address of Individual or Firm				Sub-Consultant Services are Exempted from Prime Consultant's Insurance Coverage	
					Yes	No
1	Planning Analytics, LLC				X	

1. **Request:**

Meeting Date: April 15, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING AND AUTHORIZING THE TOWN MANAGER TO EXECUTE AN AMENDMENT TO EXTEND THE PROFESSIONAL SERVICES AGREEMENTS BETWEEN THE TOWN AND 1) COASTAL ENGINEERING CONSULTANTS, 2) COASTAL SYSTEMS INTERNATIONAL, 3) EDGEWATER RESOURCES, 4) HANS WILSON & ASSOCIATES, 5) TAYLOR ENGINEERING, AND 6) TURRELL HALL & ASSOCIATES, WHICH ARE THE ENVIRONMENTAL ENGINEERING FIRMS SELECTED UNDER RFQ-20-06-AD "ENVIRONMENTAL ASSESSMENTS AND MARINE ENGINEERING" FOR AN ADDITIONAL YEAR; AND PROVIDING AN EFFECTIVE DATE

Why the action is necessary:

If the agreements are not renewed, the Town will have to issue a new RFQ. Town staff recommends the continued use of the professional service firms selected under RFP-20-06-AD Environmental Assessments and Marine Engineering.

What the action accomplishes:

Renews the previous agreements from March 16, 2024, through March 15, 2025.

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

Resolution 24-74

4. **Submitter of Information:**

Jason Freeman, Legislative
Liaison / Deputy Town Clerk

5. **Background:**

The professional service agreements under the RFQ-20-06-AD were executed in March 2020 for a period of 3 years. These agreements were renewed last year by Town Council for one additional year through March 16, 2024 and although have since recently expired, they do each have the option for one additional one-year renewal each by mutual agreement of both parties through March 16, 2025 which then will have to be re-bid. The scope of work under the RFQ is for Environmental Assessments and Marine Engineering. The type of work is fully described below.

Current firms under this contract:

- Coastal Engineering Consultants
- Coastal Systems International
- Edgewater Resources
- Hans Wilson & Associates
- Taylor Engineering
- Turrell Hall & Associates

Environmental Assessments

Requires engineering expertise in planning, designing, permitting, bidding and construction administration phases of service for Environmental Assessments, as well as knowledge of current rules and regulations of local, state and federal agencies regulating the environment and all marine, land use and building code provisions, including the Department of Environmental Protection, the South Florida Water Management District, the United States Environmental Protection Agency, the South Florida Building Code and the United States Corps of Engineers. The firm must employ at least one professional engineer, registered with the Florida State Board

of Professional Engineers, having training and experience in the area of Environmental Assessments.*

Marine Engineering

Requires engineering expertise in planning, design, permitting, bidding and construction administration services in connection with waterfront facilities and marine systems and infrastructure, including docks, seawalls, dredging activities, mooring systems. Expertise should include permitting and public assistance grants as well as knowledge of current rules and regulations of local, state and federal agencies, including the Florida Department of Environmental Protection and the United States Army Corps of Engineers. The firm must employ at least one professional engineer, registered with the Florida State Board of professional Engineers, having training and experience in the area of marine design.

Attachments:

1. 24-74 Final One-Year Renewals for RFQ-20-06-AD Marine Engineering (1) ns

Financial Impact:

N/A

6. Alternative Action

Not to approve the renewals and issue a new RFQ.

7. Management Recommendations:

To approve and execute the renewal of the agreements under the RFQ- 20-06- AD

8. Recommended Approval:

Jason Freeman, Legislative Liaison / Deputy Town Clerk
Amy Baker, Town Clerk
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 4/2/2024
Approved - 4/9/2024
Approved - 4/9/2024
Approved - 4/10/2024
Final Approval - 4/10/2024

RESOLUTION NUMBER 24-74

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING AND AUTHORIZING THE TOWN MANAGER TO EXECUTE AN AMENDMENT TO EXTEND THE PROFESSIONAL SERVICES AGREEMENTS BETWEEN THE TOWN AND 1) COASTAL ENGINEERING CONSULTANTS, 2) COASTAL SYSTEMS INTERNATIONAL, 3) EDGEWATER RESOURCES, 4) HANS WILSON & ASSOCIATES, 5) TAYLOR ENGINEERING, AND 6) TURRELL HALL & ASSOCIATES, WHICH ARE THE ENVIRONMENTAL ENGINEERING FIRMS SELECTED UNDER RFQ-20-06-AD "ENVIRONMENTAL ASSESSMENTS AND MARINE ENGINEERING" FOR AN ADDITIONAL YEAR; 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, pursuant to a competitive procurement process in compliance with state law and Town Code – RFQ-20-06-AD “ Environmental Assessments and Marine Engineering ”, the Town entered into professional services agreements with 6 environmental engineering firms (Coastal Engineering Consultants, Coastal Systems International, Edgewater Resources, Hans Wilson & Associates, Taylor Engineering, and Turrell Hall & Associates) to provide environmental services to the Town (“the Agreements”); and

WHEREAS, each Agreement included an option for the Town to extend the term of the Agreement; and

WHEREAS, the Town believes it is in the best interest for the health, safety and welfare of the Town’s business owners, residents, and visitors to extend the Agreements for an additional year.

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

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

Section 2. The Town Manager is authorized to execute amendments to the Agreements for an additional year and expend budgeted funds on behalf of the Town for such services.

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 _____ 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 ____ day of _____, 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 SOLELY:

Vose Law Firm, Town Attorney

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

1. **Request:**

Meeting Date: April 15, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING SUPPLEMENTAL TASK AGREEMENT #11 OF CONTRACT RFQ-21-09-EN BETWEEN THE TOWN AND COASTAL ENGINEERING CONSULTANTS, INC. FOR CONSTRUCTION PHASE SERVICES FOR SAND RENOURISHMENT FOR THE ESTERO ISLAND NORTH BERM TRUCK HAUL PROJECT, FOR A COST OF \$59,550; AN PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

The Estero Island North Berm Project is needed to provide storm surge protection for the upland properties.

What the action accomplishes:

STA #11 of Contract RFQ-21-09-EN will provide the Town with construction plans for the North Beach Segment Berm and provide construction phase services for the duration of the project.

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Chadd Chustz, Environmental
Services

5. **Background:**

The North Estero Island fill segment is approximately 6,850 feet long located between the terminal groin at Bowditch Park (R174.5) and Crescent Park (R182). It was previously renourished in 2011 with approximately 403,000 cubic yards of sand excavated from the Matanzas pass ebb shoal complex burrow area and placed in the beach fill area between the terminal groin and R-182.

Hurricane Ian devastated Fort Myers Beach causing substantial erosion and the loss of elevation along the beach that has left upland properties vulnerable to king tides and future storms. By utilizing monitoring and post-storm beach surveys, Coastal Engineering Consultants estimated the total damage for the North Estero Island Segment from the landward limit of erosion to the depth of closure and scour holes equaled 56,845 cubic yards (approximately 79,500 tons using a 1.4 multiplier).

Attachments:

1. 24-XX, CEC STA 11 North Estero Berm
2. 24403 STA 11 EI North Berm Truck Haul 20240321
3. Budget - EI North Berm Project

Financial Impact:

STA #11 will be 100% paid for by the FDEP Hurricane Ian and Hurricane Nicole Recovery Grant Agreement 23LE4.

6. **Alternative Action**

Do not approve STA #11 of Contract RFQ-21-09-EN for Coastal Engineering Consultants to provide construction phase services for the Estero Island North Berm Truck Haul Project.

7. **Management Recommendations:**

Approve STA #11 of Contract RFQ-21-09-EN.

8. **Recommended Approval:**

Chadd Chustz, Environmental Services
Frankie Kropacek, Operations & Compliance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 4/5/2024
Approved - 4/6/2024
Approved - 4/9/2024
Approved - 4/9/2024
Final Approval - 4/10/2024

RESOLUTION NUMBER 24-78

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING SUPPLEMENTAL TASK AGREEMENT #11 OF CONTRACT RFQ-21-09-EN BETWEEN THE TOWN AND COASTAL ENGINEERING CONSULTANTS, INC. FOR CONSTRUCTION PHASE SERVICES FOR SAND RENOURISHMENT FOR THE ESTERO ISLAND NORTH BERM TRUCK HAUL PROJECT, FOR A COST OF \$59,550; AN PROVIDING FOR AN EFFECTIVE DATE.

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

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

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

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

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

WHEREAS, the Town Council has determined it is in the best interest of the Town to approve the requested Supplemental Task Order #11 of Contract # RFQ-21-09-EN.

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

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

Section 2. The Town Council hereby approves the Supplemental Task Order #11 of Contract # RFQ-21-09-EN between the Town and Coastal Engineering Consultants, Inc., for \$59,550. A copy of the Supplemental Task Order #11 of Contract # RFQ-21-09-EN is attached hereto as Attachment "A".

The foregoing Resolution was adopted by the Town Council upon a motion by _____ and seconded by _____, and upon being put to a 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 15th day of April 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 April 2024.

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

X Supplemental Task Authorization

NO.: 11

CONTRACT/PROJECT NAME: Estero Island North Berm Truck Haul Project

CONSULTANT: Coastal Engineering Consultants, Inc.

PROJECT NO.: _____

SOLICIT NO.: Estero Island Beach Renourishment

CONTRACT NO.: RFQ-21-09-EN

REQUESTED BY: Chadd Chustz, Environmental Project Manager DATE OF REQUEST: 3/19/2024

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

EXHIBIT "A" SCOPE OF PROFESSIONAL SERVICE: DATED: March 21, 2024

EXHIBIT "B" COMPENSATION & METHOD OF PAYMENT: DATED: March 21, 2024

EXHIBIT "C" TIME AND SCHEDULE OF PERFORMANCE: DATED: March 21, 2024

EXHIBIT "D" CONSULTANT'S/PROVIDER'S ASSOCIATED
SUB-CONSULTANT(S)/SUB-CONTRACTORS: DATED: March 21, 2024

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

RECOMMENDED:

By: _____
Department Director Date

By: _____
Contracts Manager Date

ACCEPTED:

By: Michael C. Hoff March 21, 2024
Consultant/Provider Date

TOWN APPROVAL:

By: _____
Town Manager Date

EXHIBIT A

Date: March 21, 2024

SCOPE OF PROFESSIONAL SERVICES

Estero Island North Berm Truck Haul Project

INTRODUCTION

The Town applied for and is receiving State Funding (LGFR) for Hurricanes Ian and Nicole Recovery for purchasing, transporting and placing sand to offset storm impacts on the order of 53,000 tons via truck haul. This STA #11 is a companion task order to STA #5 and STA # 6.

TASK 1 Construction Phase Services

Prepare detailed construction plans for the North Beach Segment berm.

Review contractor submittals for compliance with contract documents. Attend weekly construction meetings. Conduct site visits during active construction in support of certifying project completion. Based on information obtained during such inspections and on such observations, endeavor to determine in general if such work is proceeding in accordance with the Contract Documents and keep the Town informed of the progress of the work. Prepare and submit summary reports of observations. Budget does not include nights or weekend overtime.

Conduct pre- and post-construction surveys and compute volume of sand placed to verify quantities. Set two benchmarks for the Contractor. Surveys shall be taken at approximate 100-foot intervals and points of inflection along the berm survey baseline. Cross sections shall extend a minimum of 10 feet beyond the limits of placed sand to capture the full placement areas. Vertical elevations shall be in feet referenced to the NAVD88. Horizontal distances shall be in feet. Locations shall be specified in Florida State Plane grid coordinates, NAD83. All drawings shall be submitted in electronic format (CADD and PDF). All survey data shall be provided in Easting, Northing, Elevation formatted data files (i.e. XYZ data files).

Review pay applications and recommend payments.

Conduct daily shorebird monitoring and reporting along Bowditch Point Park.

Construction stakeouts are not included in this scope of work.

Total Cost (of Job): \$59,550

EXHIBIT B

Date: March 21, 2024

COMPENSATION AND METHOD OF PAYMENT

Estero Island North Berm Truck Haul Project

Section 1. BASIC SERVICES/TASK(S)

The TOWN shall compensate the CONSULTANT for providing and performing the Task(s) set forth and enumerated in EXHIBIT "A", entitled "SCOPE OF PROFESSIONAL SERVICES", as follows:

NOTE: A Lump Sum (L.S.) or Not-to-Exceed (N.T.E.) amount of compensation to be paid the CONSULTANT should be established and set forth below for each task or sub-task described and authorized in Exhibit "A". In accordance with Agreement Article 5.02(2) "Method of Payment", tasks to be paid on a Work-in-Progress payment basis should be identified (WIPP).

Task Number	Task Title	Amount of Compensation	Indicate Basis of Compensation LS or NTE	If Applicable Indicate (W.I.P.P.)
Task 1	Construction Phase Services	\$59,550	LS	W.I.P.P.
TOTAL		\$59,550		

(Unless list is continued on next page)

Section 2. ADDITIONAL SERVICES

The TOWN shall compensate the CONSULTANT for such ADDITIONAL SERVICES as are requested and authorized in writing for such amounts or on such a basis as may be mutually agreed to in writing by both parties to this Agreement. The basis and/or amount of compensation to be paid the CONSULTANT for ADDITIONAL SERVICES requested and authorized in writing by the TOWN shall be as set forth in Article 4 of this Agreement.

Should it be mutually agreed to base compensation for ADDITIONAL SERVICES on an hourly rate charge basis for each involved professional and technical employee's wage rate classification, the applicable hourly rates to be charged are as set forth and contained in ATTACHMENT NO. 1 hereto dated 9/14/2023, entitled "CONSULTANT'S PERSONNEL HOURLY RATE SCHEDULE".

Section 3. REIMBURSABLE EXPENSES AND COSTS

When the CONSULTANT'S compensation and method of payment is based on an hourly rate for professional and/or technical personnel, the CONSULTANT shall, in addition to such hourly rates as are set forth in Attachment No. 1 hereto, be entitled to reimbursement of out-of-pocket, non-personnel expenses and costs as set forth in ATTACHMENT NO. 2 hereto dated 8/29/2023, entitled "NON-PERSONNEL REIMBURSABLE EXPENSES AND COSTS".

ATTACHMENT NO. 1 TO EXHIBIT B

Date: March 21, 2024

CONSULTANT'S PERSONNEL HOURLY RATE SCHEDULE *** FOR
Estero Island North Berm Truck Haul Project

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

(1) Project Position or Classification (Function to be Performed)	(2) Current Direct* Payroll Average Hourly Rate	(3) Multiplier**	(4) Hourly Rate To Be Charged (Column 2x3)
Principal Engineer			\$225
Principal Surveyor			\$225
Coastal Modeler			\$155
Managing Consultant			\$162
Project Consultant			\$139
Staff Consultant			\$118
2-Man Survey Crew			\$127
1-Man Survey Crew			\$93
Crew Chief			\$116
Crew Member			\$89
Construction Manager			\$108
Senior Designer			\$126
Senior Coordinator			\$89
Laborer			\$52

*NOTE: Direct Payroll hourly rate means the actual gross hourly wage paid.

**NOTE: Indicate applicable multiplier for indirect personnel costs, general administrative & overhead costs, and profit.

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

ATTACHMENT NO. 2 TO EXHIBIT B

Date: March 21, 2024

NON-PERSONNEL REIMBURSABLE EXPENSES AND COSTS

Estero Island North Berm Truck Haul Project

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

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

ITEM	BASIS OF CHARGE
Telephone (Long Distance)	Actual Cost
Postage and Shipping	Actual Cost
Commercial Air Travel	Actual Cost (Coach)
Vehicle Travel Allowance (N.T.E. 50 miles one-way) (or)	\$0.405/mile
Vehicle Rental/Gas	Actual Cost
Lodging (Per Person)	Actual Cost or NTE \$100.00
Meals:	
	Breakfast Lunch Dinner
In accordance with the Runzheimer rate service for Travel utilizing the "average", dated 5/4/06	\$12.01 \$11.82 \$24.72
Reproduction (Photocopy) 8 1/2" x 11"	\$0.15/Page
8 1/2" x 14"	\$0.20/Page
11" x 14"	\$0.35/Page
Reproduction (Blue/White Prints)	\$0.20/Sq. Ft.
Printing/Binding	Actual Cost
Mylar Sheets	Actual Cost
Photographic Supplies & Services	Actual Cost
Tolls	Actual Cost
*List other specific project related reimbursables (i.e. film/developing):	
Permit Fees	Actual Cost
RTK (per day)	\$150
NOTE: Receipts or in-house logs are required for all non-personnel reimbursable expenses unless exempt (such as meals).	
Administrative Services Fee – Applicable only when specifically authorized by the Town, for administering the procurement of special additional services, equipment, reimbursables etc. not covered under the costs and/or changes established in the Agreement.	

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

EXHIBIT C

Date: March 21, 2024

TIME AND SCHEDULE OF PERFORMANCE

Estero Island North Berm Truck Haul Project

This EXHIBIT "C" establishes times of completion for the various phases and tasks required to provide and perform the services and work set forth in EXHIBIT "A" of this Agreement. The times and schedule of performance set forth hereinafter is established pursuant to this Agreement.

Phase and/or Task Reference As Enumerated in EXHIBIT "A"	NAME OR TITLE Of Phase and/Task	Number Of Calendar Days For Completion Of Each Phase And/or Task	Cumulative Number of Calendar Days for Completion from Date of Notice to Proceed
Task 1	Construction Phase Services	45	45

EXHIBIT D

Date: March 21, 2024

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

Estero Island North Berm Truck Haul Project

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

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

Service and/or Work to be Provided or Performed	Name and Address of Individual or Firm				Sub-Consultant Services are Exempted from Prime Consultant's Insurance Coverage	
					Yes	No
Shorebird Monitors	Corinne Price Trish Schranck Edwin Wilke Scott Blake Yohn Villalta				X	

ESTERO ISLAND NORTH BERM TRUCK HAUL PROJECT						
Item	Description	Unit	Quantity	Unit Price	Extended Price	Subtotals
A-1	Design	LS	1	\$8,200	\$8,200	\$8,200
C-1	Mobilization/Demobilization	LS	1	\$0	\$0	
C-2	Construction Access/Staging	LS	1	\$25,000	\$25,000	
C-3	Maintenance of Traffic	LS	1	\$45,430	\$45,430	
C-4	Sand Production (Stewart)	Ton	53,000	\$11.85	\$628,050	
C-5	Sand Delivery (ETE)	Ton	53,000	\$16.00	\$848,000	
C-6	Sand Placement (ETE)	Ton	53,000	\$5.00	\$265,000	\$1,811,480
D-1	Const Management & Inspections	LS	1	\$71,500	\$71,500	\$71,500
					Total	\$1,891,180

1. **Request:**

Meeting Date: April 15, 2024

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 53,000 TONS OF BEACH COMPATIBLE SAND FOR \$628,050.00 AS A SOLE SOURCE PROVIDER; AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

The purpose of this request is to purchase beach compatible sand that meets the Town's specifications: All dune and beach fill sediment shall be free of construction debris, rocks, or other foreign matter, and shall not contain, on average, greater than 3% fines (i.e., silt and clay) (passing the #230 sieve); and shall not contain, on average, greater than 1% coarse material (retained on the #4 sieve); and shall have a mean grain size ranging from 0.25 mm to 0.35 mm and a moist Munsell 10yr color-value/chroma of 8/1 or lighter.

The vendor, Stewart Materials, will be responsible for providing the beach compatible sand that meets the Town's specifications for the Beach.

Beach compatible sand is needed to restore the Town's beaches from Hurricane Ian impacts to the North Estero Island Segment, and provide protection from storm surge impacts to upland properties.

What the action accomplishes:

The beach sand will be used to construct a berm and fill scours to provide storm impact reduction for upland properties.

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

4. **Submitter of Information:**

5. **Background:**

The North Estero Island fill segment is approximately 6,850 feet long located between the terminal groin at Bowditch Park (R174.5) and Crescent Park (R182). It was previously renourished in 2011 with approximately 403,000 cubic yards of sand excavated from the Matanzas pass ebb shoal complex burrow area and placed in the beach fill area between the terminal groin and R-182.

Hurricane Ian devastated Fort Myers Beach causing substantial erosion and the loss of elevation along the beach that has left upland properties vulnerable to king tides and future storms. By utilizing monitoring and post-storm beach surveys, Coastal Engineering Consultants estimated the total damage for the North Estero Island Segment from the landward limit of erosion to the depth of closure and scour holes equaled 56,845 cubic yards (approximately 79,500 tons using a 1.4 multiplier).

Attachments:

1. Resolution 24-77, Stewart Mine Materials 240415
2. Town of Ft Myers Beach - Beach sand 4-5-24
3. Sole Source Form
4. 23LE4_A1 Town of Ft. Myers Beach 2022 Hurricane Ian and Nicole Recovery Project

Financial Impact:

The cost of the sand purchase from Stewart Mine will be 100% paid for by the FDEP Hurricane Ian and Hurricane Nicole Recovery Grant Agreement 23LE4.

6. Alternative Action

Do not approve the purchase of 53,000 tons of Stewart Mine Beach Compatible Sand

7. Management Recommendations:

Approve the sole source purchase of 53,000 tons of beach compatible sand from Stewart Mine.

8. Recommended Approval:

Chadd Chustz, Environmental Services
Frankie Kropacek, Operations & Compliance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 4/5/2024
Approved - 4/6/2024
Approved - 4/9/2024
Approved - 4/9/2024
Final Approval - 4/10/2024

RESOLUTION NUMBER 24-77

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 53,000 TONS OF BEACH COMPATIBLE SAND FOR \$628,050.00 AS A SOLE SOURCE PROVIDER; AND PROVIDING FOR AN EFFECTIVE DATE.

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

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

WHEREAS, beach compatible sand is needed to restore the Town's beaches from Hurricane Ian impacts, including but not limited to construction of a sand berm to protect upland properties along the North segment; and

WHEREAS, Section 2-480(c) of the Town of Fort Myers Beach Code of Ordinances permits the award of a contract without competition when the Finance Director, in conjunction with a department director determines in writing after conducting a good faith review of available sources, that there is only one source for the required product; and

WHEREAS, the Environmental Project Manager has provided the Finance Director with written justification of the need to purchase the needed sand from Stewart Mine Materials and the Finance Director agrees with the stated justification that Stewart Materials is the only Florida Department of Environmental Protection approved upland sand source with a moist Munsell 10YR color-value/chroma of 8/1 or lighter to match native beach sand; and

WHEREAS, the needed purchase of the sand from Stewart Materials exceeds \$20,000 and requires approval from the Town Council; and

WHEREAS, the Town Council has determined it is in the best interest of the Town to approve the requested sole source purchase agreement with Stewart Mine Materials.

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

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

Section 2. The Town Council hereby approves the sole source purchase agreement between the Town and Stewart Mine Materials, for the purchase of 53,000 tons of beach compatible sand for a cost of \$628,050.00. A copy of the Sole Source Purchase Agreement is attached hereto as Attachment “A”.

The foregoing Resolution was adopted by the Town Council upon a motion by _____ and seconded by _____, and upon being put to a roll 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 15th day of April 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 _____, 2024.



Approved FDOT Aggregate Source Base and Stabilization Materials

Sand Shell Screenings Topsoil Fill

Date Proposed: April 05, 2024

Proposed to: Town of Ft Myers Beach

Company Address: 2525 Estero Blvd, Fort Myers Beach, FL 33931

Contact Name: Chadd Chustz

Phone: _____

Cell: 239-462-8127

Email: chadd@fmbgov.com

Mine Site: Immokalee

Town of Ft Myers Beach

Project Name

Ft Myers Beach, FL

Project Location/County/Zip

4/10/2024

Approximate Start/End Date of Project

NO.	DESCRIPTION	QTY	UNIT	UNIT PRICE	TOTAL PRICE
1	Beach Sand	53,000	+/- Ton	\$ 11.85	\$ 628,050.00
2			+/- Ton	\$ -	\$ -
3			+/- Ton	\$ -	\$ -
TOTAL					\$ 628,050.00

Daily Volumes Subject to Availability

All prices, unless otherwise noted, are F.O.B. at seller's mine source. Applicable taxes are NOT included in the price of material. This proposal is valid for 60 days from the Date Proposed. This proposal will become null and void if purchaser does not submit a purchase order to seller matching the terms of this quote (including price, quantities, and period of time over which purchases are to be made) within 30 days of purchaser entering into a contract after bid award for the project referenced in this quote. This quote does not apply to any contract extensions for such referenced project – purchaser must request additional quotes for any such contract extensions. This proposal may be withdrawn at any time by seller prior to unconditional written acceptance by purchaser. Seller is not responsible for any delays not caused solely by Seller. In addition to these terms, all bids, proposals, orders, contracts, and agreements relating to the purchase and sale of sand, rock, general fill and/or other aggregate materials from Stewart Materials, LLC are subject to the "General Terms and Conditions" attached hereto (page 2) and incorporated herein by reference.

The undersigned accepts the above quotation:

STEWART MATERIALS, LLC

Signature _____

Printed Name _____

Title _____

Date _____

Signature _____

By Amanda Stewart

Title VP of Sales

Date 4/5/2024



GENERAL TERMS AND CONDITIONS

In addition to the terms and conditions contained in the bid, proposal, order, contract, or agreement you have obtained from us regarding the sale/purchase of rock, sand, fill, and/or any other aggregate material (collectively, "Aggregate"), the following terms and conditions (collectively, "Terms") shall apply:

1. As used herein: (i) "we", "our", or "us" shall mean Stewart Materials, LLC and its directors, officers, employees, owners, affiliates, and subsidiaries; and (ii) "you" or "your" refers to all individuals and/or entities that have obtained a bid, proposal, order, contract, or agreement from us or who are purchasing or have purchased Aggregate from us.
2. You shall be deemed to have read and irrevocably and unconditionally agreed to these Terms as posted on our website before accepting a bid or proposal for the sale of Aggregate, placing an order for Aggregate, or purchasing Aggregate from us. Additionally, you acknowledge and agree that: (i) all bids, proposals, orders, contracts, or agreements relating to the sale/purchase of Aggregate from us are subject to these Terms; (ii) these Terms may be amended from time to time and all such bids, proposals, orders, contracts, or agreements are subject to the Terms in effect and published by us as of the date such bids, proposals, orders, contracts, or agreements are entered into; (iii) any amendments or changes to these Terms shall be effective immediately upon publication by us; and (iv) it is your responsibility to request the then current Terms published by us.
3. Under Florida's Construction Lien Laws (Florida Statutes Sections 713.001-713.37) we are classified as a materialman. Our standard practice is to provide a proposal setting out pricing for the specific job request and general information, such as our payment terms, which are net thirty (30) days from the date of the applicable statement. Unless otherwise stated in writing, a proposal from us is valid for sixty (60) days from date issued. Upon agreement to the terms set forth in our proposal and the required completed job information sheet and notice to owner information, we will set up your order and hauling can commence. In the absence of a returned signed proposal, ordering or taking delivery of Aggregate from us after receipt of a proposal shall be deemed your unconditional acceptance to the terms of the proposal and these Terms as if the proposal had been signed by you.
4. Our terms are FOB our mine sites. Once your hauler generates a ticket at our weight scale at our mine site(s) (whether or not your hauler takes physical possession of the ticket generated) and your hauler leaves our mine site(s), you are responsible for payment.
5. We are not responsible for overweight trucks.
6. Without a written manifest/dispatch on file in our scale house at the mine site(s), we will not be held responsible for incorrect materials or destinations and tickets will not be changed.
7. Requests for copies of tickets should be emailed to amanda@stewartmaterials.com and will be supplied as time permits. Before requesting a copy of a ticket from us, we suggest you first attempt to retrieve the tickets from your hauler.
8. Payment terms are net thirty (30) days from the date of the applicable statement or invoice and interest accrues at one and a half percent (1.5%) per month (eighteen percent (18%) per annum) from the due date. In the event of non-payment per the Terms, you agree to be obligated and liable to us, and to reimburse us immediately upon demand, for all costs of collection including reasonable attorney's fees, whether or not suit is filed, and through all efforts regarding collection including any appeal and collection efforts.
9. Accounts not paid within net thirty (30) days will be placed on hold until said account is brought current. No advance notice will be given to you if your account is placed on hold.
10. Any discrepancies on tickets must be brought to our attention within ten (10) calendar days from the date of invoice.
11. No terms not included herein have been or will be accepted by us unless in writing and signed by us.
12. If no valid sales tax exemption certificate is provided to us, you will be charged applicable sales tax.
13. We will be excused from entire or part performance under any bids, proposals, orders, contracts, or agreements to the extent such performance is prevented by an event of Force Majeure. As used herein, the term "Force Majeure" will include, but shall not be limited to, any of the following: allocations, expropriations, requisitions, priorities, restraints, or other acts of governmental, civil, military, or naval authorities (whether acting legally or otherwise); pandemic; acts of God or the elements; perils or accidents of the sea or other waters; cave-in, flood, windstorm, hurricane, or other damage from the elements; labor strike; riot; inability to obtain, or delay in obtaining necessary equipment or materials; inability or failure to obtain, delay in obtaining, or loss of any governmental authorizations, approvals, or permits; any federal, state, or local law or any order, rule, or regulation of any governmental authority; litigation; catastrophic failure or breakage in hull, machinery, plant, or equipment; acts of war, hostilities, interferences of public enemies or belligerents; fire or explosion; or any cause whatsoever beyond our reasonable control whether of the kind enumerated or otherwise. Such excuse from performance will continue until such Force Majeure event is eliminated or ceases to exist.
14. You agree to provide us with certificate(s) of insurance evidencing your general liability and workers compensation coverage upon request.
15. We do not make any representations or warranties of any kind whatsoever with respect to any sand, rock, general fill and/or other aggregate materials purchased or acquired from us, whether express or implied, and specifically disclaims any implied warranties, whether of merchantability, suitability, fitness for a particular use or purpose, or otherwise for said aggregate materials.

Page 2

JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION: SOLE SOURCE ACQUISITION

1. **Contracting Organization:** The Town of Fort Myers Beach is responsible for this action. The Department of the Town Requesting is Operations and Compliance.
2. **Description of Action:** This procurement request is to justify the request for goods or services for the justification of a sole source vendor.
3. **Description of Goods or Services:** The purpose of this request is to purchase beach compatible sand that meets the Town's specifications: All dune and beach fill sediment shall be free of construction debris, rocks, or other foreign matter, and shall not contain, on average, greater than 3% fines (i.e., silt and clay) (passing the #230 sieve); and shall not contain, on average, greater than 1% coarse material (retained on the #4 sieve); and shall have a mean grain size ranging from 0.25 mm to 0.35 mm and a moist Munsell 10yr color-value/chroma of 8/1 or lighter. The vendor, Stewart Materials, will be responsible for providing the beach compatible sand that meets the Town's specifications for the Beach.
4. **Authority:** The authority permitting the sole sourcing of services is Town of Fort Myers Beach Ordinance 2007-01, Section 5, subsection C page 6 "Department Director determines in writing, after conducting a good faith review of available sources that there is only one source". "The requisitioning department shall submit to the finance department written justification as to why there is only one source."
5. **Applicability Of Authority:** Stewart Materials is the only qualified vendor in the United States that can meet the Town's needs of Beach Compatible Sand and the justification is as follows:
Stewart Mine sand is the only source of beach compatible sand meeting the Town's specifications: All dune and beach fill sediment shall be free of construction debris, rocks, or other foreign matter, and shall not contain, on average, greater than 3% fines (i.e., silt and clay) (passing the #230 sieve); and shall not contain, on average, greater than 1% coarse material (retained on the #4 sieve); and shall have a mean grain size ranging from 0.25 mm to 0.35 mm and a moist Munsell 10yr color-value/chroma of 8/1 or lighter.
6. **Efforts to Obtain Competition:** Review of 3 companies or products was undertaken and attached to this document.
7. **Fair and Reasonable:** Comparison of cost for similar products are attached but due to the nature of the good or service we require Company X Stewart Materials be awarded due to these reasons provided: No other FDEP approved upland sand sources provide sand with a moist Munsell 10yr color-value/chroma of 8/1 or lighter.
8. **Technical Requirements / Personnel Certification:** We hereby certify that the technical requirements and certifications are accurate.
9. **Department Director Certification:** I hereby certify to the best of my knowledge this justification is accurate and complete.

FRANKIE KROPALCZ

Name

FRANKIE KROPALCZ

Signature

1-25-24

Date

Finance Review: _____

If over \$20,000 Must go to Town Council for approval

Agenda Date _____ Attach Copy for Audit _____

**AMENDMENT NO. 1
TO AGREEMENT NO. 23LE4
BETWEEN
FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION
AND
TOWN OF FT. MYERS BEACH**

This Amendment to Agreement No. 23LE4 (Agreement) is made by and between the Department of Environmental Protection (Department), an agency of the State of Florida, and Town of Ft. Myers Beach, 2525 Estero Boulevard, Ft. Myers Beach, FL 33931 (Grantee), on the date last signed below.

WHEREAS, the Department entered into the Agreement with the Grantee for Town of Ft. Myers Beach 2022 Hurricane Ian and Nicole Recovery Project, effective March 16, 2023; and

WHEREAS, the parties wish to amend the Agreement as set forth herein.

NOW THEREFORE, the parties agree as follows:

- 1) The total amount of funding of the Agreement is increased by \$973,909.87 to \$1,891,335.00.
- 2) Attachment 1, Standard Terms and Conditions, is hereby deleted in its entirety and replaced with Attachment 1-A, Revised Standard Terms and Conditions, as attached to this Amendment and hereby incorporated into the Agreement. All references in the Agreement to Attachment 1 shall hereinafter refer to Attachment 1-A, Revised Standard Terms and Conditions.
- 3) Attachment 3, Grant Work Plan, is hereby deleted in its entirety and replaced with Attachment 3-A, Revised Grant Work Plan, as attached to this Amendment and hereby incorporated into the Agreement. All references in the Agreement to Attachment 3 shall hereinafter refer to Attachment 3-A, Revised Grant Work Plan.
- 4) Attachment 5, Special Audit Requirements, Exhibit 1 is hereby deleted in its entirety and replaced with Attachment 5, Revised Special Audit Requirements, Exhibit 1-A, as attached to this Amendment and hereby incorporated into the Agreement. All references in the Agreement to Attachment 5, Exhibit 1, shall hereinafter refer to Attachment 5, Revised Special Audit Requirements, Exhibit 1-A.
- 5) All other terms and conditions of the Agreement remain in effect. If and to the extent that any inconsistencies may appear between the Agreement and this Amendment, the provisions of this Amendment shall control.

The parties agree to the terms and conditions of this Amendment and have duly authorized their respective representatives to sign it on the dates indicated below.

Town of Ft. Myers Beach

By: 
Title: Environmental Project Manager

Date: 21 SEPT 2023

**Florida Department of
Environmental Protection**

By: _____
Secretary or Designee

Date: _____

LIST OF ATTACHMENTS/EXHIBITS INCLUDED AS PART OF THIS AMENDMENT:

<u>Specify Type</u>	<u>Letter/Number</u>	<u>Description</u>
Attachment	1-A	Revised Standard Terms and Conditions (13 pages)

Attachment 3-A
Attachment 5, Exhibit 1-A

Revised Grant Work Plan (3 pages)
Revised Special Audit Requirements (3 pages)

- REMAINDER OF PAGE INTENTIONALLY LEFT BLANK -

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
STANDARD TERMS AND CONDITIONS
APPLICABLE TO GRANT AGREEMENTS**

ATTACHMENT 1-A

1. Entire Agreement.

This Grant Agreement, including any Attachments and Exhibits referred to herein and/or attached hereto (Agreement), constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, whether written or oral, with respect to such subject matter. Any terms and conditions included on Grantee's forms or invoices shall be null and void.

