



Fort Myers Beach Town Council

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

AMENDED Agenda

Monday, May 6, 2024

9:00 AM

ORDER OF BUSINESS

- I. CALL TO ORDER
- II. INVOCATION
- III. PLEDGE OF ALLEGIANCE
- IV. APPROVAL OF FINAL AGENDA
- V. PUBLIC COMMENT
- VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS
- VII. ADVISORY COMMITTEES ITEMS / REPORTS / APPOINTMENTS

NEW A. Tidal Basin Update

NEW B. Marine & Environmental Resources Task Force

VIII. APPROVAL OF MINUTES

- A. Town Council - April 15, 2024

IX. CONSENT AGENDA

- A. Resolutions 24-81 through 24-84; 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.

- B. Resolutions 24-85 through 24-88; 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.

- C. Resolution 24-76; CDBG-DR Applications and Grants for Public Facilities and Critical Infrastructure

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AUTHORIZING THE MAYOR OR TOWN MANAGER TO APPLY FOR AND ADMINISTER A GRANT FROM THE LEE COUNTY CDBG-DR FOR PROJECTS UNDER THE CRITICAL INFRASTRUCTURE AND PUBLIC FACILITIES PROGRAMS ; AUTHORIZING THE MAYOR OR TOWN MANAGER TO EXECUTE ANY RELATED DOCUMENTS TO IMPLEMENT AND ADMINISTER THE GRANT; AND PROVIDING AN EFFECTIVE DATE.

- D. Resolution 24-92; Disaster Recovery Services Piggyback Lee County Agreement

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING AN AGREEMENT FOR DISASTER RECOVERY SERVICES WITH CROWDER-GULF JOINT VENTURE, INC., BASED ON PRICING COMPETITIVELY PROCURED BY LEE COUNTY THROUGH AN AGREEMENT AND THE TWO ASSOCIATED AMENDMENTS; AUTHORIZING THE MAYOR OR TOWN MANAGER TO SIGN THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

- E. Resolution 24-93; Demolition Services (City of Fort Myers)

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING AN AGREEMENT FOR DEMOLITION SERVICES WITH SOUTHWEST BUILDERS INC., BASED ON PRICING COMPETITIVELY PROCURED BY THE CITY OF FORT MYERS, FLORIDA THROUGH AN AGREEMENT; AUTHORIZING THE MAYOR OR TOWN MANAGER TO SIGN THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

- F. Resolution 24-94; Demolition Services Bonita Springs Piggyback

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING AN AGREEMENT FOR DEMOLITION SERVICES WITH HONC DESTRUCTION BASED ON PRICING COMPETITIVELY PROCURED BY THE CITY OF BONITA SPRINGS; AUTHORIZING THE MAYOR OR TOWN MANAGER TO SIGN THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

- G. Resolution 24-91; ITB-23-17-PW, Change Order #1

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING CHANGE ORDER #1 OF CONTRACT ITB-23-17-PW BETWEEN THE TOWN AND AMERICAN INFRASTRUCTURE SERVICES. TO INSTALL STREET SIGNS ON

ESTERO ISLAND FOR AN ADDITIONAL COST OF \$11,952; AND PROVIDING FOR AN EFFECTIVE DATE.

- H. CDBG-DR Planning Subrecipient Agreement
Accept CDBG-DR Planning Funding award in the amount of up to \$1,575,000.00
- I. Amendment #1; Extension for Bandes Construction Company
AUTHORIZE THE MAYOR TO EXECUTE AN AMENDMENT TO THE PREVIOUS NON-EXCLUSIVE RIGHT OF WAY AGREEMENT WITH BANDES CONSTRUCTION COMPANY, INC. TO EXTEND THE AGREEMENT FOR TWO MONTHS LONGER UNDER THE SAME TERMS AND CONDITIONS

X. ITEMS REMOVED FROM CONSENT AGENDA

XI. PUBLIC HEARINGS

- A. Resolution 24-89, VAR20240050, 590 Carlos Circle
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING VARIANCE VAR20240050, REQUESTING TWO VARIANCES FROM LDC TABLE 34-3 A VARIANCE OF 16-FEET FROM THE REQUIRED 25-FOOT STREET SETBACK, AND A VARIANCE OF 5- FEET FROM THE REQUIRED 20-FOOT REAR SETBACK LOCATED AT 590 CARLOS CIR; PROVIDING FOR CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.
- B. Resolution 24-90; SEZ20240024, 6614 Estero Blvd "Island Winds Condominium"
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING / APPROVING WITH CONDITIONS / DENYING SPECIAL EXCEPTION SEZ20240024 TO ALLOW RECONSTRUCTION OF A WOODEN LANDSCAPE WALL IN THE ENVIRONMENTALLY CRITICAL (EC) ZONING DISTRICT, WITH CONDITIONS, FOR THE PROPERTY LOCATED AT 6614 ESTERO BOULEVARD; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, AND AN EFFECTIVE DATE.
- C. Ordinance 24-09; Moss Marina CPA20230152, 450, 445, 441 & 436 Harbor Court, 435 Bonita Street, and 438 Bonita Street
First Reading and Public Hearing on proposed ordinance 24-09 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING/ DENYING A COMPREHENSIVE PLAN FUTURE LAND USE MAP AMENDMENT FOR PROPERTIES LOCATED AT 450 HARBOR COURT, 445 HARBOR COURT, 441 HARBOR COURT, 436 HARBOR COURT, 435 BONITA STREET, AND 438 BONITA STREET FORT MYERS BEACH FROM MARINA (3.53 ACRES) AND MIXED RESIDENTIAL (1.00 ACRE) TO PEDESTRIAN COMMERCIAL; CONTAINING 4.53 ACRES

GENERALLY IDENTIFIED AS STRAP NUMBERS 24-46-23-W3-00027.0000, 24-46-23-W3-00026.0020, 24-46-23-W3-0030B.0200, 24-46-23-W3-0030B.0190, 24-46-23-W3-0030C.0060, 24-46-23-W3-0030C.0040, 24-46-23-W3-0030A.0110, PORTIONS OF HARBOR COURT AND BONITA STREET RIGHT-OF-WAY; PROVIDING FOR SCRIVENER'S ERRORS AND AN EFFECTIVE DATE. Open the public hearing and schedule for second reading and final adoption on June 3, 2024 at 9:00 AM.

D. Ordinance 24-10; Comprehensive Plan

First Reading and Public Hearing on proposed ordinance 24-10 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING THE TOWN OF FORT MYERS BEACH COMPREHENSIVE PLAN IN ITS ENTIRETY, PURSUANT TO 163.3184 (3), FLORIDA STATUTES; PROVIDING FOR ADOPTION OF THE TOWN OF FORT MYERS BEACH COMPREHENSIVE PLAN 2040, INCLUDING AMENDMENTS TO THE FUTURE LAND USE ELEMENT AND THE FUTURE LAND USE MAP, THE COMMUNITY DESIGN ELEMENT, THE TRANSPORTATION ELEMENT, THE HOUSING ELEMENT, THE HISTORIC PRESERVATION ELEMENT, THE UTILITIES ELEMENT, THE CONSERVATION ELEMENT, THE COASTAL MANAGEMENT ELEMENT, THE RECREATION, & OPEN SPACE ELEMENT, THE INTERGOVERNMENTAL COORDINATION ELEMENT, THE CAPITAL IMPROVEMENTS ELEMENT, AND THE PROPERTY RIGHTS ELEMENT; INCLUSIVE OF ALL ASSOCIATED TABLES, EXHIBITS AND MAPS; AUTHORIZING FINDINGS AND ADMINISTRATIVE ACTIONS; PROVIDING FOR TRANSMITTAL; PROVIDING FOR SEVERABILITY; PROVIDING FOR SCRIVENER'S ERRORS; AND PROVIDING FOR EFFECTIVE DATE.

Open the public hearing and schedule for second reading and final adoption on June 3, 2024 at 9:00 AM.

E. Ordinance 24-08; Downtown Building Height

Second Reading and Final 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.

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

Second Reading and Final 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 FROM A MEMBER OF THE PUBLIC 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.

G. Ordinance 24-04; Emergency Temporary Uses

Second Reading and Final 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.

H. Ordinance 24-13; Unsafe Structures

First Reading and Public Hearing on proposed Ordinance 24-13 entitled: ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING DIVISION 3 "UNSAFE BUILDING ABATEMENT CODE" OF ARTICLE I "PROPERTY MAINTENANCE CODES" OF CHAPTER 6 "MAINTENANCE CODES, BUILDING CODES AND COASTAL REGULATIONS" OF THE CODE OF ORDINANCES OF FORT MYERS BEACH, FLORIDA, TO CLARIFY EXISTING PROVISIONS RELATED TO NOTICE AND EXCEPTIONS; TO AUTHORIZE NOTIFICATION BY CONSTRUCTIVE SERVICE; TO INCLUDE ATTORNEY'S FEES AND COSTS AND NOTICE EXPENSES TO THE DEMOLITION LIEN AGAINST THE PROPERTY ON WHICH THE UNSAFE BUILDING WAS LOCATED,

AND TO AUTHORIZE USE OF THE UNIFORM METHOD OF COLLECTION FOR COLLECTION OF LIENS; 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 20, 2024 at 9:00 AM.

I. Ordinance 24-11, Purchasing Policy Amendments

Second Reading and Final 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.

J. Ordinance 24-12; Elections

Second Reading and Final 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.

XII. ADMINISTRATIVE AGENDA

A. Lien Reduction request; 80 Avenue E

Review of White Sands Properties of Ft. Myers Beach, LLC's Verified Motion to Forgive or in the Alternative Mitigate Funds submitted by Steven A. Ramunni, Esq., on behalf of White Sands Properties of Ft. Myers Beach, LLC.

B. Award ITB-24-03-EN to Ahtna Marine and Construction as the lowest responsive and responsible bidder to construct the Estero Island Beach Nourishment and Hurricane Recovery Project

Award ITB-24-03-EN to Ahtna Marine and Construction, as the lowest responsive and responsible bidder, to complete the Estero Island Beach Nourishment and Hurricane Recovery Project, contingent and effective on the date the Lee County Board of County Commissioners approves the Interlocal Agreement with the Town for the "Estero Island

Beach Nourishment Project," which was approved by Town Council on the 1st day of April 2024 in Resolution 24-15.

- C. Res. 24-80, Authorizing Bridge Loan to Fund FY23 Lost Revenue
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AUTHORIZING THE TRANSFER OF \$3,085,209 FROM THE BRIDGE LOAN FUND TO REPLENISH GENERAL FUND CASH THAT WAS DEPLETED AS A RESULT OF THE REVENUE LOST IN FISCAL YEAR 2023 DUE TO THE ECONOMIC IMPACT OF HURRICANE IAN, AND PROVIDING FOR AN EFFECTIVE DATE.
- D. 7th Amendment to ILA with Lee County for Utility Relocation Project
Motion to Approve the Seventh Amendment to the Interlocal Agreement between Lee county and the Town of Fort Myers Beach for a Utility Relocation Project within the Corporate Limits of the Town of Fort Myers Beach.

XIII. FINAL PUBLIC COMMENT

XIV. TOWN MANAGER'S ITEMS

XV. TOWN ATTORNEY'S ITEMS

XVI. COUNCILMEMBERS ITEMS AND REPORTS

- A. Town Manager Evaluation
Yearly review of Town Manager.

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 15, 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. INVOCATION

Town Clerk Baker.

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF FINAL AGENDA

Council Member King moved to approve the final agenda with the entire consent agenda pulled for discussion, seconded by Council Member Safford.
The motion carried unanimously.

V. PUBLIC COMMENT

No public comment.

VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Council Member Safford thanked the Community Foundation for the event on Saturday.

Council Member Woodson was glad that things were moving forward on the island.

Vice Mayor Atterholt recognized Chris King and others for picking up trash on the beach every morning.

Council Member King welcomed back 7-Eleven, and thanked the vice mayor for assisting.

Mayor Allers also thanked the Community Foundation and Mark Ashton for working over the weekend.

A. Presentation: Friends of the Mound House

Friends of the Mound House representatives presented a check of \$20,814.00 for the Mound House.

VII. ADVISORY COMMITTEES ITEMS / REPORTS / APPOINTMENTS

Steve Johnson, Chair of the Marine & Environmental Resources Task Force (MERTF), reported that MERTF made recommendations, including expanding the selection of plants for dunes, directing staff to determine whether the Resilient Lee plan will address the needs of the beach and if not, pursue a vulnerability assessment and to direct staff to work with Sanibel staff regarding a beach access design. Another recommendation to protect the EC (Environmentally Critical) zone was for the town council to discourage approval of variances for construction in the EC zone to prevent encroachment on the beach. He added that the vote included grandfathered structures that had been destroyed but did not include grandfathered structures that could be repaired.

VIII. APPROVAL OF MINUTES

- A. Town Council - April 1, 2024
Council Member King moved to approve the minutes, seconded by Council Member Woodson.
The motion carried unanimously.
- B. Management & Planning Session - April 4, 2024
Council Member King moved to approve the minutes, seconded by Council Member Woodson.
The motion carried unanimously.
- C. Town Council Special Meeting - April 4, 2024
Council Member King moved to approve the minutes, seconded by Council Member Woodson.
The motion carried unanimously.

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.
Culture, Parks & Recreation Director Jeff Hauge discussed the event and noted fireworks would start at 9:00 p.m.
Vice Mayor Atterholt moved to approve closing the bridge, seconded by Mayor Allers.
The motion carried unanimously.

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.

Town Manager Hyatt and Frankie Kropacek, Director of Operations & Compliance, explained the reason for the authorization.

Council Member King moved to approve the authorization, seconded by Council Member Safford.

The motion carried unanimously.

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

Environmental Projects Manager Chadd Chustz explained the reason for the extension.

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

The motion carried unanimously.

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.

Projects Manager Chustz explained the reason for the resolution and noted the state was covering the costs.

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

The motion carried unanimously.

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.

Projects Manager Chustz explained the reason for the resolution and noted the state was paying for the sand and related costs.

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

The motion carried unanimously.

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

Director Hauge explained that smaller projects were combined, which increased the total cost.

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

The motion carried unanimously.

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.

Director Hauge explained that the restrooms had to be replaced and the TDC (Tourist Development Council) will cover the costs.

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

The motion carried unanimously.

X. ITEMS REMOVED FROM CONSENT AGENDA

Addressed above.

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

Council Member King read the title of the resolution.

Community Development Planner Sarah Propst reviewed the background of the request as stated in the blue sheet.

No public comment.

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

The motion carried unanimously by roll call vote.

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

Mayor Allers read the title of the ordinance. Town Attorney Becky Vose explained the reason for the ordinance as stated in the blue sheet. Vice Mayor Atterholt thanked Town Attorney Vose for moving forward on the item. No public comment.

Vice Mayor Atterholt moved to approve the ordinance and send it to a second reading, seconded by Council Member Safford.
The motion carried unanimously by roll call vote.

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

Mayor Allers read the title of the ordinance. Town Attorney Vose reviewed the ordinance as stated in the blue sheet and noted that the ordinance only addressed residential and governmental entities. She will add a residential sunset clause.

Public comment:

A commercial contractor suggested adding proof of movement instead of a set amount of time for sunset.

Public comment closed.

Mayor Allers moved to approve the ordinance and send it to a second reading, seconded by Council Member King.
The motion carried unanimously by roll call vote.

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

Mayor Allers read the title of the ordinance. Director Kropacek reviewed the background of the request as stated in the blue sheet. He noted that the current purchasing policy was subpar compared to other municipalities and this ordinance allowed the town to be more competitive. He added that this update was recommended by FROC (Florida Recovery Obligation Calculation) and would increase the total points in the FROC program.

Legislative liaison Jason Freeman described the FROC program and noted it was a new initiation. He explained how points were awarded and indicated that the higher the score, the more money would be available upfront for public assistance. Director Kropacek specified how it would give the town manager more flexibility to perform day-to-day operations.

No public comment.

Finance Director Joe Onzick clarified that the changes provided consistency and Director Kropacek described how people were chosen to participate on Selection Advisory Committees.

Council Member King moved to approve the ordinance and send it to a second reading, seconded by Vice Mayor Atterholt.

The motion carried unanimously by roll call vote.

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

Mayor Allers read the title of the ordinance. Town Attorney Vose stated that the Supervisor of Elections requested the ordinance.

No public comment.

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

The motion carried unanimously by roll call vote.

XII. ADMINISTRATIVE AGENDA

No items.

XIII. FINAL PUBLIC COMMENT

Christy Thorton provided a thumb drive and a handout was distributed. She described new routes to improve traffic flow to avoid choke points. She requested access to the bus lane over the bridge for electric vehicles and golf cars.

XIV. TOWN MANAGER'S ITEMS

Town Manager Hyatt reported that an interview was scheduled for a new Harbormaster and one of the planners decided to take a job elsewhere. The budget calendar will be provided soon. More information regarding the strategic planning session on June 29, 2024, will be released in a day or two. A representative from FEMA (Federal Emergency Management Agency) will meet with staff tomorrow concerning the National Flood Insurance Program and the documents submitted. FEMA gave the town 30 days to provide additional information. Director Kropacek explained that a review of non-compliant structures was part of the issue. He stated that the new building inspector, Joe Specht, inspected structures and compiled a list of information on unsafe structures. Director Kropacek relayed his conversations with FEMA and indicated that a lack of communication was an issue.

Town Manager Hyatt stated that the federal government told the town not to make the list of unsafe structures public, but most people on the list have responded.

Those who have not responded will have their structures demolished and a lien placed on the property so the town can recoup losses. Director Kropacek stated that some properties in the database have come into compliance. He described the discrepancies between the FEMA list and the town list and noted that the FEMA list was not public.

Flood Plain Manager Kristin Schumacher revealed that the FEMA list was protected under the Federal Privacy Act of 1974, so information could not be released. The town's list was completely separate from the FEMA list.

Mayor Allers asked whether the town needed another building official to expedite inspections and Director Kropacek replied that they had resources to add another person. Mayor Allers questioned whether they could start the process with identified structures while continuing to compile the list. Town Attorney Vose indicated that the town had a letter ready to send out and that she would provide a copy at the next meeting.

Director Kropacek stated that the town was awarded \$1.5 million towards recovery planning through the CDBG (Community Development Block Grant) and the next bucket will be for low-income housing.

Projects Manager Chustz questioned whether the town would allow trucking sand 24 hours a day for approximately 75 days from the northern corridor north of the pier to the southern segment at the Wyndham. Town Manager Hyatt asked whether they could get a bid for 8-12 hours per day and another for 24 hours for a comparison. Town Clerk Baker replied positively.

Mayor Allers moved to instruct staff to get an option for daylight trucking, 24-hour trucking, length of time and cost, seconded by Council Member King. The motion carried unanimously.

Director Kropacek described the flow of documents with Tidal Basin and noted he would have a report at the next meeting.

XV. TOWN ATTORNEY'S ITEMS

No items.

XVI. COUNCILMEMBERS ITEMS AND REPORTS

Council Member Safford noted that Wade Sansbury from Maudlin & Jenkins did not recommend pursuing a forensic audit.

Council Member Woodson questioned whether residents could live on a ball in the Mooring Field. Vice Mayor Atterholt responded that there were a limited number of balls that generated funds for the town. Town Attorney Vose indicated she would look at the agreement with the state to determine whether that was allowed. Council Member Woodson said she would comment on the pier at the Lee County Commissioners' meeting tomorrow. She noted that Commissioner Sandelli encouraged her to speak, and council members agreed.

Vice Mayor Atterholt suggested adding a permitting discussion to a future M&P and a discussion from the vendor regarding the lighting details on Estero Blvd. He received support for both issues.

Mayor Allers suggested adding the bike ordinance to an M&P and Council Member Woodson agreed. He noted that letters from FDEM (Florida Department of Emergency Management) were being sent to residents and requested that FDEM be contacted and details put on the town's website. He questioned why the TDC did not consider Times Square a beach access. Town Attorney Vose will research state statutes. Mayor Allers explained why the traffic plan presented in public comments would not work. He suggested that they reach out to the county. Council Member King stated that FDOT (Florida Department of Transportation) had moved forward with implementation.

XVII. ADJOURNMENT

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

The meeting was adjourned at 11:48 a.m.

1. **Request:**

Meeting Date: May 6, 2024

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

Why the action is necessary:

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

What the action accomplishes:

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

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Amy Baker, Town Clerk

5. **Background:**

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

Attachments:

1. 24-81, Extending Declaration of Local Emergency Ian 5.7.24-5.13.24
2. 24-82, Extending Declaration of Local Emergency Ian 5.14.24-5.20.24
3. 24-83, Extending Declaration of Local Emergency Ian 5.21.24-5.27.24
4. 24-84, Extending Declaration of Local Emergency Ian 5.28.24-6.3.24

Financial Impact:

6. **Alternative Action**

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

7. **Management Recommendations:**

Approve

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 - 4/22/2024
Approved - 4/29/2024
Approved - 4/29/2024
Approved - 4/30/2024
Final Approval - 4/30/2024

RESOLUTION 24-81

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

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

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

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

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

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

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

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

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

Section 2. Hurricane Ian has caused a catastrophic disaster in the Town, damaging, or destroying over ninety percent (90%) of the Town's public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas and continues to pose a serious threat to the health, lives, property, and safety of the business owners and residents of the Town. Accordingly, the state of local emergency is hereby extended for seven (7) additional days *nun pro tunc* from 9:00 AM on the 7th day of May 2024.

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

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

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

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

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

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

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

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

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

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 6th day of May 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 May 2024.

RESOLUTION 24-82

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

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

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

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

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

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

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

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

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

Section 2. Hurricane Ian has caused a catastrophic disaster in the Town, damaging, or destroying over ninety percent (90%) of the Town's public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas and continues to pose a serious threat to the health, lives, property, and safety of the business owners and residents of the Town. Accordingly, the state of local emergency is hereby extended for seven (7) additional days *nun pro tunc* from 9:00 AM on the 14th day of May 2024.

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

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

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

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

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

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

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

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

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

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 6th day of May 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 May 2024.

RESOLUTION 24-83

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

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

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

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

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

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

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

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

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

Section 2. Hurricane Ian has caused a catastrophic disaster in the Town, damaging, or destroying over ninety percent (90%) of the Town's public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas and continues to pose a serious threat to the health, lives, property, and safety of the business owners and residents of the Town. Accordingly, the state of local emergency is hereby extended for seven (7) additional days *nun pro tunc* from 9:00 AM on the 21st day of May 2024.

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

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

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

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

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

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

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

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

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

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 6th day of May 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 May 2024.

RESOLUTION 24-84

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

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

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

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

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

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

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

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

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

Section 2. Hurricane Ian has caused a catastrophic disaster in the Town, damaging, or destroying over ninety percent (90%) of the Town's public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas and continues to pose a serious threat to the health, lives, property, and safety of the business owners and residents of the Town. Accordingly, the state of local emergency is hereby extended for seven (7) additional days *nun pro tunc* from 9:00 AM on the 28th day of May 2024.

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

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

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

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

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

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

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

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

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

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 6th day of May 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 May 2024.

1. **Request:**

Meeting Date: May 6, 2024

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.

Why the action is necessary:

Keeps the Local State of Emergency in effect for Hurricane Idalia

What the action accomplishes:

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Amy Baker, Town Clerk

5. **Background:**

Approving and ratifying this Resolution will maintain in place the Town Declaration of State of Local Emergency originally adopted via Resolution 23-99.

Attachments:

1. 24-85, Extension of Local Emergency - Idalia 5.7.24-5.13.24
2. 24-86, Extension of Local Emergency - Idalia 5.14.24-5.20.24
3. 24-87, Extension of Local Emergency - Idalia 5.21.24-5.27.24
4. 24-88, Extension of Local Emergency - Idalia 5.28.24-6.3.24

Financial Impact:

6. **Alternative Action**

Do not approve and end the Local State of Emergency for Hurricane Idalia

7. **Management Recommendations:**

Approve

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 - 4/22/2024
Approved - 4/29/2024
Approved - 4/29/2024
Approved - 4/30/2024
Final Approval - 4/30/2024

RESOLUTION NUMBER 24-85

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

WHEREAS, Section 252.38(3), Florida Statutes, authorizes the Town of Fort Myers Beach to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions by law; and

WHEREAS, Chapter 12 of the Town Code of the Town of Fort Myers Beach authorizes certain powers in the event of a local state of emergency; and

WHEREAS, a state of local emergency proclamation is allowed for seven (7) days with appropriate extensions pursuant to law; and

WHEREAS, the effects of Hurricane Idalia impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on August 29, 2023, must be extended.

THEREFORE, under the powers vested in it pursuant to Chapter 252, Florida Statutes, and under Chapter 12 of the Town Code of the Town of Fort Myers Beach, the **Town Council does hereby extend the proclamation of a state of local emergency in the Town of Fort Myers Beach, Florida, as identified above beginning at the end of the previously adopted state of local emergency to 7 days thereafter.**

SECTION 1. State of Local Emergency. The following emergency powers and other provisions shall be in force during this state of local emergency:

1. The Town Manager, or designee, is authorized to take all actions necessary and appropriate to protect human life and property, including the promulgation of rules and orders as may be necessary subject to the limitations of Section 252.33, Florida Statutes. This resolution further authorizes the Town Manager, or designee, to utilize all lawful authority granted to the Town of Fort Myers Beach by Federal, State, County, or Town Emergency Management Laws, Rules, Regulations, Orders and, including, but not limited to, Section 252.46 and Section 252.38(3)(a)(1) through Section 252.38(3)(a)(5), Florida Statutes, inclusive.
2. All existing laws, ordinances, and rules inconsistent with the provisions of Sections 252.31 to Section 252.905, Florida Statutes, inclusive, or inconsistent with any rule or order

specifically promulgated under this resolution shall be suspended during this period of time and to the extent that such conflict exists.

3. The Town Manager may suspend, toll or extend the time requirements, notice requirements and deadlines for final action on applications for permits, licenses, rates and other approvals under the Town of Fort Myers Beach Code of Ordinances, to the extent necessary to accommodate the emergency.
4. Pursuant to Section 252.38(3)(a)(5), Florida Statutes, the Town hereby exercises its authority and waives the procedures and formalities otherwise required of a political subdivision by law, pertaining to:
 - Performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community;
 - Entering into contracts;
 - Incurring obligations;
 - Employment of permanent and temporary workers;
 - Utilization of volunteer workers;
 - Rental of equipment;
 - Acquisition and distribution, with or without compensation, of supplies, materials, and facilities; and
 - Appropriation and expenditure of public funds
5. The Town Manager shall follow FEMA guidelines in procuring services, materials, labor and equipment necessary to respond to the emergency, including recovery efforts. The Town Manager shall abide by the “Uniform Administrative Requirements, Cost Principles, and Audit Requirements” for federal awards, codified at 2 C.F.R. §§200.317 through 200.326.
6. Pursuant to Section 12-23, of the Code of the Town of Fort Myers Beach, in addition to any other powers conferred by law, the town manager or designees shall have the power and authority to order and promulgate all or any of the following emergency measures to be effective during the period of such emergency in whole or in part, with such limitation and conditions as the town manager or designees may deem appropriate to protect the town's health, safety and welfare, and/or waive the procedures and formalities otherwise required of the town by law pertaining to these measures:
 - (a) To appropriate and expend funds; make contracts; incur obligations; obtain and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including emergency assistance to victims of any emergency; and direct and coordinate the implementation of emergency management plans and programs in accordance with the requirements of state and federal law.
 - (b) To appoint, employ, remove, or provide (with or without compensation) rescue teams, coordinators, other emergency management workers and other permanent or temporary workers.