2. Grant Administration.

- a. Order of Precedence. If there are conflicting provisions among the documents that make up the Agreement, the order of precedence for interpretation of the Agreement is as follows:
 - i. Standard Grant Agreement
 - ii. Attachments other than Attachment 1, in numerical order as designated in the Standard Grant Agreement
 - iii. Attachment 1, Standard Terms and Conditions
 - iv. The Exhibits in the order designated in the Standard Grant Agreement
- b. All approvals, written or verbal, and other written communication among the parties, including all notices, shall be obtained by or sent to the parties' Grant Managers. All written communication shall be by electronic mail, U.S. Mail, a courier delivery service, or delivered in person. Notices shall be considered delivered when reflected by an electronic mail read receipt, a courier service delivery receipt, other mail service delivery receipt, or when receipt is acknowledged by recipient. If the notice is delivered in multiple ways, the notice will be considered delivered at the earliest delivery time.
- c. If a different Grant Manager is designated by either party after execution of this Agreement, notice of the name and contact information of the new Grant Manager will be submitted in writing to the other party and maintained in the respective parties' records. A change of Grant Manager does not require a formal amendment or change order to the Agreement.
- d. This Agreement may be amended, through a formal amendment or a change order, only by a written agreement between both parties. A formal amendment to this Agreement is required for changes which cause any of the following:
 - (1) an increase or decrease in the Agreement funding amount;
 - (2) a change in Grantee's match requirements;
 - (3) a change in the expiration date of the Agreement; and/or
 - (4) changes to the cumulative amount of funding transfers between approved budget categories, as defined in Attachment 3, Grant Work Plan, that exceeds or is expected to exceed twenty percent (20%) of the total budget as last approved by Department.A change order to this Agreement may be used when:
 - (1) task timelines within the current authorized Agreement period change;
 - (2) the cumulative transfer of funds between approved budget categories, as defined in Attachment 3, Grant Work Plan, are less than twenty percent (20%) of the total budget as last approved by Department;
 - (3) changing the current funding source as stated in the Standard Grant Agreement; and/or
 - (4) fund transfers between budget categories for the purposes of meeting match requirements.This Agreement may be amended to provide for additional services if additional funding is made available by the Legislature.
- e. All days in this Agreement are calendar days unless otherwise specified.

3. Agreement Duration.

The term of the Agreement shall begin and end on the dates indicated in the Standard Grant Agreement, unless extended or terminated earlier in accordance with the applicable terms and conditions. The Grantee shall be eligible for reimbursement for work performed on or after the date of execution through the expiration date of this Agreement, unless otherwise specified in Attachment 2, Special Terms and Conditions. However, work performed prior to the execution of this Agreement may be reimbursable or used for match purposes if permitted by the Special Terms and Conditions.

4. Deliverables.

The Grantee agrees to render the services or other units of deliverables as set forth in Attachment 3, Grant Work Plan. The services or other units of deliverables shall be delivered in accordance with the schedule and at the pricing outlined in the Grant Work Plan. Deliverables may be comprised of activities that must be completed prior to Department making payment on that deliverable. The Grantee agrees to perform in accordance with the terms and conditions set forth in this Agreement and all attachments and exhibits incorporated by the Standard Grant Agreement.

5. Performance Measures.

The Grantee warrants that: (1) the services will be performed by qualified personnel; (2) the services will be of the kind and quality described in the Grant Work Plan; (3) the services will be performed in a professional and workmanlike manner in accordance with industry standards and practices; (4) the services shall not and do not knowingly infringe upon the intellectual property rights, or any other proprietary rights, of any third party; and (5) its employees, subcontractors, and/or subgrantees shall comply with any security and safety requirements and processes, if provided by Department, for work done at the Project Location(s). The Department reserves the right to investigate or inspect at any time to determine whether the services or qualifications offered by Grantee meet the Agreement requirements. Notwithstanding any provisions herein to the contrary, written acceptance of a particular deliverable does not foreclose Department's remedies in the event deficiencies in the deliverable cannot be readily measured at the time of delivery.

6. Acceptance of Deliverables.

- a. Acceptance Process. All deliverables must be received and accepted in writing by Department's Grant Manager before payment. The Grantee shall work diligently to correct all deficiencies in the deliverable that remain outstanding, within a reasonable time at Grantee's expense. If Department's Grant Manager does not accept the deliverables within 30 days of receipt, they will be deemed rejected.
- b. Rejection of Deliverables. The Department reserves the right to reject deliverables, as outlined in the Grant Work Plan, as incomplete, inadequate, or unacceptable due, in whole or in part, to Grantee's lack of satisfactory performance under the terms of this Agreement. The Grantee's efforts to correct the rejected deliverables will be at Grantee's sole expense. Failure to fulfill the applicable technical requirements or complete all tasks or activities in accordance with the Grant Work Plan will result in rejection of the deliverable and the associated invoice. Payment for the rejected deliverable will not be issued unless the rejected deliverable is made acceptable to Department in accordance with the Agreement requirements. The Department, at its option, may allow additional time within which Grantee may remedy the objections noted by Department. The Grantee's failure to make adequate or acceptable deliverables after a reasonable opportunity to do so shall constitute an event of default.

7. Financial Consequences for Nonperformance.

- a. Withholding Payment. In addition to the specific consequences explained in the Grant Work Plan and/or Special Terms and Conditions, the State of Florida (State) reserves the right to withhold payment when the Grantee has failed to perform/comply with provisions of this Agreement. None of the financial consequences for nonperformance in this Agreement as more fully described in the Grant Work Plan shall be considered penalties.
- b. Invoice reduction
If Grantee does not meet a deadline for any deliverable, the Department will reduce the invoice by 1% for each day the deadline is missed, unless an extension is approved in writing by the Department.
- c. Corrective Action Plan. If Grantee fails to correct all the deficiencies in a rejected deliverable within the specified timeframe, Department may, in its sole discretion, request that a proposed Corrective Action Plan (CAP) be submitted by Grantee to Department. The Department requests that Grantee specify the outstanding deficiencies in the CAP. All CAPs must be able to be implemented and performed in no more than sixty (60) calendar days.
 - i. The Grantee shall submit a CAP within ten (10) days of the date of the written request from Department. The CAP shall be sent to the Department's Grant Manager for review and approval. Within ten (10) days of receipt of a CAP, Department shall notify Grantee in writing whether the CAP proposed has been accepted. If the CAP is not accepted, Grantee shall have ten (10) days from receipt of Department letter rejecting the proposal to submit a revised proposed CAP. Failure to obtain Department approval of a CAP as specified above may result in Department's termination of this Agreement for cause as authorized in this Agreement.
 - ii. Upon Department's notice of acceptance of a proposed CAP, Grantee shall have ten (10) days to commence implementation of the accepted plan. Acceptance of the proposed CAP by Department does not relieve Grantee of any of its obligations under the Agreement. In the event the CAP fails to correct or eliminate performance deficiencies by Grantee, Department shall retain the right to

require additional or further remedial steps, or to terminate this Agreement for failure to perform. No actions approved by Department or steps taken by Grantee shall preclude Department from subsequently asserting any deficiencies in performance. The Grantee shall continue to implement the CAP until all deficiencies are corrected. Reports on the progress of the CAP will be made to Department as requested by Department's Grant Manager.

- iii. Failure to respond to a Department request for a CAP or failure to correct a deficiency in the performance of the Agreement as specified by Department may result in termination of the Agreement.

8. Payment.

- a. Payment Process. Subject to the terms and conditions established by the Agreement, the pricing per deliverable established by the Grant Work Plan, and the billing procedures established by Department, Department agrees to pay Grantee for services rendered in accordance with section 215.422, Florida Statutes (F.S.).
- b. Taxes. The Department is exempted from payment of State sales, use taxes and Federal excise taxes. The Grantee, however, shall not be exempted from paying any taxes that it is subject to, including State sales and use taxes, or for payment by Grantee to suppliers for taxes on materials used to fulfill its contractual obligations with Department. The Grantee shall not use Department's exemption number in securing such materials. The Grantee shall be responsible and liable for the payment of all its FICA/Social Security and other taxes resulting from this Agreement.
- c. Maximum Amount of Agreement. The maximum amount of compensation under this Agreement, without an amendment, is described in the Standard Grant Agreement. Any additional funds necessary for the completion of this Project are the responsibility of Grantee.
- d. Reimbursement for Costs. The Grantee shall be paid on a cost reimbursement basis for all eligible Project costs upon the completion, submittal, and approval of each deliverable identified in the Grant Work Plan. Reimbursement shall be requested on Exhibit C, Payment Request Summary Form. To be eligible for reimbursement, costs must be in compliance with laws, rules, and regulations applicable to expenditures of State funds, including, but not limited to, the Reference Guide for State Expenditures, which can be accessed at the following web address: <https://www.myfloridacfo.com/docs-sf/accounting-and-auditing-libraries/state-agencies/reference-guide-for-state-expenditures.pdf>.
- e. Rural Communities and Rural Areas of Opportunity. If Grantee is a county or municipality that qualifies as a "rural community" or "rural area of opportunity" (RAO) as defined in subsection 288.0656(2), F.S., such Grantee may request from the Department that all invoice payments (i.e., cost reimbursement) under this Agreement be directed to the relevant county or municipality or to the RAO itself. The Department will agree to Grantee's request if:
 - i. Grantee demonstrates that it is a county or municipality that qualifies as a "rural community" or "rural area of opportunity" under subsection 288.0656(2), F.S.;
 - ii. Grantee demonstrates current financial hardship using one (1) or more of the "economic distress" factors defined in subsection 288.0656(2)(c), F.S.;
 - iii. Grantee's performance has been verified by the Department, which has determined that Grantee is eligible for cost reimbursement and that Grantee's performance has been completed in accordance with this Agreement's terms and conditions; and
 - iv. Applicable federal and state law(s), rule(s) and regulation(s) allow for such payments.This subsection may not be construed to alter or limit any other applicable provisions of federal or state law, rule, or regulation. A current list of Florida's designated RAOs can be accessed at the following web address: <https://floridajobs.org/community-planning-and-development/rural-community-programs/rural-areas-of-opportunity>.
- f. Invoice Detail. All charges for services rendered or for reimbursement of expenses authorized by Department pursuant to the Grant Work Plan shall be submitted to Department in sufficient detail for a proper pre-audit and post-audit to be performed. The Grantee shall only invoice Department for deliverables that are completed in accordance with the Grant Work Plan.
- g. State Funds Documentation. Pursuant to section 216.1366, F.S., if Contractor meets the definition of a non-profit organization under section 215.97(2)(m), F.S., Contractor must provide the Department with documentation that indicates the amount of state funds:
 - i. Allocated to be used during the full term of the contract or agreement for remuneration to any member of the board of directors or an officer of Contractor.
 - ii. Allocated under each payment by the public agency to be used for remuneration of any member of the board of directors or an officer of the Contractor.

Attachment 1-A

3 of 13

The documentation must indicate the amounts and recipients of the remuneration. Such information must be posted on the State's the contract tracking system and maintained pursuant to section 215.985, F.S., and must be posted on the Contractor's website, if Contractor maintains a website.

- h. Interim Payments. Interim payments may be made by Department, at its discretion, if the completion of deliverables to date have first been accepted in writing by Department's Grant Manager.
- i. Final Payment Request. A final payment request should be submitted to Department no later than sixty (60) days following the expiration date of the Agreement to ensure the availability of funds for payment. However, all work performed pursuant to the Grant Work Plan must be performed on or before the expiration date of the Agreement.
- j. Annual Appropriation Contingency. The State's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. This Agreement is not a commitment of future appropriations. Authorization for continuation and completion of work and any associated payments may be rescinded, with proper notice, at the discretion of Department if the Legislature reduces or eliminates appropriations.
- k. Interest Rates. All interest rates charged under the Agreement shall be calculated on the prevailing rate used by the State Board of Administration. To obtain the applicable interest rate, please refer to: <https://www.myfloridacfo.com/division/aa/local-governments/judgement-interest-rates>.
- l. Refund of Payments to the Department. Any balance of unobligated funds that have been advanced or paid must be refunded to Department. Any funds paid in excess of the amount to which Grantee or subgrantee is entitled under the terms of the Agreement must be refunded to Department. If this Agreement is funded with federal funds and the Department is required to refund the federal government, the Grantee shall refund the Department its share of those funds.

9. Documentation Required for Cost Reimbursement Grant Agreements and Match.

If Cost Reimbursement or Match is authorized in Attachment 2, Special Terms and Conditions, the following conditions apply. Supporting documentation must be provided to substantiate cost reimbursement or match requirements for the following budget categories:

- a. Salary/Wages. Grantee shall list personnel involved, position classification, direct salary rates, and hours spent on the Project in accordance with Attachment 3, Grant Work Plan in their documentation for reimbursement or match requirements.
- b. Overhead/Indirect/General and Administrative Costs. If Grantee is being reimbursed for or claiming match for multipliers, all multipliers used (i.e., fringe benefits, overhead, indirect, and/or general and administrative rates) shall be supported by audit. If Department determines that multipliers charged by Grantee exceeded the rates supported by audit, Grantee shall be required to reimburse such funds to Department within thirty (30) days of written notification. Interest shall be charged on the excessive rate.
- c. Contractual Costs (Subcontractors). Match or reimbursement requests for payments to subcontractors must be substantiated by copies of invoices with backup documentation identical to that required from Grantee. Subcontracts which involve payments for direct salaries shall clearly identify the personnel involved, salary rate per hour, and hours spent on the Project. All eligible multipliers used (i.e., fringe benefits, overhead, indirect, and/or general and administrative rates) shall be supported by audit. If Department determines that multipliers charged by any subcontractor exceeded the rates supported by audit, Grantee shall be required to reimburse such funds to Department within thirty (30) days of written notification. Interest shall be charged on the excessive rate. Nonconsumable and/or nonexpendable personal property or equipment costing \$5,000 or more purchased for the Project under a subcontract is subject to the requirements set forth in chapters 273 and/or 274, F.S., and Chapter 69I-72, Florida Administrative Code (F.A.C.) and/or Chapter 69I-73, F.A.C., as applicable. The Grantee shall be responsible for maintaining appropriate property records for any subcontracts that include the purchase of equipment as part of the delivery of services. The Grantee shall comply with this requirement and ensure its subcontracts issued under this Agreement, if any, impose this requirement, in writing, on its subcontractors.
 - i. For fixed-price (vendor) subcontracts, the following provisions shall apply: The Grantee may award, on a competitive basis, fixed-price subcontracts to consultants/contractors in performing the work described in Attachment 3, Grant Work Plan. Invoices submitted to Department for fixed-price subcontracted activities shall be supported with a copy of the subcontractor's invoice and a copy of the tabulation form for the competitive procurement process (e.g., Invitation to Bid, Request for Proposals, or other similar competitive procurement document) resulting in the fixed-price subcontract. The Grantee may request approval from Department to award a fixed-price subcontract resulting from procurement methods other than those identified above. In this instance, Grantee shall request the advance written approval from Department's Grant Manager of the fixed price

Attachment 1-A

- negotiated by Grantee. The letter of request shall be supported by a detailed budget and Scope of Services to be performed by the subcontractor. Upon receipt of Department Grant Manager's approval of the fixed-price amount, Grantee may proceed in finalizing the fixed-price subcontract.
- ii. If the procurement is subject to the Consultant's Competitive Negotiation Act under section 287.055, F.S. or the Brooks Act, Grantee must provide documentation clearly evidencing it has complied with the statutory or federal requirements.
 - d. Travel. All requests for match or reimbursement of travel expenses shall be in accordance with section 112.061, F.S.
 - e. Direct Purchase Equipment. For the purposes of this Agreement, Equipment is defined as capital outlay costing \$5,000 or more. Match or reimbursement for Grantee's direct purchase of equipment is subject to specific approval of Department, and does not include any equipment purchased under the delivery of services to be completed by a subcontractor. Include copies of invoices or receipts to document purchases, and a properly completed Exhibit B, Property Reporting Form.
 - f. Rental/Lease of Equipment. Match or reimbursement requests for rental/lease of equipment must include copies of invoices or receipts to document charges.
 - g. Miscellaneous/Other Expenses. If miscellaneous or other expenses, such as materials, supplies, non-excluded phone expenses, reproduction, or mailing, are reimbursable or available for match or reimbursement under the terms of this Agreement, the documentation supporting these expenses must be itemized and include copies of receipts or invoices. Additionally, independent of Grantee's contract obligations to its subcontractor, Department shall not reimburse any of the following types of charges: cell phone usage; attorney's fees or court costs; civil or administrative penalties; or handling fees, such as set percent overages associated with purchasing supplies or equipment.
 - h. Land Acquisition. Reimbursement for the costs associated with acquiring interest and/or rights to real property (including access rights through ingress/egress easements, leases, license agreements, or other site access agreements; and/or obtaining record title ownership of real property through purchase) must be supported by the following, as applicable: Copies of Property Appraisals, Environmental Site Assessments, Surveys and Legal Descriptions, Boundary Maps, Acreage Certification, Title Search Reports, Title Insurance, Closing Statements/Documents, Deeds, Leases, Easements, License Agreements, or other legal instrument documenting acquired property interest and/or rights. If land acquisition costs are used to meet match requirements, Grantee agrees that those funds shall not be used as match for any other Agreement supported by State or Federal funds.

10. Status Reports.

The Grantee shall submit status reports quarterly, unless otherwise specified in the Attachments, on Exhibit A, Progress Report Form, to Department's Grant Manager describing the work performed during the reporting period, problems encountered, problem resolutions, scheduled updates, and proposed work for the next reporting period. Quarterly status reports are due no later than twenty (20) days following the completion of the quarterly reporting period. For the purposes of this reporting requirement, the quarterly reporting periods end on March 31, June 30, September 30 and December 31. The Department will review the required reports submitted by Grantee within thirty (30) days.

11. Retainage.

The following provisions apply if Department withholds retainage under this Agreement:

- a. The Department reserves the right to establish the amount and application of retainage on the work performed under this Agreement up to the maximum percentage described in Attachment 2, Special Terms and Conditions. Retainage may be withheld from each payment to Grantee pending satisfactory completion of work and approval of all deliverables.
- b. If Grantee fails to perform the requested work or fails to perform the work in a satisfactory manner, Grantee shall forfeit its right to payment of the retainage associated with the work. Failure to perform includes, but is not limited to, failure to submit the required deliverables or failure to provide adequate documentation that the work was actually performed. The Department shall provide written notification to Grantee of the failure to perform that shall result in retainage forfeiture. If the Grantee does not correct the failure to perform within the timeframe stated in Department's notice, the retainage will be forfeited to Department.
- c. No retainage shall be released or paid for incomplete work while this Agreement is suspended.
- d. Except as otherwise provided above, Grantee shall be paid the retainage associated with the work, provided Grantee has completed the work and submits an invoice for retainage held in accordance with the invoicing procedures under this Agreement.

12. Insurance.

- a. Insurance Requirements for Sub-Grantees and/or Subcontractors. The Grantee shall require its sub-grantees and/or subcontractors, if any, to maintain insurance coverage of such types and with such terms and limits as described in this Agreement. The Grantee shall require all its sub-grantees and/or subcontractors, if any, to make compliance with the insurance requirements of this Agreement a condition of all contracts that are related to this Agreement. Sub-grantees and/or subcontractors must provide proof of insurance upon request.
- b. Deductibles. The Department shall be exempt from, and in no way liable for, any sums of money representing a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Grantee providing such insurance.
- c. Proof of Insurance. Upon execution of this Agreement, Grantee shall provide Department documentation demonstrating the existence and amount for each type of applicable insurance coverage *prior to* performance of any work under this Agreement. Upon receipt of written request from Department, Grantee shall furnish Department with proof of applicable insurance coverage by standard form certificates of insurance, a self-insured authorization, or other certification of self-insurance.
- d. Duty to Maintain Coverage. In the event that any applicable coverage is cancelled by the insurer for any reason, or if Grantee cannot get adequate coverage, Grantee shall immediately notify Department of such cancellation and shall obtain adequate replacement coverage conforming to the requirements herein and provide proof of such replacement coverage within ten (10) days after the cancellation of coverage.
- e. Insurance Trust. If the Grantee's insurance is provided through an insurance trust, the Grantee shall instead add the Department of Environmental Protection, its employees, and officers as an additional covered party everywhere the Agreement requires them to be added as an additional insured.

13. Termination.

- a. Termination for Convenience. When it is in the State's best interest, Department may, at its sole discretion, terminate the Agreement in whole or in part by giving 30 days' written notice to Grantee. The Department shall notify Grantee of the termination for convenience with instructions as to the effective date of termination or the specific stage of work at which the Agreement is to be terminated. The Grantee must submit all invoices for work to be paid under this Agreement within thirty (30) days of the effective date of termination. The Department shall not pay any invoices received after thirty (30) days of the effective date of termination.
- b. Termination for Cause. The Department may terminate this Agreement if any of the events of default described in the Events of Default provisions below occur or in the event that Grantee fails to fulfill any of its other obligations under this Agreement. If, after termination, it is determined that Grantee was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of Department. The rights and remedies of Department in this clause are in addition to any other rights and remedies provided by law or under this Agreement.
- c. Grantee Obligations upon Notice of Termination. After receipt of a notice of termination or partial termination unless as otherwise directed by Department, Grantee shall not furnish any service or deliverable on the date, and to the extent specified, in the notice. However, Grantee shall continue work on any portion of the Agreement not terminated. If the Agreement is terminated before performance is completed, Grantee shall be paid only for that work satisfactorily performed for which costs can be substantiated. The Grantee shall not be entitled to recover any cancellation charges or lost profits.
- d. Continuation of Prepaid Services. If Department has paid for any services prior to the expiration, cancellation, or termination of the Agreement, Grantee shall continue to provide Department with those services for which it has already been paid or, at Department's discretion, Grantee shall provide a refund for services that have been paid for but not rendered.
- e. Transition of Services Upon Termination, Expiration, or Cancellation of the Agreement. If services provided under the Agreement are being transitioned to another provider(s), Grantee shall assist in the smooth transition of Agreement services to the subsequent provider(s). This requirement is at a minimum an affirmative obligation to cooperate with the new provider(s), however additional requirements may be outlined in the Grant Work Plan. The Grantee shall not perform any services after Agreement expiration or termination, except as necessary to complete the transition or continued portion of the Agreement, if any.

14. Notice of Default.

If Grantee defaults in the performance of any covenant or obligation contained in the Agreement, including, any of the events of default, Department shall provide notice to Grantee and an opportunity to cure that is reasonable under the circumstances. This notice shall state the nature of the failure to perform and provide a time certain for correcting the failure. The notice will also provide that, should the Grantee fail to perform within the time provided, Grantee will be found in default, and Department may terminate the Agreement effective as of the date of receipt of the default notice.

15. Events of Default.

Provided such failure is not the fault of Department or outside the reasonable control of Grantee, the following non-exclusive list of events, acts, or omissions, shall constitute events of default:

- a. The commitment of any material breach of this Agreement by Grantee, including failure to timely deliver a material deliverable, failure to perform the minimal level of services required for a deliverable, discontinuance of the performance of the work, failure to resume work that has been discontinued within a reasonable time after notice to do so, or abandonment of the Agreement;
- b. The commitment of any material misrepresentation or omission in any materials, or discovery by the Department of such, made by the Grantee in this Agreement or in its application for funding;
- c. Failure to submit any of the reports required by this Agreement or having submitted any report with incorrect, incomplete, or insufficient information;
- d. Failure to honor any term of the Agreement;
- e. Failure to abide by any statutory, regulatory, or licensing requirement, including an entry of an order revoking the certificate of authority granted to the Grantee by a state or other licensing authority;
- f. Failure to pay any and all entities, individuals, and furnishing labor or materials, or failure to make payment to any other entities as required by this Agreement;
- g. Employment of an unauthorized alien in the performance of the work, in violation of Section 274 (A) of the Immigration and Nationality Act;
- h. Failure to maintain the insurance required by this Agreement;
- i. One or more of the following circumstances, uncorrected for more than thirty (30) days unless, within the specified 30-day period, Grantee (including its receiver or trustee in bankruptcy) provides to Department adequate assurances, reasonably acceptable to Department, of its continuing ability and willingness to fulfill its obligations under the Agreement:
 - i. Entry of an order for relief under Title 11 of the United States Code;
 - ii. The making by Grantee of a general assignment for the benefit of creditors;
 - iii. The appointment of a general receiver or trustee in bankruptcy of Grantee's business or property; and/or
 - iv. An action by Grantee under any state insolvency or similar law for the purpose of its bankruptcy, reorganization, or liquidation.

16. Suspension of Work.

The Department may, in its sole discretion, suspend any or all activities under the Agreement, at any time, when it is in the best interest of the State to do so. The Department shall provide Grantee written notice outlining the particulars of suspension. Examples of reasons for suspension include, but are not limited to, budgetary constraints, declaration of emergency, or other such circumstances. After receiving a suspension notice, Grantee shall comply with the notice. Within 90 days, or any longer period agreed to by the parties, Department shall either: (1) issue a notice authorizing resumption of work, at which time activity shall resume; or (2) terminate the Agreement. If the Agreement is terminated after 30 days of suspension, the notice of suspension shall be deemed to satisfy the thirty (30) days' notice required for a notice of termination for convenience. Suspension of work shall not entitle Grantee to any additional compensation.

17. Force Majeure.

The Grantee shall not be responsible for delay resulting from its failure to perform if neither the fault nor the negligence of Grantee or its employees or agents contributed to the delay and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond Grantee's control, or for any of the foregoing that affect subcontractors or suppliers if no alternate source of supply is available to Grantee. In case of any delay Grantee believes is excusable, Grantee shall notify Department in writing of the delay or potential delay and describe the cause of the delay either (1) within ten days after the cause that creates or will create the delay first arose, if Grantee could reasonably foresee that a delay could occur as a result; or (2) if delay is not reasonably foreseeable, within five days after the date Grantee first had reason to believe that a delay could result. **THE FOREGOING SHALL CONSTITUTE THE GRANTEE'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY.** Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. No claim for damages, other than for an extension of time, shall be asserted against Department. The Grantee shall not be entitled to an increase in the Agreement price or payment of any kind from Department for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist Grantee shall perform at no increased cost, unless Department determines, in its sole

discretion, that the delay will significantly impair the value of the Agreement to Department, in which case Department may: (1) accept allocated performance or deliveries from Grantee, provided that Grantee grants preferential treatment to Department with respect to products subjected to allocation; (2) contract with other sources (without recourse to and by Grantee for the related costs and expenses) to replace all or part of the products or services that are the subject of the delay, which purchases may be deducted from the Agreement quantity; or (3) terminate Agreement in whole or in part.

18. Indemnification.

- a. The Grantee shall be fully liable for the actions of its agents, employees, partners, or subcontractors and shall fully indemnify, defend, and hold harmless Department and its officers, agents, and employees, from suits, actions, damages, and costs of every name and description arising from or relating to:
 - i. personal injury and damage to real or personal tangible property alleged to be caused in whole or in part by Grantee, its agents, employees, partners, or subcontractors; provided, however, that Grantee shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of Department;
 - ii. the Grantee's breach of this Agreement or the negligent acts or omissions of Grantee.
- b. The Grantee's obligations under the preceding paragraph with respect to any legal action are contingent upon Department giving Grantee: (1) written notice of any action or threatened action; (2) the opportunity to take over and settle or defend any such action at Grantee's sole expense; and (3) assistance in defending the action at Grantee's sole expense. The Grantee shall not be liable for any cost, expense, or compromise incurred or made by Department in any legal action without Grantee's prior written consent, which shall not be unreasonably withheld.
- c. Notwithstanding sections a. and b. above, the following is the sole indemnification provision that applies to Grantees that are governmental entities: Each party hereto agrees that it shall be solely responsible for the negligent or wrongful acts of its employees and agents. However, nothing contained herein shall constitute a waiver by either party of its sovereign immunity or the provisions of section 768.28, F.S. Further, nothing herein shall be construed as consent by a state agency or subdivision of the State to be sued by third parties in any matter arising out of any contract or this Agreement.
- d. No provision in this Agreement shall require Department to hold harmless or indemnify Grantee, insure or assume liability for Grantee's negligence, waive Department's sovereign immunity under the laws of Florida, or otherwise impose liability on Department for which it would not otherwise be responsible. Any provision, implication or suggestion to the contrary is null and void.

19. Limitation of Liability.

The Department's liability for any claim arising from this Agreement is limited to compensatory damages in an amount no greater than the sum of the unpaid balance of compensation due for goods or services rendered pursuant to and in compliance with the terms of the Agreement. Such liability is further limited to a cap of \$100,000.

20. Remedies.

Nothing in this Agreement shall be construed to make Grantee liable for force majeure events. Nothing in this Agreement, including financial consequences for nonperformance, shall limit Department's right to pursue its remedies for other types of damages under the Agreement, at law or in equity. The Department may, in addition to other remedies available to it, at law or in equity and upon notice to Grantee, retain such monies from amounts due Grantee as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against it.

21. Waiver.

The delay or failure by Department to exercise or enforce any of its rights under this Agreement shall not constitute or be deemed a waiver of Department's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

22. Statutory Notices Relating to Unauthorized Employment and Subcontracts.

- a. The Department shall consider the employment by any Grantee of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. If Grantee/subcontractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this Agreement. The Grantee shall be responsible for including this provision in all subcontracts with private organizations issued as a result of this Agreement.
- b. Pursuant to sections 287.133, 287.134, and 287.137 F.S., the following restrictions apply to persons placed on the convicted vendor list, discriminatory vendor list, or the antitrust violator vendor list:
 - i. Public Entity Crime. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may

not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a Grantee, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in section 287.017, F.S., for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.

- ii. **Discriminatory Vendors.** An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity.
- iii. **Antitrust Violator Vendors.** A person or an affiliate who has been placed on the antitrust violator vendor list following a conviction or being held civilly liable for an antitrust violation may not submit a bid, proposal, or reply on any contract to provide any good or services to a public entity; may not submit a bid, proposal, or reply on any contract with a public entity for the construction or repair of a public building or public work; may not submit a bid, proposal, or reply on leases of real property to a public entity; may not be awarded or perform work as a Grantee, supplier, subcontractor, or consultant under a contract with a public entity; and may not transact new business with a public entity.
- iv. **Notification.** The Grantee shall notify Department if it or any of its suppliers, subcontractors, or consultants have been placed on the convicted vendor list, the discriminatory vendor list, or antitrust violator vendor list during the life of the Agreement. The Florida Department of Management Services is responsible for maintaining the discriminatory vendor list and the antitrust violator vendor list and posts the list on its website. Questions regarding the discriminatory vendor list or antitrust violator vendor list may be directed to the Florida Department of Management Services, Office of Supplier Diversity, at (850) 487-0915.

23. Compliance with Federal, State and Local Laws.

- a. The Grantee and all its agents shall comply with all federal, state and local regulations, including, but not limited to, nondiscrimination, wages, social security, workers' compensation, licenses, and registration requirements. The Grantee shall include this provision in all subcontracts issued as a result of this Agreement.
- b. No person, on the grounds of race, creed, color, religion, national origin, age, gender, or disability, shall be excluded from participation in; be denied the proceeds or benefits of; or be otherwise subjected to discrimination in performance of this Agreement.
- c. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.
- d. Any dispute concerning performance of the Agreement shall be processed as described herein. Jurisdiction for any damages arising under the terms of the Agreement will be in the courts of the State, and venue will be in the Second Judicial Circuit, in and for Leon County. Except as otherwise provided by law, the parties agree to be responsible for their own attorney fees incurred in connection with disputes arising under the terms of this Agreement.

24. Build America, Buy America Act (BABA) - Infrastructure Projects with Federal Funding.

This provision does not apply to Agreements that are wholly funded by Coronavirus State and Local Fiscal Recovery Funds under the American Rescue Plan Act. Also, this provision does not apply where there is a valid waiver in place. However, the provision may apply to funds expended before the waiver or after expiration of the waiver.

If applicable, Recipients or Subrecipients of an award of Federal financial assistance from a program for infrastructure are required to comply with the Build America, Buy America Act (BABA), including the following provisions:

- a. All iron and steel used in the project are produced in the United States--this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
- b. All manufactured products used in the project are produced in the United States--this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and

- c. All construction materials are manufactured in the United States-this means that all manufacturing processes for the construction material occurred in the United States.

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

25. Investing in America

Grantees of an award for construction projects in whole or in part by the Bipartisan Infrastructure Law or the Inflation Reduction Act, including the following provision:

- a. Signage Requirements
 - a. Investing in America Emblem: The recipient will ensure that a sign is placed at construction sites supported in whole or in part by this award displaying the official Investing in America emblem and must identify the project as a “project funded by President Biden’s Bipartisan Infrastructure Law” or “project funded by President Biden’s Inflation Reduction Act” as applicable. The sign must be placed at construction sites in an easily visible location that can be directly linked to the work taking place and must be maintained in good condition throughout the construction period.
The recipient will ensure compliance with the guidelines and design specifications provided by EPA for using the official Investing in America emblem available at:
<https://www.epa.gov/invest/investing-america-signage>.
 - b. Procuring Signs: Consistent with section 6002 of RCRA, 42 U.S.C. 6962, and 2 CFR 200.323, recipients are encouraged to use recycled or recovered materials when procuring signs. Signage costs are considered an allowable cost under this assistance agreement provided that the costs associated with signage are reasonable. Additionally, to increase public awareness of projects serving communities where English is not the predominant language, recipients are encouraged to translate the language on signs (excluding the official Investing in America emblem or EPA logo or seal) into the appropriate non-English language(s). The costs of such translation are allowable, provided the costs are reasonable.

26. Scrutinized Companies.

- a. Grantee certifies that it is not on the Scrutinized Companies that Boycott Israel List or engaged in a boycott of Israel. Pursuant to section 287.135, F.S., the Department may immediately terminate this Agreement at its sole option if the Grantee is found to have submitted a false certification; or if the Grantee is placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Agreement.
- b. If this Agreement is for more than one million dollars, the Grantee certifies that it is also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in section 287.135, F.S. Pursuant to section 287.135, F.S., the Department may immediately terminate this Agreement at its sole option if the Grantee is found to have submitted a false certification; or if the Grantee is placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the Agreement.
- c. As provided in subsection 287.135(8), F.S., if federal law ceases to authorize these contracting prohibitions, then they shall become inoperative.

27. Lobbying and Integrity.

The Grantee agrees that no funds received by it under this Agreement will be expended for the purpose of lobbying the Legislature or a State agency pursuant to section 216.347, F.S., except that pursuant to the requirements of section 287.058(6), F.S., during the term of any executed agreement between Grantee and the State, Grantee may lobby the executive or legislative branch concerning the scope of services, performance, term, or compensation regarding that agreement. The Grantee shall comply with sections 11.062 and 216.347, F.S.