- (c) To establish, as necessary, primary and secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.
 - (d) To assign and make available for duty the offices and agencies of the town, including the employees, property, or equipment thereof relating to health, medical and related services, transportation, construction, and similar items or services for emergency operation purposes, for deployment within or outside the limits of the town.
 - (e) To request state assistance or invoke emergency-related mutual-aid assistance pursuant to existing contracts and/or state or local law.
 - (f) To waive any procedures and formalities otherwise required of the town by law pertaining to performance of public work and/or the taking of whatever prudent action is necessary to ensure the health, safety, and welfare of the people of the town.
 - (g) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives and/or combustibles.
 - (h) To utilize all available resources of the town government as reasonably necessary to cope with the emergency occasioned by the disaster.
 - (i) To make provisions for availability and use of temporary emergency housing and emergency warehousing of materials.
 - (j) Preceding or during the emergency, to call on the National Guard or the Army, Coast Guard or other law enforcement division or other agency as necessary to assist in the mitigation of the emergency or to help maintain law and order, rescue and traffic control.
7. Pursuant to Sec. 12-24, "Prohibitions during state of emergency", of the Code of the Town of Fort Myers Beach, whenever a state of local emergency has been declared, and until such state of local emergency is terminated, the following prohibitions shall apply throughout the town, unless and until the same shall be waived or modified by a quorum of the town council at a general, special or emergency meeting:
- (a) It shall be unlawful and an offense against the town for any person to use the fresh water supplied by the county or local water company for any purpose other than cooking, drinking or bathing.
 - (b) It shall be unlawful for any person to be out and about on the public rights-of-way or other public areas of the town between the dusk and dawn, except for law enforcement officers, members of the town fire control district, emergency medical personnel, town councilmembers, other persons authorized by the town manager, and regular employees of local businesses while traveling to and from their jobs for their regular hours, providing such employees have in their possession personal identification and identification of the business by which they are employed.
8. Any person who refuses to comply with or violates any provision of this declaration of local emergency shall be guilty of a municipal violation. Each day of such violation shall constitute a separate offense. Nothing herein contained shall prevent the town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article or the emergency measures which may be made effective pursuant to this article. Such other lawful action shall include but shall not be limited to,

an equitable action for injunctive relief or an action at law for damages. In addition, any person violating any rule or order issued pursuant to this Resolution or any person who willfully fails or refuses to comply with the order or orders of any duly authorized law enforcement officer or personnel charged with the responsibility for the enforcement of such orders shall, upon conviction therefor, be punished as provided by Section 252.50, Florida Statutes, and by such other laws as may be applicable to the offense.

SECTION 2. Conflicts. Any and all Resolutions or parts of Resolutions in conflict herewith are hereby repealed.

SECTION 3. Severability. If any provision or portion of this Resolution or the application is held invalid, the invalidity shall not affect other provisions, portions or applications of the Resolution, which can be given effect without the invalid provision, portion or application, and to this end the provisions, portions, or applications of this Resolution are declared severable.

SECTION 4. Effective Date and Termination Date. This Resolution shall take effect immediately upon the termination of the previously adopted state of local emergency and shall terminate automatically seven (7) days from that date unless terminated earlier or extended by a document of equal dignity herewith.

SECTION 5. Direction to Implement. The Town Manager is directed to implement this Resolution.

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member Safford and seconded by Council Member Woodson, 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 6th day of May2024 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 May 2024.

RESOLUTION NUMBER 24-86

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

WHEREAS, Section 252.38(3), Florida Statutes, authorizes the Town of Fort Myers Beach to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions by law; and

WHEREAS, Chapter 12 of the Town Code of the Town of Fort Myers Beach authorizes certain powers in the event of a local state of emergency; and

WHEREAS, a state of local emergency proclamation is allowed for seven (7) days with appropriate extensions pursuant to law; and

WHEREAS, the effects of Hurricane Idalia impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on August 29, 2023, must be extended.

THEREFORE, under the powers vested in it pursuant to Chapter 252, Florida Statutes, and under Chapter 12 of the Town Code of the Town of Fort Myers Beach, the **Town Council does hereby extend the proclamation of a state of local emergency in the Town of Fort Myers Beach, Florida, as identified above beginning at the end of the previously adopted state of local emergency to 7 days thereafter.**

SECTION 1. State of Local Emergency. The following emergency powers and other provisions shall be in force during this state of local emergency:

1. The Town Manager, or designee, is authorized to take all actions necessary and appropriate to protect human life and property, including the promulgation of rules and orders as may be necessary subject to the limitations of Section 252.33, Florida Statutes. This resolution further authorizes the Town Manager, or designee, to utilize all lawful authority granted to the Town of Fort Myers Beach by Federal, State, County, or Town Emergency Management Laws, Rules, Regulations, Orders and, including, but not limited to, Section 252.46 and Section 252.38(3)(a)(1) through Section 252.38(3)(a)(5), Florida Statutes, inclusive.
2. All existing laws, ordinances, and rules inconsistent with the provisions of Sections 252.31 to Section 252.905, Florida Statutes, inclusive, or inconsistent with any rule or order

specifically promulgated under this resolution shall be suspended during this period of time and to the extent that such conflict exists.

3. The Town Manager may suspend, toll or extend the time requirements, notice requirements and deadlines for final action on applications for permits, licenses, rates and other approvals under the Town of Fort Myers Beach Code of Ordinances, to the extent necessary to accommodate the emergency.
4. Pursuant to Section 252.38(3)(a)(5), Florida Statutes, the Town hereby exercises its authority and waives the procedures and formalities otherwise required of a political subdivision by law, pertaining to:
 - Performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community;
 - Entering into contracts;
 - Incurring obligations;
 - Employment of permanent and temporary workers;
 - Utilization of volunteer workers;
 - Rental of equipment;
 - Acquisition and distribution, with or without compensation, of supplies, materials, and facilities; and
 - Appropriation and expenditure of public funds
5. The Town Manager shall follow FEMA guidelines in procuring services, materials, labor and equipment necessary to respond to the emergency, including recovery efforts. The Town Manager shall abide by the “Uniform Administrative Requirements, Cost Principles, and Audit Requirements” for federal awards, codified at 2 C.F.R. §§200.317 through 200.326.
6. Pursuant to Section 12-23, of the Code of the Town of Fort Myers Beach, in addition to any other powers conferred by law, the town manager or designees shall have the power and authority to order and promulgate all or any of the following emergency measures to be effective during the period of such emergency in whole or in part, with such limitation and conditions as the town manager or designees may deem appropriate to protect the town's health, safety and welfare, and/or waive the procedures and formalities otherwise required of the town by law pertaining to these measures:
 - (a) To appropriate and expend funds; make contracts; incur obligations; obtain and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including emergency assistance to victims of any emergency; and direct and coordinate the implementation of emergency management plans and programs in accordance with the requirements of state and federal law.
 - (b) To appoint, employ, remove, or provide (with or without compensation) rescue teams, coordinators, other emergency management workers and other permanent or temporary workers.

- (c) To establish, as necessary, primary and secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.
 - (d) To assign and make available for duty the offices and agencies of the town, including the employees, property, or equipment thereof relating to health, medical and related services, transportation, construction, and similar items or services for emergency operation purposes, for deployment within or outside the limits of the town.
 - (e) To request state assistance or invoke emergency-related mutual-aid assistance pursuant to existing contracts and/or state or local law.
 - (f) To waive any procedures and formalities otherwise required of the town by law pertaining to performance of public work and/or the taking of whatever prudent action is necessary to ensure the health, safety, and welfare of the people of the town.
 - (g) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives and/or combustibles.
 - (h) To utilize all available resources of the town government as reasonably necessary to cope with the emergency occasioned by the disaster.
 - (i) To make provisions for availability and use of temporary emergency housing and emergency warehousing of materials.
 - (j) Preceding or during the emergency, to call on the National Guard or the Army, Coast Guard or other law enforcement division or other agency as necessary to assist in the mitigation of the emergency or to help maintain law and order, rescue and traffic control.
7. Pursuant to Sec. 12-24, "Prohibitions during state of emergency", of the Code of the Town of Fort Myers Beach, whenever a state of local emergency has been declared, and until such state of local emergency is terminated, the following prohibitions shall apply throughout the town, unless and until the same shall be waived or modified by a quorum of the town council at a general, special or emergency meeting:
- (a) It shall be unlawful and an offense against the town for any person to use the fresh water supplied by the county or local water company for any purpose other than cooking, drinking or bathing.
 - (b) It shall be unlawful for any person to be out and about on the public rights-of-way or other public areas of the town between the dusk and dawn, except for law enforcement officers, members of the town fire control district, emergency medical personnel, town councilmembers, other persons authorized by the town manager, and regular employees of local businesses while traveling to and from their jobs for their regular hours, providing such employees have in their possession personal identification and identification of the business by which they are employed.
8. Any person who refuses to comply with or violates any provision of this declaration of local emergency shall be guilty of a municipal violation. Each day of such violation shall constitute a separate offense. Nothing herein contained shall prevent the town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article or the emergency measures which may be made effective pursuant to this article. Such other lawful action shall include but shall not be limited to,

an equitable action for injunctive relief or an action at law for damages. In addition, any person violating any rule or order issued pursuant to this Resolution or any person who willfully fails or refuses to comply with the order or orders of any duly authorized law enforcement officer or personnel charged with the responsibility for the enforcement of such orders shall, upon conviction therefor, be punished as provided by Section 252.50, Florida Statutes, and by such other laws as may be applicable to the offense.

SECTION 2. Conflicts. Any and all Resolutions or parts of Resolutions in conflict herewith are hereby repealed.

SECTION 3. Severability. If any provision or portion of this Resolution or the application is held invalid, the invalidity shall not affect other provisions, portions or applications of the Resolution, which can be given effect without the invalid provision, portion or application, and to this end the provisions, portions, or applications of this Resolution are declared severable.

SECTION 4. Effective Date and Termination Date. This Resolution shall take effect immediately upon the termination of the previously adopted state of local emergency and shall terminate automatically seven (7) days from that date unless terminated earlier or extended by a document of equal dignity herewith.

SECTION 5. Direction to Implement. The Town Manager is directed to implement this Resolution.

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member Safford and seconded by Council Member Woodson, 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 6th day of May2024 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 May 2024.

RESOLUTION NUMBER 24-87

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

WHEREAS, Section 252.38(3), Florida Statutes, authorizes the Town of Fort Myers Beach to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions by law; and

WHEREAS, Chapter 12 of the Town Code of the Town of Fort Myers Beach authorizes certain powers in the event of a local state of emergency; and

WHEREAS, a state of local emergency proclamation is allowed for seven (7) days with appropriate extensions pursuant to law; and

WHEREAS, the effects of Hurricane Idalia impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on August 29, 2023, must be extended.

THEREFORE, under the powers vested in it pursuant to Chapter 252, Florida Statutes, and under Chapter 12 of the Town Code of the Town of Fort Myers Beach, the **Town Council does hereby extend the proclamation of a state of local emergency in the Town of Fort Myers Beach, Florida, as identified above beginning at the end of the previously adopted state of local emergency to 7 days thereafter.**

SECTION 1. State of Local Emergency. The following emergency powers and other provisions shall be in force during this state of local emergency:

1. The Town Manager, or designee, is authorized to take all actions necessary and appropriate to protect human life and property, including the promulgation of rules and orders as may be necessary subject to the limitations of Section 252.33, Florida Statutes. This resolution further authorizes the Town Manager, or designee, to utilize all lawful authority granted to the Town of Fort Myers Beach by Federal, State, County, or Town Emergency Management Laws, Rules, Regulations, Orders and, including, but not limited to, Section 252.46 and Section 252.38(3)(a)(1) through Section 252.38(3)(a)(5), Florida Statutes, inclusive.
2. All existing laws, ordinances, and rules inconsistent with the provisions of Sections 252.31 to Section 252.905, Florida Statutes, inclusive, or inconsistent with any rule or order

specifically promulgated under this resolution shall be suspended during this period of time and to the extent that such conflict exists.

3. The Town Manager may suspend, toll or extend the time requirements, notice requirements and deadlines for final action on applications for permits, licenses, rates and other approvals under the Town of Fort Myers Beach Code of Ordinances, to the extent necessary to accommodate the emergency.
4. Pursuant to Section 252.38(3)(a)(5), Florida Statutes, the Town hereby exercises its authority and waives the procedures and formalities otherwise required of a political subdivision by law, pertaining to:
 - Performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community;
 - Entering into contracts;
 - Incurring obligations;
 - Employment of permanent and temporary workers;
 - Utilization of volunteer workers;
 - Rental of equipment;
 - Acquisition and distribution, with or without compensation, of supplies, materials, and facilities; and
 - Appropriation and expenditure of public funds
5. The Town Manager shall follow FEMA guidelines in procuring services, materials, labor and equipment necessary to respond to the emergency, including recovery efforts. The Town Manager shall abide by the “Uniform Administrative Requirements, Cost Principles, and Audit Requirements” for federal awards, codified at 2 C.F.R. §§200.317 through 200.326.
6. Pursuant to Section 12-23, of the Code of the Town of Fort Myers Beach, in addition to any other powers conferred by law, the town manager or designees shall have the power and authority to order and promulgate all or any of the following emergency measures to be effective during the period of such emergency in whole or in part, with such limitation and conditions as the town manager or designees may deem appropriate to protect the town's health, safety and welfare, and/or waive the procedures and formalities otherwise required of the town by law pertaining to these measures:
 - (a) To appropriate and expend funds; make contracts; incur obligations; obtain and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including emergency assistance to victims of any emergency; and direct and coordinate the implementation of emergency management plans and programs in accordance with the requirements of state and federal law.
 - (b) To appoint, employ, remove, or provide (with or without compensation) rescue teams, coordinators, other emergency management workers and other permanent or temporary workers.

- (c) To establish, as necessary, primary and secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.
 - (d) To assign and make available for duty the offices and agencies of the town, including the employees, property, or equipment thereof relating to health, medical and related services, transportation, construction, and similar items or services for emergency operation purposes, for deployment within or outside the limits of the town.
 - (e) To request state assistance or invoke emergency-related mutual-aid assistance pursuant to existing contracts and/or state or local law.
 - (f) To waive any procedures and formalities otherwise required of the town by law pertaining to performance of public work and/or the taking of whatever prudent action is necessary to ensure the health, safety, and welfare of the people of the town.
 - (g) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives and/or combustibles.
 - (h) To utilize all available resources of the town government as reasonably necessary to cope with the emergency occasioned by the disaster.
 - (i) To make provisions for availability and use of temporary emergency housing and emergency warehousing of materials.
 - (j) Preceding or during the emergency, to call on the National Guard or the Army, Coast Guard or other law enforcement division or other agency as necessary to assist in the mitigation of the emergency or to help maintain law and order, rescue and traffic control.
7. Pursuant to Sec. 12-24, "Prohibitions during state of emergency", of the Code of the Town of Fort Myers Beach, whenever a state of local emergency has been declared, and until such state of local emergency is terminated, the following prohibitions shall apply throughout the town, unless and until the same shall be waived or modified by a quorum of the town council at a general, special or emergency meeting:
- (a) It shall be unlawful and an offense against the town for any person to use the fresh water supplied by the county or local water company for any purpose other than cooking, drinking or bathing.
 - (b) It shall be unlawful for any person to be out and about on the public rights-of-way or other public areas of the town between the dusk and dawn, except for law enforcement officers, members of the town fire control district, emergency medical personnel, town councilmembers, other persons authorized by the town manager, and regular employees of local businesses while traveling to and from their jobs for their regular hours, providing such employees have in their possession personal identification and identification of the business by which they are employed.
8. Any person who refuses to comply with or violates any provision of this declaration of local emergency shall be guilty of a municipal violation. Each day of such violation shall constitute a separate offense. Nothing herein contained shall prevent the town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article or the emergency measures which may be made effective pursuant to this article. Such other lawful action shall include but shall not be limited to,

an equitable action for injunctive relief or an action at law for damages. In addition, any person violating any rule or order issued pursuant to this Resolution or any person who willfully fails or refuses to comply with the order or orders of any duly authorized law enforcement officer or personnel charged with the responsibility for the enforcement of such orders shall, upon conviction therefor, be punished as provided by Section 252.50, Florida Statutes, and by such other laws as may be applicable to the offense.

SECTION 2. Conflicts. Any and all Resolutions or parts of Resolutions in conflict herewith are hereby repealed.

SECTION 3. Severability. If any provision or portion of this Resolution or the application is held invalid, the invalidity shall not affect other provisions, portions or applications of the Resolution, which can be given effect without the invalid provision, portion or application, and to this end the provisions, portions, or applications of this Resolution are declared severable.

SECTION 4. Effective Date and Termination Date. This Resolution shall take effect immediately upon the termination of the previously adopted state of local emergency and shall terminate automatically seven (7) days from that date unless terminated earlier or extended by a document of equal dignity herewith.

SECTION 5. Direction to Implement. The Town Manager is directed to implement this Resolution.

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member Safford and seconded by Council Member Woodson, 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 6th day of May2024 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 May 2024.

RESOLUTION NUMBER 24-88

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

WHEREAS, Section 252.38(3), Florida Statutes, authorizes the Town of Fort Myers Beach to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions by law; and

WHEREAS, Chapter 12 of the Town Code of the Town of Fort Myers Beach authorizes certain powers in the event of a local state of emergency; and

WHEREAS, a state of local emergency proclamation is allowed for seven (7) days with appropriate extensions pursuant to law; and

WHEREAS, the effects of Hurricane Idalia impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on August 29, 2023, must be extended.

THEREFORE, under the powers vested in it pursuant to Chapter 252, Florida Statutes, and under Chapter 12 of the Town Code of the Town of Fort Myers Beach, the **Town Council does hereby extend the proclamation of a state of local emergency in the Town of Fort Myers Beach, Florida, as identified above beginning at the end of the previously adopted state of local emergency to 7 days thereafter.**

SECTION 1. State of Local Emergency. The following emergency powers and other provisions shall be in force during this state of local emergency:

1. The Town Manager, or designee, is authorized to take all actions necessary and appropriate to protect human life and property, including the promulgation of rules and orders as may be necessary subject to the limitations of Section 252.33, Florida Statutes. This resolution further authorizes the Town Manager, or designee, to utilize all lawful authority granted to the Town of Fort Myers Beach by Federal, State, County, or Town Emergency Management Laws, Rules, Regulations, Orders and, including, but not limited to, Section 252.46 and Section 252.38(3)(a)(1) through Section 252.38(3)(a)(5), Florida Statutes, inclusive.
2. All existing laws, ordinances, and rules inconsistent with the provisions of Sections 252.31 to Section 252.905, Florida Statutes, inclusive, or inconsistent with any rule or order

specifically promulgated under this resolution shall be suspended during this period of time and to the extent that such conflict exists.

3. The Town Manager may suspend, toll or extend the time requirements, notice requirements and deadlines for final action on applications for permits, licenses, rates and other approvals under the Town of Fort Myers Beach Code of Ordinances, to the extent necessary to accommodate the emergency.
4. Pursuant to Section 252.38(3)(a)(5), Florida Statutes, the Town hereby exercises its authority and waives the procedures and formalities otherwise required of a political subdivision by law, pertaining to:
 - Performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community;
 - Entering into contracts;
 - Incurring obligations;
 - Employment of permanent and temporary workers;
 - Utilization of volunteer workers;
 - Rental of equipment;
 - Acquisition and distribution, with or without compensation, of supplies, materials, and facilities; and
 - Appropriation and expenditure of public funds
5. The Town Manager shall follow FEMA guidelines in procuring services, materials, labor and equipment necessary to respond to the emergency, including recovery efforts. The Town Manager shall abide by the “Uniform Administrative Requirements, Cost Principles, and Audit Requirements” for federal awards, codified at 2 C.F.R. §§200.317 through 200.326.
6. Pursuant to Section 12-23, of the Code of the Town of Fort Myers Beach, in addition to any other powers conferred by law, the town manager or designees shall have the power and authority to order and promulgate all or any of the following emergency measures to be effective during the period of such emergency in whole or in part, with such limitation and conditions as the town manager or designees may deem appropriate to protect the town's health, safety and welfare, and/or waive the procedures and formalities otherwise required of the town by law pertaining to these measures:
 - (a) To appropriate and expend funds; make contracts; incur obligations; obtain and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including emergency assistance to victims of any emergency; and direct and coordinate the implementation of emergency management plans and programs in accordance with the requirements of state and federal law.
 - (b) To appoint, employ, remove, or provide (with or without compensation) rescue teams, coordinators, other emergency management workers and other permanent or temporary workers.

- (c) To establish, as necessary, primary and secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.
 - (d) To assign and make available for duty the offices and agencies of the town, including the employees, property, or equipment thereof relating to health, medical and related services, transportation, construction, and similar items or services for emergency operation purposes, for deployment within or outside the limits of the town.
 - (e) To request state assistance or invoke emergency-related mutual-aid assistance pursuant to existing contracts and/or state or local law.
 - (f) To waive any procedures and formalities otherwise required of the town by law pertaining to performance of public work and/or the taking of whatever prudent action is necessary to ensure the health, safety, and welfare of the people of the town.
 - (g) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives and/or combustibles.
 - (h) To utilize all available resources of the town government as reasonably necessary to cope with the emergency occasioned by the disaster.
 - (i) To make provisions for availability and use of temporary emergency housing and emergency warehousing of materials.
 - (j) Preceding or during the emergency, to call on the National Guard or the Army, Coast Guard or other law enforcement division or other agency as necessary to assist in the mitigation of the emergency or to help maintain law and order, rescue and traffic control.
7. Pursuant to Sec. 12-24, "Prohibitions during state of emergency", of the Code of the Town of Fort Myers Beach, whenever a state of local emergency has been declared, and until such state of local emergency is terminated, the following prohibitions shall apply throughout the town, unless and until the same shall be waived or modified by a quorum of the town council at a general, special or emergency meeting:
- (a) It shall be unlawful and an offense against the town for any person to use the fresh water supplied by the county or local water company for any purpose other than cooking, drinking or bathing.
 - (b) It shall be unlawful for any person to be out and about on the public rights-of-way or other public areas of the town between the dusk and dawn, except for law enforcement officers, members of the town fire control district, emergency medical personnel, town councilmembers, other persons authorized by the town manager, and regular employees of local businesses while traveling to and from their jobs for their regular hours, providing such employees have in their possession personal identification and identification of the business by which they are employed.
8. Any person who refuses to comply with or violates any provision of this declaration of local emergency shall be guilty of a municipal violation. Each day of such violation shall constitute a separate offense. Nothing herein contained shall prevent the town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article or the emergency measures which may be made effective pursuant to this article. Such other lawful action shall include but shall not be limited to,

an equitable action for injunctive relief or an action at law for damages. In addition, any person violating any rule or order issued pursuant to this Resolution or any person who willfully fails or refuses to comply with the order or orders of any duly authorized law enforcement officer or personnel charged with the responsibility for the enforcement of such orders shall, upon conviction therefor, be punished as provided by Section 252.50, Florida Statutes, and by such other laws as may be applicable to the offense.

SECTION 2. Conflicts. Any and all Resolutions or parts of Resolutions in conflict herewith are hereby repealed.

SECTION 3. Severability. If any provision or portion of this Resolution or the application is held invalid, the invalidity shall not affect other provisions, portions or applications of the Resolution, which can be given effect without the invalid provision, portion or application, and to this end the provisions, portions, or applications of this Resolution are declared severable.

SECTION 4. Effective Date and Termination Date. This Resolution shall take effect immediately upon the termination of the previously adopted state of local emergency and shall terminate automatically seven (7) days from that date unless terminated earlier or extended by a document of equal dignity herewith.

SECTION 5. Direction to Implement. The Town Manager is directed to implement this Resolution.

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member Safford and seconded by Council Member Woodson, 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 6th day of May2024 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 May 2024.

1. **Request:**

Meeting Date: May 6, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AUTHORIZING THE MAYOR OR TOWN MANAGER TO APPLY FOR AND ADMINISTER A GRANT FROM THE LEE COUNTY CDBG-DR FOR PROJECTS UNDER THE CRITICAL INFRASTRUCTURE AND PUBLIC FACILITIES PROGRAMS ; AUTHORIZING THE MAYOR OR TOWN MANAGER TO EXECUTE ANY RELATED DOCUMENTS TO IMPLEMENT AND ADMINISTER THE GRANT; AND PROVIDING AN EFFECTIVE DATE.

Why the action is necessary:

Council approval requested to move forward with the grant request.

What the action accomplishes:

Designates signatory authority and authorization to apply for and manage CDBG-DR funding requests under both the Public Facilities and Critical Infrastructure NOFAs.

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Frankie Kropacek, Operations & Compliance Director

5. **Background:**

Lee County CDBG-DR Public Facilities & Critical Infrastructure

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

Lee County has allocated funding for competitive applications available to municipalities within Lee County. All projects under this program are considered to meet a HUD National Objective as outlined by Lee County in the Action Plan. Applications are due to Lee County on or before May 24, 2024. Projects must be broadly based in nature and cannot focus on one specific project or small area of recovery.

The minimum and maximum CDBG-DR award amounts per activity are: Minimum: \$5,000,000
Maximum: \$50,000,000

This Resolution allows for the Mayor, Town Manager, and/or Director of Operations & Compliance to sign and execute any required documentation to apply for and administer project agreements through these programs.

Attachments:

1. 24-76, CDBG-DR Authorization Public Facilities and Infrastructure ns

Financial Impact:

Lee County anticipated funding amounts:

- \$129,155,755.00 for Critical Infrastructure
- \$100,000,000.00 for Public Facilities

6. **Alternative Action**

Do not approve and do not apply for projects under these NOFAs.

7. **Management Recommendations:**

To 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 - 4/22/2024
Approved - 4/22/2024
Approved - 4/22/2024
Approved - 4/29/2024
Final Approval - 4/30/2024

RESOLUTION NUMBER 24-76

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AUTHORIZING THE MAYOR OR TOWN MANAGER TO APPLY FOR AND ADMINISTER A GRANT FROM THE LEE COUNTY CDBG-DR FOR PROJECTS UNDER THE CRITICAL INFRASTRUCTURE AND PUBLIC FACILITIES PROGRAMS; AUTHORIZING THE MAYOR OR TOWN MANAGER TO EXECUTE RELATED DOCUMENTS NEEDED TO IMPLEMENT AND ADMINISTER THE GRANT AND PROGRAMS; AND FOR RELATED PURPOSES; PROVIDING AN EFFECTIVE DATE.

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

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

WHEREAS, the Town of Fort Myers Beach, Florida (the “Town”) has an opportunity to apply for grant funding from the Lee County CDBG-DR Public Facilities and Critical Infrastructure Programs (the “Programs”); and

WHEREAS, the Town desires to apply for grant funding from the Programs (the “Grant”) to provide the Town with funds for the completion of eligible projects, including but not limited to _____; and

WHEREAS, as part of the application for the Grant, the Town must submit a resolution authorizing submission of an application for the Grant and administration of the Grant on behalf of the Town; and

WHEREAS, the Town Council finds and determines that it is in the best interest of the Town and its citizens to authorize the application for the Grant and the administration thereof if the Grant is awarded; and

WHEREAS, the Town desires to authorize the Mayor, the Town Manager or the aforementioned officer’s designees, to apply for the Grant from the Program and administer the Grant for an on behalf of the Town; and

WHEREAS, the Town Council desires to authorize the Mayor, the Town Manager, or the aforementioned officer’s designees to execute and deliver all documents necessary to apply for the Grant and carry out the administration of same.

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

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

Section 2. That the Town Council hereby authorizes and instructs either of the Mayor or Town Manager to apply for the Grant from the Lee County CDBG-DR Public Facilities and Critical Infrastructure Grant Programs and to administer the Grants on behalf of the Town.

Section 3. That Mayor Dan Allers or Town Manager Andrew Hyatt are each hereby authorized to execute and deliver any documents necessary to apply for, receive and administer the Grant award on behalf of the Town.

Section 4. This Resolution shall take effect immediately upon its adoption by the Town Council of the Town of Fort Myers Beach.

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

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

ADOPTED this 6th day of May 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 May 2024.

1. **Request:**

Meeting Date: May 6, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING AN AGREEMENT FOR DISASTER RECOVERY SERVICES WITH CROWDER-GULF JOINT VENTURE, INC., BASED ON PRICING COMPETITIVELY PROCURED BY LEE COUNTY THROUGH AN AGREEMENT AND THE TWO ASSOCIATED AMENDMENTS; AUTHORIZING THE MAYOR OR TOWN MANAGER TO SIGN THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

Provides the Town with a pre-positioned contractor for disaster recovery services through pre-negotiated rates.

What the action accomplishes:

Provides the Town with a pre-positioned contractor for disaster recovery services through pre-negotiated rates.

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

Frankie Kropacek, Operations & Compliance Director

5. **Background:**

The Town has historically solicited an independent pre-positioned contract for disaster recovery services and has a debris monitoring company already in place. The past contract has since expired with no additional renewals and the Town is now working on soliciting for another continuing contract for the next hurricane season and beyond.

The Town has an immediate opportunity through Lee County to piggyback the County's pre-positioned contract for disaster recovery services which would provide the Town with an established contractor quickly and efficiently through an already competitively solicited process by Lee County. This does not preclude the Town from issuing a RFP in the near future, however this option does provide immediate resources in the event of an unexpected storm. The Town is currently verifying with FEMA that use of a piggyback for this contract will not preclude reimbursement. This has also been done by another local municipality in the past and would be at the Town Council's discretion to approve the piggyback agreement.