28. Record Keeping.

The Grantee shall maintain books, records and documents directly pertinent to performance under this Agreement in accordance with United States generally accepted accounting principles (US GAAP) consistently applied. The Department, the State, or their authorized representatives shall have access to such records for audit purposes during

the term of this Agreement and for five (5) years following the completion date or termination of the Agreement. In the event that any work is subcontracted, Grantee shall similarly require each subcontractor to maintain and allow access to such records for audit purposes. Upon request of Department's Inspector General, or other authorized State official, Grantee shall provide any type of information the Inspector General deems relevant to Grantee's integrity or responsibility. Such information may include, but shall not be limited to, Grantee's business or financial records, documents, or files of any type or form that refer to or relate to Agreement. The Grantee shall retain such records for the longer of: (1) three years after the expiration of the Agreement; or (2) the period required by the General Records Schedules maintained by the Florida Department of State (available at: <http://dos.myflorida.com/library-archives/records-management/general-records-schedules/>).

29. Audits.

- a. Inspector General. The Grantee understands its duty, pursuant to section 20.055(5), F.S., to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing. The Grantee will comply with this duty and ensure that its sub-grantees and/or subcontractors issued under this Agreement, if any, impose this requirement, in writing, on its sub-grantees and/or subcontractors, respectively.
- b. Physical Access and Inspection. Department personnel shall be given access to and may observe and inspect work being performed under this Agreement, with reasonable notice and during normal business hours, including by any of the following methods:
 - i. Grantee shall provide access to any location or facility on which Grantee is performing work, or storing or staging equipment, materials or documents;
 - ii. Grantee shall permit inspection of any facility, equipment, practices, or operations required in performance of any work pursuant to this Agreement; and,
 - iii. Grantee shall allow and facilitate sampling and monitoring of any substances, soils, materials or parameters at any location reasonable or necessary to assure compliance with any work or legal requirements pursuant to this Agreement.
- c. Special Audit Requirements. The Grantee shall comply with the applicable provisions contained in Attachment 5, Special Audit Requirements. Each amendment that authorizes a funding increase or decrease shall include an updated copy of Exhibit 1, to Attachment 5. If Department fails to provide an updated copy of Exhibit 1 to include in each amendment that authorizes a funding increase or decrease, Grantee shall request one from the Department's Grants Manager. The Grantee shall consider the type of financial assistance (federal and/or state) identified in Attachment 5, Exhibit 1 and determine whether the terms of Federal and/or Florida Single Audit Act Requirements may further apply to lower tier transactions that may be a result of this Agreement. For federal financial assistance, Grantee shall utilize the guidance provided under 2 CFR §200.331 for determining whether the relationship represents that of a subrecipient or vendor. For State financial assistance, Grantee shall utilize the form entitled "Checklist for Nonstate Organizations Recipient/Subrecipient vs Vendor Determination" (form number DFS-A2-NS) that can be found under the "Links/Forms" section appearing at the following website: <https://apps.fldfs.com/fsaa>.
- d. Proof of Transactions. In addition to documentation provided to support cost reimbursement as described herein, Department may periodically request additional proof of a transaction to evaluate the appropriateness of costs to the Agreement pursuant to State guidelines (including cost allocation guidelines) and federal, if applicable. Allowable costs and uniform administrative requirements for federal programs can be found under 2 CFR 200. The Department may also request a cost allocation plan in support of its multipliers (overhead, indirect, general administrative costs, and fringe benefits). The Grantee must provide the additional proof within thirty (30) days of such request.
- e. No Commingling of Funds. The accounting systems for all Grantees must ensure that these funds are not commingled with funds from other agencies. Funds from each agency must be accounted for separately. Grantees are prohibited from commingling funds on either a program-by-program or a project-by-project basis. Funds specifically budgeted and/or received for one project may not be used to support another project. Where a Grantee's, or subrecipient's, accounting system cannot comply with this requirement, Grantee, or subrecipient, shall establish a system to provide adequate fund accountability for each project it has been awarded.
 - i. If Department finds that these funds have been commingled, Department shall have the right to demand a refund, either in whole or in part, of the funds provided to Grantee under this Agreement for non-compliance with the material terms of this Agreement. The Grantee, upon such written notification from Department shall refund, and shall forthwith pay to Department, the amount of money demanded by Department. Interest on any refund shall be calculated based on the prevailing rate used by the State Board of Administration. Interest shall be calculated from the date(s) the

original payment(s) are received from Department by Grantee to the date repayment is made by Grantee to Department.

- ii. In the event that the Grantee recovers costs, incurred under this Agreement and reimbursed by Department, from another source(s), Grantee shall reimburse Department for all recovered funds originally provided under this Agreement and interest shall be charged for those recovered costs as calculated on from the date(s) the payment(s) are recovered by Grantee to the date repayment is made to Department.
- iii. Notwithstanding the requirements of this section, the above restrictions on commingling funds do not apply to agreements where payments are made purely on a cost reimbursement basis.

30. Conflict of Interest.

The Grantee covenants that it presently has no interest and shall not acquire any interest which would conflict in any manner or degree with the performance of services required.

31. Independent Contractor.

The Grantee is an independent contractor and is not an employee or agent of Department.

32. Subcontracting.

- a. Unless otherwise specified in the Special Terms and Conditions, all services contracted for are to be performed solely by Grantee.
- b. The Department may, for cause, require the replacement of any Grantee employee, subcontractor, or agent. For cause, includes, but is not limited to, technical or training qualifications, quality of work, change in security status, or non-compliance with an applicable Department policy or other requirement.
- c. The Department may, for cause, deny access to Department's secure information or any facility by any Grantee employee, subcontractor, or agent.
- d. The Department's actions under paragraphs b. or c. shall not relieve Grantee of its obligation to perform all work in compliance with the Agreement. The Grantee shall be responsible for the payment of all monies due under any subcontract. The Department shall not be liable to any subcontractor for any expenses or liabilities incurred under any subcontract and Grantee shall be solely liable to the subcontractor for all expenses and liabilities incurred under any subcontract.
- e. The Department will not deny Grantee's employees, subcontractors, or agents access to meetings within the Department's facilities, unless the basis of Department's denial is safety or security considerations.
- f. The Department supports diversity in its procurement program and requests that all subcontracting opportunities afforded by this Agreement embrace diversity enthusiastically. The award of subcontracts should reflect the full diversity of the citizens of the State. A list of minority-owned firms that could be offered subcontracting opportunities may be obtained by contacting the Office of Supplier Diversity at (850) 487-0915.
- g. The Grantee shall not be liable for any excess costs for a failure to perform, if the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is completely beyond the control of both Grantee and the subcontractor(s), and without the fault or negligence of either, unless the subcontracted products or services were obtainable from other sources in sufficient time for Grantee to meet the required delivery schedule.

33. Guarantee of Parent Company.

If Grantee is a subsidiary of another corporation or other business entity, Grantee asserts that its parent company will guarantee all of the obligations of Grantee for purposes of fulfilling the obligations of Agreement. In the event Grantee is sold during the period the Agreement is in effect, Grantee agrees that it will be a requirement of sale that the new parent company guarantee all of the obligations of Grantee.

34. Survival.

The respective obligations of the parties, which by their nature would continue beyond the termination or expiration of this Agreement, including without limitation, the obligations regarding confidentiality, proprietary interests, and public records, shall survive termination, cancellation, or expiration of this Agreement.

35. Third Parties.

The Department shall not be deemed to assume any liability for the acts, failures to act or negligence of Grantee, its agents, servants, and employees, nor shall Grantee disclaim its own negligence to Department or any third party. This Agreement does not and is not intended to confer any rights or remedies upon any person other than the parties. If Department consents to a subcontract, Grantee will specifically disclose that this Agreement does not create any third-party rights. Further, no third parties shall rely upon any of the rights and obligations created under this Agreement.

36. Severability.

If a court of competent jurisdiction deems any term or condition herein void or unenforceable, the other provisions are severable to that void provision, and shall remain in full force and effect.

37. Grantee's Employees, Subcontractors and Agents.

All Grantee employees, subcontractors, or agents performing work under the Agreement shall be properly trained technicians who meet or exceed any specified training qualifications. Upon request, Grantee shall furnish a copy of technical certification or other proof of qualification. All employees, subcontractors, or agents performing work under Agreement must comply with all security and administrative requirements of Department and shall comply with all controlling laws and regulations relevant to the services they are providing under the Agreement.

38. Assignment.

The Grantee shall not sell, assign, or transfer any of its rights, duties, or obligations under the Agreement, or under any purchase order issued pursuant to the Agreement, without the prior written consent of Department. In the event of any assignment, Grantee remains secondarily liable for performance of the Agreement, unless Department expressly waives such secondary liability. The Department may assign the Agreement with prior written notice to Grantee of its intent to do so.

39. Compensation Report.

If this Agreement is a sole-source, public-private agreement or if the Grantee, through this agreement with the State, annually receive 50% or more of their budget from the State or from a combination of State and Federal funds, the Grantee shall provide an annual report, including the most recent IRS Form 990, detailing the total compensation for the entities' executive leadership teams. Total compensation shall include salary, bonuses, cashed-in leave, cash equivalents, severance pay, retirement benefits, deferred compensation, real-property gifts, and any other payout. The Grantee must also inform the Department of any changes in total executive compensation between the annual reports. All compensation reports must indicate what percent of compensation comes directly from the State or Federal allocations to the Grantee.

40. Execution in Counterparts and Authority to Sign.

This Agreement, any amendments, and/or change orders related to the Agreement, may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument. In accordance with the Electronic Signature Act of 1996, electronic signatures, including facsimile transmissions, may be used and shall have the same force and effect as a written signature. Each person signing this Agreement warrants that he or she is duly authorized to do so and to bind the respective party to the Agreement.

**ATTACHMENT 3-A
REVISED GRANT WORK PLAN**

PROJECT TITLE: Town of Ft. Myers Beach 2022 Hurricane Ian and Nicole Recovery Project

PROJECT LOCATION: The Project is located along the Gulf of Mexico shoreline in Lee County, Florida. The specific project location is Estero Island Beach (R-174 to R-198 and R-203 to R-207).

PROJECT BACKGROUND: The Project shoreline sustained beach and dune erosion from Hurricane Ian (category 4 storm in late September 2022) and Hurricane Nicole (category 1 storm in November 2022). Laws of Florida Chapter 2022-272 SB4-A authorized the Department of Environmental Protection to waive or reduce match requirements for certain local governments and provided non-recurring funds for damages related to Hurricane Ian and Hurricane Nicole for beach erosion projects as identified in Section 161.101(22), Florida Statute (F.S.).

PROJECT DESCRIPTION: The Project consists of beach and dune restoration consistent with the recovery plan to address impacts of Hurricanes Ian and Nicole.

PROJECT ELIGIBILITY: The Department has determined that 100 percent of the non-federal Project cost is eligible for state cost sharing. Therefore, the Department's financial obligation shall not exceed the sum of \$1,891,335.00 for this Project or up to 100 percent of the non-federal Project cost, if applicable, for the specific eligible Project items listed, whichever is less. Any indicated federal cost sharing percentage is an estimate and shall not affect the cost sharing percentages of the non-federal share. The parties agree that eligibility for cost sharing purposes will be maintained pursuant to 62B-36, Florida Administrative Code (F.A.C.)

Duplication of federal funds are not permitted under this agreement.

The Local Sponsor will be responsible for auditing all travel reimbursement expenses based on the travel limits established in Section 112.061 (F.S.)

Pursuant to Sections 161.091 - 161.161, F.S., the Department provides financial assistance to eligible governmental entities for beach erosion control and inlet management activities under the Florida Beach Management Funding Assistance Program.

The Project shall be conducted in accordance with the terms and conditions set forth under this Agreement, all applicable Department permits and the eligible Project task items established below. All data collection and processing, and the resulting product deliverables, shall comply with the standards and technical specifications contained in the Department's Monitoring Standards for Beach Erosion Control Projects (2014) and all associated state and federal permits, unless otherwise specified in the approved scope of work for an eligible Project item. The monitoring standards may be found at:

<https://floridadep.gov/sites/default/files/PhysicalMonitoringStandards.pdf>

One (1) electronic copy of all written reports developed under this Agreement shall be forwarded to the Department, unless otherwise specified.

Acronyms:

DEP – Florida Department of Environmental Protection

F.A.C. – Florida Administrative Code
F.S. – Florida Statutes
FEMA – Federal Emergency Management Agency
FWC – Florida Fish and Wildlife Conservation Commission

TASKS and DELIVERABLES:

The Local Sponsor will provide detailed scopes of work or a letter requesting advance payment if authorized by Attachment 2, for all tasks identified below, which shall include a narrative description of work to be completed, a corresponding cost estimate and a proposed schedule of completion for the proposed work and associated deliverables. Each scope of work shall be approved in writing by the DEP Project Manager to be included into this work plan for reimbursement.

Task 1: Construction – Estero Island Beach Restoration and Nourishment Projects

Task Description: This task includes work performed and costs incurred associated with the placement of fill material and/or the construction of erosion control structures within the Project area. Project costs associated with eligible beach and inlet construction activities include work approved through construction bids and/or construction-phase engineering and monitoring services contracts. Eligible costs may include mobilization, demobilization, construction observation or inspection services, physical and environmental surveys, beach fill, tilling and scarp removal, erosion control structures, mitigation reefs, dune stabilization measures and native beach-dune vegetation. Construction shall be conducted in accordance with any and all State or Federal permits. The Local Sponsor will submit work products to the appropriate State or Federal regulatory agencies as requested by the DEP Project Manager in order to be eligible for reimbursement under this task.

Deliverable: Certification of Completion by a Florida-registered Professional Engineer with documentation of submittal to the Department affirming the construction task was completed in accordance with construction contract documents. For interim payment requests, a Task Summary Report signed by Local Sponsor must be submitted detailing activities completed during the payment request period. The Task Summary Report must include the dates and descriptions of all activities, surveys and reports completed or in progress during the time period of the interim payment request.

Performance Standard: The DEP Project Manager will review the task deliverable and any associated work products as necessary to verify they meet the specifications in the Grant Work Plan and this task description.

Payment Request Schedule: Payment requests may be submitted after the deliverable is received and accepted and may be submitted no more frequently than quarterly.

Estimated Eligible Project Cost

Task #	Eligible Project Tasks	State Cost Share (%)	Federal Estimated Project Costs	DEP	Local	Total
1	Construction - Estero Island Beach Restoration and Nourishment Projects	100.00%	\$0.00	\$1,891,335.00	\$0.00	\$1,891,335.00
	TOTAL PROJECT COSTS		\$0.00	\$1,891,335.00	\$0.00	\$1,891,335.00

PROJECT TIMELINE & BUDGET DETAIL: The tasks must be completed by, and all deliverables received by, the corresponding deliverable due date.

Task No.	Task Title	Budget Category	Budget Amount	Task Start Date	Deliverable Due Date
1	Construction	Contractual Services	\$1,891,335.00	9/28/2022	9/30/2025
Total:			\$1,891,335.00		

EXHIBIT – 1-A

FUNDS AWARDED TO THE RECIPIENT PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:

Note: If the resources awarded to the recipient represent more than one federal program, provide the same information shown below for each federal program and show total federal resources awarded

Federal Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following:					
Federal Program A	Federal Agency	CFDA Number	CFDA Title	Funding Amount	State Appropriation Category
Federal Program B	Federal Agency	CFDA Number	CFDA Title	Funding Amount	State Appropriation Category
				\$	

Note: Of the resources awarded to the recipient represent more than one federal program, list applicable compliance requirements for each federal program in the same manner as shown below:

Federal Program A	First Compliance requirement: i.e.: (what services of purposes resources must be used for)	
	Second Compliance requirement: i.e.: (eligibility requirement for recipients of the resources)	
	Etc.	
	Etc.	
Federal Program B	First Compliance requirement: i.e.: (what services of purposes resources must be used for)	
	Second Compliance requirement: i.e.: (eligibility requirement for recipients of the resources)	
	Etc.	
	Etc.	

Note: If the resources awarded to the recipient for matching represent more than one federal program, provide the same information shown below for each federal program and show total state resources awarded for matching.

State Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following Matching Resources for Federal Programs:					
Federal Program A	Federal Agency	CFDA	CFDA Title	Funding Amount	State Appropriation Category
Federal Program B	Federal Agency	CFDA	CFDA Title	Funding Amount	State Appropriation Category

Note: If the resources awarded to the recipient represent more than one state project, provide the same information shown below for each state project and show total state financial assistance awarded that is subject to section 215.97, F.S.

State Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following Resources Subject to Section 215.97, F.S.:						
State Program A	State Awarding Agency	State Fiscal Year ¹	CSFA Number	CSFA Title or Funding Source Description	Funding Amount	State Appropriation Category
Original	Florida Department of Environmental Protection.	2022-2023	37.113	Laws of Florida Chapter 2022-272 SB4-A	\$917,425.13	087752
Amendment 1	Florida Department of Environmental Protection.	2022-2023	37.113	FY 2023-2024 General Appropriations Act Section 142	\$973,909.87	087752
State Program B	State Awarding Agency	State Fiscal Year ²	CSFA Number	CSFA Title or Funding Source Description	Funding Amount	State Appropriation Category

Total Award	\$1,891,335.00	
-------------	----------------	--

Note: List applicable compliance requirement in the same manner as illustrated above for federal resources. For matching resources provided by the Department for DEP for federal programs, the requirements might be similar to the requirements for the applicable federal programs. Also, to the extent that different requirements pertain to different amount for the non-federal resources, there may be more than one grouping (i.e. 1, 2, 3, etc.) listed under this category.

For each program identified above, the recipient shall comply with the program requirements described in the Catalog of Federal Domestic Assistance (CFDA) [<https://sam.gov/content/assistance-listings>] and/or the Florida Catalog of State Financial Assistance (CSFA) [<https://apps.fldfs.com/fsaa/searchCatalog.aspx>], and State Projects Compliance Supplement (Part Four: State Projects Compliance Supplement [https://apps.fldfs.com/fsaa/state_project_compliance.aspx]). The

¹ Subject to change by Change Order.

² Subject to change by Change Order.

services/purposes for which the funds are to be used are included in the Agreement's Grant Work Plan. Any match required by the Recipient is clearly indicated in the Agreement.

1. **Request:**

Meeting Date: April 15, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, RATIFYING EXPENDITURES IN EXCESS OF \$25,000 FOR CONCRETE WORK FOR BAY OAKS RECREATIONAL CAMPUS AND PROVIDING FOR AN EFFECTIVE DATE

Why the action is necessary:

Section 5.B.1. of the Town Purchasing Ordinance requires Town Council Approval of any purchases over \$25,000.

What the action accomplishes:

This action facilitates compliance with the Town Purchasing Ordinance.

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Mark Ashton, Public
Works/Utilities Director

5. **Background:**

Concrete work already performed by Scott Commercial Contracting for Bay Oaks Recreational Campus included construction of the footer and bases for a safety fence and light poles at the ball field, additional light bases, a 10' X 5' concrete pad, and concrete curbing around a landscape island. Although the amounts of the individual components were under \$25,000, since the total amount of the components ended up exceeding \$25,000, it is deemed necessary to obtain Town Council approval to comply with the Town's purchasing ordinance.

Attachments:

1. 24-73, Ratifying Expenditures in Excess of \$25,000 for Concrete Work (1) ns

Financial Impact:

The total cost of this concrete work was \$39,948, and may be funded by the Bay Oaks Capital Improvement Loan.

6. **Alternative Action**

Do not authorize expenditures

7. **Management Recommendations:**

Management recommends authorization of the expenditures since they were already incurred in order to maintain compliance with the Town's purchasing ordinance.

8. **Recommended Approval:**

Joe Onzick, Finance Director
Joe Onzick, Finance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 3/27/2024
Approved - 3/27/2024
Approved - 3/27/2024
Approved - 4/9/2024
Final Approval - 4/10/2024

RESOLUTION NUMBER 24-73

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, RATIFYING EXPENDITURES IN EXCESS OF \$25,000 FOR CONCRETE WORK FOR BAY OAKS RECREATIONAL CAMPUS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Scott Commercial Contracting performed concrete work for the Bay Oaks Recreational Campus, including construction of the footer and bases for a safety fence and light poles at the ballfield, additional light bases, a 10' X 5' concrete pad, and concrete curbing around a landscape island; and

WHEREAS, the cost of the individual components of the project were each under \$25,000, however when combined, their total cost exceeds \$25,000; and

WHEREAS, Section 5.B.1. of the Town Purchasing Ordinance requires Town Council approval of any purchases over \$25,000; and

WHEREAS, approval of this Resolution is in the best interest of the residents of the Town.

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

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

Section 2. Authorization of the expenditure of \$39,948 for concrete work performed by Scott Commercial Contracting for the Bay Oaks Recreational Campus is hereby ratified.

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, Councilmember	_____
Scott Safford, Councilmember	_____
Karen Woodson, Councilmember	_____

ADOPTED this 15th day of April 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:**

Voss Law Firm, Town Attorney

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

1. **Request:**

Meeting Date: April 15, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING THE PURCHASE OF A PORTABLE RESTROOM TRAILER FROM READY2GO RESTROOM TRAILERS SALES LLC AND AUTHORIZING THE TOWN MANAGER TO EXECUTE A PURCHASE ORDER IN THE AMOUNT NOT TO EXCEED \$70,256.62; AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

Authorizes the purchase and installation of the restroom trailer at Newton Park Beach.

What the action accomplishes:

Authorizes staff to move forward with procurement.

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

4. **Submitter of Information:**

5. **Background:**

Town Council approved the request and grant application to the Tourist Development Council (TDC) for a restroom trailer on Newton Beach Park. Prior to Hurricane Ian, the restroom was incorporated into the Newton Cottage and all maintenance was funded by TDC. Originally, the TDC council awarded the Town of FMB \$45,000 to rent a restroom trailer, but Town staff found it more useful to purchase one. TDC as agreed to allow the Town of Fort Myers Beach, to re-allocate TDC funds from one category to help purchase the restroom trailer.

Attachments:

1. 24-75 Newton Restroom Trailer Purchase Draft
2. jhauge_estimate - Ready2GO
3. WCI - Accessibility Certification Letter 8-26-22 (1) (1)
4. SOURCEWELL APPROVED DLR LETTER READY2GO (1) (1) (1)
5. American Cargo Contract 092922

Financial Impact:

\$70,256.62 funded and maintained through the Tourist Development Council

6. **Alternative Action**

Do not approve the purchase.

7. **Management Recommendations:**

8. **Recommended Approval:**

Jeff Hauge, Culture, Parks & Recreation Director
Jeff Hauge, Culture, Parks & Recreation Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 4/10/2024
Approved - 4/10/2024
Approved - 4/10/2024
Approved - 4/10/2024
Final Approval - 4/10/2024

RESOLUTION NUMBER 24-75

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING THE PURCHASE OF A PORTABLE RESTROOM TRAILER FROM READY2GO RESTROOM TRAILERS SALES LLC AND AUTHORIZING THE TOWN MANAGER TO EXECUTE A PURCHASE ORDER IN THE AMOUNT NOT TO EXCEED \$70,256.62; AND PROVIDING FOR AN EFFECTIVE DATE.

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

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

WHEREAS, a purchase order is made and to be executed by and between READY2GO RESTROOM TRAILERS SALES LLC ("Contractor"), 1525 Park Manor Boulevard #300 Pittsburgh, PA 15205, and the TOWN OF FORT MYERS BEACH Florida ("TOWN OF FORT MYERS BEACH"), a municipal corporation 2731 Oak Street, Fort Myers Beach, FL, 33931.

WHEREAS, Contractor executed Contract #092922-AGO with Sourcewell, formerly known as National Joint Powers Alliance (NJPA), for the procurement of mobile restroom trailers and related products and services, which will expire on December 20th, 2026; and

WHEREAS, Sourcewell, formerly known as National Joint Powers Alliance (NJPA), is a local government unit, public corporation and public agency pursuant to the Minnesota Constitution and enabling law Minn. Stat Sec. 123A.21, which is authorized to establish competitively awarded cooperative purchasing contracts on behalf of itself and other governmental entities; and

WHEREAS, Section 163.01, Florida Statutes, also referred to as the Florida Interlocal Cooperation Act, permits local governments to cooperate with other localities, including governmental units outside the State of Florida on the basis of mutual advantage; and

WHEREAS, the TOWN OF FORT MYERS BEACH is in need of portable toilets to allow to increase the availability of facilities for use of the public on beach accesses; and

WHEREAS, Section 2-480(f) of the TOWN OF FORT MYERS BEACH Code of Ordinances provides that when it is in the best interest of the TOWN OF FORT MYERS BEACH, the TOWN OF FORT MYERS BEACH may cooperatively purchase from any other government agency, which has competitively bid and awarded any contract for any product or service at the awarded price, if the original bid specifications and award allow it and if the other governmental

agency's procurement complies with the TOWN OF FORT MYERS BEACH's competitive bid policy; and

WHEREAS, the Fort Myers Beach Town Council finds RFP #092922 and Contract No. 092922-AGO were competitively bid with procedural guarantees of fairness and competitiveness equivalent to those of the Town of Fort Myers Beach and the Contractor authorized TOWN to "piggyback" on the competitive pricing provided to Sourcewell in Contract 092922-AGO;

WHEREAS, it is in the best interest of the residents of the Town of Fort Myers Beach to execute a Purchase Order with Contractor containing similar terms and conditions as contained Contract No. 092922-AGO.

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

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

Section 2. The Town Council hereby approves the purchase order and authorizes the Town Manager or his designee to execute any documentation related to the purchase order, which is attached hereto as "Attachment A."

The foregoing Resolution was adopted by the Town Council upon a motion by _____ and seconded by _____, and upon being put to a 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 15th day of April 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 April 2024.

Ready2Go Restroom Trailers Sales LLC

1525 Park Manor Blvd. #300

Pittsburgh, PA 15205 US

mark@ready2gorestroomtrailers.com



ESTIMATE

BILL TO

Jeff Hauge

Town of Fort Myers Beach

2525 Estero Boulevard

Fort Myers, FL 33931

SHIP TO

Jeff Hauge

Town of Fort Myers Beach

2525 Estero Boulevard

Fort Myers, FL 33931

ESTIMATE # 1630**DATE** 03/28/2024**DUE DATE** 05/31/2024**TERMS** As agreed upon**SHIP DATE**

05/24/2024

TRACKING NO.

SourceWell

PRODUCT	DESCRIPTION	QTY	RATE	AMOUNT	SKU
Charges					
UL620-ADA-2	1 EA Ultralav - ACG - Model# UL620-ADA-2 1 EA Ultralav 1 EA Steel Frame 1 EA Flat Front 1 EA Tag 1 EA 20ft Long 1 EA Flat Roof 1 EA 6ft Wide 1 EA 2-5/16in 14,000lb Coupler 1 EA 5in Tube Mainframe w/Floor Under Frame 1 EA 8/0 x 27" G3 Safety Chains with Slip Hook 20 EA 7'0" Approximate Inside Height 20 EA 92-3/4in Tube Posts 20 EA Vertical Posts 16in On Center 1 EA 5,000lb Top Crank Round A-Frame Jack(ADA) 1 EA Standard A-Frame Tongue 1 EA ADA Suspension 2 EA 5,000lb Axle Spindle 2 EA ST235/80R16E GY Rad 8B Silver Spoke Steel Wheel 2 EA Chrome Center Caps on Wheels 1 EA 32 x 78 Entry Door, RH Hinge - Knob Lock - Square 1 EA 32 x 78 Entry Door, LH Hinge - Knob Lock - Square 1 EA 24 x 60 Utility Room Access Door, LH Hinge 1 EA 36 x 80 Entry Door, RH Hinge - Knob Lock - Square	1	69,207.30	69,207.30	

PRODUCT	DESCRIPTION	QTY	RATE	AMOUNT	SKU
	20 EA 3/4in PlexCore Decking				
	20 EA Black Coin Rubber Floor				
	Covering				
	1 EA 1" Sidewall Fiberglass				
	Insulation - R5				
	1 EA PolyCor Silver Frost				
	Sidewall Liner				
	1 EA Women's Restroom				
	1 EA Men's Restroom w/Urinal				
	1 EA ADA Restroom				
	1 EA 12 Volt LED Dome Light				
	(Requires 12v Wall Switch)				
	12 EA 12v LED 6" Round Dome				
	Light w/Chrome Ring				
	3 EA 12v LED 9" Porch Light				
	1 EA LED Fender Mount				
	Clearance Lights				
	2 EA LED Clear Lens Amber				
	Clearance Lights				
	2 EA LED Clear Lens Red				
	Clearance Lights				
	1 EA LED Wraparound Clear				
	Lens Tail Lights				
	1 EA LED Clear Lens Rear				
	Clearance Light ID Bar				
	2 EA 120v 30A Motorbase with				
	Twist Lock Connect				
	1 EA 120v 6 Gallon Hot Water				
	Heater				
	1 EA 105 Gallon Fresh Water				
	Tank				
	1 EA 3/8" Polyethylene Waste				
	Holding Tank				
	2 EA Sight Glass - Waste Tank				
	Level Indicator				
	1 EA ADA Landing & Ramp				
	System w/Handrails				
	1 EA Electric Winch for Landing				
	1 EA Alum. Rack & Straps for				
	Ramp & Railings				
	1 EA 1-Piece Aluminum Roof				
	20 EA Polar White .030				
	Aluminum Exterior				
	20 EA Bonded Exterior				
	Sidewalls				
	1 EA Smooth Aluminum				
	Fenders				
	1 EA 13.5Mach3				
	A/C+HT+WallTStat-Wt(req 12v)				
UL - Heater per room	Heater in restroom (3)	1	1,965.00	1,965.00	
UL- SourceWELL	SourceWELL Discount	1	-8,540.68	-8,540.68	
UL- SourceWELL	SourceWELL processing fee	1	125.00	125.00	
Freight	Transport of Restroom/Shower/ or Specialty Trailer	1	3,500.00	3,500.00	

PRODUCT	DESCRIPTION	QTY	RATE	AMOUNT	SKU
IF - Direct to Sewer ADA	UltraLav ADA+2 - Remove Waste Tank and Make it Direct to Sewer Remove Standard Room Pedal Flush Toilets - Remove Vent Pipe - Disconnect Plumbing from ADA Room to Waste Tank - Remove Waste Tank - Install Necessary Plumbing for Direct to Sewer Connections - Install New Full Flushing Toilets in Standard Rooms - Reconnect Plumbing from ADA Room to New Plumbing Direct Connection Termination Will Be Located Where the Previous Waste Tank Valve Was	1	4,000.00	4,000.00	
VIN Number - Info	Trailer#1: 7V0W12016RE418353	1			

SUBTOTAL	70,256.62
TAX	0.00
TOTAL	70,256.62
BALANCE DUE	\$70,256.62



August 26, 2022

To Whom It May Concern:

RE: Accessible Facilities in
American Cargo Group Trailers, LLC (UltraLav)

Glenco, Inc. has reviewed plans and specifications and conducted inspections in a representative sample toilet trailer model. The trailers are manufactured by American Cargo Group Trailers, LLC (UltraLav). Our agency found them to be in compliance with the following standards:

- International Code Council Standard ICC A117.1-2009 – Accessible and Usable Buildings and Facilities.
- International Code Council Standard ICC A117.1-2017 – Accessible and Usable Buildings and Facilities.
- Americans with Disabilities Act Accessibility Guidelines (ADAAG) – 2010 Edition.

The toilet trailer models found to be in compliance are the following models:

- UL614-ADA.
- UL620-ADA-2

Please contact me if you have any questions

Sincerely,

Jeffrey R. Walton, P.E.

Jeffrey R. Walton, P.E.
Glenco, Inc.
jeff@glencoinc.com
(570) 837-0577, Ext. 119

Indiana P.E. License #19600457





1503 McNaughton Ave.
Elkhart, IN 46514
Phone: (574) 264-9661

Date: 4/27/2023

To: Sourcewell Member

Subject: Authorized Approved Dealers for Sourcewell Contract

To whom it may concern,

American Cargo Group was awarded a contract for Sourcewell Solicitation Number: RFP #092922 (Trailers with Related Equipment, Accessories, and Services)

American Cargo Group's Sourcewell contract number is: 092922-AGO

As stated in our RFP response, American Cargo Group does not sell direct but rather through a select group of Authorized Dealers. Any Authorized Dealer selected to process a Sourcewell trailer order/purchase through this contact has met stringent requirements, is a dealer in good standing, and has agreed to all the terms and conditions outlined in the Sourcewell Contract.

This letter confirms that the dealer listed below is an official authorized dealer for American Cargo Group.

Ready2Go Restroom Trailers Sales LLC
1525 Park Manor Blvd #300
Pittsburgh, PA 15205
Primary Contact: Mark Rosen
Phone: 412-498-2632
Email: mark@ready2gorestroomtrailers.com
Website: ready2gorestroomtrailers.com

Should you have any questions or require further assistance, please do not hesitate to contact our dedicated Fleet Sales Manager, Valerie Burleigh. Her contact information can be found below. We are here to help ensure that your trailer purchase through American Cargo Group is professional, timely, and accurate.

Sincerely,

Mike Nichols
Vice President Sales
American Cargo Group

Valerie Burleigh
Phone: 254-386-6702
Email: valerie.burleigh@americancargogroup.com



**Solicitation Number: RFP #092922****CONTRACT**

This Contract is between Sourcewell, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479 (Sourcewell) and American Cargo Group Trailers, LLC, 1503 McNaughton Ave., Elkhart, IN 46514 (Supplier).

Sourcewell is a State of Minnesota local government unit and service cooperative created under the laws of the State of Minnesota (Minnesota Statutes Section 123A.21) that offers cooperative procurement solutions to government entities. Participation is open to eligible federal, state/province, and municipal governmental entities, higher education, K-12 education, nonprofit, tribal government, and other public entities located in the United States and Canada. Sourcewell issued a public solicitation for Trailers with Related Equipment, Accessories, and Services from which Supplier was awarded a contract.

Supplier desires to contract with Sourcewell to provide equipment, products, or services to Sourcewell and the entities that access Sourcewell's cooperative purchasing contracts (Participating Entities).

1. TERM OF CONTRACT

- A. **EFFECTIVE DATE.** This Contract is effective upon the date of the final signature below.
- B. **EXPIRATION DATE AND EXTENSION.** This Contract expires December 20, 2026, unless it is cancelled sooner pursuant to Article 22. This Contract may be extended one additional year upon the request of Sourcewell and written agreement by Supplier.
- C. **SURVIVAL OF TERMS.** Notwithstanding any expiration or termination of this Contract, all payment obligations incurred prior to expiration or termination will survive, as will the following: Articles 11 through 14 survive the expiration or cancellation of this Contract. All other rights will cease upon expiration or termination of this Contract.

2. EQUIPMENT, PRODUCTS, OR SERVICES

- A. **EQUIPMENT, PRODUCTS, OR SERVICES.** Supplier will provide the Equipment, Products, or Services as stated in its Proposal submitted under the Solicitation Number listed above.

Supplier's Equipment, Products, or Services Proposal (Proposal) is attached and incorporated into this Contract.

All Equipment and Products provided under this Contract must be new and the current model. Supplier may offer close-out or refurbished Equipment or Products if they are clearly indicated in Supplier's product and pricing list. Unless agreed to by the Participating Entities in advance, Equipment or Products must be delivered as operational to the Participating Entity's site.

This Contract offers an indefinite quantity of sales, and while substantial volume is anticipated, sales and sales volume are not guaranteed.

B. **WARRANTY.** Supplier warrants that all Equipment, Products, and Services furnished are free from liens and encumbrances, and are free from defects in design, materials, and workmanship. In addition, Supplier warrants the Equipment, Products, and Services are suitable for and will perform in accordance with the ordinary use for which they are intended. Supplier's dealers and distributors must agree to assist the Participating Entity in reaching a resolution in any dispute over warranty terms with the manufacturer. Any manufacturer's warranty that extends beyond the expiration of the Supplier's warranty will be passed on to the Participating Entity.

C. **DEALERS, DISTRIBUTORS, AND/OR RESELLERS.** Upon Contract execution and throughout the Contract term, Supplier must provide to Sourcewell a current means to validate or authenticate Supplier's authorized dealers, distributors, or resellers relative to the Equipment, Products, and Services offered under this Contract, which will be incorporated into this Contract by reference. It is the Supplier's responsibility to ensure Sourcewell receives the most current information.

3. PRICING

All Equipment, Products, or Services under this Contract will be priced at or below the price stated in Supplier's Proposal.

When providing pricing quotes to Participating Entities, all pricing quoted must reflect a Participating Entity's total cost of acquisition. This means that the quoted cost is for delivered Equipment, Products, and Services that are operational for their intended purpose, and includes all costs to the Participating Entity's requested delivery location.

Regardless of the payment method chosen by the Participating Entity, the total cost associated with any purchase option of the Equipment, Products, or Services must always be disclosed in the pricing quote to the applicable Participating Entity at the time of purchase.

A. **SHIPPING AND SHIPPING COSTS.** All delivered Equipment and Products must be properly packaged. Damaged Equipment and Products may be rejected. If the damage is not readily apparent at the time of delivery, Supplier must permit the Equipment and Products to be

returned within a reasonable time at no cost to Sourcewell or its Participating Entities. Participating Entities reserve the right to inspect the Equipment and Products at a reasonable time after delivery where circumstances or conditions prevent effective inspection of the Equipment and Products at the time of delivery. In the event of the delivery of nonconforming Equipment and Products, the Participating Entity will notify the Supplier as soon as possible and the Supplier will replace nonconforming Equipment and Products with conforming Equipment and Products that are acceptable to the Participating Entity.

Supplier must arrange for and pay for the return shipment on Equipment and Products that arrive in a defective or inoperable condition.

Sourcewell may declare the Supplier in breach of this Contract if the Supplier intentionally delivers substandard or inferior Equipment or Products.

B. SALES TAX. Each Participating Entity is responsible for supplying the Supplier with valid tax-exemption certification(s). When ordering, a Participating Entity must indicate if it is a tax-exempt entity.

C. HOT LIST PRICING. At any time during this Contract, Supplier may offer a specific selection of Equipment, Products, or Services at discounts greater than those listed in the Contract. When Supplier determines it will offer Hot List Pricing, it must be submitted electronically to Sourcewell in a line-item format. Equipment, Products, or Services may be added or removed from the Hot List at any time through a Sourcewell Price and Product Change Form as defined in Article 4 below.

Hot List program and pricing may also be used to discount and liquidate close-out and discontinued Equipment and Products as long as those close-out and discontinued items are clearly identified as such. Current ordering process and administrative fees apply. Hot List Pricing must be published and made available to all Participating Entities.

4. PRODUCT AND PRICING CHANGE REQUESTS

Supplier may request Equipment, Product, or Service changes, additions, or deletions at any time. All requests must be made in writing by submitting a signed Sourcewell Price and Product Change Request Form to the assigned Sourcewell Supplier Development Administrator. This approved form is available from the assigned Sourcewell Supplier Development Administrator. At a minimum, the request must:

- Identify the applicable Sourcewell contract number;
- Clearly specify the requested change;
- Provide sufficient detail to justify the requested change;

- Individually list all Equipment, Products, or Services affected by the requested change, along with the requested change (e.g., addition, deletion, price change); and
- Include a complete restatement of pricing documentation in Microsoft Excel with the effective date of the modified pricing, or product addition or deletion. The new pricing restatement must include all Equipment, Products, and Services offered, even for those items where pricing remains unchanged.

A fully executed Sourcewell Price and Product Request Form will become an amendment to this Contract and will be incorporated by reference.

5. PARTICIPATION, CONTRACT ACCESS, AND PARTICIPATING ENTITY REQUIREMENTS

A. PARTICIPATION. Sourcewell's cooperative contracts are available and open to public and nonprofit entities across the United States and Canada; such as federal, state/province, municipal, K-12 and higher education, tribal government, and other public entities.

The benefits of this Contract should be available to all Participating Entities that can legally access the Equipment, Products, or Services under this Contract. A Participating Entity's authority to access this Contract is determined through its cooperative purchasing, interlocal, or joint powers laws. Any entity accessing benefits of this Contract will be considered a Service Member of Sourcewell during such time of access. Supplier understands that a Participating Entity's use of this Contract is at the Participating Entity's sole convenience and Participating Entities reserve the right to obtain like Equipment, Products, or Services from any other source.

Supplier is responsible for familiarizing its sales and service forces with Sourcewell contract use eligibility requirements and documentation and will encourage potential participating entities to join Sourcewell. Sourcewell reserves the right to add and remove Participating Entities to its roster during the term of this Contract.

B. PUBLIC FACILITIES. Supplier's employees may be required to perform work at government-owned facilities, including schools. Supplier's employees and agents must conduct themselves in a professional manner while on the premises, and in accordance with Participating Entity policies and procedures, and all applicable laws.

6. PARTICIPATING ENTITY USE AND PURCHASING

A. ORDERS AND PAYMENT. To access the contracted Equipment, Products, or Services under this Contract, a Participating Entity must clearly indicate to Supplier that it intends to access this Contract; however, order flow and procedure will be developed jointly between Sourcewell and Supplier. Typically, a Participating Entity will issue an order directly to Supplier or its authorized subsidiary, distributor, dealer, or reseller. If a Participating Entity issues a purchase order, it may use its own forms, but the purchase order should clearly note the applicable Sourcewell

contract number. All Participating Entity orders under this Contract must be issued prior to expiration or cancellation of this Contract; however, Supplier performance, Participating Entity payment obligations, and any applicable warranty periods or other Supplier or Participating Entity obligations may extend beyond the term of this Contract.

Supplier's acceptable forms of payment are included in its attached Proposal. Participating Entities will be solely responsible for payment and Sourcewell will have no liability for any unpaid invoice of any Participating Entity.

B. ADDITIONAL TERMS AND CONDITIONS/PARTICIPATING ADDENDUM. Additional terms and conditions to a purchase order, or other required transaction documentation, may be negotiated between a Participating Entity and Supplier, such as job or industry-specific requirements, legal requirements (e.g., affirmative action or immigration status requirements), or specific local policy requirements. Some Participating Entities may require the use of a Participating Addendum, the terms of which will be negotiated directly between the Participating Entity and the Supplier or its authorized dealers, distributors, or resellers, as applicable. Any negotiated additional terms and conditions must never be less favorable to the Participating Entity than what is contained in this Contract.

C. SPECIALIZED SERVICE REQUIREMENTS. In the event that the Participating Entity requires service or specialized performance requirements not addressed in this Contract (such as e-commerce specifications, specialized delivery requirements, or other specifications and requirements), the Participating Entity and the Supplier may enter into a separate, standalone agreement, apart from this Contract. Sourcewell, including its agents and employees, will not be made a party to a claim for breach of such agreement.

D. TERMINATION OF ORDERS. Participating Entities may terminate an order, in whole or in part, immediately upon notice to Supplier in the event of any of the following events:

1. The Participating Entity fails to receive funding or appropriation from its governing body at levels sufficient to pay for the equipment, products, or services to be purchased; or
2. Federal, state, or provincial laws or regulations prohibit the purchase or change the Participating Entity's requirements.

E. GOVERNING LAW AND VENUE. The governing law and venue for any action related to a Participating Entity's order will be determined by the Participating Entity making the purchase.

7. CUSTOMER SERVICE

A. PRIMARY ACCOUNT REPRESENTATIVE. Supplier will assign an Account Representative to Sourcewell for this Contract and must provide prompt notice to Sourcewell if that person is changed. The Account Representative will be responsible for:

- Maintenance and management of this Contract;
- Timely response to all Sourcewell and Participating Entity inquiries; and
- Business reviews to Sourcewell and Participating Entities, if applicable.

B. BUSINESS REVIEWS. Supplier must perform a minimum of one business review with Sourcewell per contract year. The business review will cover sales to Participating Entities, pricing and contract terms, administrative fees, sales data reports, performance issues, supply issues, customer issues, and any other necessary information.

8. REPORT ON CONTRACT SALES ACTIVITY AND ADMINISTRATIVE FEE PAYMENT

A. CONTRACT SALES ACTIVITY REPORT. Each calendar quarter, Supplier must provide a contract sales activity report (Report) to the Sourcewell Supplier Development Administrator assigned to this Contract. Reports are due no later than 45 days after the end of each calendar quarter. A Report must be provided regardless of the number or amount of sales during that quarter (i.e., if there are no sales, Supplier must submit a report indicating no sales were made).

The Report must contain the following fields:

- Participating Entity Name (e.g., City of Staples Highway Department);
- Participating Entity Physical Street Address;
- Participating Entity City;
- Participating Entity State/Province;
- Participating Entity Zip/Postal Code;
- Participating Entity Contact Name;
- Participating Entity Contact Email Address;
- Participating Entity Contact Telephone Number;
- Sourcewell Assigned Entity/Participating Entity Number;
- Item Purchased Description;
- Item Purchased Price;
- Sourcewell Administrative Fee Applied; and
- Date Purchase was invoiced/sale was recognized as revenue by Supplier.

B. ADMINISTRATIVE FEE. In consideration for the support and services provided by Sourcewell, the Supplier will pay an administrative fee to Sourcewell on all Equipment, Products, and Services provided to Participating Entities. The Administrative Fee must be included in, and not added to, the pricing. Supplier may not charge Participating Entities more than the contracted price to offset the Administrative Fee.

The Supplier will submit payment to Sourcewell for the percentage of administrative fee stated in the Proposal multiplied by the total sales of all Equipment, Products, and Services purchased

by Participating Entities under this Contract during each calendar quarter. Payments should note the Supplier's name and Sourcewell-assigned contract number in the memo; and must be mailed to the address above "Attn: Accounts Receivable" or remitted electronically to Sourcewell's banking institution per Sourcewell's Finance department instructions. Payments must be received no later than 45 calendar days after the end of each calendar quarter.

Supplier agrees to cooperate with Sourcewell in auditing transactions under this Contract to ensure that the administrative fee is paid on all items purchased under this Contract.

In the event the Supplier is delinquent in any undisputed administrative fees, Sourcewell reserves the right to cancel this Contract and reject any proposal submitted by the Supplier in any subsequent solicitation. In the event this Contract is cancelled by either party prior to the Contract's expiration date, the administrative fee payment will be due no more than 30 days from the cancellation date.

9. AUTHORIZED REPRESENTATIVE

Sourcewell's Authorized Representative is its Chief Procurement Officer.

Supplier's Authorized Representative is the person named in the Supplier's Proposal. If Supplier's Authorized Representative changes at any time during this Contract, Supplier must promptly notify Sourcewell in writing.

10. AUDIT, ASSIGNMENT, AMENDMENTS, WAIVER, AND CONTRACT COMPLETE

A. **AUDIT.** Pursuant to Minnesota Statutes Section 16C.05, subdivision 5, the books, records, documents, and accounting procedures and practices relevant to this Contract are subject to examination by Sourcewell or the Minnesota State Auditor for a minimum of six years from the end of this Contract. This clause extends to Participating Entities as it relates to business conducted by that Participating Entity under this Contract.

B. **ASSIGNMENT.** Neither party may assign or otherwise transfer its rights or obligations under this Contract without the prior written consent of the other party and a fully executed assignment agreement. Such consent will not be unreasonably withheld. Any prohibited assignment will be invalid.

C. **AMENDMENTS.** Any amendment to this Contract must be in writing and will not be effective until it has been duly executed by the parties.

D. **WAIVER.** Failure by either party to take action or assert any right under this Contract will not be deemed a waiver of such right in the event of the continuation or repetition of the circumstances giving rise to such right. Any such waiver must be in writing and signed by the parties.

E. **CONTRACT COMPLETE.** This Contract represents the complete agreement between the parties. No other understanding regarding this Contract, whether written or oral, may be used to bind either party. For any conflict between the attached Proposal and the terms set out in Articles 1-22 of this Contract, the terms of Articles 1-22 will govern.

F. **RELATIONSHIP OF THE PARTIES.** The relationship of the parties is one of independent contractors, each free to exercise judgment and discretion with regard to the conduct of their respective businesses. This Contract does not create a partnership, joint venture, or any other relationship such as master-servant, or principal-agent.

11. INDEMNITY AND HOLD HARMLESS

Supplier must indemnify, defend, save, and hold Sourcewell and its Participating Entities, including their agents and employees, harmless from any claims or causes of action, including attorneys' fees incurred by Sourcewell or its Participating Entities, arising out of any act or omission in the performance of this Contract by the Supplier or its agents or employees; this indemnification includes injury or death to person(s) or property alleged to have been caused by some defect in the Equipment, Products, or Services under this Contract to the extent the Equipment, Product, or Service has been used according to its specifications. Sourcewell's responsibility will be governed by the State of Minnesota's Tort Liability Act (Minnesota Statutes Chapter 466) and other applicable law.

12. GOVERNMENT DATA PRACTICES

Supplier and Sourcewell must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by or provided to Sourcewell under this Contract and as it applies to all data created, collected, received, maintained, or disseminated by the Supplier under this Contract.

13. INTELLECTUAL PROPERTY, PUBLICITY, MARKETING, AND ENDORSEMENT

A. INTELLECTUAL PROPERTY

1. *Grant of License.* During the term of this Contract:
 - a. Sourcewell grants to Supplier a royalty-free, worldwide, non-exclusive right and license to use the trademark(s) provided to Supplier by Sourcewell in advertising and promotional materials for the purpose of marketing Sourcewell's relationship with Supplier.
 - b. Supplier grants to Sourcewell a royalty-free, worldwide, non-exclusive right and license to use Supplier's trademarks in advertising and promotional materials for the purpose of marketing Supplier's relationship with Sourcewell.
2. *Limited Right of Sublicense.* The right and license granted herein includes a limited right of each party to grant sublicenses to their respective subsidiaries, distributors, dealers,

resellers, marketing representatives, and agents (collectively “Permitted Sublicensees”) in advertising and promotional materials for the purpose of marketing the Parties’ relationship to Participating Entities. Any sublicense granted will be subject to the terms and conditions of this Article. Each party will be responsible for any breach of this Article by any of their respective sublicensees.

3. *Use; Quality Control.*

- a. Neither party may alter the other party’s trademarks from the form provided and must comply with removal requests as to specific uses of its trademarks or logos.
- b. Each party agrees to use, and to cause its Permitted Sublicensees to use, the other party’s trademarks only in good faith and in a dignified manner consistent with such party’s use of the trademarks. Upon written notice to the breaching party, the breaching party has 30 days of the date of the written notice to cure the breach or the license will be terminated.

4. *Termination.* Upon the termination of this Contract for any reason, each party, including Permitted Sublicensees, will have 30 days to remove all Trademarks from signage, websites, and the like bearing the other party’s name or logo (excepting Sourcewell’s pre-printed catalog of suppliers which may be used until the next printing). Supplier must return all marketing and promotional materials, including signage, provided by Sourcewell, or dispose of it according to Sourcewell’s written directions.

B. PUBLICITY. Any publicity regarding the subject matter of this Contract must not be released without prior written approval from the Authorized Representatives. Publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Supplier individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this Contract.

C. MARKETING. Any direct advertising, marketing, or offers with Participating Entities must be approved by Sourcewell. Send all approval requests to the Sourcewell Supplier Development Administrator assigned to this Contract.

D. ENDORSEMENT. The Supplier must not claim that Sourcewell endorses its Equipment, Products, or Services.

14. GOVERNING LAW, JURISDICTION, AND VENUE

The substantive and procedural laws of the State of Minnesota will govern this Contract. Venue for all legal proceedings arising out of this Contract, or its breach, must be in the appropriate state court in Todd County, Minnesota or federal court in Fergus Falls, Minnesota.

15. FORCE MAJEURE

Neither party to this Contract will be held responsible for delay or default caused by acts of God or other conditions that are beyond that party's reasonable control. A party defaulting under this provision must provide the other party prompt written notice of the default.

16. SEVERABILITY

If any provision of this Contract is found by a court of competent jurisdiction to be illegal, unenforceable, or void then both parties will be relieved from all obligations arising from that provision. If the remainder of this Contract is capable of being performed, it will not be affected by such determination or finding and must be fully performed.

17. PERFORMANCE, DEFAULT, AND REMEDIES

A. **PERFORMANCE.** During the term of this Contract, the parties will monitor performance and address unresolved contract issues as follows:

1. *Notification.* The parties must promptly notify each other of any known dispute and work in good faith to resolve such dispute within a reasonable period of time. If necessary, Sourcewell and the Supplier will jointly develop a short briefing document that describes the issue(s), relevant impact, and positions of both parties.
2. *Escalation.* If parties are unable to resolve the issue in a timely manner, as specified above, either Sourcewell or Supplier may escalate the resolution of the issue to a higher level of management. The Supplier will have 30 calendar days to cure an outstanding issue.
3. *Performance while Dispute is Pending.* Notwithstanding the existence of a dispute, the Supplier must continue without delay to carry out all of its responsibilities under the Contract that are not affected by the dispute. If the Supplier fails to continue without delay to perform its responsibilities under the Contract, in the accomplishment of all undisputed work, the Supplier will bear any additional costs incurred by Sourcewell and/or its Participating Entities as a result of such failure to proceed.

B. **DEFAULT AND REMEDIES.** Either of the following constitutes cause to declare this Contract, or any Participating Entity order under this Contract, in default:

1. Nonperformance of contractual requirements, or
2. A material breach of any term or condition of this Contract.

The party claiming default must provide written notice of the default, with 30 calendar days to cure the default. Time allowed for cure will not diminish or eliminate any liability for liquidated or other damages. If the default remains after the opportunity for cure, the non-defaulting party may:

- Exercise any remedy provided by law or equity, or
- Terminate the Contract or any portion thereof, including any orders issued against the Contract.

18. INSURANCE

A. REQUIREMENTS. At its own expense, Supplier must maintain insurance policy(ies) in effect at all times during the performance of this Contract with insurance company(ies) licensed or authorized to do business in the State of Minnesota having an "AM BEST" rating of A- or better, with coverage and limits of insurance not less than the following:

1. *Workers' Compensation and Employer's Liability.*

Workers' Compensation: As required by any applicable law or regulation.

Employer's Liability Insurance: must be provided in amounts not less than listed below:

Minimum limits:

\$500,000 each accident for bodily injury by accident

\$500,000 policy limit for bodily injury by disease

\$500,000 each employee for bodily injury by disease

2. *Commercial General Liability Insurance.* Supplier will maintain insurance covering its operations, with coverage on an occurrence basis, and must be subject to terms no less broad than the Insurance Services Office ("ISO") Commercial General Liability Form CG0001 (2001 or newer edition), or equivalent. At a minimum, coverage must include liability arising from premises, operations, bodily injury and property damage, independent contractors, products-completed operations including construction defect, contractual liability, blanket contractual liability, and personal injury and advertising injury. All required limits, terms and conditions of coverage must be maintained during the term of this Contract.

Minimum Limits:

\$1,000,000 each occurrence Bodily Injury and Property Damage

\$1,000,000 Personal and Advertising Injury

\$2,000,000 aggregate for products liability-completed operations

\$2,000,000 general aggregate

3. *Commercial Automobile Liability Insurance.* During the term of this Contract, Supplier will maintain insurance covering all owned, hired, and non-owned automobiles in limits of liability not less than indicated below. The coverage must be subject to terms no less broad than ISO Business Auto Coverage Form CA 0001 (2010 edition or newer), or equivalent.

Minimum Limits:

\$1,000,000 each accident, combined single limit

4. *Umbrella Insurance*. During the term of this Contract, Supplier will maintain umbrella coverage over Employer's Liability, Commercial General Liability, and Commercial Automobile.

Minimum Limits:

\$2,000,000

5. *Network Security and Privacy Liability Insurance*. During the term of this Contract, Supplier will maintain coverage for network security and privacy liability. The coverage may be endorsed on another form of liability coverage or written on a standalone policy. The insurance must cover claims which may arise from failure of Supplier's security resulting in, but not limited to, computer attacks, unauthorized access, disclosure of not public data – including but not limited to, confidential or private information, transmission of a computer virus, or denial of service.

Minimum limits:

\$2,000,000 per occurrence

\$2,000,000 annual aggregate

Failure of Supplier to maintain the required insurance will constitute a material breach entitling Sourcewell to immediately terminate this Contract for default.

B. CERTIFICATES OF INSURANCE. Prior to commencing under this Contract, Supplier must furnish to Sourcewell a certificate of insurance, as evidence of the insurance required under this Contract. Prior to expiration of the policy(ies), renewal certificates must be mailed to Sourcewell, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479 or sent to the Sourcewell Supplier Development Administrator assigned to this Contract. The certificates must be signed by a person authorized by the insurer(s) to bind coverage on their behalf.

Failure to request certificates of insurance by Sourcewell, or failure of Supplier to provide certificates of insurance, in no way limits or relieves Supplier of its duties and responsibilities in this Contract.

C. ADDITIONAL INSURED ENDORSEMENT AND PRIMARY AND NON-CONTRIBUTORY INSURANCE CLAUSE. Supplier agrees to list Sourcewell and its Participating Entities, including their officers, agents, and employees, as an additional insured under the Supplier's commercial general liability insurance policy with respect to liability arising out of activities, "operations," or "work" performed by or on behalf of Supplier, and products and completed operations of Supplier. The policy provision(s) or endorsement(s) must further provide that coverage is primary and not excess over or contributory with any other valid, applicable, and collectible insurance or self-insurance in force for the additional insureds.

D. WAIVER OF SUBROGATION. Supplier waives and must require (by endorsement or otherwise) all its insurers to waive subrogation rights against Sourcewell and other additional insureds for losses paid under the insurance policies required by this Contract or other

insurance applicable to the Supplier or its subcontractors. The waiver must apply to all deductibles and/or self-insured retentions applicable to the required or any other insurance maintained by the Supplier or its subcontractors. Where permitted by law, Supplier must require similar written express waivers of subrogation and insurance clauses from each of its subcontractors.

E. UMBRELLA/EXCESS LIABILITY/SELF-INSURED RETENTION. The limits required by this Contract can be met by either providing a primary policy or in combination with umbrella/excess liability policy(ies), or self-insured retention.

19. COMPLIANCE

A. LAWS AND REGULATIONS. All Equipment, Products, or Services provided under this Contract must comply fully with applicable federal laws and regulations, and with the laws in the states and provinces in which the Equipment, Products, or Services are sold.

B. LICENSES. Supplier must maintain a valid and current status on all required federal, state/provincial, and local licenses, bonds, and permits required for the operation of the business that the Supplier conducts with Sourcwell and Participating Entities.

20. BANKRUPTCY, DEBARMENT, OR SUSPENSION CERTIFICATION

Supplier certifies and warrants that it is not in bankruptcy or that it has previously disclosed in writing certain information to Sourcwell related to bankruptcy actions. If at any time during this Contract Supplier declares bankruptcy, Supplier must immediately notify Sourcwell in writing.

Supplier certifies and warrants that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from programs operated by the State of Minnesota; the United States federal government or the Canadian government, as applicable; or any Participating Entity. Supplier certifies and warrants that neither it nor its principals have been convicted of a criminal offense related to the subject matter of this Contract. Supplier further warrants that it will provide immediate written notice to Sourcwell if this certification changes at any time.

21. PROVISIONS FOR NON-UNITED STATES FEDERAL ENTITY PROCUREMENTS UNDER UNITED STATES FEDERAL AWARDS OR OTHER AWARDS

Participating Entities that use United States federal grant or FEMA funds to purchase goods or services from this Contract may be subject to additional requirements including the procurement standards of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, 2 C.F.R. § 200. Participating Entities may have additional requirements based on specific funding source terms or conditions. Within this Article, all

references to “federal” should be interpreted to mean the United States federal government. The following list only applies when a Participating Entity accesses Supplier’s Equipment, Products, or Services with United States federal funds.

A. **EQUAL EMPLOYMENT OPPORTUNITY.** Except as otherwise provided under 41 C.F.R. § 60, all contracts that meet the definition of “federally assisted construction contract” in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. §60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 C.F.R. §, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 C.F.R. § 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.” The equal opportunity clause is incorporated herein by reference.

B. **DAVIS-BACON ACT, AS AMENDED (40 U.S.C. § 3141-3148).** When required by federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. § 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 C.F.R. § 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-federal entity must report all suspected or reported violations to the federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations (29 C.F.R. § 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-federal entity must report all suspected or reported violations to the federal awarding agency. Supplier must be in compliance with all applicable Davis-Bacon Act provisions.

C. **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (40 U.S.C. § 3701-3708).** Where applicable, all contracts awarded by the non-federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. § 5). Under 40 U.S.C. § 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of

not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence. This provision is hereby incorporated by reference into this Contract. Supplier certifies that during the term of an award for all contracts by Sourcewell resulting from this procurement process, Supplier must comply with applicable requirements as referenced above.

D. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT. If the federal award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 C.F.R. § 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency. Supplier certifies that during the term of an award for all contracts by Sourcewell resulting from this procurement process, Supplier must comply with applicable requirements as referenced above.

E. CLEAN AIR ACT (42 U.S.C. § 7401-7671Q.) AND THE FEDERAL WATER POLLUTION CONTROL ACT (33 U.S.C. § 1251-1387). Contracts and subgrants of amounts in excess of \$150,000 require the non-federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401- 7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251- 1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA). Supplier certifies that during the term of this Contract will comply with applicable requirements as referenced above.

F. DEBARMENT AND SUSPENSION (EXECUTIVE ORDERS 12549 AND 12689). A contract award (see 2 C.F.R. § 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. § 180 that implement Executive Orders 12549 (3 C.F.R. § 1986 Comp., p. 189) and 12689 (3 C.F.R. § 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. Supplier certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency.

G. BYRD ANTI-LOBBYING AMENDMENT, AS AMENDED (31 U.S.C. § 1352). Suppliers must file any required certifications. Suppliers must not have 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. Suppliers must 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. Suppliers must file all certifications and disclosures required by, and otherwise comply with, the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352).

H. RECORD RETENTION REQUIREMENTS. To the extent applicable, Supplier must comply with the record retention requirements detailed in 2 C.F.R. § 200.333. The Supplier further certifies that it will retain all records as required by 2 C.F.R. § 200.333 for a period of 3 years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

I. ENERGY POLICY AND CONSERVATION ACT COMPLIANCE. To the extent applicable, Supplier must comply with the 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.

J. BUY AMERICAN PROVISIONS COMPLIANCE. To the extent applicable, Supplier must comply with all applicable provisions of the Buy American Act. Purchases made in accordance with the Buy American Act must follow the applicable procurement rules calling for free and open competition.

K. ACCESS TO RECORDS (2 C.F.R. § 200.336). Supplier agrees that duly authorized representatives of a federal agency must have access to any books, documents, papers and records of Supplier that are directly pertinent to Supplier's discharge of its obligations under this Contract for the purpose of making audits, examinations, excerpts, and transcriptions. The right also includes timely and reasonable access to Supplier's personnel for the purpose of interview and discussion relating to such documents.

L. PROCUREMENT OF RECOVERED MATERIALS (2 C.F.R. § 200.322). A non-federal entity that is a state agency or 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 C.F.R. § 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.

M. FEDERAL SEAL(S), LOGOS, AND FLAGS. The Supplier cannot use the seal(s), logos, crests, or reproductions of flags or likenesses of Federal agency officials without specific pre-approval.

N. NO OBLIGATION BY FEDERAL GOVERNMENT. The U.S. federal government is not a party to this Contract or any purchase by a Participating Entity and is not subject to any obligations or liabilities to the Participating Entity, Supplier, or any other party pertaining to any matter resulting from the Contract or any purchase by an authorized user.

O. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS. The Contractor acknowledges that 31 U.S.C. 38 (Administrative Remedies for False Claims and Statements) applies to the Supplier's actions pertaining to this Contract or any purchase by a Participating Entity.

P. FEDERAL DEBT. The Supplier certifies that it is non-delinquent in its repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowance, and benefit overpayments.

Q. CONFLICTS OF INTEREST. The Supplier must notify the U.S. Office of General Services, Sourcewell, and Participating Entity as soon as possible if this Contract or any aspect related to the anticipated work under this Contract raises an actual or potential conflict of interest (as described in 2 C.F.R. Part 200). The Supplier must explain the actual or potential conflict in writing in sufficient detail so that the U.S. Office of General Services, Sourcewell, and Participating Entity are able to assess the actual or potential conflict; and provide any additional information as necessary or requested.

R. U.S. EXECUTIVE ORDER 13224. The Supplier, and its subcontractors, must comply with U.S. Executive Order 13224 and U.S. Laws that prohibit transactions with and provision of resources and support to individuals and organizations associated with terrorism.

S. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT. To the extent applicable, Supplier certifies that during the term of this Contract it will comply with applicable requirements of 2 C.F.R. § 200.216.

T. DOMESTIC PREFERENCES FOR PROCUREMENTS. To the extent applicable, Supplier certifies that during the term of this Contract will comply with applicable requirements of 2 C.F.R. § 200.322.

22. CANCELLATION

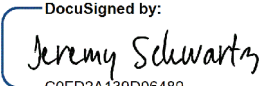
Sourcewell or Supplier may cancel this Contract at any time, with or without cause, upon 60 days' written notice to the other party. However, Sourcewell may cancel this Contract immediately upon discovery of a material defect in any certification made in Supplier's

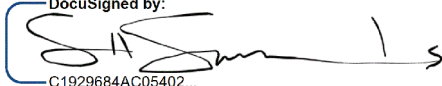
092922-AGO

Proposal. Cancellation of this Contract does not relieve either party of financial, product, or service obligations incurred or accrued prior to cancellation.

Sourcewell

American Cargo Group Trailers, LLC

DocuSigned by:

By: C0FD2A139D06489...
Jeremy Schwartz
Title: Chief Procurement Officer
12/15/2022 | 12:16 PM CST
Date: _____

DocuSigned by:

By: C1929684AC05402...
Scott Samuels
Title: Director of Marketing
12/21/2022 | 10:32 AM CST
Date: _____

Approved:

DocuSigned by:

By: 7E42B8F817A64CC...
Chad Coauette
Title: Executive Director/CEO
12/21/2022 | 10:36 AM CST
Date: _____

RFP 092922 - Trailers with Related Equipment, Accessories, and Services

Vendor Details

Company Name: American Cargo Group

Does your company conduct business under any other name? If yes, please state: Wells Cargo, Haulmark, American Hauler and UltraLav

Address: 1503 McNaughton Ave.
Elkhart, Indiana 46514

Contact: Scott Samuels

Email: scott.samuels@americancargogroup.com

Phone: 574-607-3326 5280

HST#:

Submission Details

Created On: Monday August 22, 2022 10:40:47

Submitted On: Thursday September 22, 2022 16:46:57

Submitted By: Scott Samuels

Email: scott.samuels@americancargogroup.com

Transaction #: 9d6b0691-4cbc-4c43-b646-1c941dbce43f

Submitter's IP Address: 207.32.236.122

Specifications

Table 1: Proposer Identity & Authorized Representatives

General Instructions (applies to all Tables) Sourcewell prefers a brief but thorough response to each question. Do not merely attach additional documents to your response without also providing a substantive response. Do not leave answers blank; respond "N/A" if the question does not apply to you (preferably with an explanation).