All the Lee County procurement documents for Disaster Recovery Services can be viewed here: https://www.leegov.com/procurement/awarded-annual-contracts/downloads?fid=5891&fn=Project2022-06-27T08_39_41.xml

The Town also holds an interlocal agreement with Lee County for Solid Waste Services through 2030 which provides for shared use of temporary debris management sites for a particular event or storm upon mutual agreement.

Attachments:

1. 24-92, Disaster Recovery Resolution ns 4302024
2. Disaster Recovery Piggyback Contract - April 26 2024 MR (2) NS
3. County - Vendor Executed - Crowder Gulf
4. RFP220362BJB - Disaster Recovery Svcs - Crowder-Gulf - Am 1 - Change in Svcs-Cost - EXEC OCR

5. RFP220362BJB - Disaster Recovery Svcs - Crowder-Gulf - Am 2 - Addl Removal Svcs - EXEC OCR

Financial Impact:

Dependent upon each event.

6. Alternative Action

Do not approve and find alternatives to obtain an agreement for disaster recovery services.

7. Management Recommendations:

Authorize the approval and execution of an agreement.

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 - 4/30/2024
Approved - 4/30/2024
Approved - 4/30/2024
Approved - 5/1/2024
Final Approval - 5/1/2024

RESOLUTION NUMBER 24-XX

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING AN AGREEMENT FOR DISASTER RECOVERY SERVICES WITH CROWDER-GULF JOINT VENTURE, INC., BASED ON PRICING COMPETITIVELY PROCURED BY LEE COUNTY THROUGH AN AGREEMENT AND THE TWO ASSOCIATED AMENDMENTS; AUTHORIZING THE MAYOR OR TOWN MANAGER TO SIGN THE AGREEMENT; 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, Lee County and Crowder-Gulf Joint Venture, Inc. (“Contractor”) entered into a contract for disaster recovery services on or about October 2, 2022 (hereinafter the “Contract”); and

WHEREAS, pursuant to the Contract, the Contractor has agreed to provide Lee County with disaster recovery services; 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, Section 2-480(f) of the Town’s Code of Ordinances provides that when it is in the best interest of the Town, it may cooperatively purchase goods or services from any other government agency, which has competitively bid and awarded a 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’s competitive bid policy; and

WHEREAS, the Town Council finds Lee County RFP #220362BJB and the resulting Contract were competitively bid with procedural guarantees of fairness and competitiveness equivalent to those of the Town and the Contractor has agreed to allow the Town to “piggyback” on the competitive pricing provided to Lee County; and

WHEREAS, it is in the best interests of the residents of the Town of Fort Myers Beach to execute an agreement with the Contractor containing similar terms and conditions as contained in the Contract.

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 Agreement to Piggyback a Contract for Disaster Recovery Services Procured by Lee County, Florida, and authorizes the Mayor or Town Manager to execute the Agreement, which is attached hereto as Exhibit "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 ____ day of _____ 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, Town Attorney

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

**AGREEMENT TO PIGGYBACK A CONTRACT FOR DISASTER RECOVERY
SERVICES COMPETITIVELY PROCURED BY LEE COUNTY, FLORIDA**

THIS AGREEMENT is made and entered into this ____ day of _____, 2024, by and between the Town of Fort Myers Beach, Florida (the “Town”), a Florida municipal corporation whose principal place of business is 2525 Estero Blvd., Ft. Myers Beach, FL 33391 and Crowder-Gulf Joint Venture, Inc., a Florida corporation authorized to do business in the State of Florida, (“Contractor”) whose principal place of business is 5629 Commerce Blvd E., Mobile, Alabama 36619 (“Agreement”). The Town and the Contractor may also be referred to collectively as the “Parties.”

WHEREAS, Lee County, Florida competitively procured a contract for disaster recovery services (“RFP220362BJB or RFP”) and thereafter awarded and executed the Agreement for Disaster Recovery Services for Lee County (“County Agreement”) to Contractor on October 2, 2022; and

WHEREAS, the County Agreement has a term of 5 years with optional renewals; and

WHEREAS, Exhibit E to the County Agreement contains the terms and conditions contained in the RFP, which were incorporated by reference into the County Agreement, including Section 28.1, which states:

28. AUTHORITY TO UTILIZE BY OTHER GOVERNMENT ENTITIES 28.1.
This opportunity is also made available to any government entity. Pursuant to their own governing laws, and subject to the agreement of the vendor, other entities may be permitted to make purchases at the terms and conditions contained herein. Lee County Board of County Commissioners will not be financially responsible for the purchases of other entities from this solicitation.; and

WHEREAS, the scope of disaster recovery services available to Lee County under the County Agreement includes demolition services;

WHEREAS, the Town is in immediate need of disaster recovery services; and

WHEREAS, the Town desires Contractor provide needed demolition services, and under the Town Code, the purchase of services under a contract awarded by another governmental entity is authorized provided the finance department director makes a written determination that time and expense factors make it financially advantageous for the Town to do so; and

WHEREAS, the finance department director has made such a written determination and the Contractor is willing to provide demolition services to the Town, subject to the terms and conditions of the County Agreement, with the specific modifications set forth herein; and

WHEREAS, approval of this Agreement is in the best interest of the health, safety and welfare of the residents of the Town.

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

1. **INCORPORATION OF LEE COUNTY CONTRACT.** This Agreement incorporates by reference, the County Agreement, a true and accurate copy of which is attached hereto as Exhibit “A.”
2. **SCOPE OF SERVICES.** During the Term of this Agreement, the Contractor will provide disaster recovery services as requested by the Town.
3. **PRICING.** The Town will pay Contractor for such services as provided in Exhibit B – Fee Schedule of the County Agreement. This sum will be the Contractor’s sole compensation for the goods and services provided by Contractor under this Agreement.
4. **DURATION OF THE AGREEMENT.** The Term of this Agreement shall begin on the last signed by a party and continue for the duration of the term, and any renewals, specified in the County Agreement.
5. **DESIGNATED REPRESENTATIVE.** The Town Manager, or designee, shall be the Town’s Designated Representative in matters arising under this Agreement.

TOWN MANAGER
Town of Fort Myers Beach
2525 Estero Boulevard
Fort Myers Beach, FL 33931
andy@fmbgov.com

6. **MODIFICATIONS TO COUNTY AGREEMENT.** Notwithstanding the incorporation of the County Agreement into this Agreement as referenced, the Parties hereby agree to certain modifications to the County Agreement, as follows:
 - a. All references in the County Agreement to terms such as “County” or “City” will be deemed to refer to the Town. In addition, all references within the County Agreement to specific officers/departments/divisions, or to specific locations (such as for delivery of goods/services, receipt of Contractor invoicing, etc.), if not specifically addressed in this Agreement, will be deemed to refer to the equivalent Town officers/departments/divisions, and Town locations, as hereafter designated by the Town’s Designated Representative. The Town shall be added as an additional insured to Contractor’s Certificate of Insurance.
 - b. Town’s performance and obligation to pay under the Agreement is contingent upon an annual appropriation by the Town Council.
 - c. The Contractor (and its subcontractors) have an obligation to utilize the U.S. Department of Homeland Security's (DHS) E-Verify system for all newly hired employees. By executing this Agreement, the Contractor certifies that it is

registered with, and uses, the E- Verify system for all newly hired employees. The Contractor must obtain an affidavit from its subcontractors in accordance with paragraph (2)(b) of §448.095, Fla. Stat., and maintain a copy of such affidavit for the duration of the Agreement.

- d. This section serves as notice to the Contractor regarding the requirements of §448.095, Fla. Stat., specifically sub-paragraph (2)(c), and the Town's obligation to terminate the Agreement if it has a good faith belief that the Contractor has knowingly violated §448.09(1), Fla. Stat. If terminated for such reason, the Contractor will not be eligible for award of a public contract for at least one year after the date of such termination. The Town reserves the right to order the immediate termination of any contract between the Contractor and a subcontractor performing work on its behalf should the Town develop a good faith belief that the subcontractor has knowingly violated §448.095(1), Fla. Stat.
- e. By execution of this Agreement, in accordance with the requirements of §§287.135 and 215.473, Fla. Stat., the Contractor certifies that the Contractor is not participating in a boycott of Israel. The Contractor further certifies that the Contractor is not on the Scrutinized Companies that Boycott Israel list, not on the Scrutinized Companies with Activities in Sudan List, and not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has Contractor been engaged in business operations in Cuba or Syria. Subject to limited exceptions provided in state law, the Town will not contract for the provision of goods or services with any scrutinized company referred to above. Submitting a false certification shall be deemed a material breach of this Agreement. The Town shall provide notice, in writing, to the Contractor of the Town's determination concerning the false certification. The Contractor shall have five (5) days from receipt of notice to refute the false certification allegation. If such false certification is discovered during the active Agreement term, the Contractor shall have ninety (90) days following receipt of the notice to respond in writing and demonstrate that the determination of false certification was made in error. If the Contractor does not demonstrate that the Town's determination of false certification was made in error then the Town shall have the right to terminate the Agreement and seek civil remedies pursuant to §287.135, Fla. Stat., as amended from time to time.
- f. The following provisions are required by §119.0701, Fla. Stat., and may not be amended. The Contractor shall keep and maintain public records required by the Town to perform the services required under this Agreement. Upon request from Town's custodian of public records, the Contractor shall provide the Town with a copy of any requested public records or to allow the requested public records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law. The Contractor shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement's term and following completion of the Agreement if Contractor does not transfer the public records to

the Town. Upon completion of the Agreement, the Contractor may transfer, at no cost, to the Town all public records in possession of the Contractor or keep and maintain public records required by the Town to perform the services required under the Agreement. If the Contractor transfers all public records to the Town upon completion of the Agreement, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Agreement, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Town, upon request from the Town's custodian of public records, in a format that is compatible with the Town's information technology systems. Contractor's failure to comply with the provisions set forth in this Section shall constitute a Default and Breach of this Agreement, for which, the Town may terminate the Agreement.

IF A PARTY TO THIS AGREEMENT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE AGREEMENT, THAT PARTY MAY CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

**CUSTODIAN OF PUBLIC RECORDS
2525 ESTERO BOULEVARD
FORT MYERS BEACH, FLORIDA 33931
(239) 765-0202
FMBPUBLICRECORDS@FMBGOV.COM**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as below.

TOWN OF FORT MYERS BEACH:

CONTRACTOR:

Dan Allers, Fort Myers Beach Mayor

Print Name: _____
Print Title: _____

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

**AGREEMENT FOR
DISASTER RECOVERY SERVICES FOR LEE COUNTY**

THIS AGREEMENT ("Agreement") is made and entered into by and between Lee County, a political subdivision of the State of Florida, hereinafter referred to as the "County" and Crowder-Gulf Joint Venture, Inc., a Florida corporation authorized to do business in the State of Florida, whose address is 5629 Commerce Blvd E, Mobile, AL 36619, and whose federal tax identification number is 01-0626019, hereinafter referred to as "Vendor."

WITNESSETH

WHEREAS, the County intends to purchase disaster recovery services from the Vendor in connection with "Disaster Recovery Services for Lee County" (the "Purchase"); and,

WHEREAS, the County issued Solicitation No. RFP220362BJB on July 01, 2022 (the "Solicitation"); and,

WHEREAS, the County evaluated the responses received and found the Vendor qualified to provide the necessary services; and,

WHEREAS, the County posted a Notice of Intended Decision on September 19, 2022; and,

WHEREAS, the Vendor has reviewed the products and services to be supplied pursuant to this Agreement and is qualified, willing and able to provide all such products and services in accordance with its terms.

NOW, THEREFORE, the County and the Vendor, in consideration of the mutual covenants contained herein, do agree as follows:

I. PRODUCTS AND SERVICES

The Vendor agrees to diligently provide all products and services for the Purchase, a more specific description of the Project Scope of Services is set forth in Sections 1 through 12 of the Detailed Specifications section of RFP220362BJB, a photocopy of said section(s) being attached hereto and incorporated by reference as Exhibit A. Vendor shall comply strictly with all of the terms and conditions of Solicitation No. RFP220362BJB, as modified by its addenda, copies of which are on file with the County's Department of Procurement Management and are deemed incorporated into this Agreement.

Vendor hereby agrees to provide and perform all services required and necessary as set forth in attached EXHIBIT "A", entitled "SCOPE OF WORK AND SPECIFICATIONS" and additionally provide such services in compliance with all Project Funding terms, conditions, provisions, certifications, affidavits, and

alike as set forth in attached EXHIBIT "E", entitled "PROJECT FUNDING PACKAGE", which shall be inclusive of original solicitation package with Vendor executed documents, grant funding provisions, and addendums.

II. TERM AND DELIVERYS

- A. This Agreement shall commence immediately upon the execution of all parties and shall continue on an "as needed basis" for a five (5) year period. Upon mutual written agreement of both parties, the parties may renew the Agreement, in whole or in part, for a renewal term or terms not to exceed the initial Agreement term of five (5) years. The increments of renewal shall be at the sole discretion of the County as deemed in its best interest.
- B. A purchase order must be issued by the County before commencement of any work or purchase of any goods related to this Agreement.

III. COMPENSATION AND PAYMENT

- A. The County shall pay the Vendor in accordance with the terms and conditions of this Agreement for providing all products and services as set forth in Exhibit A, and further described in Exhibit B, Fee Schedule, attached hereto and incorporated herein. Said total amount to be all inclusive of costs necessary to provide all products and services as outlined in this Agreement, and as supported by the Vendor's submittal in response to the Solicitation, a copy of which is on file with the County's Department of Procurement Management and is deemed incorporated into this Agreement.
- B. Notwithstanding the preceding, Vendor shall not make any deliveries or perform any services under this Agreement until receipt of written authorization from the County. Vendor acknowledges and agrees that no minimum order or amount of product or service is guaranteed under this Agreement and County may elect to request no products or services. If the County authorizes delivery of products or performance of services, the County reserves the right to amend, reduce, or cancel the authorization in its sole discretion.
- C. All funds for payment by the County under this Agreement are subject to the availability of an annual appropriation for this purpose by the County. In the event of non-appropriation of funds by the County for the services provided under this Agreement, the County will terminate the contract, without termination charge or other liability, on the last day of the then current fiscal year or when the appropriation made for the then-current year for the services covered by this Agreement is spent, whichever event occurs first. If at any time funds are not appropriated for the continuance of this Agreement, cancellation shall be accepted by the Vendor on thirty (30) days' prior written notice, but failure to give such notice shall be of no

effect and the County shall not be obligated under this Agreement beyond the date of termination.