Line Item	Question	Response *	
1	Proposer Legal Name (one legal entity only): (In the event of award, will execute the resulting contract as "Supplier")	American Cargo Group Trailers, LLC	*
2	Identify all subsidiary entities of the Proposer whose equipment, products, or services are included in the Proposal.	Haulmark, Wells Cargo, and American Hauler	*
3	Identify all applicable assumed names or DBA names of the Proposer or Proposer's subsidiaries in Line 1 or Line 2 above.	Haulmark, Wells Cargo, and American Hauler	*
4	Provide your CAGE code or Unique Entity Identifier (SAM):	LNK6G66EZCS5 Note: American Cargo Group is in the process of being acquired by Tuckahoe Holdings. This Unique Entity ID reflects the address of where the new company is incorporated. Once the sale is complete, the address (on SAM.GOV) will be updated to reflect our Corporate Office address which is noted on question #5.	*
5	Proposer Physical Address:	1503 McNaughton Ave. Elkhart, IN 46514	*
6	Proposer website address (or addresses):	www.americancargogroup.com www.wellscargo.com www.haulmark.com www.americanhauler.com	*
7	Proposer's Authorized Representative (name, title, address, email address & phone) (The representative must have authority to sign the "Proposer's Assurance of Compliance" on behalf of the Proposer and, in the event of award, will be expected to execute the resulting contract):	Scott Samuels Director of Marketing 1503 McNaughton Ave. Elkhart, IN 46514 scott.samuels@americancargogroup.com 574-612-6434	*
8	Proposer's primary contact for this proposal (name, title, address, email address & phone):	Scott Samuels Director of Marketing 1503 McNaughton Ave. Elkhart, IN 46514 scott.samuels@americancargogroup.com 574-612-6434	*
9	Proposer's other contacts for this proposal, if any (name, title, address, email address & phone):	Mike Nichols VP Sales mike.nichols@americancargogroup.com 254-495-2183	

Table 2: Company Information and Financial Strength

Line Item	Question	Response *	
10	Provide a brief history of your company, including your company's core values, business philosophy, and industry longevity related to the requested equipment, products or services.	American Cargo Group (ACG) was formed in August of 2018, at which time it acquired the existing brands of American Hauler, Haulmark, and Wells Cargo. Wells Cargo was originally founded in 1954 and is credited with pioneering the enclosed cargo trailer industry. Haulmark, established in 1977, spent many years as the number one top selling enclosed steel trailer manufacturer in the United States. American Hauler, founded in 2003, is an established name in the Midwest and Canada with approximately 120 dealers.	*
11	What are your company's expectations in the event of an award?	The expectation of ACG is to build strong relationships with Sourcewell's member community who are in the market for an enclosed cargo trailer(s). We will use all our resources and experience to match them with the specific trailer that will best fit their needs, and ultimately sell them a trailer that will exceed their expectations.	*
12	Demonstrate your financial strength and stability with meaningful data. This could include such items as financial statements, SEC filings, credit and bond ratings, letters of credit, and detailed reference letters. Upload supporting documents (as applicable) in the document upload section of your response.	American Cargo Group is a privately owned company and prefers not to share sensitive financial information. The owner is Robb Kaufman. Robb Kaufman is a true entrepreneur. He owns over 20 different business entities (not including ACG) with the most well known is Kaufman Trailers. Kaufman Trailers was founded in 1987. (Kaufman Trailers is NOT part of this RFQ submission.) At the time of this application, American Cargo Group is in the process of being acquired by Tuckahoe Holdings based in Richmond, VA. Once consummated, this new ownership structure will greatly strengthen American Cargo Group's financial strength. Here is a link to Tuckahoe Holdings: https://www.tuckahoeholdings.com/	*
13	What is your US market share for the solutions that you are proposing?	According to Statistical Surveys, Inc., American Cargo Group (ACG) has a 6.5% US Market Share for enclosed trailers. That ranks ACG 3rd among all enclosed trailer manufacturing companies. The enclosed trailer marketplace is highly fragmented. American Cargo Group is one of only three (3) enclosed trailer manufacturers with an established national distribution footprint with six (6) strategically located factories across the United States.	*
14	What is your Canadian market share for the solutions that you are proposing?	While there is no official market share data for Canada, ACG does have five manufacturing facilities that produce enclosed trailers for the Canadian market from British Columbia to Quebec. ACG has over 70 dealers in Canada.	*
15	Has your business ever petitioned for bankruptcy protection? If so, explain in detail.	No	*
16	How is your organization best described: is it a manufacturer, a distributor/dealer/reseller, or a service provider? Answer whichever question (either a) or b) just below) best applies to your organization. a) If your company is best described as a distributor/dealer/reseller (or similar entity), provide your written authorization to act as a distributor/dealer/reseller for the manufacturer of the products proposed in this RFP. If applicable, is your dealer network independent or company owned? b) If your company is best described as a manufacturer or service provider, describe your relationship with your sales and service force and with your dealer network in delivering the products and services proposed in this RFP. Are these individuals your employees, or the employees of a third party?	ACG would best be described as a manufacturer. We have an internal sales staff (employees) including Territory Sales Managers (TSM) and Dealer Support Specialists (DSS). Our sales staff's primary duties relate to supporting our nationwide dealer network. Our dealer network is made up of independent businesses (not company-owned). Our corporate office in Indiana does have an Indiana Dealer License for our UltraLav Mobile Restroom division. If we deem it in the best interest of any Sourcewell member, we have the ability to process any trailer sale through this sales channel. However, in most cases, an authorized ACG dealer will process the trailer sale.	*
17	If applicable, provide a detailed explanation outlining the licenses and certifications that are both required to be held, and actually held, by your organization (including third parties and subcontractors that you use) in pursuit of the business contemplated by this RFP.	American Cargo Group (ACG) sells primarily through our nationwide dealer network. ACG has proper manufacturing certifications to sell to dealers in every state except Louisiana. ACG is currently working to be recertified to sell to dealers in the state of Louisiana. ACG, on occasion, does sell direct to the end user through our UltraLav Mobile Restroom division and has an up-to-date Indiana dealer license. All our fleet certified dealers have up-to-date dealer licenses and sell to customers nationwide.	*
18	Provide all "Suspension or Debarment" information that has applied to your organization during the past ten years.	None	*

Table 3: Industry Recognition & Marketplace Success

Line Item	Question	Response *	
19	Describe any relevant industry awards or recognition that your company has received in the past five years	In 2020, Statistical Surveys, Inc. (SSI) awarded American Cargo Group with two awards: 1.) #1 Trailer Manufacturer Market Share Increase ALL TRAILER SEGMENTS 2.) #1 Trailer Manufacturer Market Share Increase Enclosed Trailers.	*
20	What percentage of your sales are to the governmental sector in the past three years	Less than 10%	*
21	What percentage of your sales are to the education sector in the past three years	Less Than 5%	*
22	List any state, provincial, or cooperative purchasing contracts that you hold. What is the annual sales volume for each of these contracts over the past three years?	None	*
23	List any GSA contracts or Standing Offers and Supply Arrangements (SOSA) that you hold. What is the annual sales volume for each of these contracts over the past three years?	None. We do have some independent dealers that have GSA contracts.	*

Table 4: References/Testimonials

Line Item 24. Supply reference information from three customers who are eligible to be Sourcwell participating entities.

Entity Name *	Contact Name *	Phone Number *	
LaGrange County Commissioners	Zachary Holsinger	(260) 499-6431 zholsinger@lagrangecounty.org	*
US Forest Service	Chris Reynolds	chris.reynolds@usda.gov	*
National Park Mount Rainer	Geoff Walker	(360) 569-6691 geoff.walker@nps.gov	*

Table 5: Top Five Government or Education Customers

Line Item 25. Provide a list of your top five government, education, or non-profit customers (entity name is optional), including entity type, the state or province the entity is located in, scope of the project(s), size of transaction(s), and dollar volumes from the past three years.

Entity Name	Entity Type *	State / Province *	Scope of Work *	Size of Transactions *	Dollar Volume Past Three Years *	
See List	Government	Indiana - IN	As noted before, American Cargo Group utilizes a dealer network to sell our trailers. While we strongly encourage our dealers to properly register sold trailers, often we are not directly aware of the final customer and/or application. Please see attached list of some of our many Government and Education customers.	N/A	N/A	*
See List	Government	Indiana - IN	N/A	N/A	N/A	*
See List	Government	Indiana - IN	N/A	N/A	N/A	*
See List	Government	Indiana - IN	N/A	N/A	N/A	*
See List	Government	Indiana - IN	N/A	N/A	N/A	*

Table 6: Ability to Sell and Deliver Service

Describe your company's capability to meet the needs of Sourcwell participating entities across the US and Canada, as applicable. Your response should address in detail at least the following areas: locations of your network of sales and service providers, the number of workers (full-time equivalents) involved in each sector, whether these workers are your direct employees (or employees of a third party), and any overlap between the sales and service functions.

Line Item	Question	Response *	
26	Sales force.	American Cargo Group currently has six (6) manufacturing facilities located in Bristol, IN, Elkhart, IN (2 plants), McAdoo, PA, Waco, TX and Ogden, UT. American Cargo Group has 7 Territory Sales Managers. Each Territory Sales Manager has at least one Dealer Support Specialist (i.e., Inside Sales). These are all full-time employees of American Cargo Group	*
27	Dealer network or other distribution methods.	American Cargo Group has over 800 authorized dealers representing our four brands across the United States and Canada.	*
28	Service force.	Most, not all, of our authorized dealer network have some level of service/repair capabilities. Those that don't, often have local connections with independent service/repair facilities. Lastly, we have a fully staffed Parts and Warranty department that can assist in finding service/repair facilities.	*
29	Describe the ordering process. If orders will be handled by distributors, dealers or others, explain the respective roles of the Proposer and others.	American Cargo Group will take a multi-pronged approach to the ordering process based on which sales channel will best service the needs of Sourcewell's participating members. There are three (3) potential sales channels: 1.) one of our 800 nationwide authorized dealers 2.) one of our recognized Fleet Approved Dealers* 3.) Direct Sale through our in-house UltraLav Mobile Restroom division that has an Indiana Dealer License. All Sourcewell sales leads will be funneled through a dedicated Account Manager who will work closely with your members and guide them through the ordering process. To your members, the entire process should be seamless regardless of which sales channel ends up consummating the trailer transaction. *Authorized Fleet Dealers are dealers identified by ACG as qualified to handle larger key accounts. They have a dedicated and experienced staff with exceptional product knowledge, service capabilities and connections with a network freight companies for reliable and cost-effective product delivery.	*
30	Describe in detail the process and procedure of your customer service program, if applicable. Include your response-time capabilities and commitments, as well as any incentives that help your providers meet your stated service goals or promises.	American Cargo group is a large company with six manufacturing facilities, a Sales Department (16 people), a Warranty Department (6 people), a Parts Department (6 people), Shipping Dispatchers (6) and CAD Support (3). All these resources will be utilized in this contract with Sourcewell to ensure your members have a positive purchasing experience. In addition, the dedicated Account Manager will act as the orchestrator of all these resources with the end goal of complete customer satisfaction.	*
31	Describe your ability and willingness to provide your products and services to Sourcewell participating entities in the United States.	American Cargo Group is able and willing to provide trailer sales to all 50 states and US territories. The only potential restriction, as noted below, is the availability and cost of transportation. Each of our facilities has a dedicated Transportation/Dispatch Coordinator whose sole responsibility is to arrange reliable and cost-effective trailer shipment options to our dealers and for this contract Sourcewell members as well.	*
32	Describe your ability and willingness to provide your products and services to Sourcewell participating entities in Canada.	American Cargo Group is able and willing to provide trailer sales in Canada. We currently have over 70 dealers in Canada. Five of our manufacturing facilities routinely sell and ship trailers to Canada. The only potential restriction, as noted below, is the availability and cost of transportation.	*
33	Identify any geographic areas of the United States or Canada that you will NOT be fully serving through the proposed contract.	As noted earlier, American Cargo Group currently cannot sell to "dealers" in the state of Louisiana. That situation is being actively rectified. However, there is no restriction to sell to an "end customer" (i.e., Sourcewell member) in Louisiana through another dealer outside the state of Louisiana or from our direct sales channel (our UltraLav Division).	*
34	Identify any Sourcewell participating entity sectors (i.e., government, education, not-for-profit) that you will NOT be fully serving through the proposed contract. Explain in detail. For example, does your company have only a regional presence, or do other cooperative purchasing contracts limit your ability to promote another contract?	None.	*
35	Define any specific contract requirements or restrictions that would apply to our participating entities in Hawaii and Alaska and in US Territories.	ACG ability to serve these geographic locations is only limited by the availability and cost of transportation services, i.e., freight. Example: Hawaii and Alaska can be quite expensive to freight/ship trailers. ACG does have dealers in Alaska and Hawaii. Regarding offshore trailer delivery, ACG will arrange delivery of the trailer to the appropriate shipping dock. Sourcewell member will be responsible for arranging container and overseas shipping arrangements.	*

Table 7: Marketing Plan

Line Item	Question	Response *
36	Describe your marketing strategy for promoting this contract opportunity. Upload representative samples of your marketing materials (if applicable) in the document upload section of your response.	American Cargo Group (ACG) has an in-house Marketing Department responsible for literature, websites, video, social media, on-line marketing, and trade shows. All marketing channels are being used to drive brand awareness to the ACG brands. ACG will be attending the EQUIP Show in October and the WWETT Show in February -- both attract attendees in the government, education, and non-profit space. ACG also works with outside Advertising/Marketing Agencies on projects outside the scope of our in-house marketing capabilities.
37	Describe your use of technology and digital data (e.g., social media, metadata usage) to enhance marketing effectiveness.	ACG utilizes social media (Facebook, Twitter, Instagram and YouTube) to further build brand awareness and strengthen brand loyalty among retail customers. We also utilize Google Ads to drive traffic to our websites. One area that demonstrates our investment in technology is our leading-edge online Dealer Portal/QuoteBuilder. This allows dealers to track their orders, generate professional looking quotes, and works as the primary communication tool with our dealers. Sourcewell members will NOT have access to this program, but our Dealer Portal/QuoteBuidler will be used to service Sourcewell members. This program highlights our marketing effectiveness and commitment to technology.
38	In your view, what is Sourcewell's role in promoting contracts arising out of this RFP? How will you integrate a Sourcewell-awarded contract into your sales process?	ACG views Sourcewell as a business partner to help bring awareness of our enclosed trailer products to your association members. This is a new venture for us, so we may require some early training and support on the entire Sourcewell Cooperative Purchasing process. Also, a dedicated point of contact at Sourcewell for ACG to ask questions, get advice, make suggestions, etc. would be helpful.
39	Are your products or services available through an e-procurement ordering process? If so, describe your e-procurement system and how governmental and educational customers have used it.	N/A

Table 8: Value-Added Attributes

Line Item	Question	Response *	
40	Describe any product, equipment, maintenance, or operator training programs that you offer to Sourcwell participating entities. Include details, such as whether training is standard or optional, who provides training, and any costs that apply.	Training is not offered or necessary in most cases. An Owner's Manual (via QR Code) is included with each trailer. If the trailer includes any 3rd Party components, their documentation is also included. Also, the Account Manager can assist with any questions and/or our Customer Service Department accessible via our toll-free phone number. Lastly, our nationwide dealer network routinely assists customers with trailer questions and best practices.	*
41	Describe any technological advances that your proposed products or services offer.	All the brands of ACG (Haulmark, American Hauler, and Wells Cargo) feature top quality components including Dexter Axles and Assembled-in-the-USA LED Lighting by TecNiq. ACG has the resources, contacts, and experience to fulfill almost any trailer configuration or application.	*
42	Describe any "green" initiatives that relate to your company or to your products or services, and include a list of the certifying agency for each.	N/A	*
43	Identify any third-party issued eco-labels, ratings or certifications that your company has received for the equipment or products included in your Proposal related to energy efficiency or conservation, life-cycle design (cradle-to-cradle), or other green/sustainability factors.	American Cargo Group is a member in good standing of the National Association of Trailer Manufacturers (NATM). The NATM Compliance Verification Program (CVP) is a mandatory program for all NATM member trailer manufacturers. This program involves multiple components, all of which are geared toward creating safer trailers and in turn, safer roadways. The program begins with the Guidelines for Minimum Recommended Manufacturing Practices (Guidelines). The Guidelines are a compilation of applicable Federal Motor Vehicle Safety Standards, regulations, and industry best practices. The purpose of the Guidelines is to create easy access to reference materials and federal regulation with which trailer manufacturers are required to comply. Each of our six (6) manufacturers on a yearly basis is inspected by the NATM compliance team to ensure we are following the Compliance Verification Program requirements. Note to Sourcwell: I would be highly suspect of any trailer manufacturer that is not a NATM member and in compliance with the CVP requirements.	*
44	Describe any Women or Minority Business Entity (WMBE), Small Business Entity (SBE), or veteran owned business certifications that your company or hub partners have obtained. Upload documentation of certification (as applicable) in the document upload section of your response.	N/A	*
45	What unique attributes does your company, your products, or your services offer to Sourcwell participating entities? What makes your proposed solutions unique in your industry as it applies to Sourcwell participating entities?	I think it is fair to say that no other trailer manufacturer has the breadth and depth of our product offering. The brands of American Cargo Group represent some of the most established and respected names in the trailer industry. Wells Cargo pioneered the cargo trailer industry in 1954 and are known for their legendary durability. There are more Haulmark cargo trailers on the road today than any other trailer brand. From heavy-duty trailers intended for daily use in commercial applications to more value-driven models, ACG can match a trailer with your members specific needs. Wells Cargo founded the cargo trailer industry over 60 years ago. Haulmark, at one time, was the largest selling cargo trailer manufacturer in the county and under ACG's ownership, will hope to gain that position again soon. By combining the brands under the ACG mantle (Wells Cargo, Haulmark, and American Hauler) no other enclosed cargo trailer manufacturer has produced/sold more trailers over the last 50 years – that's well over 500,000 trailers total.	*

Table 9: Warranty

Describe in detail your manufacturer warranty program, including conditions and requirements to qualify, claims procedure, and overall structure. You may upload representative samples of your warranty materials (if applicable) in the document upload section of your response in addition to responding to the questions below.

Line Item	Question	Response *	
46	Do your warranties cover all products, parts, and labor?	The ACG Warranty covers the original purchaser of the Trailer that the Manufacturer shall repair any defects relating to materials or workmanship and attributable to the Manufacturer. Also, many of our components carry a separate warranty their respective manufacturer. The most common example is axles and tires, but there are other components as well and depends on how the trailer was configured and what optional items may have been added. A sample of our warranty (via our Owners Manual) is included in this RFQ uploaded documents.	*
47	Do your warranties impose usage restrictions or other limitations that adversely affect coverage?	Yes, there are exclusions and they are detailed in our Warranty Program found in our Owner's Manual. Some restrictions include misuse/misapplication, lack of routine maintenance, environmental/road hazards, and acts of God.	*
48	Do your warranties cover the expense of technicians' travel time and mileage to perform warranty repairs?	We do not use technicians but use our dealer network and our manufacturing plant for repairs which does NOT cover travel time or mileage. On rare occasions, we may send repair personnel to an end-users location, but that is usually a last resort and at the sole discretion of ACG. The purchaser does have certain obligations and those obligations are also detailed in the Warranty Program found in the Owner's Manual.	*
49	Are there any geographic regions of the United States or Canada (as applicable) for which you cannot provide a certified technician to perform warranty repairs? How will Sourcewell participating entities in these regions be provided service for warranty repair?	If an authorized ACG dealer is not in the area of a Sourcewell member, a 3rd party repair facility may be utilized or repairs may be made at an ACG manufacturing facility. These exceptions are at the sole discretion of ACG. Our Warranty Department would facilitate the logistics of finding a suitable service/repair facility in the event of a warrantable repair.	*
50	Will you cover warranty service for items made by other manufacturers that are part of your proposal, or are these warranties issues typically passed on to the original equipment manufacturer?	No, we only warranty materials and workmanship attributable to ACG. As noted above, 3rd party components are covered separately, not by ACG. However, our warranty department routinely work with end users to facilitate the warranty process with the 3rd party supplier.	*
51	What are your proposed exchange and return programs and policies?	We do not exchange or return, our sole obligation is to repair any defects in materials or workmanship made by ACG as explained in our Warranty Program.	*
52	Describe any service contract options for the items included in your proposal.	N/A	*

Table 10: Payment Terms and Financing Options

Line Item	Question	Response *	
53	Describe your payment terms and accepted payment methods.	Cash, check, ACH, credit card (processing fees may be imposed for credit card sales) Payment terms may vary by dealer.	*
54	Describe any leasing or financing options available for use by educational or governmental entities.	Financing is available through Sheffield Financial and Synchrony Financial. Some restrictions may apply. Individual dealers may offer other financing options. No leasing programs available.	*
55	Describe any standard transaction documents that you propose to use in connection with an awarded contract (order forms, terms and conditions, service level agreements, etc.). Upload a sample of each (as applicable) in the document upload section of your response.	A professional quote will be provided detailing the standard features, optional items, and package upgrades. The total trailer selling price will be clearly stated showing the Sourcewell discounted pricing. Depending on which channel we use, there will most likely will be some kind of freight/delivery charge. If the order is complex and requires a CAD print, the member will need to approve and sign-off on the print. Once the order is entered into ACG's system, an order acknowledgement will be provided. Lastly, dealer will provide a paid invoice (format will vary by dealer) including any state sales documents. (forms vary by state) The final document packet will include a Manufacturers Certificate Origin and any required documents for the Sourcewell member to properly register their trailer in their respective state.	*
56	Do you accept the P-card procurement and payment process? If so, is there any additional cost to Sourcewell participating entities for using this process?	Possible, we would need more information. Not familiar with this payment option. Most dealers can accept major credit cards.	*

Table 11: Pricing and Delivery

Provide detailed pricing information in the questions that follow below. Keep in mind that reasonable price and product adjustments can be made during the term of an awarded Contract as described in the RFP, the template Contract, and the Sourcewell Price and Product Change Request Form.

Line Item	Question	Response *	
57	Describe your pricing model (e.g., line-item discounts or product-category discounts). Provide detailed pricing data (including standard or list pricing and the Sourcewell discounted price) on all of the items that you want Sourcewell to consider as part of your RFP response. If applicable, provide a SKU for each item in your proposal. Upload your pricing materials (if applicable) in the document upload section of your response.	Pricing represents a 12% discount off MSRP of the Total Trailer Selling Price. "Total Trailer Selling Price" includes base model price, any requested upgrades including custom options and packages. Pricing will vary by manufacturing facility (we have regional pricing), but regardless of manufacturing location, Sourcewell members will get the 12% discount off MSRP for that specific region. -Total Trailer Selling Price does NOT include freight (FOB factory) and applicable taxes. Freight is a separate charge. Tax is based on state of trailer registration and may or may not be collected at the time of sale as dictated by state law. Any Sourcewell member claiming a sales tax exceptions will need to provide proper documentation. See attached spreadsheet for Model Price details by region. Included in this proposal (see uploaded documents) is a comprehensive model pricing list showing MSRP and Sourcewell member's 12% discount off MSRP. ACG offers a wide range of options and packages. An itemized pricing list of options and packages is also included. Any option and/or package is considered part of the Total Trailer Selling Price and will receive the 12% discount off MSRP. Models/Options/Packages availability vary by manufacturing facility. Option/Package availability vary by model. (Not all Options/Packages are available on all models.)	*
58	Quantify the pricing discount represented by the pricing proposal in this response. For example, if the pricing in your response represents a percentage discount from MSRP or list, state the percentage or percentage range.	Percentage discount off MSRP: 12% discount from MSRP	*
59	Describe any quantity or volume discounts or rebate programs that you offer.	Additional 2% off total MSRP (14% total) for volume orders over \$150,000 or 20 trailers. All trailers must be from a single Sourcewell member and all trailers ordered at the same time. Larger volume commitments will receive special consideration with potentially greater discounts.	*
60	Propose a method of facilitating "sourced" products or related services, which may be referred to as "open market" items or "nonstandard options". For example, you may supply such items "at cost" or "at cost plus a percentage," or you may supply a quote for each such request.	American Cargo Group will NOT offer "Sourced" product/services. We have an extensive list of custom options and package upgrades that will meet the vast majority of your members trailering needs. ACG will only offer those options/packages. However, some of our dealers offer aftermarket upfitting. The price for "sourced" options will be negotiated between the selling dealer and the Sourcewell member. American Cargo Group will only facilitate the process by referring the Sourcewell member to an appropriate dealer that offer sourced products/services. Sourced services may or may not include a discount and any discount is at the sole discretion of the selling dealer.	*
61	Identify any element of the total cost of acquisition that is NOT included in the pricing submitted with your response. This includes all additional charges associated with a purchase that are not directly identified as freight or shipping charges. For example, list costs for items like pre-delivery inspection, installation, set up, mandatory training, or initial inspection. Identify any parties that impose such costs and their relationship to the Proposer.	There may be a Administration Fee not to exceed \$150 which includes a temporary License Plate/Tag and standard UPS delivery of trailer sales paperwork (Example Manufacturers Certificate of Origin, Invoice, Tax forms, etc.) This cost will be imposed by the selling dealer.	*

62	If freight, delivery, or shipping is an additional cost to the Sourcewell participating entity, describe in detail the complete freight, shipping, and delivery program.	All listed trailer pricing does NOT include freight/shipping charges. Delivery/Shipping is an additional charge. All pricing is FOB manufacturing facility. In almost all cases, there will be some sort of additional freight/delivery charge. ACG does not have a set freight program. Instead, ACG works with a number of independent freight/shipping companies. Freight/shipping charges can vary widely based on cost of fuel, distance and shipping method (i.e., single pull vs. on a load). ACG and/or dealer will arrange delivery to whatever location the Sourcewell Member requires. This may include a nearby dealer or In some cases the trailer can be shipped directly to their business location. The only manufacturing facility that allows customer pickup is the Wells Cargo Elkhart facility and in such cases must be sold through our UltraLav Mobile Restroom division (i.e., direct sale.) NO customer pickups are allowed at our other ACG facilities. Freight/Shipping will be clearly indicated as a separate line item in any quote/invoice. The Sourcewell member discount does NOT apply to shipping/freight charges.	*
63	Specifically describe freight, shipping, and delivery terms or programs available for Alaska, Hawaii, Canada, or any offshore delivery.	ACG currently ships to Alaska, Hawaii, and Canada and foresee no issues arranging shipping/freight to those locations. Regarding offshore delivery, ACG will arrange delivery of the trailer to the appropriate shipping dock. Sourcewell member will be responsible for arranging container and overseas shipping arrangements.	*
64	Describe any unique distribution and/or delivery methods or options offered in your proposal.	Each of our manufacturing locations has a dedicated Shipping Coordinator. Each Shipping Coordinator has an extensive list of independent Freight Service Companies at their disposal. Trailer delivery can be via "load" (more than one trailer) normally on a wedge style trailer or as a "single pull" normally necessary for larger trailers.	*

Table 12: Pricing Offered

Line Item	The Pricing Offered in this Proposal is: *	Comments
65	d. other than what the Proposer typically offers (please describe).	This is the ONLY discount program ACG is currently offering. At this time, Sourcewell is the only entity getting this discount.

Table 13: Audit and Administrative Fee

Line Item	Question	Response *
66	Specifically describe any self-audit process or program that you plan to employ to verify compliance with your proposed Contract with Sourcewell. This process includes ensuring that Sourcewell participating entities obtain the proper pricing, that the Vendor reports all sales under the Contract each quarter, and that the Vendor remits the proper administrative fee to Sourcewell. Provide sufficient detail to support your ability to report quarterly sales to Sourcewell as described in the Contract template.	ACG has no official self-audit process or program currently in place; however, as noted before, ACG will assign a dedicated Account Administrator to the Sourcewell account. A single source available by phone, email, and text during normal business hours to ensure compliance with Sourcewell's policies, procedures, and agreement terms.
67	If you are awarded a contract, provide a few examples of internal metrics that will be tracked to measure whether you are having success with the contract.	American Cargo Group will keep a master Sourcewell Tracking worksheet that will record all contacts (i.e., sales leads) with Sourcewell members. It will include a status column that will allow us to track our closing ratio.
68	Identify a proposed administrative fee that you will pay to Sourcewell for facilitating, managing, and promoting the Sourcewell Contract in the event that you are awarded a Contract. This fee is typically calculated as a percentage of Vendor's sales under the Contract or as a per-unit fee; it is not a line-item addition to the Member's cost of goods. (See the RFP and template Contract for additional details.)	The Sourcewell Administrative Fee under this proposal is 1%. The Sourcewell Administrative Fee will be calculated as a percentage of the trailer total selling price, after Sourcewell Member discount, of all trailers purchased by Sourcewell Members under this Contract. Clarification: Sourcewell Administration Fee will be calculated on the total trailer selling price of the trailer only including the base model and any options and/or packages added. Freight, Taxes, Sourced Options, and other Misc. Cost of Acquisition are not included in the total trailer selling price and does not qualify for any administrative fee.

Table 14A: Depth and Breadth of Offered Equipment Products and Services

Line Item	Question	Response *
69	Provide a detailed description of the equipment, products, and services that you are offering in your proposal.	American Cargo Group is offering our complete line-up of Enclosed Cargo Trailers. This is over 750 different models. This includes our three brands - Haulmark, Wells Cargo and American Hauler. Our offering will include ball hitch trailers (also referred to as tag or tagalong trailers) and gooseneck models (also referred to as 5th Wheel trailers). We will offer our entry-level models, mid-line models, and premium/commercial-grade models. Sizes range from 5' Wide to 8.5'W and Lengths from 8' to 48'. ACG offers single axle, tandem axle and triple axle models with GVWR (Gross Vehicle Weight Rating) ranging from 2,990 lb. to 18,000 lb. Both steel-framed and aluminum-framed models available. Attached are several literature samples, not all, of our product offering.
70	Within this RFP category there may be subcategories of solutions. List subcategory titles that best describe your products and services.	Enclosed Trailer categories: cargo/utility trailers, auto/car haulers, landscape trailers, construction trailers, UTV/ATV trailers, motorcycle trailers, snowmobile trailers, powersport trailers, mobile office trailers, concession trailers, aluminum cargo trailers and aluminum auto/car haulers.

Table 14B: Depth and Breadth of Offered Equipment Products and Services

Indicate below if the listed types or classes of equipment, products, and services are offered within your proposal. Provide additional comments in the text box provided, as necessary.

Line Item	Category or Type	Offered *	Comments	
71	Semi, utility, dump, lowboys, tags, hydraulic lift, flatbeds, deck overs, drop-deck tilt, rollbacks, slide axle, tanker, gooseneck, car haulers, stock, cargo, sport, walking floor, roll-off, storage, construction job, and refrigerated	☒ Yes ☐ No	Some, not all, of listed trailers in this question including: cargo, sport, gooseneck, car haulers, sport, storage, and construction job. Enclosed style trailers only.	*
72	Mobile offices and concessions	☒ Yes ☐ No	Mobile offices and concessions are within our capabilities.	*
73	Mobile command stations and incident response	☒ Yes ☐ No	Mobile command stations and incident response are within our capabilities.	*

Table 15: Exceptions to Terms, Conditions, or Specifications Form

Line Item 74. NOTICE: To identify any exception, or to request any modification, to the Sourcwell template Contract terms, conditions, or specifications, a Proposer must submit the exception or requested modification on the **Exceptions to Terms, Conditions, or Specifications Form** immediately below. The contract section, the specific text addressed by the exception or requested modification, and the proposed modification must be identified in detail. Proposer's exceptions and proposed modifications are subject to review and approval of Sourcwell and will not automatically be included in the contract.

Contract Section	Term, Condition, or Specification	Exception or Proposed Modification

Documents

Ensure your submission document(s) conforms to the following:

- Documents in PDF format are preferred. Documents in Word, Excel, or compatible formats may also be provided.
- Documents should NOT have a security password, as Sourcwell may not be able to open the file. It is your sole responsibility to ensure that the uploaded document(s) are not either defective, corrupted or blank and that the documents can be opened and viewed by Sourcwell.
- Sourcwell may reject any response where any document(s) cannot be opened and viewed by Sourcwell.
- If you need to upload more than one (1) document for a single item, you should combine the documents into one zipped file. If the zipped file contains more than one (1) document, ensure each document is named, in relation to the submission format item responding to. For example, if responding to the Marketing Plan category save the document as "Marketing Plan."

- [Pricing](#) - Sourcwell ALL pricing (Models-Options-Packages).pdf - Thursday September 22, 2022 14:23:02
- Financial Strength and Stability (optional)
- [Marketing Plan/Samples](#) - Literature Samples ACG.zip - Monday September 19, 2022 09:10:15
- WMBE/MBE/SBE or Related Certificates (optional)
- [Warranty Information](#) - Wells_Cargo_Owners_Manual_7-1-2022.pdf - Monday September 19, 2022 09:06:43
- [Standard Transaction Document Samples](#) - Order Verification EXAMPLE 9-15-2022.zip - Monday September 19, 2022 09:07:11
- [Upload Additional Document](#) - ACG - List of Govt Sales (ACG).xlsx - Monday September 19, 2022 09:11:19

Addenda, Terms and Conditions

PROPOSER AFFIDAVIT AND ASSURANCE OF COMPLIANCE

I certify that I am the authorized representative of the Proposer submitting the foregoing Proposal with the legal authority to bind the Proposer to this Affidavit and Assurance of Compliance:

1. The Proposer is submitting this Proposal under its full and complete legal name, and the Proposer legally exists in good standing in the jurisdiction of its residence.
2. The Proposer warrants that the information provided in this Proposal is true, correct, and reliable for purposes of evaluation for contract award.
3. The Proposer, including any person assisting with the creation of this Proposal, has arrived at this Proposal independently and the Proposal has been created without colluding with any other person, company, or parties that have or will submit a proposal under this solicitation; and the Proposal has in all respects been created fairly without any fraud or dishonesty. The Proposer has not directly or indirectly entered into any agreement or arrangement with any person or business in an effort to influence any part of this solicitation or operations of a resulting contract; and the Proposer has not taken any action in restraint of free trade or competitiveness in connection with this solicitation. Additionally, if Proposer has worked with a consultant on the Proposal, the consultant (an individual or a company) has not assisted any other entity that has submitted or will submit a proposal for this solicitation.
4. To the best of its knowledge and belief, and except as otherwise disclosed in the Proposal, there are no relevant facts or circumstances which could give rise to an organizational conflict of interest. An organizational conflict of interest exists when a vendor has an unfair competitive advantage or the vendor's objectivity in performing the contract is, or might be, impaired.
5. The contents of the Proposal have not been communicated by the Proposer or its employees or agents to any person not an employee or legally authorized agent of the Proposer and will not be communicated to any such persons prior to Due Date of this solicitation.
6. If awarded a contract, the Proposer will provide to Sourcewell Participating Entities the equipment, products, and services in accordance with the terms, conditions, and scope of a resulting contract.
7. The Proposer possesses, or will possess before delivering any equipment, products, or services, all applicable licenses or certifications necessary to deliver such equipment, products, or services under any resulting contract.
8. The Proposer agrees to deliver equipment, products, and services through valid contracts, purchase orders, or means that are acceptable to Sourcewell Members. Unless otherwise agreed to, the Proposer must provide only new and first-quality products and related services to Sourcewell Members under an awarded Contract.
9. The Proposer will comply with all applicable provisions of federal, state, and local laws, regulations, rules, and orders.
10. The Proposer understands that Sourcewell will reject RFP proposals that are marked "confidential" (or "nonpublic," etc.), either substantially or in their entirety. Under Minnesota Statutes Section 13.591, subdivision 4, all proposals are considered nonpublic data until the evaluation is complete and a Contract is awarded. At that point, proposals become public data. Minnesota Statutes Section 13.37 permits only certain narrowly defined data to be considered a "trade secret," and thus nonpublic data under Minnesota's Data Practices Act.
11. Proposer its employees, agents, and subcontractors are not:
 1. Included on the "Specially Designated Nationals and Blocked Persons" list maintained by the Office of Foreign Assets Control of the United States Department of the Treasury found at: <https://www.treasury.gov/ofac/downloads/sdnlist.pdf>;
 2. Included on the government-wide exclusions lists in the United States System for Award Management found at: <https://sam.gov/SAM/>; or
 3. Presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from programs operated

by the State of Minnesota; the United States federal government or the Canadian government, as applicable; or any Participating Entity. Vendor certifies and warrants that neither it nor its principals have been convicted of a criminal offense related to the subject matter of this solicitation.

☒ By checking this box I acknowledge that I am bound by the terms of the Proposer's Affidavit, have the legal authority to submit this Proposal on behalf of the Proposer, and that this electronic acknowledgment has the same legal effect, validity, and enforceability as if I had hand signed the Proposal. This signature will not be denied such legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation. - Scott Samuels, Director of Marketing, AMERICAN CARGO GROUP TRAILERS LLC

The Proposer declares that there is an actual or potential Conflict of Interest relating to the preparation of its submission, and/or the Proposer foresees an actual or potential Conflict of Interest in performing the contractual obligations contemplated in the bid.

☒ Yes ☐ No

The Bidder acknowledges and agrees that the addendum/addenda below form part of the Bid Document.

Check the box in the column "I have reviewed this addendum" below to acknowledge each of the addenda.

File Name	I have reviewed the below addendum and attachments (if applicable)	Pages
Addendum_5_Trailers Wed September 21 2022 04:26 PM	☒	1
Addendum_4_Trailers Tue September 20 2022 08:40 AM	☒	1
Addendum_3_Trailers Mon September 19 2022 12:24 PM	☒	1
Addendum_2_Trailers Wed September 14 2022 03:50 PM	☒	1
Addendum_1_Trailers Tue September 13 2022 07:51 AM	☒	1

1. **Request:**

Meeting Date: April 15, 2024

First Reading and Public Hearing on an Ordinance entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 34, ARTICLE III., DIVISION 5, SECTIONS 34-675 BUILDING SIZE TO 1) CHANGE BUILDING HEIGHT FROM 2 STORIES TO 3 STORIES FOR PROPERTIES THAT FRONT ON TIMES SQUARE AND BAYFRONT PEDESTRIAN PLAZAS, THE NORTH SIDE OF FIRST STREET, THE SOUTH SIDE OF ESTERO BOULEVARD BETWEEN OLD SAN CARLOS BOULEVARD AND THE MAIN PEDESTRIAN CROSSING; AND 2) CHANGE BUILDING HEIGHT FROM 2 STORIES TO 3 STORIES FOR PROPERTIES THAT FRONT ON LAGOON STREET, CRESCENT STREET, FIRST, SECOND, THIRD AND FIFTH STREETS (EAST OF SKY BRIDGE ONLY); PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND AN EFFECTIVE DATE. Open the public hearing and schedule for second reading and final adoption on May 6, 2024 at 9:00 AM

Why the action is necessary:

The Town Council hears and approves or denies LDC changes.