IV. METHOD OF PAYMENT

- A. The County shall pay the Vendor in accordance with the Local Government Prompt Payment Act, Section 218.70, Florida Statutes, upon receipt of the Vendor's invoice and written approval of same by the County indicating that the products and services have been provided in conformity with this Agreement.
- B. The Vendor shall submit an invoice for payment to the County on a monthly basis for those specific services as described in Exhibit A (and the corresponding fees as described in Exhibit B) that were provided during that invoicing period.
- C. For partial shipments or deliveries, progress payments shall be paid monthly in proportion to the percentage of products and services delivered on those specific line items as approved in writing by the County.

V. ADDITIONAL PURCHASES

- A. No changes to this Agreement or the performance contemplated hereunder shall be made unless the same are in writing and signed by both the Vendor and the County.
- B. If the County requires the Vendor to perform additional services or provide additional product(s) related to this Agreement, then the Vendor shall be entitled to additional compensation based on the Fee Schedule as amended to the extent necessary to accommodate such additional work or product(s). The additional compensation shall be agreed upon before commencement of any additional services or provision of additional product(s) and shall be incorporated into this Agreement by written amendment. The County shall not pay for any additional service, work performed or product provided before a written amendment to this Agreement.

Notwithstanding the preceding, in the event additional services are required as a result of error, omission or negligence of the Vendor, the Vendor shall not be entitled to additional compensation.

VI. LIABILITY OF VENDOR

- A. The Vendor shall save, defend, indemnify and hold harmless the County from and against any and all claims, actions, damages, fees, fines, penalties, defense costs, suits or liabilities which may arise out of any act, neglect, error, omission or default of the Vendor arising out of or in any

way connected with the Vendor or subcontractor's performance or failure to perform under the terms of this Agreement.

B. This section shall survive the termination or expiration of this Agreement.

VII. VENDOR'S INSURANCE

A. Vendor shall procure and maintain insurance as specified in Exhibit C Insurance Requirements, attached hereto and made a part of this Agreement.

B. Vendor shall, on a primary basis and at its sole expense, maintain in full force and effect, at all times during the life of this Agreement, insurance coverage (including endorsements) and limits as described in Exhibit C. These requirements, as well as the County's review or acceptance of insurance maintained by Vendor, are not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Vendor under this Agreement. Insurance carriers providing coverage required herein must be licensed to conduct business in the State of Florida and must possess a current A.M. Best's Financial Strength Rating of "B or better." No changes are to be made to these specifications without prior written specific approval by County Risk Management. To the extent multiple insurance coverages and/or County's self-insured retention may apply, any and all insurance coverage purchased by Vendor and its subcontractors identifying the County as an additional named insured shall be primary.

VIII. RESPONSIBILITIES OF THE VENDOR

A. The Vendor shall be responsible for the quality and functionality of all products supplied and services performed by or at the behest of the Vendor under this Agreement. The Vendor shall, without additional compensation, correct any errors or deficiencies in its products, or if directed by County, supply a comparable replacement product or service.

B. The Vendor warrants that it has not employed or retained any company or person (other than a bona fide employee working solely for the Vendor), to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm other than a bona fide employee working solely for the Vendor, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award of this Agreement.

C. The Vendor shall comply with all federal, state, and local laws, regulations and ordinances applicable to the work or payment for work thereof, and shall not discriminate on the grounds of race, color, religion, sex, or national origin in the performance of work under this Agreement.

D. Vendor specifically acknowledges its obligations to comply with Section 119.0701, Florida Statutes, with regard to public records, and shall:

- 1) keep and maintain public records that ordinarily and necessarily would be required by the County in order to perform the services required under this Agreement;
- 2) upon request from the County, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law;
- 3) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law; and
- 4) meet all requirements for retaining public records and transfer, at no cost to the County, all public records in possession of Vendor upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the County in a format that is compatible with the information technology system of the County.

IF THE VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE VENDOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 239-533-2221, 2115 SECOND STREET, FORT MYERS, FL 33901, PRRCustodian@leegov.com; <http://www.leegov.com/publicrecords>.

E. The Vendor is, and shall be, in the performance of all work, services and activities under this Agreement, an independent contractor. Vendor is not an employee, agent or servant of the County and shall not represent itself as such. All persons engaged in any work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the Vendor's sole direction, supervision and control. The Vendor shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Vendor's relationship and the relationship of its employees to the County shall be that of an independent contractor and not as employees of the County. The Vendor shall be solely responsible for providing benefits and insurance to its employees.

- F. The Vendor shall comply with the Vendor Background Screening Affidavit attached hereto and incorporated herein as Exhibit D.

IX. OWNERSHIP OF PRODUCTS

It is understood and agreed that all products provided under this Agreement shall become the property of the County upon acceptance by the County.

X. TIMELY DELIVERY OF PRODUCTS AND PERFORMANCE OF SERVICES

- A. The Vendor shall ensure that all of its staff, contractors and suppliers involved in the production or delivery of the products are fully qualified and capable to perform their assigned tasks.
- B. The personnel assigned by the Vendor to perform the services pursuant to this Agreement shall comply with the terms set forth in this Agreement. If the services provided require use of specific key personnel, the personnel shall be agreed to by the County and Vendor. If the Vendor's key personnel have been predetermined and approved, through the Solicitation process or otherwise, any subsequent change or substitution to the personnel must receive the County's written approval before said changes or substitution can become effective.
- C. The Vendor specifically agrees that all products shall be delivered within the time limits as set forth in this Agreement, subject only to delays caused by force majeure, or as otherwise defined herein. "Force majeure" shall be deemed to be any unforeseeable and unavoidable cause affecting the performance of this Agreement arising from or attributable to acts, events, omissions or accidents beyond the control of the parties.

XI. COMPLIANCE WITH APPLICABLE LAW

This Agreement shall be governed by the laws of the State of Florida. Vendor shall promptly comply with all applicable federal, state, county and municipal laws, ordinances, regulations, and rules relating to the services to be performed hereunder and in effect at the time of performance. Vendor shall conduct no activity or provide any service that is unlawful or offensive.

XII. TERMINATION

- A. The County shall have the right at any time upon thirty (30) days' written notice to the Vendor to terminate this Agreement in whole or in part for any reason whatsoever. In the event of such termination, the County shall be responsible to Vendor only for fees and compensation earned by the Vendor, in accordance with Section III, prior to the effective date of said termination. In no event shall the County be responsible for lost profits of Vendor or any other elements of breach of contract.

- B. After receipt of a notice of termination, except as otherwise directed, the Vendor shall stop work on the date of receipt of the notice of termination or other date specified in the notice; place no further orders or subcontracts for materials, services, or facilities except as necessary for completion of such portion of the work not terminated; terminate all vendors and subcontracts; and settle all outstanding liabilities and claims.
- C. The County's rights under this Agreement shall survive the termination or expiration of this Agreement and are not waived by final payment or acceptance and are in addition to the Vendor's obligations under this Agreement.

XIII. DISPUTE RESOLUTION

- A. In the event of a dispute or claim arising out of this Agreement, the parties agree first to try in good faith to settle the dispute by direct discussion. If this is unsuccessful, the parties may enter into mediation in Lee County, Florida, with the parties sharing equally in the cost of such mediation.
- B. In the event mediation, if attempted, is unsuccessful in resolving a dispute, the parties may proceed to litigation as set forth below.
- C. Any dispute, action or proceeding arising out of or related to this Agreement will be exclusively commenced in the state courts of Lee County, Florida, or where proper subject matter jurisdiction exists, in the United States District Court for the Middle District of Florida. Each party irrevocably submits and waives any objections to the exclusive personal jurisdiction and venue of such courts, including any objection based on forum non conveniens.
- D. This Agreement and the rights and obligations of the parties shall be governed by the laws of the State of Florida without regard to its conflict of laws principles.
- E. Unless otherwise agreed in writing, the Vendor shall be required to continue all obligations under this Agreement during the pendency of a claim or dispute including, but not limited to, actual periods of mediation or judicial proceedings.

XIV. STOP WORK ORDER

The County may, at any time, by written order to the Vendor, require the Vendor to stop all or any part of the work called for by this Agreement. Any order shall be identified specifically as a stop work order issued pursuant to this clause. This order shall be effective as of the date the order is delivered to the Vendor. Upon receipt of such an order, the Vendor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work

stoppage. The Vendor shall not resume work unless specifically so directed in writing by the County. The County may take one of the following actions:

1. Cancel the stop work order; or
2. Terminate the work covered by the order; or
3. Terminate the Agreement in accordance with provisions contained in Section XI.

In the event the County does not direct the Vendor to resume work, the stop work order may be converted into a notice of termination for convenience pursuant to Section XII. The notice period for such termination shall be deemed to commence on the date of issuance of the stop work order. In the event the County does not direct the Vendor to resume work within ninety (90) days, the Vendor may terminate this Agreement.

XV. MISCELLANEOUS

- A. This Agreement constitutes the sole and complete understanding between the parties and supersedes all other contracts between them, whether oral or written, with respect to the subject matter. No amendment, change or addendum to this Agreement is enforceable unless agreed to in writing by both parties and incorporated into this Agreement.
- B. The provisions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assignees of the parties hereto. A party to this Agreement shall not sell, transfer, assign, license, franchise, restructure, alter, or change its corporate structure or otherwise part with possession or mortgage, charge or encumber any right or obligation under this Agreement without the proposed assignee and/or party restructuring, altering or changing its corporate structure agreeing in writing with the non-assigning party to observe and perform the terms, conditions and restrictions on the part of the assigning party to this Agreement, whether express or implied, as if the proposed assignee and/or party restructuring, altering or changing its corporate structure was an original contracting party to this Agreement. Notwithstanding the foregoing provision, the Vendor may assign its rights if given written authorization by the County and claims for the money due or to become due to the Vendor from the County under this Agreement may be assigned to a financial institution or to a trustee in bankruptcy without such approval from the County. Notice of any such transfer or assignment due to bankruptcy shall be promptly given to the County.
- C. The exercise by either party of any rights or remedies provided herein shall not constitute a waiver of any other rights or remedies available under this Agreement or any applicable law.
- D. The failure of the County to enforce one or more of the provisions of the Agreement shall not be construed to be and shall not be a waiver of any

such provision or provisions or of its right thereafter to enforce each and every such provision.

- E. The parties covenant and agree that each is duly authorized to enter into and perform this Agreement and those executing this Agreement have all requisite power and authority to bind the parties.
- F. Neither the County's review, approval or acceptance of, nor payment for, the products and services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.
- G. If the Vendor is comprised of more than one legal entity, each entity shall be jointly and severally liable hereunder.
- H. When any period of time is referred to by days herein, it shall be computed to exclude the first day and include the last day of such period. When the period of time is fewer than three (3) days, it shall mean business days as defined by Lee County. If the period of time is greater than three (3) days, then it shall mean calendar days. For any period of time greater than seven (7) days, where the deadline falls on a Saturday, Sunday, or Lee County recognized holiday, the deadline will then fall to the next Monday or non-Lee County recognized holiday
- I. Any notices of default or termination shall be sufficient if sent by the parties via United States certified mail, postage paid, or via a nationally recognized delivery service, to the addresses listed below:

Vendor's Representative

Name: Ashley Ramsay-Naile
 Title: President
 Address: 5629 Commerce Blvd.
 East, Mobile, AL 36619
 Telephone: 800-992-6207
 Facsimile: 251-459-7433
 Email: jramsay@crowdergulf.com

County's Representative

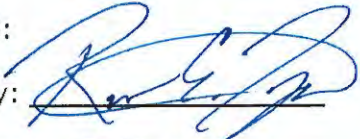
Names:	Roger Desjarlais	Mary Tucker
Titles:	County Manager	Procurement Management Director
Address:	P.O. Box 398 Fort Myers, FL 33902	
Telephone:	(239) 533-2221	(239) 533-8881
Facsimile:	(239) 485-2262	(239) 485-8383
Email:	rdesjarlais@leegov.com	mtucker@leegov.com

- J. Any change in the County's or the Vendor's Representative will be promptly communicated by the party making the change.
- K. Paragraph headings are for the convenience of the parties and for reference purposes only and shall be given no legal effect.
- L. In the event of conflicts or inconsistencies, the documents shall be given precedence in the following order:

1. Agreement
2. County's Purchase Order
3. Solicitation
4. Vendor's Submittal in Response to the Solicitation

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date last below written.

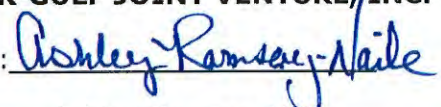
WITNESS:

Signed By: 

Print Name: Reid Loper

Vice President

CROWDER-GULF JOINT VENTURE, INC.

Signed By: 

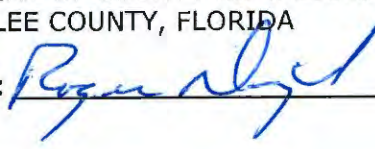
Print Name: Ashley Ramsay-Nalle

Title: President

Date: 10-02-22

LEE COUNTY

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: 

DATE: 10-02-22

ATTEST:
CLERK OF THE CIRCUIT COURT

BY: _____

APPROVED AS TO FORM FOR THE
RELIANCE OF LEE COUNTY ONLY:

BY: 

OFFICE OF THE COUNTY ATTORNEY

EXHIBIT A

SCOPE OF WORK AND SPECIFICATIONS

DETAILED SPECIFICATIONS

1. GENERAL SCOPE OF WORK

- 1.1. The Lee County Board of County Commissioners seeks to contract with a qualified Vendor to provide a variety of disaster recovery related services for Lee County, Florida. These services will be on an as-needed basis countywide with no work guaranteed. Not all tasks will be assigned for all events. Services shall include but are not limited to: Large and small scale debris removal projects, separation, staging, disposal, demolition work, vegetative and construction and demolition debris removal, hazardous waste handling, hazardous tree trimming and removal, stump grinding and removal, sand removal from roads, streets, and right-of-ways, and all additional scopes of work as described herein.
- 1.2. All work under this RFP shall be performed in accordance with FEMA rules and guidelines for federal reimbursements and with 2 CFR 200.317-326 as updated and where applicable.

2. DEFINITIONS

- **Contractor / Firm** – The successful proposer (s)
- **Debris Monitoring Consultant** - A Consultant retained by the County to manage administrative aspects of the recovery process including processing FEMA submittals.
- **Debris** – Scattered items and materials broken, destroyed, or displaced by a disaster, Example; trees, construction and demolition material, personal property.
- **FEMA** – Federal Emergency Management Agency
- **FDEM** – Florida Division of Emergency Management
- **DMS** – Debris Management Site- Predetermined site location for either temporary staging or final destination.
- **Storm Litter** - Debris such as leaves and small twigs that would normally require hand raking to collect. Does not include debris easily picked up by hand.
- **Government** - The term “government” as used in this Contract refers to those governmental agencies, which may have a regulatory or funding interest in this Contract.

3. CONTRACTOR RESPONSIBILITY & ADDITIONAL SCOPE CONDITIONS

- 3.1. The Contractor may be called upon throughout the contract to render services to assist the County with special needs and events related to disaster recovery and/or planning activities other than full-scale disasters. Each year of this contract, the Contractor shall provide a minimum of one (1) day (up to 8 hours) of on-site, pre-event training of County’s emergency management and recovery personnel at no additional charge to the County.
- 3.2. The Contractor shall provide technical guidance and consultation before, during, and after the disaster event. For contracted operations, the Contractor shall provide trained administrative support, onsite management staff to work with County officials, field supervisors, operators, drivers, laborers, and all associated vehicles, equipment, tools, and supplies necessary to ensure a successful recovery operation.
- 3.3. The selected Contractor(s) shall be responsible for knowledge and compliance with all federal, state, and local laws, rules, practices, and regulations. The Contractors shall be familiar with the County’s approved debris management plan.
- 3.4. No guarantee is expressed or implied as to the quantity of services to be procured under this request for proposal; no work is guaranteed.

4. INITIATING CONTRACT WHEN A MAJOR DISASTER OCCURS OR IS IMMINENT

- 4.1 When a major disaster occurs or is imminent, the County will contact the firm(s) holding Disaster Recovery Services Contract(s) to advise them of the County's intent to activate the contracts. Debris removal will generally be limited to debris in, upon, or brought to public streets and roads, right-of-ways, municipal properties and facilities, and other public sites, unless otherwise directed.
- 4.2 The County, upon contacting the Contractor, will issue a Notice to Proceed and work order assignment/task authorization. The issuance of the work order/task authorization will allow the Contractor to begin pre-storm preparations and allow the immediate response once the recovery begins. The Contractor shall also begin coordination with County Solid Waste Management personnel. This may include staffing or preparing reports for the Debris Operations and/or Emergency Operation Center.
- 4.3 The Contractor shall have a maximum of 24 hours from notification to proceed by the County to mobilize and begin their response. Failure to mobilize in the allowed time may result in the selection of another Contractor.
- 4.4 The Contractor shall be responsible for determining the method and manner of debris removal and for conducting lawful disposal operations, including regulated hazardous waste. County will determine the primary location of the reduction and disposal sites in consultation with Contractor. Additional sites may be utilized as directed and/or approved by County.
- 4.5 For "Event Types" that require Temporary Debris Staging and Reduction Sites (DMS) the Contractor shall be available for technical assistance to assist the County in determining which pre-approved DMS will be used. Selection of these sites is to be the first task completed by the Debris Management Team. With the completion of this initial task, the result will be a map of the various sites and a basic operation plan for each site.

5. RELATIONSHIP BETWEEN DEBRIS MONITORING CONSULTANT & DEBRIS REMOVAL CONTRACTOR

- 5.1 The County's Debris Monitoring Consultant and/or County Staff provide inspection, engineering, and administrative services as needed to meet the requirements for FEMA reimbursement. The interaction between the Contractor and the Consultant is crucial to the success of the response operation. Therefore, each Contractor shall be capable of working with different accounting and tracking systems.
- 5.2 Prior to the beginning of each hurricane season, the successful Contractor(s) shall meet with the County and the Debris Monitoring Consultant to finalize and test the processes for inspection and documentation that are to be used during the response and recovery phase of debris removal. This meeting is to occur annually or may be included as part of the required training day.

6. SCOPE OF WORK

- 6.1. Contractor shall provide all expertise, personnel, tools, materials, equipment, transportation, supervision and all other services and facilities of any nature necessary to execute, complete and deliver the timely removal and lawful disposal of all eligible storm-generated debris, including hazardous and industrial waste materials; and shall be provided in accordance with the Standards of Performance as set forth in Section 7. Emergency push, debris removal and demolition of structures will be limited to:
 - a) That which is determined to eliminate immediate threats to life, public health, and safety;
 - b) That which has been determined to eliminate immediate threats of significant damage to improved public or private property; and

- c) That which is considered essential to ensure the economic recovery of the affected community to the benefit of the community at large.

These contracted services shall provide for the cost effective and efficient removal and lawful disposal of debris accumulated on all public, residential, and commercial properties, streets, roads, other rights-of-way and public-school properties, including any other locally owned facility or site as may be directed by County. Contracted services shall only be performed when requested and as designated by County via task order.

Contractor shall load and haul the debris from within the legal boundaries of the municipality to a final disposal location defined by the County, or to Debris Management Site (DMS) site(s) and as specified by the County and set out in Section 9.8 of this Contract.

Furthermore, the vendor shall provide services as necessary to assist in the event of any Local, State, or Federal State of Emergency is declared.

6.2. Emergency Push / Road Clearance:

If directed by the County, Contractor shall accomplish the cutting, tossing and/or pushing of debris from the primary transportation routes as identified by and directed by County. This operational aspect of the scope of services shall be for the first 72 (plus or minus) hours after mobilization of 100% of the resources pursuant to Section 8.2. Once this task is accomplished, the following additional tasks shall begin as required.

6.3. Right-of-Way (ROW) Removal:

Contractor shall remove all debris from the ROW when directed to do so by County. Contractor shall use reasonable care not to damage any real or personal property not already damaged by the storm event. Damages shall be handled pursuant to section 9.5.

6.4. Right-of-Entry (ROE) Removal *(if Task Authorized by County)*:

Contractor shall exercise due diligence in removing ROE debris from private property, as authorized and directed by the County. The Contractor also agrees to make reasonable efforts to save from destruction items that the property owners wish to save (i.e., trees, small buildings, etc.). Contractor shall exercise caution when working around public utilities (i.e., gas, water, electric, etc.). Every effort will be made to mark these utilities, but County does not warrant that all utilities will be located before debris removal operations begin, nor does County warrant that utility damages will not occur as a result of properly conducting Contracted services.

6.5. Demolition of Structures *(if Task Authorized by County)*:

Contractor shall remove structures designated for removal by and at the direction of County, in a timely manner as determined by County.

6.6. Private Property Waivers:

County will secure all necessary permissions, waivers and Right-of-Entry Agreements from real property owners required for the lawful removal of debris and/or demolition of structures from real properties.

6.7. Disaster Recovery Technical Assistance:

Contractor shall provide Disaster Recovery Technical Assistance, to officials within County and designated staff members, to assist a local government with guidance and consultation on all aspects of the recovery process.

6.8. Vegetative Debris Reduction:

Contractor shall reduce the vegetative debris prior to taking it to the County's designated final site(s). This shall be performed through either a burning or chipping process. The County will decide which means is the better method at the time. Required permits are the responsibility of the Contractor. Reduction production rates will be sufficient to meet or exceed the daily collection rate after the fifteenth day. Direct hauling of vegetative debris from the ROW collection point to final disposal site, where the material will not be delivered to or managed at a DMS, will not require reduction and will not be subject to site management or reduction fees.

6.9. Construction and Demolition (C&D) Debris Removal:

Contractor shall collect, consolidate, and remove C&D debris to a location designated by the County. The production rate of this effort will be determined by the County and will be based on the volume of C&D estimated. The production rate should be similar to the vegetation rate. Direct hauling of Construction and demolition debris from the ROW collection point to final disposal site, where the material will not be delivered to or managed at a DMS for reduction or recycling, will not be subject to site management or reduction fees.

6.10. Construction and Demolition (C&D) Debris Recycling & Reduction:

When directed, the Contractor shall sort the C & D and make every effort to recycle as much material as possible to reduce the overall volume transported to the landfill. Funds generated from the recycling process shall be used to reduce the final cost to the County. The Contractor is responsible for handling and proper removal of all environmental hazards collected such as refrigerant in air conditioners and refrigerators, batteries, household hazardous wastes, etc. When directed and due to C&D volumes that justify the use of a DMS, the County will work with the Contractor and FDEP to establish an approved DMS suitable for C&D, including detailed site plans and required environmental protection protocols including but not limited to pre and post use monitoring prior to the use of a DMS for the staging, recycling, and reduction of C&D debris. Cost for environmental monitoring or testing shall be a pass through to the County without profit unless otherwise agreed or initiated and managed by the County. The method of size reduction shall be determined based on the material make-up and the fees for reduction shall be based on the type of equipment used as quoted or as allowed per negotiation for non-quoted specialty equipment.

6.11. Specialized Crews:

If requested by the County, the Contractor shall provide a dedicated crew to collect specific debris piles that cause health and safety issues around hospitals, public schools, County facilities, or other type properties.

7. PERFORMANCE OF SERVICES

7.1. Description of Service:

Contractor agrees to perform Contracted services in a professional and workmanlike manner and in compliance with all applicable laws, ordinances, rules, regulations and permits. Only the highest quality workmanship shall be acceptable. Services, equipment, and workmanship not conforming to the intent of Contract or meeting the approval of County may be rejected. Replacements and/or rework, as required, shall be accomplished at no additional cost to the County.

7.2. Cost of Services:

Contractor shall bear all of its own operating costs and is responsible for all permits, license fees, and maintenance of its own trucks and equipment to keep such property in a condition and manner adequate to accomplish contracted services.

7.3. Sub-Contractor(s):

Contractor may utilize the services of Sub-Contractors and shall be responsible for the acts or omissions of its Sub-Contractors to the same extent Contractor is responsible for the acts and omissions of its own employees. Contractor shall ensure that all its Sub-Contractors have and carry the same major provisions of this Contract and that the work of their Sub-Contractors is subject to said provisions. Nothing contained in this Contract shall create any contractual relationship between any Sub-Contractor and County. Contractor shall supply the names and addresses of Sub-Contractors and materials suppliers when requested to do so by County.

8. STANDARDS OF PERFORMANCE

8.1. Contractor Representative:

Contractor shall have a knowledgeable and responsible representative report to County's designated Contract representative within 24 hours following the execution of this Contract. The Contractor's representative shall have the authority to implement all actions required to begin the performance of contracted services as set out in this Contract and Contractor's General Operations Plan. A Contractor representative shall remain locally during the duration of recovery efforts and be available to routinely meet with County contract administrator. The Contractor shall also consider locating this representative at or near the Lee County EOC to facilitate coordination of debris removal operations. The Contractor shall also provide reports on debris removal operational progress as requested.

8.2. Mobilization:

The Contractor shall have sufficient equipment and forces in Lee County within 4 days of "notification to proceed" to begin removal operations at an initial rate of 3,000 cy per day and increasing that rate, after the sixth day, by a minimum of 3,000 cy each day, building to a consistent, minimum daily rate of 50,000 cy of debris collected, or as modified by the County based on need of the storm event(s). Additional resources may be required to meet the debris activities based on the scope and impact of the event. Adjustments to these minimums may be approved by the County based on the size and scope of the disaster event.

8.3. Time to Complete:

Contractor shall use all efforts to complete all work directed under this Contract as soon as feasibly possible, and in accordance with established timelines for completion of debris related activities for the specific event, as defined by FEMA or other federal reimbursement program guidelines or as agreed to with the County. County will direct the scope and nature of the work to be performed once the extent of damage has been determined.

8.4. Completion of Work:

Contractor shall be responsible for removal of all debris up to the point where remaining debris can only be described as storm litter and additional collection can only be accomplished by the use of hand labor and all DMS mitigation and damages by Contractor have been resolved.

9. GENERAL RESPONSIBILITIES

9.1. County Obligations:

County will furnish all information and documents necessary for the commencement of contracted services, including a written Notice To Proceed. A representative will be designated by County to be the primary point of contact for inspecting the work and answering any on-site questions prior to and after activation of this Contract via a written Notice to Proceed.

County will be responsible for issuing all Public Service Announcements (PSAs) to advise citizens and agencies of the available debris management services. Contractor may assist County with the development of debris management PSAs, if so requested.

9.2. Contractor's Conduct of Work:

Contractor shall be responsible for planning and conducting all operations in a satisfactory workmanship manner. Contractor shall demonstrate and maintain a courteous and responsive demeanor toward all citizens, especially when working on individual private properties. All operations shall be conducted under the review of a County representative at times, places, and by means as directed by County. Contractor shall have and require strict compliance with a written Code of Ethics to be provided by County.

9.3. Supervision by Contractor:

Contractor shall supervise and/or direct all contracted services performed by its employees, agents and Sub-Contractors. Contractor is solely responsible for all means, methods, techniques, safety, and other procedures.

Contractor shall employ and maintain a qualified supervisor at the work site who shall have full authority to act on behalf of Contractor. All communications given to the supervisor by County's authorized representative shall be as binding as if given to Contractor. Multiple work sites will require equal supervision as outlined above. Contractor must ensure that sufficient supervision is provided to manage multifaceted debris management operations that may include projects that require separate coordination, tracking, and documentation; additional supervision and/or project management staff shall be provided if requested by the County for these projects.

9.4. Damages by Contractor:

Contractor shall be responsible for conducting all operations, in such a manner as to cause the minimum damage possible to existing public, private, and commercial property and/or infrastructure. Contractor shall also be responsible for any damages due to the negligence of its employees and Sub-Contractors. Should any property be damaged due to negligence on the part of Contractor, the Contractor shall repair damages promptly and at no additional cost to the County; repairs must be sufficient and a release from claim of damage must be signed by the parties involved. If repairs are not made promptly or sufficiently as to obtain the signed release from claim, the County may elect to coordinate or hire an outside vendor to make the required repairs and will either bill the Contractor for the damages or withhold funds due to the Contractor. County shall make the determination of whether "negligence" has occurred. Contractor shall respond to all damage complaints within 48 hrs. of receipt and maintain a Damage Log tracking all damage complaints including date and point of contact, proposed resolution, status of repairs or settlement, and date of documented release. Contractor shall review this list with County designated contract manager a minimum of weekly and provide copies of all releases. All Contractor damages must be resolved prior to project closeout unless otherwise agreed to by County. If at any time the damage list exceeds 25 open claims without scheduled repairs or at the discretion of the County, the Contractor shall provide, at no additional cost to the County, a dedicated staff member to resolve damage claims.