What the action accomplishes:

This change will allow buildings in certain parts of the Downtown zoning district to be a total of three stories tall and no more than 30 feet above base flood elevation.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Ordinance

4. **Submitter of Information:**

Sarah Propst, Planning &
Zoning

5. **Background:**

The Downtown zoning ordinance language found in Section 34-675 currently limits the number of stories a building may have, to two stories, in several parts of the Downtown. The number of stories includes the ground floor, which is below the base flood elevation and limits the usable area of these buildings to a single story above flood. The allowable building height, in feet, is 30 feet above base flood elevation. This code mismatch needs to be resolved so that property owners are able to utilize the allowable building height and have the same development rights as other properties in the same zoning district.

Attachments:

1. Ordinance 24-08 (6) ns
2. Exhibit A Amended Building Height
3. TC Memo (1) ns

Financial Impact:

unknown

6. **Alternative Action**

Make changes and move to a second hearing.

7. **Management Recommendations:**

Approval

8. Recommended Approval:

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

Created/Initiated - 4/5/2024
Approved - 4/6/2024
Approved - 4/9/2024
Approved - 4/9/2024
Final Approval - 4/10/2024

ORDINANCE NO. 24-08

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 34, ARTICLE III., DIVISION 5, SECTIONS 34-675 BUILDING SIZE TO 1) CHANGE BUILDING HEIGHT FROM 2 STORIES TO 3 STORIES FOR PROPERTIES THAT FRONT ON TIMES SQUARE AND BAYFRONT PEDESTRIAN PLAZAS, THE NORTH SIDE OF FIRST STREET, THE SOUTH SIDE OF ESTERO BOULEVARD BETWEEN OLD SAN CARLOS BOULEVARD AND THE MAIN PEDESTRIAN CROSSING; AND 2) CHANGE BUILDING HEIGHT FROM 2 STORIES TO 3 STORIES FOR PROPERTIES THAT FRONT ON LAGOON STREET, CRESCENT STREET, FIRST, SECOND, THIRD AND FIFTH STREETS (EAST OF SKY BRIDGE ONLY); PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND AN EFFECTIVE DATE.

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

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

WHEREAS, the Town recognizes that redevelopment of the Town, following hurricane Ian requires evaluation and updates to the Land Development Code; and

WHEREAS, the Town Council desires updates to the Fort Myers Beach Land Development Code to clarify, improve and create consistency among sections; and

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on April 9, 2024, at time which the LPA gave full and complete consideration of the request, recommendations by staff, the documents in the record, and the testimony of all interested persons, and the LPA voted ___, to recommend approval of this Ordinance; and

WHEREAS, on _____, the Town Council held a first reading of the proposed Ordinance and gave full and complete consideration to the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons to amend Ordinance 23-05 as provided herein and approved scheduling an adoption public hearing; and

WHEREAS, a Business Impact Estimate was prepared and posted on the City's website on the ___ day of _____, 2024, as required by Section 166.041(4), Florida Statutes; and

WHEREAS, an advertisement of the public hearing for adoption of the Ordinance was

published in the _____ on the ____ day of _____, 2024, which is 10 days prior to the second reading of the proposed Ordinance as required by Section 166.041; and

WHEREAS, on the ____ day of _____, 2024, the Town Council held a second reading of the Ordinance; at which time the Town Council gave full and complete consideration to the recommendations of staff and the LPA, and the testimony of all interested persons; and

WHEREAS, the Town finds that it is in the best interests of the health, safety, and welfare of the Town's business owners, residents, and visitors to adopt the proposed change.

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

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

Section 2. Chapter 34, Article III., Division 5, Sections 34-675 Building Size is hereby amended to read as found in attached Exhibit A – Amended Sec. 34- Downtown Building Height.

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

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

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

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

The foregoing Ordinance was adopted by the Town Council upon a motion by Councilmember ____ and seconded by ____ 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 ____ day of May 2023, by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, Town Attorney

EXHIBITS

Exhibit A – Amended Downtown Building Height, Sec. 34-675

Exhibit A – Amended Downtown Building Height

Subdivision II. – Downtown Zoning District

Sec. 34-675. - Building size.

(a) Building frontage. Building frontage limits (see § 34-663 of this chapter) vary according to the street types designated on Figure 34-7:

- (1) For pedestrian plazas and primary streets except for Crescent Street and for Fifth Avenue east of the Sky Bridge, building frontages shall be at least 70 percent of the lot frontage.
- (2) For all other streets, building frontages shall be at least 35 percent of the lot frontage.
- (3) For multiple adjoining lots under single control, or for a single lot with multiple buildings, the percentages above apply to the combination of lot(s) and building(s).
- (4) Exception for properties between Estero Boulevard and the Gulf: The required building frontage percentage may be reduced to 35 percent for properties between Estero Boulevard and the Gulf of Mexico provided that the open space thus created allows open views to the Gulf of Mexico.

(b) Building height. Building heights (see § 34-631 of this chapter) shall be limited to:

- (1) For properties that front on the following streets, a maximum of 30 feet above base flood elevation and no taller than ~~two~~ three stories:
 - a. Times Square and Bayfront pedestrian plazas (see Figure 34-7);
 - b. North side of First Street;
 - c. South side of Estero Boulevard between Old San Carlos Boulevard and the main pedestrian crossing;
 - d. Carolina Avenue.
- (2) For properties that front on the following streets, a maximum of 30 feet above base flood elevation and no taller than ~~two~~ three stories, ~~except that an elevated buildings are encouraged to limit~~ without enclosed space on the first story ~~may be three stories tall (but still limited to 30 feet above base flood elevation):~~
 - a. Lagoon Street;
 - b. Crescent Street;
 - c. First, Second, Third, and Fifth (east of the Sky Bridge only);
 - d. North side of Estero Boulevard west of Old San Carlos Boulevard and east of Crescent Street;
 - e. Primo Drive;

Exhibit A – Amended Downtown Building Height

- f. Palermo Circle;
- g. Miramar Street, north of Estero;
- h. Ohio Avenue;
- i. Virginia Avenue.

(3) For properties that front on the following streets, a maximum of 40 feet above base flood elevation and no taller than three stories:

- a. Old San Carlos Boulevard between Fifth and First Streets;
- b. South side of First and both sides of Second and Third (west of the Sky Bridge only);
- c. South side of Estero Boulevard east of the main pedestrian crossing;
- d. Canal Street;
- e. Avenues A, C, E, and I;
- f. Alva Drive;
- g. Miramar Street, south of Estero;
- h. Palm Avenue.

(c) Floor area ratio (FAR). Floor area ratios (see § 34-633 of this chapter) shall not exceed:

- (1) 1.8 for properties fronting on Old San Carlos between Fifth and First Streets and fronting on the Times Square pedestrian plaza (see Figure 34-7).
- (2) 1.4 for properties fronting on Estero Boulevard and fronting on the Bayfront pedestrian plazas.
- (3) 1.0 for all other properties in the Downtown district.



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

To: Town Council
From: Sarah Propst, Community Development
Date: April 15, 2024
Re: Downtown Zoning District Number of Stories

EXISTING LANGUAGE ISSUE

The Downtown zoning ordinance language found in Section 34-675 currently limits the number of stories a building may have, to two stories, in several parts of the Downtown. The number of stories includes the ground floor, which is below the base flood elevation and limits the usable area of these buildings to a single story above flood. The allowable building height, in feet, is 30 feet above base flood elevation. This code mismatch needs to be resolved so that property owners are able to utilize the allowable building height and have the same development rights as other properties in the same zoning district.

At the April 9, 2024, Local Planning Agency (“LPA”) public hearing, the LPA found the proposed ordinance change to be consistent with the Town’s Comprehensive Plan and voted 6-0 to recommend approval to the Town Council.

RECOMMENDATION

The existing language makes development problematic for several parts of the Downtown zoning district. Staff asks that the Town Council find this code language to be an appropriate solution to a glitch in the code and schedule a second hearing for this ordinance on May 6, 2024.

EXHIBIT

Exhibit A – Proposed Language

1. Request:

Meeting Date: April 15, 2024

First Reading and Public Hearing on an Ordinance entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING SECTION 34-232 "REQUIRED HEARINGS" OF DIVISION 5 "PUBLIC HEARINGS AND REVIEW" OF ARTICLE II "ZONING PROCEDURES" OF CHAPTER 34 "ZONING DISTRICTS, DESIGN STANDARDS AND NONCONFORMITIES" TO REQUIRE ONLY ONE PUBLIC HEARING BEFORE THE LOCAL PLANNING AGENCY ("LPA") FOR VARIANCES, EXTENSIONS, AND SATISFACTION OF CONDITIONS OF PREVIOUSLY APPROVED LAND USE APPROVALS IF THE DECISION BY THE LPA IS UNANIMOUS AND THE TOWN CLERK DOES NOT RECEIVE A REQUEST BY ANYONE FOR AN ADDITIONAL HEARING BEFORE THE TOWN COUNCIL WITHIN 10 BUSINESS DAYS AFTER THE LPA DECISION; A PUBLIC HEARING BEFORE THE TOWN COUNCIL IS REQUIRED FOR VARIANCES, EXTENSIONS, OR SATISFACTION OF CONDITIONS IF THE DECISION BY THE LPA IS NOT UNANIMOUS OR IF ANYONE REQUESTS SUCH HEARING WITHIN 10 BUSINESS DAYS AFTER THE LPA DECISION; PROVIDING FOR CODIFICATION, SEVERABILITY, SCRIVENER ERRORS, CONFLICTS OF LAW AND AN EFFECTIVE DATE. Open the public hearing and schedule for second reading and final adoption on May 6, 2024 at 9:00 AM

Why the action is necessary:

The Town Council has shown an interest in looking at methods of expediting non-controversial land use requests to assist with the rebuilding efforts of the Town. The LPA makes determinations of consistency of proposed ordinances with the Town's adopted Comprehensive Plan.

What the action accomplishes:

This proposed Ordinance would eliminate the need for a second public hearing before the Town Council if a land use approval for variances or an extension/satisfaction of condition is unanimously approved by the LPA and no one requests a second hearing before the Town Council as to the request within ten calendar days after the LPA meeting. This would potentially expedite non-controversial requests and potentially save the expense of having an owner representative appear at two public hearings.

If the ordinance is approved, the town council directed that the LPA inform the public during the public hearing of the opportunity to request a second hearing before the town council. Notice of the opportunity shall also be included in the LPA written agenda.

2. Agenda:

PUBLIC HEARINGS

3. Requirement/Purpose:

As directed by the Town Council

4. Submitter of Information:

Nancy Stuparich, Town
Attorney

5. Background:

Review and recommend for approval a draft ordinance to eliminate an additional public hearing before the Town Council for certain land use applications for variances, or extensions or evidence of satisfaction of conditions in prior approvals, when the LPA's decision is unanimous and there is no request for an additional hearing by anyone at the LPA public hearing.

At the March 7, 2024 Management and Planning Meeting, the Town Council reviewed a draft ordinance, which would potentially eliminate the need for an additional public hearing before the Town Council for variances, which were unanimously recommended by the LPA without any concerns raised by members of the public. Thereafter at a subsequent public meeting, Town Council directed the Town Attorney to add requests for extensions, which currently require

review by both the LPA and the Town Council, to only require review by the LPA under similar circumstances. Additionally, satisfaction of conditions could also be considered for approval with only one public hearing before the LPA, which has also been added.

At the April 9, 2024 LPA hearing the LPA recommended a minor text change and recommended approval of the ordinance to the Town Council.

Attachments:

1. Expedited Land Use Review Ordinance 24-06 (1)

Financial Impact:

unknown

6. Alternative Action

Recommend denial.

7. Management Recommendations:

Find the ordinance consistent with the code and comprehensive plan and schedule for a second hearing on May 6th.

8. Recommended Approval:

Sarah Propst, Planning & Zoning
Sarah Propst, Planning & Zoning
Nancy Stuparich, Town Attorney
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 4/9/2024
Approved - 4/9/2024
Approved - 4/9/2024
Approved - 4/9/2024
Approved - 4/10/2024
Final Approval - 4/10/2024

ORDINANCE NO. 24-06

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING SECTION 34-232 “REQUIRED HEARINGS” OF DIVISION 5 “PUBLIC HEARINGS AND REVIEW” OF ARTICLE II “ZONING PROCEDURES” OF CHAPTER 34 “ZONING DISTRICTS, DESIGN STANDARDS AND NONCONFORMITIES” TO REQUIRE ONLY ONE PUBLIC HEARING BEFORE THE LOCAL PLANNING AGENCY (“LPA”) FOR VARIANCES, EXTENSIONS, AND SATISFACTION OF CONDITIONS FOR PREVIOUSLY APPROVED LAND USE APPROVALS IF THE DECISION BY THE LPA IS UNANIMOUS AND THE TOWN CLERK DOES NOT RECEIVE A REQUEST BY ANYONE FOR AN ADDITIONAL HEARING BEFORE THE TOWN COUNCIL WITHIN 10 BUSINESS DAYS AFTER THE LPA DECISION; A PUBLIC HEARING BEFORE THE TOWN COUNCIL IS REQUIRED FOR VARIANCES, EXTENSIONS, OR SATISFACTION OF CONDITIONS IF THE DECISION BY THE LPA IS NOT UNANIMOUS OR IF ANYONE REQUESTS SUCH HEARING WITHIN 10 BUSINESS DAYS AFTER THE LPA DECISION; PROVIDING FOR CODIFICATION, SEVERABILITY, SCRIVENER ERRORS, CONFLICTS OF LAW AND AN EFFECTIVE DATE.

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

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

WHEREAS, Section 34-232 of the Town’s Land Development Code currently requires 2 public hearings for variance applications, one before the local planning agency (“LPA”) and one before the town council; and

WHEREAS, approved land use resolutions may also contain extension requirements and other conditions of approval; and

WHEREAS, in the recent past a number of owner initiated variances and other land use requests for extensions or satisfaction of previously required conditions of approval have been unanimously approved by the LPA for consistency with the Town of Fort Myers Beach Comprehensive Plan and Land Development Code with no opposition from the public or adjacent property owners; and

WHEREAS, the time and expense of requiring a second public hearing before the town council for owner initiated variances and other requests for extension of approvals or removal of

satisfied conditions is in conflict with the town’s efforts to rebuild the community as expeditiously as possible; and

WHEREAS, notwithstanding the need to expedite the rebuilding of the town, there may be situations where issues arise unexpectedly during the LPA meeting related to variance, extension or satisfaction requests, which may require further evaluation by the town council; and

WHEREAS, a public hearing of this Ordinance was held before the LPA on the 9th day of April, 2024, at which time the LPA gave full and complete consideration of the proposed ordinance change, recommendations by staff, the documents in the record, and the testimony of all interested persons, and made a finding of consistency with the Fort Myers Beach Comprehensive Plan and Land Development Code; and

WHEREAS, the LPA thereafter voted 6 to 0, with one member absent, to recommend approval of this Ordinance amending the referenced section of the Land Development Code to the town council; and

WHEREAS, on the 15th day of April, 2024, the town council held a first reading of the Ordinance and gave full and complete consideration to the request of the proposed ordinance to amend Section 34-232 of the Land Development Code, the recommendation of the local planning agency, the recommendation of staff, the documents in the record, and the testimony of all interested persons; and

WHEREAS, a Business Impact Estimate was prepared and posted on the City’s website on the ___ day of _____, 2024, as required by Section 166.041(4), Florida Statutes; and

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

WHEREAS, on the ___ day of _____, 2024, the Town Council held a second reading of the Ordinance; and

WHEREAS, the Town Council determined that adoption of the Ordinance as provided herein is in the best interest of the health, safety and welfare of the public.

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

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

Section 2. That Section 34-232 “Required Hearings” of Division 5 “Public Hearings and Review” of Article II “Zoning Procedures” of Chapter 34 “Zoning Districts, Design Standards and Nonconformities is hereby amended as follows:

Section 34-232 – Required hearings.

(a) Amendment or adoption of land use ordinances.

(1) Any proposed amendment to this chapter or to any land use ordinance, or adoption of any new land use ordinance, shall be enacted pursuant to the requirements set forth in F.S. § 166.041.

(2) Prior to a final required hearing by the town council, the local planning agency shall review the amendment at a public hearing.

(b) Owner-initiated requests. Owner-initiated requests for ~~rezonings, variances~~, special exceptions, and developments of regional impact require one public hearing before the local planning agency and one public hearing before the town council.

(c) Owner-initiated requests. Owner-initiated requests for rezonings and development agreements require one public hearing before the local planning agency and two public hearings before the town council

(d) Owner-initiated requests for variances, or required reviews to extend or to provide evidence of satisfaction of conditions contained in prior land use approvals, that are:

1) approved by a unanimous vote of the local planning agency members who are eligible to vote, and

2) not subject to a request for an additional public hearing before the town council made by anyone that is received by the town clerk within 10 business days after the date of the local planning agency decision, excluding holidays,

only require one public hearing before the local planning agency, and the local planning agency decision is final agency action.

If the decision by the local planning agency is not unanimous or if there is a timely request made for an additional public hearing before the town council, the owner-initiated request for variances or required reviews to extend or to provide evidence of satisfaction of conditions contained in prior land use approvals, shall require an additional public hearing before the town council.

~~(e)~~*(c) Town-initiated requests.* Town-initiated requests for rezonings, variances, special exceptions, and developments of regional impact require one public hearing before the local planning agency and:

(1) Applications covering less than ten abutting acres of land will require a single public hearing before the town council.

(2) Applications covering more than ten abutting acres of land will require two public hearings before the town council in accordance with F.S. § 166.041.

Section 3. That the town council intends that the provisions of this ordinance be made a part of the Fort Myers Beach Land Development Code, and that sections herein may be renumbered or re-lettered and the words or phrases herein may be changed to accomplish

codification; regardless, typographical errors that do not affect intent may be corrected with notice to and authorization of the town manager without further process.

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

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

Section 6. This Ordinance shall become effective upon adoption by the town council.

The forgoing Ordinance was adopted by the town council upon a motion by _____ and seconded by _____, and upon being put on a roll call vote, the results was as follows:

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

ADOPTED this ____ day of _____, 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, Town Attorney

This Ordinance was filed in the Office of the Town Clerk on this ____ day of _____, 2024.

1. **Request:**

Meeting Date: April 15, 2024

First reading and Public Hearing of an Ordinance Entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING AND RESTATING ORDINANCE 23-05 TO PERMIT TEMPORARY USES IN CERTAIN ZONING DISTRICTS IN RESPONSE TO, AND AS A PART OF THE TOWN'S RECOVERY EFFORTS FOLLOWING A NATURAL DISASTER OR OTHER EMERGENCY SITUATION: 1) BY A GOVERNMENTAL ENTITY FOR THE BENEFIT OF THE PUBLIC; 2) FOR RESIDENTIAL MANUFACTURED HOMES, MOBILE HOMES, MOTOR HOMES, RECREATIONAL VEHICLES OR OTHER TEMPORARY DWELLINGS FOR RESIDENTIAL PURPOSES; AND 3) FOR MOVEABLE COMMERCIAL STRUCTURES FOR THE DELIVERY AND SALE OF GOODS AND SERVICES TO THE PUBLIC; PROVIDING FOR CONFLICT OF LAW, SCRIVENER'S ERRORS, SEVERABILITY, AND PROVIDING FOR AN EFFECTIVE DATE. Open the public hearing and schedule for second reading and final adoption on May 6, 2024 at 9:00 AM

Why the action is necessary:

Eliminate confusion related to administrative approvals of temporary placement permits for residential, commercial and governmental uses.

What the action accomplishes:

Provides clarification and codification of the existing procedures, requirements for temporary placement permits, consistent with the town council's intent at the time Ordinance 23-05 was adopted.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

As directed by the Town Council

4. **Submitter of Information:**

Nancy Stuparich, Town
Attorney

5. **Background:**

Review and recommend for approval of a draft ordinance to clarify the town council's prior intent to allow temporary placement permits in certain zoning districts for governmental, commercial and residential uses following a natural disaster or emergency, and to codify general conditions of approval that have been previously applied by town staff following Hurricane Ian.

Discussion by the town council also included consideration of whether an area could be identified where temporary commercial uses, which may not have existed prior to Hurricane Ian, could be permitted to operate. The example of a food truck court in existence in other communities was used to further elaborate on this topic.

At the March 7, 2024 Management and Planning Meeting, the Town Council discussed the manner in which temporary placement permits (Ordinance 23-05) were approved. It became clear that the town council's intent when Ordinance 23-05 was adopted following Hurricane Ian was not clearly reflected in the adopted ordinance. The draft ordinance clarifies the town council's prior intent and also codifies requirements previously contained in the application for a temporary placement permit. It is prospective in application and doesn't adversely impact any previously approved temporary placement permits. To date, 159 residential temporary placement permits, 2 governmental temporary placement permits, and 46 commercial temporary placement permits remain active.

At the April 9, 2024 LPA hearing the LPA recommended a few minor edits and recommended approval of the ordinance to the Town Council.

Attachments:

1. Ordinance 24-04, Emergency Temporary Uses (1) 4-9-2024
2. Temporary Placement Application -11-7-2023

Financial Impact:

unknown

6. **Alternative Action**

7. **Management Recommendations:**

Approve.

8. **Recommended Approval:**

Sarah Propst, Planning & Zoning
Sarah Propst, Planning & Zoning
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 4/9/2024
Approved - 4/9/2024
Approved - 4/9/2024
Approved - 4/10/2024
Final Approval - 4/10/2024

ORDINANCE 24-04

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING AND RESTATING ORDINANCE 23-05 TO PERMIT TEMPORARY USES IN CERTAIN ZONING DISTRICTS IN RESPONSE TO, AND AS A PART OF THE TOWN'S RECOVERY EFFORTS FOLLOWING A NATURAL DISASTER OR OTHER EMERGENCY SITUATION: 1) BY A GOVERNMENTAL ENTITY FOR THE BENEFIT OF THE PUBLIC; 2) FOR RESIDENTIAL MANUFACTURED HOMES, MOBILE HOMES, MOTOR HOMES, RECREATIONAL VEHICLES OR OTHER TEMPORARY DWELLINGS FOR RESIDENTIAL PURPOSES; AND 3) FOR MOVEABLE COMMERCIAL STRUCTURES FOR THE DELIVERY AND SALE OF NEEDED GOODS AND SERVICES TO THE PUBLIC; PROVIDING FOR CONFLICT OF LAW, SCRIVENER'S ERRORS, SEVERABILITY, AND PROVIDING FOR AN EFFECTIVE DATE.

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

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

WHEREAS, the Town recognizes that recovery and redevelopment of the Town, following a natural disaster, such as Hurricane Ian creates a need for temporary uses in areas that were not damaged in order to provide goods and services to the public

WHEREAS, the Town adopted Ordinance 23-05 following Hurricane Ian and desires to revise the Ordinance in order to clarify its intent at the time of adoption, facilitate continued recovery and have more detailed regulations in place in the event of a future natural disaster or emergency; and

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on April 9, 2024, at time which the LPA gave full and complete consideration of the request, recommendations by staff, the documents in the record, and the testimony of all interested persons, and the LPA voted 6 to 0, to recommend approval of this Ordinance; and

WHEREAS, on April 15, 2024, the Town Council held a first reading of the proposed Ordinance and gave full and complete consideration to the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons to amend Ordinance 23-05 as provided herein; and

WHEREAS, a Business Impact Estimate was prepared and posted on the Town' website on the ____ day of _____, 2024, as required by Section 166.041(4), Florida Statutes; and

WHEREAS, an advertisement of the public hearing for adoption of the Ordinance was published in the _____ on the ____ day of _____, 2024, which is 10 days prior to the second reading of the proposed Ordinance as required by Section 166.041; and

WHEREAS, on the ____ day of _____, 2024, the Town Council held a second reading of the Ordinance; at which time the Town Council gave full and complete consideration to the recommendations of staff and the LPA, and the testimony of all interested persons; and

WHEREAS, the Town finds that it is in the best interests of the health, safety, and welfare of the Town's business owners, residents, and visitors to allow for the temporary use of property in certain zoning districts for residential, commercial and governmental purposes.

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

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

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

Temporary Governmental, Residential (Manufactured Homes, Mobile Homes, Motor Homes, Recreational Vehicles Other Temporary Residential Dwelling) or Moveable Commercial Uses following Natural Disasters or Other Emergencies

- (1) Governmental, residential (manufactured home, mobile home, motor home, recreational vehicle, or other temporary unit), or moveable commercial uses may be permitted on a limited basis by the issuance of a temporary emergency placement permit (ETPP) by the Town.
- (2) Unless otherwise provided in this Ordinance, any governmental , residential (manufactured home, mobile home, motor home, recreational vehicle, or other temporary residential dwelling) or moveable commercial use shall be removed from the site 1) no later than thirty (30) days after

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

issuance of a certificate of occupancy or certificate of use associated with an approved permit; 2) at the time of the expiration of the ETPP as provided herein; or 3) at the time of expiration of any local or state declaration of emergency or law, whichever is earlier. The ETPP shall not be used for the purpose of short-term commercial or residential rental for new businesses or tenants, who did not otherwise have a business or residence in the town prior to the natural disaster or emergency.

A. A TPP may be granted as indicated below:

- (i) **Governmental Use.** Within any Commercial or Institutional Zoning District, an ETPP may be issued for the purpose of providing an emergency governmental use to provide an essential governmental services or aid to the public impacted due to a natural disaster, or emergency. or other acts of God.
- (ii) **Residential Use.** Within any Commercial, Institutional or Residential Zoning District, an ETPP may be issued for the purposes of placing a manufactured home, mobile home, motor home, recreational vehicle, or other temporary unit for displaced owner-occupants or tenants if their existing living unit(s) has/have become uninhabitable due to adverse weather damage or other acts of God. Habitability of the existing residential unit(s) shall be determined by an inspection by the City building official, Florida certified building inspector, architect, or engineer, and subject to the following requirements and restrictions:
 - (a) No more than one (1) manufactured home, mobile home, motor home, recreational vehicle, or other temporary unit shall be allowed per living unit, for single family and two-family homes. Additional units may only be allowed with approval of a waiver by the Town Council.
 - (b) The ETPP shall only be allowed while the damaged living unit is

uninhabitable and in the process of repair or a replacement living unit is in the process of being constructed.

- (c) Placement of a manufactured home, mobile home, motor home, recreational vehicle, or other temporary unit on a site must meet all State requirements for tie-downs. Mobile homes shall be installed by a licensed mobile home contractor and in accordance with requirements of Florida Statutes and the Florida Building Code.
- (d) Only verified residents of Fort Myers Beach may be granted an ETPP.

- (iii) **Commercial Uses.** Within Commercial zoning districts, a ETPP may be issued to an owner or lessee of the property to operate a business that was existing on the property prior to the natural disaster or emergency or a similar new business. A new business or change in use dissimilar to the use that was in existence prior to the natural disaster or emergency, by an owner or lessee of the property, is not eligible for a ETPP.

1. A permit applicant for a commercial use must have a Lee County Tax-ID.

2. Vehicles and structures placed on commercial lots must be setback by no less than the width of the vehicle/structure (i.e. track width) and may not protrude into the right-of-way.

3. Food Service Kitchens are permitted on their brick-and-mortar commercial site that is zoned for that type of activity.

4. Structures which are not on wheels must be tied-down on a stabilized surface or secured with appropriate helical piles, or other method to resist hydro-dynamic forces.

5. Vehicles must be on wheels and be able to quickly disconnect utility connections and be towed by a light utility vehicle.

6. No more than one commercial use may occur on the property unless more than one use existed on the property prior to the natural disaster or emergency.

- (iv) **Review Period/Extension.** All approved ETPPs shall be issued in increments of six (6) months subject to review by the Town and shall not be issued for a period exceeding eighteen (18) months from the date of this ordinance adoption. The Town may, however, grant extensions to a ETPP permit exceeding eighteen (18) months if a ETPP permit holder demonstrates that a significant hardship exists. The Town Manager or designee shall decide if a hardship exists based upon evidence provided by the permit holder that they have exercised all due diligence in obtaining permits either for repair or replacement of the affected structure. The Town Manager may consider whether the applicant has had difficulties in completing insurance claims, obtaining an architect or engineer, obtaining construction materials, or obtaining a contractor, and if relevant, whether they have had difficulty in obtaining grants or loans to assist in repair or replacement of the affected structure, other identified extenuating circumstances, or state of emergency extension or state law.
- ~~(v) — The holder of TPP shall apply for a building permit for the damaged or destroyed dwelling unit no later than — The Town Manager or designee may, however, grant extensions to this deadline requirement based upon evidence provided by the property owner that they have exercised all due diligence in obtaining permits either for repair or replacement of the affected structure. The Town Manager may consider whether the~~

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

Noncompliance. Noncompliance with regulations contained herein, or any other applicable federal law/regulations, state law or town code may result in revocation of the ETPP, including but not limited to noise, debris removal, fire safety, lighting, parking in the right-of-way etc. Any requested deviation of a requirement contained in the existing town code shall require approval by the town council occupants of any manufactured home, mobile home, motor home, recreational vehicle, or other temporary residential unit and owners and lessees of commercial properties must comply with all mandatory federal, state and local hurricane evacuation requirements. Failure to do so may result in the revocation of the ETPP or code enforcement action.

3. Submission Requirements:
 - A. A completed ETPP application providing details of the specific desired temporary use and specifications;and
 - B. Map or other documentation indicating the proposed location of the manufactured home, mobile home, motor home, recreational vehicle, or other temporary residential unit or commercial use; and
 - C. State Department of Health, State Department of Environmental Protection, and Town permit(s) authorizing the connection of the manufactured home, mobile home, motor home, recreational vehicle, or other temporary residential unit or commercial structure to an on-site or existing community wastewater treatment system and power

source. Commercial structures must obtain a Trade permit from the Building Department

- 4. An ETPP may include additional conditions of approval unique to the request. An appeal of any administrative decision made under this Ordinance may be made pursuant to the provisions found in Section 34-86 of the Town’s Land Development Code.
- 5. This ordinance shall apply to ETPPs issued subsequent to the date of its adoption.

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

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

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

Section 6.

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

The foregoing Ordinance 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 ____ day of _____ 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, Town Attorney

This Ordinance was filed in the Office of the Town Clerk on this ____ day of _____, 2024.



Temporary Placement Application

Emergency Uses, Manufactured Homes, Mobile Homes, Recreational Vehicles Other
Temporary Residential Dwelling or Temporary Movable Commercial Units
Email application to temporaryuse@fmbgov.com

Property Address: _____
Property Owner's Name: _____ Strap Number: _____
Contractor (required for approved FEMA/FDEM Temp House): _____
Phone # 1: _____ Phone # 2: _____
Email: _____
Effective Date Requested: _____ Do You Require A New Water-Meter (Y/ N): _____
If RV - Make and Model: _____ Vehicle/ Dimensions: Length: _____
Width: _____ Height: _____ Tag #: _____ Expiration date: _____

Choose RV Type:

- | | | |
|---|---|---|
| ☐ Class A Park Model | ☐ Pop Up Camper | ☐ Food Service Kitchen (must supply FL DBPR license) |
| ☐ Class B | ☐ Travel Trailer | ☐ Temp House (FEMA/ FDEM) |
| ☐ Class C | ☐ Truck Camper | ☐ Outdoor Sales/ Display |
| ☐ Fifth Wheel | ☐ Storage Trailer/ Pod | ☐ Other _____ |
| ☐ Park Model | ☐ Food Truck (must supply FL DBPR license) | |

SUBMITTAL REQUIREMENTS

- A. A completed Temporary Placement Application
- B. Map or other documentation indicating the proposed location of the manufactured home, mobile home, motor home, recreational vehicle, or other temporary residential unit; and
- C. Temp power and sewer connection must be permitted by submitting a Trade permit application.

REGULATIONS

- D. The applicant must be the property owner/commercial tenant of the lot and the vendor must have a Lee County Tax-ID; or with the Town's consent, have the permission of the property owner to operate at that location (permission must be supplied with registration form).
- E. All vehicles and structures must be completely on the lot and may not extend into the public right-of-way.
- F. Vehicles and structures placed on commercial lots must be setback by no less than the width of the vehicle/structure (i.e. track width) from any property line and not protrude into the right of way.
- G. Food Service Kitchens are permitted on their brick-and-mortar commercial site that is zoned for that type of activity.
 - a. Other retail stores may not accommodate food trucks.
- H. Structures which are not on wheels must be tied-down on a stabilized surface or secured with appropriate helical piles, or other method to resist hydro-dynamic forces.
- I. Vehicle and mobile home must be on wheels and be able to quickly disconnect utility connections and be removed from the property after a hurricane watch has been issued.



Temporary Placement Application

**Emergency Uses, Manufactured Homes, Mobile Homes, Recreational Vehicles Other
Temporary Residential Dwelling or Temporary Movable Commercial Units**
Email application to temporaryuse@fmbgov.com

REQUIREMENTS AND RESTRICTIONS:

- A. The temporary unit shall be removed from the site within thirty (30) days after issuance of a certificate of occupancy or certificate of use associated with the approved permit, or at the time of the expiration of the TPP, whichever is earlier. TPP shall not be used for the purpose of placing and operating a Short Term Rental.
- B. Within any Commercial, Institutional or Residential Zoning District, a TPP may be issued for the purposes of placing a manufactured home, mobile home, motor home, recreational vehicle, or other temporary unit for displaced owner-occupants or tenants if their existing living unit(s) has/have become uninhabitable due to adverse weather damage or other acts of God.

Restrictions:

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



Temporary Placement Application
Emergency Uses, Manufactured Homes, Mobile Homes, Recreational Vehicles Other
Temporary Residential Dwelling or Temporary Movable Commercial Units
Email application to temporaryuse@fmbgov.com

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

The undersigned applicant agrees to comply with the Town of Fort Myers Beach Land Development Code and any other applicable codes and certifies that to the best of his/her knowledge, the information submitted for the temporary permit is true and correct. Any unregistered temporary use will be subject to \$500 per incident per day through code enforcement.

Signature (property owner/authorized agent)_____ Date: _____

Typed or printed name_____

Signature (Lease Holders)_____ Date: _____

Typed or printed name_____

Town of Fort Myers Beach
2525 Estero Blvd. Fort Myers Beach, FL 33931
Email application to temporaryuse@fmbgov.com

1. **Request:**

Meeting Date: April 15, 2024

First Reading and Public Hearing of an Ordinance Entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING DIVISION 1 PURCHASING OF GOODS AND SERVICES POLICIES AND PROCEDURES OF ARTICLE V FINANCE OF THE TOWN OF FORT MYERS BEACH TO TRANSFER PURCHASING TO THE TOWN MANAGER OR DESIGNEE FROM THE FINANCE DEPARTMENT, TO INCREASE THE AUTHORITY OF THE TOWN MANAGER FOR PURCHASES OF GOODS AND SERVICES, TO CLARIFY EXISTING REGULATIONS, AND TO IMPLEMENT RECOMMENDATIONS PROVIDED TO THE TOWN BASED ON THE DISASTER READINESS ASSESSMENT AND ABATEMENT PLAN PREPARED BY THE FLORIDA DIVISION OF EMERGENCY MANAGEMENT; PROVIDING FOR CONFLICT OF LAW, SCRIVENER'S ERRORS AND SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE. Open the public hearing and schedule for second reading and final adoption on May 6, 2024 at 9:00 AM

Why the action is necessary:

Provides updates to strengthen efficiency and disaster readiness and compliance with requirements mandated by the Federal Emergency Management Agency (FEMA),

What the action accomplishes:

Transfers the responsibilities of the Finance Department Director to the Town Manager or designer, the increase in the cost of goods and services justifies an increase in the Town Manager's authority for purchases of goods and services without further review by the Town Council; and as part of its response to implementation of an Abatement Plan to improve upon disaster readiness and compliance with requirements mandated by the Federal Emergency Management Agency (FEMA), the town desires to further clarify and emphasize certain existing procurement policies.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Ordinance

4. **Submitter of Information:**

5. **Background:**

The Town's current procurement policies were last updated in 2017 through Ordinance 17-01. The Town has undergone many changes including continuing recovery efforts with Hurricane Ian and staff believe it is in the best interest of the Town and public to update these policies.

Also, as part of the participation in the Florida Division of Emergency Management's new F-ROC (Florida Recovery Obligation Calculation) program, the Town received customized abatement recommendations to strengthen our debris and emergency protective measures. This updated policy helps to address these recommendations to increase the Town's preparedness and potential to receive more future funding upfront through a higher score for expenses related to Category A (Debris Removal) and Category B (Emergency Protective Measures).

Attachments:

1. 24-11, Purchasing Ordinance Amendments ns 4-10
2. 24-11, Exhibit A - 2024 Procurement Ordinance Update (1) 4-10-2024
3. 24-11, Buisness Impact Estimate Purchasing Policies

Financial Impact:

Increases the amount of authority vested in the Town Manager to \$75,000 from \$25,000.

6. **Alternative Action**

Deny the Ordinance and continue with current procedures.

7. **Management Recommendations:**

Approve

8. **Recommended Approval:**

Jason Freeman, Legislative Liaison / Deputy Town Clerk
Frankie Kropacek, Operations & Compliance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 4/10/2024
Approved - 4/10/2024
Approved - 4/10/2024
Approved - 4/10/2024
Final Approval - 4/10/2024

ORDINANCE 24-11

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING DIVISION 1 PURCHASING OF GOODS AND SERVICES POLICIES AND PROCEDURES OF ARTICLE V FINANCE OF THE TOWN OF FORT MYERS BEACH TO TRANSFER PURCHASING TO THE TOWN MANAGER OR DESIGNEE FROM THE FINANCE DEPARTMENT, TO INCREASE THE AUTHORITY OF THE TOWN MANAGER FOR PURCHASES OF GOODS AND SERVICES, TO CLARIFY EXISTING REGULATIONS, AND TO IMPLEMENT RECOMMENDATIONS PROVIDED TO THE TOWN BASED ON THE DISASTER READINESS ASSESSMENT AND ABATEMENT PLAN PREPARED BY THE FLORIDA DIVISION OF EMERGENCY MANAGEMENT; PROVIDING FOR CONFLICT OF LAW, SCRIVENER'S ERRORS AND SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

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

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

WHEREAS, for purposes of greater efficiency, the responsibilities of the Finance Department Director have been transferred to the Town Manager or designee; and

WHEREAS, the increase in the cost of goods and services justifies an increase in the Town Manager's authority for purchases of goods and services without further review by the Town Council; and

WHEREAS, as part of its response to implementation of an Abatement Plan to improve upon disaster readiness and compliance with requirements mandated by the Federal Emergency Management Agency (FEMA), the town desires to further clarify and emphasize certain existing procurement policies; and

WHEREAS, on April 15, 2024 the Town Council held a first reading of the proposed Ordinance and gave full and complete consideration to recommendations of staff and the testimony of all interested persons; and

WHEREAS, a Business Impact Estimate was prepared and posted on the City's website on the ____ day of _____, 2024, as required by Section 166.041(4), Florida Statutes; and

WHEREAS, an advertisement of the public hearing for adoption of the Ordinance was

published in the _____ on the ____ day of _____, 2024, which is 10 days prior to the second reading of the proposed Ordinance as required by Section 166.041; and

WHEREAS, on the ____ day of _____, 2024, the Town Council held a second reading of the Ordinance; at which time the Town Council gave full and complete consideration to the recommendations of staff and the LPA, and the testimony of all interested persons; and

WHEREAS, the Town finds that it is in the best interests of the health, safety, and welfare of the Town's business owners, residents, and visitors to allow for the temporary use of property in certain zoning districts for residential, commercial and governmental purposes.

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

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

Section 2. The Town Council determines that adoption of the following changes to Division 1 Purchasing of Goods and Services Policies and Procedures of Article V Finance are in the best interests of the health, safety, and welfare of the Town's business owners, residents, and visitors, and shall read as amended in attached Exhibit A.

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

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

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

Section 6. Absent extension of this Ordinance in accordance with State law, Executive Order 22-218, and the Town Code, this Ordinance shall terminate within 30 days from its effective date and shall be of no further force or effect after such date.

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

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

ADOPTED this ____ day of _____ 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 Town Attorney

This Ordinance was filed in the Office of the Town Clerk on this ____ day of _____, 2024.

EXHIBIT A

DIVISION 1. - PURCHASING OF GOODS AND SERVICES POLICIES AND PROCEDURES

Sec. 2-476. - Purpose.

The purpose of the ordinance codified in this division is to provide for a fair and equitable method of administering purchases of goods and services in order to maximize the purchasing value of public funds and to provide procedures and guidelines governing said purchases. The ordinance is intended to supplement the provisions pertaining to procurement of goods and services set forth in Florida Statutes.

Sec. 2-477. - Applicability.

This division applies to all purchases of supplies and services and construction by the Town of Fort Myers Beach as of the effective date. In the event of a conflict between the provisions of this division and any applicable state or federal law or the town Charter, the most restrictive provisions will prevail, unless the Town is otherwise pre-empted from regulation.

Sec. 2-478. - Responsibilities for procurement of goods and services.

The Town Manager or designee finance department is authorized to promulgate procedures for the requisition of supplies, goods and services; and, all purchases of goods and services must be processed through this department. The procedures shall include a requirement for the completion of an analysis of whether it is in the Town's best interest to purchase or lease needed equipment.

For purchases of \$500.00 or more, the finance department will certify to the Town Manager or designee that the purchase request has sufficient unencumbered funds to cover the purchase, or a transfer is in process for approval by the town council, manager or designee, and the proper purchasing procedures have been followed. The Town Manager or designee shall remain responsible for insuring that proper purchasing procedures have been followed.

Sec. 2-479. - Definitions.

"Brand name or equal specification" means a specification limited to one or more items by manufacturers' names or catalog numbers to describe the standard of quality, performance, and other salient characteristics needed to meet the town's requirements, and which provides for the submission of equivalent products.

"Brand name specification" means a specification limited to one or more items by manufacturers' names or catalog numbers.

"Business" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, association, or any other legal entity currently licensed to do business in the State of Florida and doing business in the State of Florida.

"Change order" means a written change to a contract after the contract has been awarded.

"Confidential information" means any information that is available to any employee only because of the employee's status as an employee of the town and is not a matter of public knowledge or available to the public on request.

"Construction" means the process of building, altering, repairing, improving, or demolishing any structure or building, or other public improvement of any kind to any structure or building, or other public improvements of any kind to any real property. It does not include the routine operation, routine repair, or routine maintenance of existing structures, buildings, real property.

"Contract" means all types of town agreements, regardless of what they may be called, for the procurement of supplies, services or construction.

"Equipment" means all property, including but not limited to, town capitalized equipment.

"Firm" or "vendor" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, association, or any other legal entity, currently licensed to do business in the State of Florida and doing business in the State of Florida.

"Indirect" or "indirect interest" means an interest in which legal title is held by another as trustee or other representative capacity, but the equitable or beneficial interest is held by the employee or town official.

"Invitation to bid" (ITB) means all documents, whether attached or incorporated by reference, utilized by the town for soliciting sealed bids.

"Invitation to negotiate" (ITN) means all documents, whether attached or incorporated by reference, utilized by the town for soliciting proposals.

"Material interest" means direct or indirect ownership of more than five percent of the total assets or capital stock of any business or firm.

"Request for proposals" (RFP) means all documents, whether attached or incorporated by reference, utilized by the town for soliciting proposals.

"Request for qualifications" (RFQ) means all documents, whether attached or incorporated by reference, utilized by the town for soliciting statements of qualifications under the Consultants Competitive Negotiations Act or otherwise.

"Responsible offeror" means a person or firm who has the capability in all respects to perform fully the contract requirements, and the tenacity, perseverance, experience, integrity, reliability, capacity, facilities, equipment, and credit that will assure good faith performance of the contract.

"Responsive bidder" means a person or firm who has submitted a bid that confronts in all material respects to the requirements set forth in the invitation to bid.

"Selection advisory committee" means a committee of staff members, town members with expert knowledge and contracted professionals of the town, not in conflict with the commodity being bid, who evaluate professional service contract submittals to the town manager and/or council for approval.

"Sole source" means only one available source for supply, equipment, service or construction items.

"Specification" means any description of the physical or functional characteristics or of the nature of a supply, service, or construction item. It may include a description of any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery.

"Supplies" means property, including but not limited to materials, printing, insurance, and leases of real property, excluding land or a permanent interest in land.

"Town official" means any town council member, the mayor any other person who is elected to fill a position with the Town of Fort Myers Beach.

Sec. 2-480. - Purchasing procedures.

(a) *Competitive sealed bidding.*

- (1) *Applicability.* Except as otherwise authorized herein, all contracts for the purchase of goods or contractual services in excess of \$25,000.00 within a fiscal year shall be awarded by competitive sealed bid.
- (2) *Invitation to bid.* For all purchases subject to competitive bidding, the **Town Manager or designee finance department**, with assistance from the affected departments, will issue an invitation to bid that includes specifications, and all contractual terms and conditions applicable to the anticipated purchase. In the event of any conflict between the invitation to bid and this division, the provisions of this division will prevail.
- (3) *Addendum.* After an invitation to bid is issued and before the bid opening, the affected department **may request that the Town Manager or designee and/or the finance department may** issue one or more written addendum for the purpose of clarifying specifications or other matters relating to the bid. **The finance department is solely responsible to issue all addenda.**

- (4) *Public notice.* All invitations to bids must be published at least once in a newspaper of general circulation in the town for a minimum of 30 calendar days preceding the last day set for the opening of bids. The public notice must state the place, date, and time of the bid opening; a general description of the subject matter of the bid, and where bid forms and specifications may be obtained.
- (5) *Bid bond.* The invitation to bids may specify that a form of bid security, as a guarantee that all provisions of the specifications will be met, is required. The bid bond must provide that if the bid is: (a) rejected by the town; or (b) accepted and the bidder executes the contract and furnishes an appropriate bond, then the bid bond is void; otherwise it remains in full force and effect. As an alternative to a bid bond, the required bid security may be provided in the form of a certified check, a cashier's check, treasurer's check or bank draft of any national or state bank made payable solely to the Town of Fort Myers Beach. No third-party endorsed payments are acceptable for this purpose. If the town permits a bidder to withdraw its bid, no action shall be taken against the bidder or the bid security.
- (6) *Bid opening.*
- a. Bids will be opened publicly at the time and place designated in the invitation to bid. The amount of each bid, and such other relevant information as the **Town Manager or designee finance department director** deems appropriate, together with the name of each bidder will be recorded and made available for public inspection. (see Exhibit A).
 - b. Bid openings must be scheduled a minimum of 30 calendar days after the date that the invitation to bid is advertised.
- (7) *Bid acceptance.* Bids will be unconditionally accepted without alteration or correction, except as may be authorized in this division. All bids will be deemed to be held open and irrevocable for the time period set forth in the invitation to bid.
- (8) *Bid evaluation.* Bids will be evaluated based **on a bidder's ability to satisfy** the requirements set forth in the invitation to bid, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered as part of the evaluation for award must be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The invitation to bid must set forth the evaluation criteria to be used. No criteria may be used in bid evaluations that are not set forth in the invitation to bid.
- (9) *Bid mistakes.* Mistakes discovered before the bids are opened may be modified by the bidder via written notice from the bidder specifically identifying the modification and the reason the modification is necessary. In lieu of modification, the bidder may also withdraw the bid submittal. The written notice as to modification or withdrawal must be received in the office designated in the invitation to bid prior to the time set for bid opening.
- (10) *Bid withdrawal.* After bids are opened, corrections or modification to bids are not permitted, but a bidder may be permitted to withdraw an erroneous bid, prior to the bid award by the town, if the following is established to the satisfaction of the town manager. In the town's sole judgment:
- a. The bidder acted in good faith in submitting the bid;
 - b. In preparing the bid there was an error of such magnitude that enforcement of the bid would work severe hardship upon the bidder;
 - c. The error was not the result of gross negligence or willful inattention on the part of the bidder;
 - d. The error was discovered and communicated to the town finance department within eight business hours of bid opening, along with a written request for permission to withdraw the bid; and
 - e. The bidder submits documentation acceptable to the town and an explanation of how the bidding error was made.

- (11) *Cancellation of invitation to bid.* An invitation to bid may be cancelled, or any or all bids or proposals may be rejected, in whole or in part, with or without cause. The following are considered good cause for rejection of all bids:
- All bids exceed the estimated or budgeted amount.
 - The specifications contain an error which causes confusion and misunderstanding among bidders.
 - The item(s) or services are no longer needed.
 - Lack of adequate competition.
 - Notice of cancellation will be sent to all businesses solicited or submitting bids.
- (12) *Bid award.*
- All bids will be awarded by town as soon as practical after the bids are opened. Bids shall be awarded to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation to bid. The town reserves the right to reject any and all bids and to waive minor irregularities in an otherwise valid bid. A minor irregularity is a variation from the bid invitation that does not affect the price of the bid, or give the bidder an advantage or benefit not enjoyed by the other bidders, or does not adversely impact the interests of the town.
 - In the event the lowest responsive and responsible bid for a construction project exceeds available funds, as certified by the finance department director, and such bid does not exceed such funds by more than ten percent, the town manager is authorized, when time or economic considerations preclude re-solicitation of work of reduced scope, to negotiate an adjustment of the bid price with the low responsive and responsible bidder, in order to bring the bid within the amount of available funds. Any such negotiated adjustment may be obtained only by eliminating independent deductive items specified in the invitation to bid.
- (13) *Tie bids.* In the event two or more bids are equal with respect to price, quality and service, preference will be given in the following order:
- The bidder who has its principal place of business in the Town of Fort Myers Beach, Florida.
 - The bidder who has its principal place of business in Lee County, Florida.
 - The bidder who has its principal place of business in the State of Florida.
- (14) *Selection advisory committee.*
- A selection advisory committee, consisting of a minimum of three members, may be established for the purpose of evaluating bids submitted to the town. The selection advisory committee may consist of: ~~a town department directors or their designees~~ **and in the discretion of the Town Manager or designee**, members of the town and Lee County community that are deemed as having special or expert knowledge in the area being solicited.
 - All members of the selection advisory committee are prohibited from speaking, answering questions or having contact with any potential bidder. During this process the selection advisory committee will operate in a "cone of silence" decorum beginning on the date of the bid posting and ending when council approves the contract.
 - All meetings of the selection advisory committee will be open to the public and notices containing the date, time, place and purpose of all selection advisory committee meetings will be conspicuously posted in Town Hall. All meetings of the selection advisory committee will be recorded and recordings will be available for public inspection.
 - The selection advisory committee will review the **submittal bid and response** materials **provided by the finance department** prior to the selection committee meeting. The committee will evaluate each firm's qualifications based on past experience, expressed understanding

of the project and proposed method of handling of the project and any other criteria included for evaluation in the invitation to bid. **The committee shall perform a cost or price analysis for any bid greater than \$250,000.**

- e. After evaluation, the committee will formulate a recommendation consisting of a list, in order of preference, of no fewer than three firms deemed to be the most highly **responsive and** qualified to perform the required services, unless noted above. The town manager, after review, will forward the recommendation to the town council for consideration during a regularly schedule council meeting.
- f. If no more than two firms submit proposals, the town manager will determine whether to proceed with only two proposals, based on availability of alternatives and qualifications.
- g. In determining whether a firm is **responsive and** qualified, the committee will consider such factors as the ability of professional personnel; past performance; willingness to meet time and budget requirements; location; recent, current, and projected workloads of the firm. The selection advisory committee may not request, accept, or consider proposals for compensation to be paid under the contract.

(15) *Recommendation.*

- a. The town council will carefully consider the recommendations of the town manager and selection advisory committee, review the qualifications of the firms, and vote to accept or reject the ranking of the firms as proposed by the town manager.
- b. After the ranking of the firms has been determined by the town council, the council will direct the town manager or designee to initiate negotiations with the number one ranked firm. The town council may reject the ranking order recommended by the town manager and propose an alternative ranking or require re-solicitation.

(16) *Negotiation.*

- a. The town manager will negotiate a contract with the most qualified firm for compensation the town manager determines is fair, competitive, reasonable, and for which funds are available. In making such determination, the town manager may conduct a detailed analysis of the cost of the **products and/or professional** services required in addition to considering the scope and complexity of the project.
- b. For any lump-sum or cost-plus-a-fixed-fee contract in excess of \$60,000.00, the firm receiving the contract must execute a truth-in-negotiation certificate confirming that wage rates and other unit costs are accurate, complete and correct. The contract must include a provision indicating that the original contract price, and any additions thereto, may be adjusted to exclude increases in the contract price demonstrably related to inaccurate or incomplete billing information, or based upon wage rates and/or unit costs not agreed to as part of the contract.
- c. If the town manager is unable to negotiate a satisfactory contract with the first ranked firm, negotiations with that firm will be formally terminated; and, the town manager will undertake negotiations with the second ranked firm. If the town manager fails to reach an agreement with the second ranked firm, negotiations with the third ranked firm will be undertaken.
- d. If the town manager is unable to negotiate a satisfactory contract with any of the selected firms, the town manager may select additional firms in the order of their competence and qualification and submit them to council for determination and ranking and continue selection and negotiations as specified in this division until an agreement is reached or reissue the request for qualifications.

(17) *Town council approval.* The town manager will seek town attorney review of the negotiated contract prior to forwarding the contract to the town council for approval.

(b) *Small purchases.*

- (1) *Applicability.* Any purchase of ~~\$25,000.00~~ \$75,000 or less may be made in accordance with the small purchase procedures authorized in this section. Contract requirements may not be artificially divided so as to constitute a small purchase under this section. Any purchase in excess of ~~\$25,000.00~~ \$75,000.00 must be approved by town council. All small purchases shall be accompanied by a quote sheet. (see Exhibit B).
 - (2) *Purchases over \$4,000.00 and not greater than \$25,000.00.* For smaller purchases of \$4,000.00 and over, no less than three written quotations must be obtained, if available (e.g., not a sole source situation). The award will be made by the department director and town manager, with review by the finance department director, to the business offering the lowest acceptable quotation. The names of the businesses submitting quotations, and the date and amount of each quotation, must be recorded and maintained in the town's records. For items purchased on an ongoing basis, contracts may not be for a term in excess of two years without obtaining new quotations to determine if the price is still the lowest.
 - (3) *Purchases over \$500.00 and not greater than \$4,000.00.* For purchases greater than \$500.00 but less than \$4,000.00, a minimum of three verbal, telephone, facsimile or electronic quotations may be obtained, if available. The award may be made by the department director, with review by the finance department director, to the business offering the lowest acceptable quotation. The names of the businesses submitting quotations, and the date and amount of each quotation, shall be recorded and maintained in the town's records.
 - (4) *Purchases for \$500.00 and under.* For purchases of \$500.00 and under, one verbal quotation is required, provided the quotation is fair and reasonable as determined by the department director and documented on the quote sheet.
 - (5) *Tie bids.* In the event two or more bids are equal with respect to price, quality and service, preference will be given in the following order:
 - a. The bidder who has its principal place of business in the Town of Fort Myers Beach, Florida.
 - b. The bidder who has its principal place of business in Lee County, Florida
 - c. The bidder who has its principal place of business in the State of Florida.
- (c) *Sole source purchases.*
- (1) *Basis for sole source purchase.*
 - a. A contract may be awarded without competition when the ~~town manager with the recommendation of the~~ finance department director ~~and, in conjunction with the~~ department director determines, in writing, after conducting a good faith review of available sources, that there is only one source for the required supply, equipment, service, or construction item. The requisitioning department must submit to the ~~town manager finance department~~ written justification as to why there is only one source (see Exhibit C).
 - b. The town manager or designee will conduct negotiations, as appropriate, as to price, delivery, and terms. The contract must be approved by the town manager. A record of sole source contracts must be maintained by the town ~~clerk finance department~~. Sole source contracts may not be automatically renewed.
 - c. At the beginning of each fiscal year, the ~~town manager or designee finance department director,~~ in conjunction with the department director, will determine whether the item is still only available from a sole source. If additional sources are discovered, then bids or quotations must be obtained before the item is purchased under a new contract.
 - (2) *Town council approval.* The town manager will submit the all sole source purchases of \$20,000.00 or more to the town attorney for review, and submit the contract to the town council for approval.
- (d) *Emergency purchases.*

- (1) *Basis for emergency purchase.* Notwithstanding any other provisions of this division, the town manager or designee may make, or authorize others to make, emergency purchases of supplies, services or construction items when there exists a threat to public health, welfare or safety; provided that such emergency purchases are made with such competition as is practicable under the circumstances. The director of the affected department will notify the town manager, who will certify the threat to public health, welfare or safety in writing and authorize the purchase of the needed items(s). The director will send a purchase order request to the finance department, together with a written explanation of the basis for the emergency purchase (see Exhibit D). The town manager or designee must approve all emergency requisitions.
 - (2) *Town council approval.* The town manager will submit any emergency purchase in excess of \$25,000.00 to the town attorney for review and submit the contract to the town council for approval, as soon as practicable after the purchase.
- (e) *Purchases from other governmental entities.*
- (1) *Basis for purchase.* Purchases of goods from the federal government, any state or political subdivision thereof, or any municipality are exempt from the competitive bid requirements of this division. There must be proof of proper procedural documentation to support the other governmental agencies purchasing policy provides for competitive bidding similar to the town's competitive bid process and in cases of piggybacking contracts, certification that the other governmental entity's contract allows for this conduct (see Exhibit E).
 - (2) *Town council approval.* The town manager will submit any individual purchases in an amount in excess of \$25,000.00 to the town attorney for review and submit the contract to the town council for approval.
- (f) *Purchases of goods from contracts awarded by other governmental entities by competitive bid (aka: "piggybacking").*
- (1) *Basis for purchase.* The purchase of goods under a contract awarded by another governmental entity or cooperative purchasing entity is authorized provided the town manager or designee finance department director makes a written determination that time and expense factors make it financially advantageous for the town to do so. In making this determination, the town manager or designee finance department director will consider the number of bids so solicited by the other governmental entity or cooperative purchasing entity. There must be proof of proper procedural documentation to support the other governmental agencies entity's purchasing policy and, in cases of piggybacking contracts, certification that the other governmental entity's contract allows for this conduct (see Exhibit E).
 - (2) *Town council approval.* The town manager will submit any contract(s) awarded by the town based upon another governmental entity's procurement process in an amount in excess of \$25,000.00 to the town attorney for review and submit the contract to the town council for approval.
- (g) *Cooperative purchasing.*
- (1) *Basis for purchase.* The town finance department may participate in, sponsor, conduct or administer a cooperative purchasing agreement for the procurement of any goods, services or construction with one or more other governmental units or cooperative purchasing entities.
 - (2) *Town council approval.* Cooperative purchasing agreements must be authorized pursuant to an interlocal agreement with a governmental entity or other agreement approved by town council and executed by all participating governmental units. The town manager will forward the proposed interlocal agreement to the town attorney for review and submit the interlocal agreement to the town council for approval.
 - (3) The town manager may purchase goods or services through cooperative purchasing in lieu of a competitive bid as provided in this Division.
- (h) *Competitive negotiation for professional services.*

- (1) *Applicability.* Contracts for professional services consisting of architecture, professional engineering, landscape architecture, or registered land surveying must be competitively negotiated in accordance with the requirements of F.S. § 287.055 (the "Consultant's Competitive Negotiation Act" or "CCNA") and within statutory thresholds.
- (2) *Request for qualification.* The department director will prepare, with the assistance of the town manager or designee finance department director, and review by the town manager or designee, a request for qualification for the particular project. The request will include:
 - a. A delineation of the required scope of services. The description must be sufficient to assure that all firms have the same understanding of the requested basic services.
 - b. A request for specific and general information on how the firm will proceed with the project. Specific instructions on how, when and where the proposal must be submitted.
 - c. A requirement that the proposal be submitted as a sealed package. The proposer must, if required for the particular solicitation process, submit a project price in a separate sealed envelope, clearly marked as "Project Price". The pricing envelope may not be opened unless the proposer is selected by the town to engage in negotiations.
- (3) *Addenda.*
 - a. After a request for qualifications (RFQ) is issued and before the submission deadline, town manager or designee finance department director , with assistance from the affected department, may issue one or more written addendum for the purpose of clarifying specifications or providing further information or other matters relating to the RFQ.
 - b. Any firm or individual desiring to provide professional services to the town must first be certified by the town as qualified pursuant to law and the regulations of the town. The town will make a finding that the firms or individuals to be employed is fully qualified to render the required service. The factors to be considered include but are not limited to the capabilities, adequacy of personnel, past record, and experience of the firm or individual.
- (4) *Public notice and qualification procedures.* The town clerk must publish, in a newspaper of general circulation, as such is defined in the Florida Statutes, a notice on each occasion when professional services are required to be purchased for a project whose projected basic construction cost is estimated by the town to be in excess of statutory thresholds \$250,000.00, or for planning or study activities when the fee for professional services is in excess of statutory thresholds \$25,000.00, other than as permitted by the CCNA. The notice must include a general description of the project, shall indicate how interested parties may apply for consideration, and the closing date for receipt of proposals, and contain such other information as the town deems pertinent. Publications of statewide and national distribution may be utilized for notices when the magnitude of the project so merits in the town's discretion. The submission deadline must be a minimum of 30 calendar days after the date the RFQ is first published.
- (5) *Selection advisory committee.*
 - a. A selection advisory committee, consisting of a minimum of three members, may be established for the purpose of evaluating bids submitted to the town. The selection advisory committee may consist of: a town department directors or their designees and in the discretion of the Town Manager or designee, members of the town and Lee County community that are deemed as having special or expert knowledge in the area being solicited.
 - b. All members of the selection advisory committee are prohibited from speaking, answering questions or having contact with any potential bidder. During this process the selection advisory committee will operate in a "cone of silence" decorum beginning on the date of the bid posting and ending when council approves the contract.
 - c. All meetings of the selection advisory committee will be open to the public and notices containing the date, time, place and purpose of all selection advisory committee meetings

will be conspicuously posted in Town Hall. All meetings of the selection advisory committee will be recorded and recordings will be available for public inspection.

- d. The selection advisory committee will review the submittal bid and response materials provided by the finance department prior to the selection committee meeting. The committee will evaluate each firm's qualifications based on past experience, expressed understanding of the project and proposed method of handling of the project and any other criteria included for evaluation in the invitation to bid. The committee shall perform a cost or price analysis for any bid greater than \$250,000.
- e. After evaluation, the committee will formulate a recommendation consisting of a list, in order of preference, of no fewer than three firms deemed to be the most highly responsive and qualified to perform the required services, unless noted above. The town manager, after review, will forward the recommendation to the town council for consideration during a regularly schedule council meeting.
- f. If no more than two firms submit proposals, the town manager will determine whether to proceed with only two proposals, based on availability of alternatives and qualifications.
- g. In determining whether a firm is responsive and qualified, the committee will consider such factors as the ability of professional personnel; past performance; willingness to meet time and budget requirements; location; recent, current, and projected workloads of the firm. The selection advisory committee may not request, accept, or consider proposals for compensation to be paid under the contract.

(6) *Recommendation.*

- a. The town council will carefully consider the recommendation of the town manager and review the qualifications of the firms and vote to accept, reject, or modify the ranking of the firms by the town manager.
- b. After the ranking of the firms has been determined by the town council, the council will direct the town manager or designee to initiate negotiations with the number one ranked firm. The town council may reject the ranking order recommended by the town manager and propose an alternative ranking or require re-solicitation.

(7) *Negotiation.*

- a. The town manager will negotiate a contract with the most qualified firm for professional services for compensation the town manager determines is fair, competitive, reasonable, and for which funds are available. In making such determination, the town manager may conduct a detailed analysis of the cost of the professional services required in addition to considering their scope and complexity.
- b. For any lump-sum or cost-plus-a-fixed-fee contract in excess of \$60,000.00, the firm receiving the contract must execute a truth-in-negotiation certificate confirming that wage rates and other unit costs are accurate, complete and correct. The contract must include a provision indicating that the original contract price, and any additions thereto, may be adjusted to increases due to inaccurate, or incomplete billing information, or based upon wage rates and/or unit costs not agreed to as part of the contract.
- c. If the town manager is unable to negotiate a satisfactory contract with the first ranked firm, negotiations with that firm will be formally terminated and the town manager will undertake negotiations with the second ranked firm. If the town manager fails to reach an agreement with the second ranked firm, negotiations with the third ranked firm will be undertaken.
- d. If the town manager is unable to negotiate a satisfactory contract with any of the selected firms, the town manager may select additional firms in the order of their competence and qualification and submit them to council for determination and ranking; and, thereafter continue selection and negotiations as specified in this division until an agreement is reached or reissue the request for qualifications.

- (8) *Town council approval.* The town manager will submit the negotiated contract to the town attorney for review and the contract to the town council for approval.
 - (9) *Prohibition against contingent fees.* Each contract entered into by the town for professional services must contain a prohibition against contingent fees as follows: "The architect (or registered land surveyor or professional engineer as applicable) warrants that he/she has not employed, or retained any company or person, other than a bona fide employee working solely for the architect (or registered land surveyor or professional engineer, as applicable) nor offered any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this agreement." For the breach or violation of this provision, the town has the right to terminate the agreement without liability and, at its discretion, deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.
 - (10) *Reuse of existing plans.* There is no public notice requirement or utilization of the selection process for projects in which the town is able to reuse existing plans from a prior project. However, with plans that the town intends to reuse at some future time, the original public notice must contain a statement that the plans are subject to reuse in accordance with F.S. § 287.055(11).
 - (11) *Exception to CCNA process—Emergencies.* Under emergencies as defined by F.S. § 287.055, as amended, the procedure set forth in the statute must be followed and supersedes anything to the contrary set forth in this subsection (h).
 - (12) *Exception to CCNA process—Continuing contracts.* In the event that the continuing contract provisions of F.S. § 287.055 apply to acquisition of professional services, the procedure set forth in the statute will be followed and supersedes anything to contrary set forth in this subsection (h).
- (i) *Request for proposal.*
- (1) *Applicability.* Contracts for goods and/or services, which are not subject to the Consultant's Competitive Negotiation Act and for which uniform detailed specifications cannot be provided, may be obtained in accordance with this section. At the option of the town manager, said contracts may be negotiated by utilizing the selection advisory committee as specified in subsection (h)(3) above.
 - (2) *Request for proposal.* The department director will prepare, with the assistance of the **finance department director, and review by** the town manager or designee, a request for qualification for the particular project. The request shall include:
 - a. A delineation of the required scope of services. The description must be sufficient to assure that all firms have the same understanding of the requested basic services.
 - b. A request for specific and general information on how the firm will proceed with the project. Specific instructions on how, when, and where the proposal must be submitted.
 - c. A requirement that the proposal be submitted as a sealed package. The proposer must, if required for the particular solicitation process, submit a project price in a separate sealed envelope, clearly marked as "Project Price". The pricing, envelope may not be opened unless the proposer is selected by the town to engage in negotiations.
 - (3) *Addenda.* After a request for proposals is issued and before the submission deadline, **the town manager or designee the finance department** may issue one or more written addendum for the purpose of clarifying specifications or other matters relating to the RFP/RFQ.
 - (4) *Statement of qualifications.* Persons and firms interested in providing goods and/or services to the town in response to an RFP issued pursuant to this section may submit statements of qualification and expressions of interest in providing such goods and/or services.
 - (5) *Public notice.* The town will provide reasonable notice of the need for such goods and/or services through a request for proposals (RFP). The RFP must describe the goods and/or services required, list the types of information and data required of each offeror, and state the relative importance of particular specifications or qualifications.

(6) *Selection advisory committee.*

- a. A selection advisory committee, consisting of a minimum of three members, may be established for the purpose of evaluating bids submitted to the town. The selection advisory committee may consist of: ~~a town department directors or their designees~~ **and in the discretion of the Town Manager or designee**, members of the town and Lee County community that are deemed as having special or expert knowledge in the area being solicited.
- b. All members of the selection advisory committee are prohibited from speaking, answering questions or having contact with any potential bidder. During this process the selection advisory committee will operate in a "cone of silence" decorum beginning on the date of the bid posting and ending when council approves the contract.
- c. All meetings of the selection advisory committee will be open to the public and notices containing the date, time, place and purpose of all selection advisory committee meetings will be conspicuously posted in Town Hall. All meetings of the selection advisory committee will be recorded and recordings will be available for public inspection.
- d. The selection advisory committee will review the **submittal bid and response** materials **provided by the finance department** prior to the selection committee meeting. The committee will evaluate each firm's qualifications based on past experience, expressed understanding of the project and proposed method of handling of the project and any other criteria included for evaluation in the invitation to bid. **The committee shall perform a cost or price analysis for any bid greater than \$250,000.**
- e. After evaluation, the committee will formulate a recommendation consisting of a list, in order of preference, of no fewer than three firms deemed to be the most highly **responsive and** qualified to perform the required services, unless noted above. The town manager, after review, will forward the recommendation to the town council for consideration during a regularly schedule council meeting.
- f. If no more than two firms submit proposals, the town manager will determine whether to proceed with only two proposals, based on availability of alternatives and qualifications.
- g. In determining whether a firm is **responsive and** qualified, the committee will consider such factors as the ability of professional personnel; past performance; willingness to meet time and budget requirements; location; recent, current, and projected workloads of the firm. The selection advisory committee may not request, accept, or consider proposals for compensation to be paid under the contract.

(7) *Recommendation.*

- a. The town council will carefully consider the recommendation of the town manager and review the qualifications of the firms and vote to accept, reject, or modify the ranking of the firms by the town manager.
- b. After the ranking of the firms has been determined by the town council, the council will direct the town manager or designee to initiate negotiations with the number one ranked firm. The town council may reject the ranking order recommended by the town manager and propose an alternative ranking or require re-solicitation.

(8) *Negotiation.*

- a. The town manager **shall** negotiate a contract with the most qualified firm for compensation the town manager determines is fair, competitive, reasonable and for which funds are available. In making such determination, the town manager may conduct a detailed analysis of the cost of the services required in addition to considering their scope and complexity.
- b. For any lump-sum or cost-plus-a-fixed-fee contract in excess of \$60,000.00, the firm receiving the contract must execute a truth-in-negotiation certificate confirming that wage rates and other unit costs are accurate, complete and correct. The contract must include a

provision indicating that the original contract price and any additions thereto may be adjusted to exclude increases due to inaccurate, incomplete billing information, or based upon wage rates and unit costs not agreed to as part of the contract.

- c. If the town manager is unable to negotiate a satisfactory contract with the first ranked firm, negotiations with that firm will be formally terminated and the town manager will undertake negotiations with the second ranked firm. If the town manager fails to reach an agreement with the second ranked firm, negotiations with the third ranked firm will be undertaken.
 - d. If the town manager is unable to negotiate a satisfactory contract with any of the selected firms, the town manager may select additional firms in the order of their competence and qualification and submit them to council for determination and ranking continue selection and negotiations as specified in this division until an agreement is reached or reissue the request for proposals.
- (9) *Discussions.* The town manager or the selection advisory committee may conduct discussions with any offeror who has submitted a proposal to determine such offeror's qualifications for further consideration. These discussions must be conducted at a duly notice meeting and be open to the public.
- (10) *Award.*
- a. Proposed awards above \$25,000.00 must be formally approved by the town council. The award should be made to the offeror determined to be best qualified based on the evaluation factors set forth in the RFP and negotiation of compensation determined to be fair and reasonable. If compensation cannot be agreed upon with the best qualified offeror, then negotiations will be formally terminated with the selected offeror. If proposals were submitted by one or more other offerors determined to be qualified, negotiations may be conducted with such other offerors, in the order of their respective qualification ranking, and the contract may be awarded to the offeror then ranked best qualified if the amount of compensation is determined to be fair and reasonable.
 - b. Nothing in this division may be construed to prevent the hiring of expert witnesses and other professionals necessary to assist the town manager or town attorney in representing the town, but such hiring may be subject to council approval.
- (11) *Town council approval.* The town manager will submit the request for proposal of \$25,000.00 or more to the town attorney for review and then submit the contract to the town council for approval.
- (12) *Cancellation of request for proposals.* A request for proposal, or other solicitation may be cancelled, or any or all bids or proposals may be rejected in whole or in part with or without cause. The following is considered good cause for rejection of all proposals:
- a. All bids exceed the estimated or budgeted amount.
 - b. The specifications contain an error which causes confusion and misunderstanding among bidders.
 - c. The items or services are no longer needed.
 - d. Lack of adequate competition.
 - e. Notice of cancellation will be sent to all businesses solicited or submitting bids.

Sec. 2-481. - Vendor list.

Vendor list. The finance department does not maintain a "vendor list" of vendors who desire to receive invitations of bids and/or requests for proposals by mail.

Sec. 2-482. - Specifications for all solicitations.

- (a) *General.* All specifications must be drafted so as to promote overall economy for the purposes intended and encourage competition in satisfying the town's needs, and may not be unduly restrictive. The policy enunciated in this section applies to all specifications including, but not limited to, those prepared for the town by architects, engineers, designers, and draftsmen.
- (b) *Brand name or equal specification.*
 - (1) *Use.* Brand name or equal specifications may be used when the department director and **town manager or designee finance department director** determines in writing that:
 - a. No other design or performance specification or qualified products list is available;
 - b. Title does not permit the preparation of another form of purchase description, not including a brand name specification;
 - c. The nature of the product or nature of the town's requirements makes use of a brand name or equal specification suitable; or
 - d. Use of a brand name or equal specification is in the town's best interest.
 - (2) *Designation of several brand names.* Brand name or equal specifications will seek to designate three, or as many different brands as practicable, as "or equal" references and further state that substantially equivalent products to those designated will be considered for award.
 - (3) *Required characteristics.* Unless the **town manager or designee finance department director** and the affected department director determine in writing that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications must include a description of the particular design, functional, or performance characteristics which are required.
 - (4) *Nonrestrictive use of brand name or equal specifications.* When a brand name or equal specification is used in a solicitation, the solicitation should contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance and characteristics desired and is not intended to limit or restrict competition.
- (c) *Brand name specification.* Since use of a brand name specification is restrictive of product competition, it may be used only when the finance department director makes a written determination that only the identified brand name items will satisfy the town's needs.
- (d) *Competition.* The **town manager or designee finance department director**, in conjunction with the department director, will seek to identify sources from which the designated brand name items can be obtained and solicit such sources to achieve whatever degree of price competition is practicable. If only one source can supply the requirement, the purchase will be made in accordance with subsection 2-480(c) (Sole source purchases).

Sec. 2-483. - Performance bond and insurance requirements.

The **town manager or designee finance department director** will require a public construction bond for all contracts listed in subsection 2-480(c) (Sole source purchases) and may require a performance bond and/or evidence of sufficient insurance for other contracts when necessary to protect the town.

Sec. 2-484. - Construction contracts and supporting documents.

- (a) *Construction contracts.* All construction contracts will be reviewed by the town attorney and be executed by the mayor and town clerk and by either the president or vice-president of the contractor. Other signatories may sign on behalf of the contractor provided there is an attached certified copy of a corporation resolution authorizing that person to sign. The corporate seal of the contractor must be affixed to the contract.
- (b) *Insurance.* All construction contracts must be accompanied by a certificate of insurance indicating coverage in the amounts required by the bid specifications and name the Town of Fort Myers Beach as an additional insured, not just a certificate of holder.

- (c) *Public construction bond.* Any person entering into a contract for the construction of a public building or public work, or for repairs upon a public building or a public work must, before commencing work, execute, deliver to the town, and record in the public records of Lee County, Florida, a public construction bond issued by a surety authorized to do business in the State of Florida.
- (1) *Form.* The bond must be in substantially the following form:

PUBLIC CONSTRUCTION BOND

BY THIS BOND, We, _____, as Principal and _____, a corporation, as Surety, are bound to the Town of Fort Myers Beach, herein called Owner, in the sum of \$_____, for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

THE CONDITION OF THIS BOND is that if Principal:

Performs the contract dated _____, between Principal and Owner for construction of _____, the contract being made a part of this bond by reference, at the times and in the manner prescribed in the contract; and promptly makes payments to all claimants, as defined in F.S. § 255.05(1), supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the contract: and Pays Moller al losses, damages, expenses, costs and attorney's fees, including appellate proceedings that owner sustains because of default by Principal under the contract; and

Performs the guarantee of all work and materials furnished under the contract for the time specified in the contract, then this bond is void; otherwise it remains in full force.

Any changes in or under the contract documents and compliance or non-compliance with any formalities connected with the contract or the changes does not affect Surety's obligation under this bond.

- (2) *Waiver of bond.* Town council may waive the public construction bond requirement for project with a total contract amount of \$200,000.00 or less.
- (3) *Alternative form of security.*
- In lieu of a public construction bond, a contractor may file with the town an alternative form of security in the form of cash, a money order, a certified check, a cashier's check, an irrevocable letter of credit, or a security of a type listed in F.S. ch. 652, pt. II.
 - Any such alternative form of security must be for the same purpose and be subject to the same conditions as those applicable to the public construction bond. The determination of the value of an alternative form of security will be made by the town.
- (d) *Change orders.*
- No work outside the scope of the original contract may be performed prior to approval of a change order by the town council; provided, however, that town council may delegate this authority, up to a specified amount, for contracts where council approval of all change orders would hinder or delay work progress.
 - This does not include contingency changes with a contract which fall within the contingency amount of that contract. These are approved by the department director and town manager.
 - All change orders must be in writing and have town manager approval.

Sec. 2-485. - Disqualification of vendors and bidders.

- (a) *Procedure for disqualification.* After reasonable notice to the person or firm involved and a reasonable opportunity for the person or firm to respond, the town manager is authorized to disqualify that person or firm for cause from consideration for award of contracts. The disqualification may be for a period of not more than four years.
- (b) *Grounds for disqualification.* Grounds for disqualification include, but are not limited to:
 - (1) Conviction for commission of a criminal offense as an incident to obtaining;
 - (2) Attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
 - (3) Conviction under state or federal statutes for embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects the person or firm's ability to perform work for the town;
 - (4) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;
 - (5) Deliberate failure without good cause to perform in accordance with contract specifications or within the time limit provided in a contract;
 - (6) Financial irresponsibility;
 - (7) Unethical conduct; disciplinary action against the person or firm's professional or contractors;
 - (8) License; or
 - (9) Findings under bid protest that the firm acted fraudulently or in bad faith.
- (c) *Notice of decision.* A copy of a decision to disqualify must be mailed to the affected person or firm by certified mail, return receipt requested.
- (d) *Appeal.* Any person or firm who is disqualified may appeal the decision to the town council, provided a notice of appeal is filed within 30 calendar days of the date the decision to disqualify is rendered.

Sec. 2-486. - Appeals and remedies.

- (a) *Bid protests.*
 - (1) *Right to protest.* Any person or firm who is affected adversely by the town's decision may protest to the town council.
 - (2) *Time limits and form of protest.*
 - a. A protest with respect to an invitation to bids or request for proposals must be submitted in writing to the town clerk prior to the opening of bids or the closing date of proposals.
 - b. Written notice of intent to a protest a bid be filed with the town clerk within 72 hours (excluding Saturday, Sundays, and legal holidays) after the posting of the bid tabulation or after receipt of the notice of award or notice of intent to award the contract, whichever is later.
 - c. A formal written protest must be filed within ten calendar days after the filing of the initial written notice of intent to protest. The formal written protest must state with particularity the fact and law upon which the protest is based.
 - d. Failure to file a notice of intent to protest or failure to file a formal written protest within the time limits proscribed herein will constitute a waiver of the right to protest.
 - e. The protestor must post a bond, payable to the Town of Fort Myers Beach in an amount equal to five percent of the total bid or \$20,000.00, whichever is greater, but not to exceed the value of the bid.

- f. The protest bond will be designated and held for payment of any costs that may be levied against the protesting entity by the Town of Fort Myers Beach as a result of a frivolous protest.

(3) *Hearing.*

- a. If the subject of a protest is not resolved by mutual agreement within 14 calendar days after receipt of a formal written protest, the matter may, at the option of the town council, be referred to a hearing officer who will conduct a hearing within 15 calendar days of receipt of the referred formal written protest.
 - b. The hearing officer will render a written recommended order within 30 calendar days after the hearing. The recommended order will be scheduled on the next council agenda for final action.
 - c. If council so elects, the protest may be heard directly by the town council.
- (b) *Stay of action.* Upon receipt of a formal written protest that has been timely filed, the town will stop the bid solicitation process or the contract award process until the subject of the protest is resolved either informally or by town council action, unless the town manager sets forth in writing particular facts and circumstances which require the continuance of the bid solicitation process or the contract award process without delay in order to avoid an immediate and serious danger to the public health, safety or welfare.
- (c) *Appeal of decision.* If a protest is denied, the protestor will have 30 calendar days to file for relief in Circuit Court in Lee County, Florida.

Sec. 2-487. - Remedies for solicitations or awards in violation of law.

- (a) *Closing date for receipt of proposals.* If prior to the bid opening or closing date for receipt of proposals, the town manager or designee finance department director and the affected department director, after consultation with the town manager and town attorney, determines that a solicitation is in violation of federal, state or municipal law, then the solicitation may be cancelled or revised to comply with applicable law.
- (b) *Prior to award.* If after bid opening or the closing date for receipt of proposals, the town manager or designee finance department director and the affected department director, after consultation with the town manager and town attorney, determines that a solicitation or proposed award of a contract is in violation of federal, state, or municipal law, then the solicitation or proposed award will be cancelled.
- (c) *After award.* If, after an award the town manager or designee finance department director and the affected department director, after consultation with the town manager and town attorney, determines that a solicitation or award of a contract was in violation of applicable law, then:
 - (1) If the person or firm awarded the contract has not acted fraudulently or in bad faith;
 - (2) The contract may be ratified and affirmed, provided it is determined that doing so is in the best interests of the town; or
 - (3) The contract may be terminated and the person awarded the contract will be compensated for any costs reasonably incurred under the contract, plus a reasonable amount for overhead, prior to the termination; or
 - (4) If the person or firm awarded the contract has acted fraudulently or in bad faith, the contract may be declared null and void or voidable, if such action is in the best interest of the town.

Sec. 2-488. - Standard of conduct for town officials and employees.

All town officials and employees shall adhere to the Code of Ethics for Public Officers and Employees, adopted by the Florida Legislature as Part III of Chapter 112, Florida Statutes, as amended from time to

time ("Ethics Code"). In the event of a conflict between any term, condition or requirement in this Section and the Ethics Code, the Ethics Code shall be followed.

- (a) *Failure to follow proper purchasing procedures.* It is a violation of this division for any employee to order, contract for, or purchase any materials, supplies, or services except in strict compliance with all purchasing procedures as provided herein or as established by the the town manager or designee finance department director.
- (b) *Solicitation or acceptance of gifts.* No town official or employee may solicit or accept anything of value from any vendor or bidder, including gift, loan, reward promise of future employment, favor, or service, based upon any understanding that the actions of said official or employee would be influenced thereby.
- (c) *Doing business with the town.*
 - (1) No employee or public official acting in his/her official capacity may either directly or indirectly purchase, rent, or lease any realty, goods, or services for the town from any business entity or which he/she or his/her spouse or child is an officer, partner, director, or proprietor or in which such official or employee or his/her spouse or child, or any combination of them, has a material interest.
 - (2) No town official or employee, acting in a private capacity, may rent, lease, or sell any realty, goods, or services to the town.
- (d) *Unauthorized compensation.* No town official or employee or his/her spouse or minor child may, at any time, accept any compensation payment, or thing of value when that person knows, or with the exercise of reasonable care, should know, that it was given to influence action in which the official or employee was expected to participate in his/her official capacity.
- (e) *Conflicting employment or contractual relationship.* No town official or employee may have or hold any employment or contractual relationship with any business entity that is doing business with the town; provided however, that this section may not be construed to prevent any officer or employee from accepting any other employment or following any pursuit that does not interfere with the full and faithful discharge of the officer or employee's duties in his/her employment with the town.
- (f) *Contingent fees.* No town official or employee may be retained, or retain a person, to solicit or secure a town contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee.
- (g) *Confidential information.* No town official or employee may disclose or use any information not available to members of the general public and gained by reason of his/her official position for his/her personal gain or benefit of any other person or business entity.
- (h) *Penalties.* Violation of any provision of this section may subject the officer or employee to discipline in the form of one or more of the following:
 - (1) *In the case of a town official:*
 - a. Forfeiture of office as provided in the town Charter.
 - b. Restitution of any pecuniary benefit received because of the violation committed.
 - (2) *In the case of a town employee:*
 - a. Dismissal from employment, provided that if the employee is found guilty of willful violation, then dismissal from employment is mandatory.
 - b. Suspension from employment for not more than 90 days without pay.
 - c. Demotion.
 - d. Reduction in salary level.
 - e. Oral or written reprimands or warnings.

- f. Any discipline imposed shall be subject to the town's personnel rules.
- (i) *Contracts voidable.* If a violation of any of the prohibitions contained in this section occurs, then the contract involved may, at the option of the town, be declared null and void or voidable.

I have read, understand and acknowledge the Town's purchasing policy and my responsibilities under this policy as a Town Employee. I acknowledge that if I have questions I will contact the Finance Director or Town Manager.

_____	_____
Name	Date

Sec. 2-489. - Cone of silence.

- (a) *Purpose and intent.* The requirements of section, "cone of silence", as amended, are applicable to the town. It is the intent of this division to prevent potential bidders, offerors or service providers from communicating with town department heads, their staff, town council or selection and evaluation committee members during the period of time in which the cone of silence is imposed.
- (1) *Meaning.* "Cone of silence" is defined to mean a prohibition on:
- a. Any communication regarding a particular RFP, RFQ or IFB between a potential offeror, service provider, bidder, lobbyist, or consultant and the town's professional staff including, but not limited to, the town manager and his or her staff;
 - b. Any communication regarding a particular RFP, RFQ or IFB between the mayor, town council or their respective staffs and any member of the town's professional staff including, but not limited to, the town manager and his or her staff;
 - c. Any communication regarding a particular RFP, RFQ or IFB between a potential offeror, service provider, bidder, lobbyist, or consultant and any member of the selection committee or evaluation committee;
 - d. Any communication regarding a particular RFP, RFQ or IFB between the mayor, town council or their respective staffs and any member of the selection committee or evaluation committee;
 - e. Any communication regarding a particular RFP, RFQ or IFB between a potential offeror, service provider, bidder, lobbyist, or consultant and the mayor, town council and their respective staffs; and
 - f. The town manager and the chairperson of the selection committee may communicate about a particular selection committee recommendation, but only after the committee has submitted an award recommendation to the town manager and, provided that should any change occur in the committee recommendation, the content of the communication and of the corresponding changes must be described in writing and filed by the town manager.
- (2) *Allowed communications.* Notwithstanding the foregoing, the cone of silence does not apply to:
- a. Communications with the town attorney and his or her staff;
 - b. Duly noticed site visits to determine the competency of bidders regarding a particular bid during the time period between the opening of bids and the time the town manager makes a written recommendation;
 - c. Communications regarding a particular RFP, RFQ or IFB between any person and the the finance department director or designee, provided the communication is limited strictly to

matters of process or procedure already contained in the corresponding solicitation document; and

- d. Communications regarding a particular proposal, quotation or bid between the ~~the town manager or designee~~ finance department director or designee and a member of the selection committee or evaluation committee provided the communication is limited strictly to matters of process or procedure already contained in the corresponding solicitation document.

(b) *Procedure.*

- (1) A cone of silence will be imposed upon each RFP, RFQ and IFB after the advertisement of the RFP, RFQ or IFB. At the time of imposition of the cone of silence, ~~the town manager or designee~~ finance department director or designee will provide for public notice of the cone of silence. The ~~the town manager or designee~~ finance department director will issue a written notice thereof to the affected departments, file a copy of such notice with the town clerk, with an email copy thereof to each town council member, and include in any public solicitation for supplies or services a statement disclosing the requirements of this division. Notwithstanding any other provision of this section, the imposition of a cone of silence on a particular RFP, RFQ or IFB will not preclude procurement staff from obtaining industry comment or performing market research provided all communications related thereto with a potential offeror, service provider, bidder, lobbyist, or consultant are in writing or are made at a duly noticed public meeting.
- (2) The cone of silence terminates at the time town council votes to award the contract.
- (3) If the town manager rejects all bids or proposals submitted in response to an RFP or IFB and concurrently requests the re-issuance of an RFP or IFB, the rejected bids or proposals will remain under the cone of silence until such time the town manager issues a written recommendation of award or until the town manager withdraws the re-issued RFP or IFB.

Sec. 2-490. - Exhibits.

All exhibits referenced in this division including:

Exhibit A Bid Tally Sheet

Exhibit B Quote Sheet

Exhibit C Sole Source Purchase

Exhibit D Emergency Purchase; and

Exhibit E Cooperative Purchase Justification,

are on file with the town.

Secs. 2-491—2-505. - Reserved.



Business Impact Estimate

Proposed ordinance's title/reference:

Ordinance 24-11 Purchasing Policy Amendments

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

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

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

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

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

AMENDING DIVISION 1 PURCHASING OF GOODS AND SERVICES POLICIES AND PROCEDURES OF ARTICLE V FINANCE OF THE TOWN OF FORT MYERS BEACH TO TRANSFER PURCHASING TO THE TOWN MANAGER OR DESIGNEE FROM THE FINANCE DEPARTMENT, TO INCREASE THE AUTHORITY OF THE TOWN MANAGER FOR PURCHASES OF GOODS AND SERVICES AND TO IMPLEMENT RECOMMENDATIONS PROVIDED TO THE TOWN BASED ON THE DISASTER READINESS ASSESSMENT AND ABATEMENT PLAN PREPARED BY THE FLORIDA DIVISION OF EMERGENCY MANAGEMENT AND APPROVED BY THE FEDERAL DISASTER EMERGENCY MANAGEMENT AGENCY

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

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

There are unlikely to be direct compliance costs associated with Ordinance 24-11.

Ordinance 24-11 does not impose any new charge or fee on businesses.

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

The Town will not likely incur additional costs.

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

The Town believes that businesses would not be impacted by this ordinance.

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

N/A

1. **Request:**

Meeting Date: April 15, 2024

1st Reading and Public Hearing on an Ordinance entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA REAFFIRMING ITS PRIOR AMENDMENT OF THE QUALIFYING PERIOD FOR TOWN COUNCIL CANDIDATES FOR THE NOVEMBER 2024 ELECTION TO NOON ON THE 71ST DAY (JUNE 10, 2024) TO NOON OF THE 67TH DAY (JUNE 14, 2024) PRIOR TO THE AUGUST PRIMARIES TO BE HELD ON AUGUST 20, 2024; PROVIDING FOR SCRIVENER'S ERRORS; CONFLICTS OF LAW; SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

Open the public hearing and schedule for second reading and final adoption on May 6, 2024 at 9:00 AM

Why the action is necessary:

Will allow for sufficient time to prepare, proof, and mail official ballots containing federal, state, and municipal contests.

What the action accomplishes:

Moves the candidate-qualifying period in accordance with Section 101.75(3), Florida Statutes.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Ordinance

4. **Submitter of Information:**

5. **Background:**

Section 101.75, Florida Statutes permits a municipality to change by ordinance the date of any municipal election to a date concurrent with any statewide or countywide election. The dates for qualifying for the election moved by the passage of such an ordinance shall be specifically provided for in the ordinance. In 2022, the Town adopted Ordinance 22-08, which changed the qualifying and election dates as requested by the Supervisor of Elections ("SOE"). This ordinance reaffirms the change in the qualifying date as requested by the SOE pursuant to Section 2.10.9 of the 2023 Interlocal Agreement with the Town.

Attachments:

1. 24-12, SOE Qualifying Date Change
2. Interlocal Agreement w Fort Myers Beach exctd 12 28 23
3. SOE FMB Candidates

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

Amy Baker, Town Clerk
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 4/9/2024
Approved - 4/10/2024
Approved - 4/10/2024
Final Approval - 4/10/2024

ORDINANCE 24-12

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA REAFFIRMING ITS PRIOR AMENDMENT OF THE QUALIFYING PERIOD FOR TOWN COUNCIL CANDIDATES FOR THE NOVEMBER 2024 ELECTION TO NOON ON THE 71ST DAY (JUNE 10, 2024) TO NOON OF THE 67TH DAY (JUNE 14, 2024) PRIOR TO THE AUGUST PRIMARIES TO BE HELD ON AUGUST 20, 2024; PROVIDING FOR SCRIVENER'S ERRORS; CONFLICTS OF LAW; SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

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

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

WHEREAS, Section 5.01 of the Town of Fort Myers Beach ("Town") Charter establishes the time period that candidates for Town Council must qualify from noon of the 50th day to noon of the 46th day before a November election; and

WHEREAS, the current time frame for Town candidates to qualify severely impacts and limits the Lee County Supervisor of Elections' ("SOE") ability to prepare and timely mail official ballots in accordance with state law; and

WHEREAS, Section 101.75(3), *Florida Statutes*, provides that the Town may move the dates for qualifying for the Town elections by ordinance; and

WHEREAS, the Town Council adopted Ordinance 22-08, which moved the Town Council candidate qualifying period for the 2022 election year to noon of the 71st day until noon of the 67th day prior to the November general election date for 2022, and all general elections in November thereafter; and

WHEREAS, the Town had and continues to have the legal authority to adopt an Ordinance pursuant to its broad home rule powers and Section 101.75(3), *Florida Statutes*; and

WHEREAS, the Supervisor of Elections requested and the Town desires to reaffirm a change to the candidate qualifying period as contained in the Town Charter for the November 5, 2024 Town Council election to noon on the 71st day (June 10, 2024) to noon of the 67th day (June 14, 2024) prior to the August primaries on the 20th day of August; and

WHEREAS, on April 15, 2024 the Town Council held a first reading of the proposed Ordinance and gave full and complete consideration to the recommendation of staff, the documents

in the record, and the testimony of all interested persons; and

WHEREAS, a Business Impact Estimate was prepared and posted on the Town’s website on the ____ day of _____, 2024, as required by Section 166.041(4), Florida Statutes; and

WHEREAS, an advertisement of the public hearing for adoption of the Ordinance was published in the _____ on the ____ day of _____, 2024, which is 10 days prior to the second reading of the proposed Ordinance as required by Section 166.041; and

WHEREAS, on the ____ day of _____, 2024, the Town Council held a second reading of the Ordinance; and

WHEREAS, the Town finds that it is in the best interests of the Town to adopt this ordinance.

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

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

Section 2. In accordance with Section 101.75(3), *Florida Statutes*, the Town Council reaffirms that the candidate qualifying period shall be from noon of the 71st day to noon of the 67th day prior to the August 20, 2024 primaries.

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

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

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

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

The foregoing Ordinance 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 ____ day of _____ 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, Town Attorney

This Ordinance was filed in the Office of the Town Clerk on this ____ day of _____, 2024.

AGREEMENT

This Agreement is made this 28 day of DECEMBER, 2023, by and between the Town of Fort Myers Beach ("Municipality") and the Office of the Supervisor of Elections of Lee County, Florida, ("Supervisor").

RECITALS:

WHEREAS, the Municipality is required to provide for the conduct of its elections;

WHEREAS, the Supervisor, as the lawfully elected constitutional officer of Lee County, Florida, is the official custodian of the registration books and has the exclusive control of matters pertaining to the registration of electors;

WHEREAS, the Supervisor is willing to conduct elections for the Municipality subject to the terms and conditions set forth in this Agreement; and

WHEREAS, the Municipality desires that the Supervisor conduct elections for the Municipality.

NOW, THEREFORE, for and in consideration of the mutual promises and benefits conferred herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and confessed, the parties hereto, intending to be legally bound, covenant and agree as follows:

PROVISIONS:

1. Recitals. The recitals contained in this Agreement are true and correct and are incorporated herein in their entirety.
2. Supervisor's Duties: Supervisor shall conduct such elections for Municipality as may be requested by Municipality including special, stand-alone, and/or regularly scheduled elections, on such dates as are mutually agreed upon by Municipality and Supervisor, all in accordance with the Florida Election Code, any applicable charter, and any applicable ordinances. The services to be provided by Supervisor include:
 - 2.1 Supervisor shall prepare ballots, including, as necessary, candidates, referenda, and instructions to voters.
 - 2.2 Supervisor shall provide, operate, and maintain voting and tabulation equipment necessary for Municipality elections.
 - 2.3 Supervisor shall provide such personnel as are necessary to: conduct Municipality elections, tabulate the vote and provide results to the Municipality.
 - 2.4 Supervisor shall provide operating supplies necessary to conduct Municipality elections.

- 2.5 Supervisor shall perform all functions necessary to the distribution, processing and counting of mail ballots.
- 2.6 Supervisor shall provide adequate polling place facilities for each Municipality precinct.
- 2.7 Supervisor shall advise and assist the Canvassing Board as needed.
- 2.8 Supervisor is responsible for all statutorily required legal advertising, the cost of which shall be billed to the Municipality. Supervisor may provide for the publication medium of legal advertising as statutorily permitted by law. Supervisor will provide the Municipality with a copy of any legal advertisement or mailing that the Municipality must publish on its official website.
- 2.9 Supervisor must provide dual ballot languages (English and Spanish), and legal advertising statutorily required of the Supervisor per the Language Minority Provisions of Section 203 of the Voting Rights Act.
- 2.10 Unless the Municipality provides written notice to the contrary at least one hundred and eighty (180) days prior to the date of any special, stand-alone, or regularly scheduled elections, the Supervisor shall act as the Election Qualifying Officer. As such the Supervisor shall be responsible for:
 - 2.10.1 Receipt and conditional review of all campaign finance reports in conformity with Florida law;
 - 2.10.2 Maintaining the candidate list for each election;
 - 2.10.3 Production and distribution of candidate packet materials;
 - 2.10.4 Providing election related notary services to campaigns and candidates;
 - 2.10.5 Petition processing and certification;
 - 2.10.6 Post-election campaign finance reconciliation support;
 - 2.10.7 Candidate qualifying instructions;
 - 2.10.8 Preparing and scheduling of the election calendar; and
 - 2.10.9 Determination of the candidate-qualifying period.

3. Municipality's Duties:

- 3.1 Municipality shall immediately notify, continually advise, and provide written copies of all provisions of law pertaining to elections within the Municipality, including, but not limited to, any charter, code of ordinances, special acts, and any additions or amendments thereto, as necessary for Supervisor to conduct Municipality's elections.
- 3.2 Municipality shall notify Supervisor in writing, and get Supervisor's consent thereto, at least one hundred twenty (120) days in advance of all election dates, and such notice shall include the qualifying periods applicable thereto.
- 3.3 Municipality shall conference with Supervisor at least one hundred twenty (120) days prior to the scheduled election and on, or before, that date, provide an up-to-date map clearly indicating official Municipality boundaries (ninety (90) days in the event of the death or removal of the Mayor or a Council member).
- 3.4 Municipality is responsible for legal advertising statutorily required of the Municipality and must provide for the publication medium as required by law.
- 3.5 Municipality shall reimburse Supervisor for all services, supplies, expenses and costs of whatever kind or nature incurred because of or in the conduct of the Municipality's special or stand-alone elections. It is not contemplated that elections held in conjunction with federal, state, or county elections would cause Municipality to reimburse Supervisor for expenses, except those for expenses solely related to Municipality's elections, including, but not limited to, candidate withdrawal notices to voters, translation, recount, and attorney's fees, which would not have otherwise been incurred by Supervisor.
- 3.6 To the extent permitted by Section 768.28, Florida Statutes, Municipality shall indemnify and hold Supervisor harmless from and against all claims, damages, injuries, litigation, actions or losses including reasonable attorney's fees and costs, arising out of or resulting from the acts of Supervisor in the performance of his lawful duties and the responsibilities under this Agreement, excepting any act or omission committed in bad faith or with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety or property.
- 3.7 Municipality shall name Supervisor as additional insured under the Municipality's property and casualty insurance policies, including but not limited to general liability, with respect to all activities of Supervisor relating to or arising out of the conduct of the Municipality's elections.

3.7.1 Subject to Supervisor's approval in any particular instance, which approval shall not be unreasonably withheld, Municipality Attorney, or designee, shall have authority to defend, negotiate and participate in any actions or claims for damages arising from the responsibilities of Supervisor under this agreement, or provide for defense of such actions or claims through its Risk Management Pool or other appropriate firm.

3.7.2 No settlement of such claims or actions shall be binding upon Municipality unless approved by the Municipality Council.

4. Expenses and Compensation: Upon completion of election services for any election, Supervisor shall provide an invoice to the Municipality detailing the costs incurred by Supervisor in conducting the election for Municipality. Reimbursement shall be made within thirty (30) days to Supervisor for such costs, including, but not limited to, the following: printing, labor, poll workers, rent, postage, transportation, forms, supplies, communication and use of tabulation equipment. Supervisor will provide such verification of expenses as is reasonably requested by Municipality.
5. Term: This Agreement shall become effective on the date of its execution by both parties and shall continue in effect for one (1) year from such date. The Agreement shall be automatically extended from year to year unless either party provides written notice of its intent to terminate at least six (6) months prior to the month in which a Municipality election is scheduled.
6. This Agreement is not cancellable during an election cycle.
7. The Municipality consents to all non-sample Ballot mailing advertisement by the Supervisor without the need for prior approval.
8. Any Sample Ballot mailing for stand-alone and/or special elections will only occur upon written request by Municipality to Supervisor.
9. Determinations regarding decision on whether to conduct early voting must be included in the Municipality's official resolution to conduct a stand-alone and/or special elections. The parties agree that failure to do so shall be construed as a decision not to provide early voting.
10. All costs for the enforcement of this Agreement, including reasonable attorney's fees, shall be paid by the losing party to the prevailing party.
11. Where used herein references to Municipality or Supervisor shall include the officers, agents, and employees of each.

12. This Agreement shall not be applicable to elections that are limited solely to freeholders.
13. In the event that any part of this Agreement is determined to be unenforceable by a court of competent jurisdiction, said determination shall not invalidate the remaining parts of this Agreement.
14. This Agreement shall become effective on the date first above written. This Agreement and any subsequent amendments thereto, shall be filed with the Clerk of the Circuit Court of Lee County, Florida.

Witnesses:

Kimberly McKown
1st Witness
Kimberly McKown
Printed Name

2nd Witness

Therette Feliciano
Printed Name

Witnesses:

Donna Romilio
1st Witness
DONNA Romilio
Printed Name

2nd Witness

JASON FREEMAN
Printed Name

Approved as to Form:

Nancy Spil
Vose Law Firm, LLP, Town Attorney

SUPERVISOR OF ELECTIONS

By: T. Doyle
Print: TOMMY DOYLE

TOWN OF FORT MYERS BEACH

By: Andrew Hyatt
Print: Andrew Hyatt
Title: Town Manager

Attest:

By: Amy Baker
Amy Baker, Town Clerk



TOWN OF FORT MYERS BEACH CANDIDATES

Candidates and **NEW FILERS** may file the required candidate-qualifying forms on or after Monday, May 27, 2024 **as indicated below:**

1. ☐ Candidate Campaign File Cover Sheet;
2. ☐ Text Messaging Service Agreement;
3. ☐ Form DS-DE 9 Appointment of Campaign Treasurer and Designation of Campaign Depository for Candidates;
4. ☐ Form DS-DE 84 Statement of Candidate (filed within 10-days of filing Form DS-DE 9);
5. ☐ Lee County Campaign Finance Reporting System Affidavit;
6. ☐ Form 6 Full and Public Statement of Financial Interests for 2023 – must be filed electronically with the Florida Commission on Ethics via the Electronic Filing Disclosure Management System (EFDMS) at <https://disclosure.floridaethics.gov/Account/Login>. A copy of the electronically filed Form 6 must be provided with your final qualifying documents.
7. ☐ The appropriate **CANDIDATE OATH** (must be notarized and properly executed);
 - **DS-DE 302NP: Candidate Oath – Non Partisan Office;**
8. ☐ Canvassing Board Meetings and Logic and Accuracy Testing Schedules for the Primary and General Elections - signed and dated.
9. ☐ Candidates who utilized the candidate-petition process and obtained the required number of candidate petition signatures prior to May 13, 2024 will not be required to pay the filing fee, however, the election assessment must still be paid in #11;
 - 47 signatures of registered electors residing in Town of Fort Myers Beach
10. ☐ **OR pay filing fee (the filing fee must be paid by check drawn on the campaign account) and must be for the exact amount** – if a candidate's check for the filing fee is for an amount less than the filing fee or is returned by the bank for "insufficient funds," the candidate will be disqualified, and his or her name will not appear on the ballot;
11. At the time of qualifying, a candidate shall pay an election assessment equal to 1% of the annual salary (\$16,800) of the office sought. Candidates for Town Council will be assessed **\$168.00, PLUS** a 3% qualifying fee of **\$504.00**.

Total cost for qualifying for Town of Fort Myers Beach Council Member candidate: **\$672.00**
12. ☐ Make campaign check payable to Lee County Elections; no cash, cashier's checks or money orders;
13. ☐ **All forms and fees (if any) must be submitted prior to NOON, Friday, June 14, 2024!**

THE DEADLINE TO FILE IS NOON, FRIDAY, JUNE 14, 2024!