9.5. Contractor's Duty Regarding Other Contractor(s):

Contractor acknowledges the presence of other Contractors involved in disaster response and recovery activities by the federal, state and local government and of any private utility, and shall not interfere with their work.

9.6. Contractor's Ownership of Debris:

Unless otherwise directed by County, All debris, including regulated hazardous waste, shall become the property of Contractor for removal and lawful disposal. The debris will consist of, but not be limited to vegetative, construction and demolition, white goods, and household solid waste. Disposal costs at Non-County managed disposal locations shall be passed through to the County without mark-up on the monthly invoices.

9.7. Contractor's Disposal of Debris:

Unless otherwise directed by County, Contractor shall be responsible for determining and executing the method and manner for lawful disposal of all eligible debris, including regulated hazardous waste. County shall determine the primary location of the reduction and disposal sites in consultation with Contractor. Additional sites may be utilized as directed and/or approved by County.

9.8. Debris Management Site (DMS):

9.8.1. Site Setup:

Prior to beginning operation at a debris management site, the condition of the site shall be photographed, or video recorded by the Contractor and its condition documented and agreed upon by the County, Contractor, and Property Owner if applicable. As directed by County, baseline environmental assessments shall be performed and supplied for County review. Site setup shall be completed by the Contractor to include but not limited to, grubbing, silt fencing, all weather tower construction and/or rental, and site operation plan. County shall approve additional materials if determined necessary to provide for safe access to the site, costs for these materials shall be a pass-through cost without mark-up.

9.8.2.Site Operation:

Debris shall be stored in accordance with all federal, state, and local regulations. Fire lanes and adequate access shall be provided. Debris reduction activities shall be performed at each DMS as to maintain the safe and efficient operation of the site.

9.8.3.Site Remediation:

Debris management sites shall be returned to equal or better than original condition and to the satisfaction of County. Contractor shall be responsible for any damages pursuant to section 9.4.

9.8.4.Site Security:

Contractor shall supply twenty-four (24) hours per day security for the DMS sites to ensure unlawful or unauthorized dumping of debris does not occur. Unauthorized debris shall become the responsibility of the Contractor and must be disposed of lawfully and without additional costs to the County.

9.8.5. Debris Management Site (DMS)

The Debris Monitoring Team will determine the minimum number of sites required for each storm event. Lee County will designate the DMS to be activated. The County will select these sites, at the beginning of each hurricane season. Preparation, maintenance, and operation of these DMS facilities are entirely the Contractor's responsibility.

Preparation and maintenance of facilities shall include maintenance of the DMS approach and interior road(s) for the entire period of debris hauling, including provision of rock for any roads that require stabilization for ingress and egress. Each facility shall include a roofed inspection tower sufficient for a minimum of three (3) inspectors for the inspection of all incoming and exiting loads. The Contractor will be responsible for obtaining any required permits, which shall be paid at cost by the County. At the County's discretion, owned rights of way or other entity owned property could be provided for temporary storage of debris.

If needed, additional Contractor identified DMS sites may be considered for approval by the County. Lease agreements, between the Contractor and the property owner, for these properties may be executed by the Contractor with approval from the County. Management of these sites shall be subject to all terms outlined in this document, including but not limited to DMS management, environmental controls, and site remediation.

9.8.6. DMS Debris Removal Operations Plan and Environmental Protection Plan

Contractor shall provide within 90 days of execution of this contract, their generic site management plan. Once the debris management site is selected for use, the CONTRACTOR shall provide a Site Management Plan. This plan is to address site setup, pre-use activities, post-use activities and operational activities. The plans shall include pre and post video and other checklists to assure proper management of the site. Contractor shall submit three (3) copies of the plan. The plan shall be drawn to a scale of 1" = 50' and address the following functions:

- Access to site
- Site preparation -clearing, erosion control, and grading
- Traffic control procedures
- Safety
- Segregation of debris
- Location of ash disposal area, hazardous material containment area, Contractor work area, and inspection tower
- Location of incineration operations, grinding operation (if required). Burning operations require a 100-foot clearance from the stockpile and a 1000-foot clearance from structures.
- Location of existing structures or sensitive areas requiring protection
- Restoration of Site

9.8.7. Debris Processing and Classification:

All debris shall be processed in accordance with local, state and federal law, standards, and regulations. Processing shall include, but is not limited to, reduction by grinding and/or incineration when approved by the County. Prior to reduction, all debris shall be segregated by common waste material classifications; e.g., vegetative debris, construction and demolition debris, recyclable debris, white goods, hazardous waste, etc.

9.8.8. Generated Hazardous Waste Abatement:

Abatement of hazardous waste identified by the County is to be disposed of in accordance with all applicable Federal, State, and local laws, standards, and regulations.

9.8.9. Debris Disposal:

Disposal of all eligible debris, reduced debris, ash residue and other products of the debris management process shall be in accordance with all applicable Federal, State, and local laws, standards, and regulations. Unless otherwise directed by the County, the Contractor shall be responsible for paying all landfill tipping or disposal fees and provide all scale tickets or other related & required documentation to the Debris Monitoring Consultant needed to receive eligible reimbursement through FEMA and (FHWA) for such fees.

Tipping or Disposal Fees at Final Disposal Sites shall be passed through to the County at cost without mark-up or escalation.

Unless otherwise notified, Tipping or Disposal costs for debris disposed of at approved County owned and operated Final Disposal Sites, shall be the responsibility of the County; in lieu of pass-through debris disposal costs. Disposal fees shall be the normally posted gate fees and be reconciled against load and scale tickets in the same manner as Contractor paid disposal fees. Tipping fees for debris from ineligible work, not approved by the County, shall be the responsibility of the Contractor and deducted from the invoice.

9.8.10. Debris Monitoring Assistance:

Assistance to the Debris Monitoring Consultant by the Contractor shall include, but is not limited to the following:

- Monitoring multiple Contractors and multiple trucks delivering materials to the DMS.
- Verify that each truck that delivers to the DMS matches its manifest ticket – truck and maximum capacity.
- Make sure load is properly secured for transport.
- Photograph of each loaded truck bed and attach photograph to truck's manifest ticket or link with digital photographic records, as applicable.
- Review trucks manifest and observe the truck bed to confirm that the truck was loaded to capacity or as described on manifest ticket, and completely empty on departure.
- Maintain manifest tickets in an organized manner for proper record review and storage.
- Initial load tickets before permitting truck to leave the DMS check-in area to empty its load.
- Document location of origin of debris.
- Troubleshoot questions and problems at the DMS and identify issues that could impact eligibility for cost reimbursements.
- Remain in contact with the central office/staging operation command center.
- Perform other duties as directed by County personnel, e.g., conduct final inspections and issue closeout reports.

9.8.11. Training:

Contractor shall provide training annually. Training shall take place for a minimum of one (1) day, for up to eight (8) hours of on-site. Training shall consist of pre-strike training for County field and supervisory personnel.

10. SCOPE OF SERVICES

10.1. Geographic Assignment:

The geographic boundary for work by Contractor's crews shall be only as directed by County and will be limited to properties located within the County's jurisdictional boundaries. Collection activities shall be monitored, and crews shall be responsible for providing detailed information of collection locations as requested.

10.2. Multiple, Scheduled Passes:

Contractor shall make complete scheduled passes at the direction of County and/or unscheduled passes of each area impacted by the storm event. County shall direct the interval timing of all passes. Passes shall be complete only when County deems they meet the definition outlined in section 8.4. Sufficient time shall be permitted between subsequent passes to accommodate reasonable recovery and additional debris placement at the ROW by the citizens and the County.

10.3. Operation of Equipment:

Contractor shall operate all trucks, trailers, and all other equipment in compliance with any/all applicable federal, state and local rules and regulations. Equipment shall be in good working condition, with no fluid leaks, and must have an enclosed rear or operable tailgate. NO unapproved improvised tailgates are allowed, e.g. chain link fencing, etc. All loading equipment shall be operated from the road, street or ROW using buckets and/or boom and grapple devices to collect and load debris. No equipment shall be allowed to operate on private property or outside of the public ROW unless otherwise directed by County. Damages by the Contractor or its representative shall be the Contractor's responsibility and repaired at no additional cost to the County as outlined in section 9.4. Should operation of equipment be required outside of the public ROW, County will provide a Right-of-Entry Agreement, as set out in Section 6.6 of this Contract.

10.4. Certification of Load Carrying Capacity:

Contractor shall submit to County a certified report indicating the type of vehicle, make and model, license plate number and/or trailer VIN number, assigned debris hauling number and measured maximum volume, in cubic yards, of the load bed of each piece of equipment to be utilized to haul debris. This report shall be maintained, updated, and provided to the County whenever equipment is added or deleted.

The measured volume of each piece of equipment shall be calculated from the actual physical measurement performed by County, County's Debris Monitoring Contractor, and Contractor representatives at a County designated location. A standard measurement form certifying actual physical measurements of each piece of equipment, including side boards and deductions shall be an attachment to the certified reports submitted to County.

Each vehicle shall be measured for cubic yard capacity. Each vehicle shall have one numbered certification form prepared with a written description of the measurements, detailed diagram showing the overall inside dimensions, the dimensions of any and all, side boards, and/or deductions, and photograph attached. Deductions, such as doghouses, slant plates, etc. shall be shown as a deduction from the total cubic yards. Example: Measure and diagram length times Width times Height divided by 27= Total CY. Second, measure and diagram the "deduction item" and subtract from the total CY. This is the number that will be certified on the certification form and the placard placed on the vehicle. Certification forms shall be in triplicate, sequentially numbered and verified by a County representative. County shall retain the original certification copy, the Contractor shall retain the second copy, and the third copy shall remain in the certified vehicle.

Any changes to the equipment size or capacity, i.e. adding or removing sideboards, tailgates etc. will require it to be recertified. This new certification shall be attached to the original certification and documented as to when and/or why recertification was required and occurred.

Any vehicle may at any time be re-measured for capacity. If determined the capacity is different due to mathematical error, this new capacity will be reflected on any previous loads and reconciled as such. Digital copies of truck certifications, forms, and photographs may be used in place of hard copies when applicable technologies are both available and if conform with and are compatible with an approved ADMS used by the debris monitoring Contractor.

10.5. Vehicle Information:

The maximum load capacity of each hauling vehicle will be rounded to the nearest whole cubic yard (CY) (Decimal values of .1 through .4 will be rounded down and decimal values of .5 through .9 will be rounded up). The measured maximum load capacity (as adjusted) of any vehicle load bed shall be the same as shown on the certification form and placarded on each numbered vehicle or piece of equipment used to haul debris. Contractor name and vehicle certification number shall be on the placard along with the certified CY. All vehicles or equipment used for hauling shall have and use a County / Contractor-approved tailgate. A complete list of all certified vehicles with total adjusted CY information including details of tailgates, sideboards, and deductions shall be supplied, maintained, and updated by the Contractor when any changes occur at all DMS sites.

10.6. Security of Debris during Hauling:

Contractor shall be responsible for the security of debris on/in each vehicle or piece of equipment utilized to haul debris. Prior to leaving the loading sites, Contractor shall ensure that each load is secure and trimmed so that no debris extends horizontally beyond the bed of the equipment in any direction or vertically above FDOT maximum height requirements; tailgates must be closed. All loose debris shall be reasonably compacted and secured during transport in accordance with FDOT guidelines. As required, Contractor will regularly survey the primary transportation routes used by Contractor & its subs and recover fallen or blown debris from the roadway(s).

10.7. Traffic Control:

Contractor shall mitigate impact on local traffic conditions to the greatest extent possible while collecting or managing debris. Contractor is responsible for establishing and maintaining appropriate traffic control in accordance with the most current edition of the US Department of Transportation Manual of Uniform Traffic Control Devices (MUTCD) (see <http://muted.fhwa.dot.gov> OR other appropriate address for manual). Contractor shall provide sufficient signage, flagging, and barricading to ensure the safety of vehicular and pedestrian traffic at all debris removal, reduction and/or disposal sites.

10.8. Workdays/Hours:

Contractor may conduct debris removal operations 30 minutes prior to and 30 minutes after the published sunrise/sunset, seven (7) days per week unless prohibited by ordinance. Any mechanical, debris reduction operations or burning operations may be conducted twenty-four (24) hours per day, seven (7) days per week or in accordance with Local, State or Federal decree. Adjustments to workdays and/or work hours shall be as directed by County following consultation and notification to Contractor.

10.9. Hazardous and Industrial Wastes:

Contractor shall provide within 90 days of execution of this contract, their Hazardous and Industrial Materials Cleanup and Disposal Plan. This plan shall outline procedures on how the Contractor shall identify, isolate, and reasonably protect all hazardous or industrial materials encountered during debris removal operations for collection and disposal.

Contractor shall build, operate, and maintain a Hazardous Waste and Industrial Material Storage area until proper disposal of such waste is feasible. Contractor may use the subcontracting services of a firm specializing in the management and disposal of such materials and waste as outlined in section 7.3.

10.10. Stumps:

All eligible stumps authorized by the County shall be extracted, loaded, transported, stored, reduced and disposed in accordance with the standards and pricing templates of this Contract and in accordance with FEMA guidance documents DAP9523.11 or as amended.

Small stumps placed within loose debris piles shall be collected as normal debris. Loose stumps, placed at the right-of-way by others shall be identified and converted to cubic yards prior to collection. The size of all eligible loose stumps shall be determined by measuring up 1 to 2 feet from the root system then measuring the circumference and dividing by (3.14) to determine the diameter; or in accordance with the most currently available FEMA guidelines. All stumps will be documented, invoiced and paid in accordance with FEMA guidance and details & conditions of this Contract.

The Contractor shall backfill the hole left from stump extractions. A stump will be determined eligible for extraction based on the most current FEMA guidance but at a minimum must meet the following:

- The stump poses a threat to health and safety, and
- Has 50% or more of the root-ball is exposed, and
- It is greater than 24" in diameter as measured 24" above the ground.

FEMA policy for documentation of stumps shall be followed but at a minimum the following documentation must be obtained for each stump removed:

- Photographs and GPS coordinates that establish the location is on public property.
- Specific narrative describing the threat to health and safety
- Diameter of the stump
- Quantity of material needed to fill the resultant hole

Prior to stump extraction, all documentation described above shall be provided to the County; once determined eligible, written authorization shall be provided to the Contractor to remove the eligible stump. Copies of this authorization shall be submitted with the invoice in order to justify payment.

The Contractor must complete a FEMA Hazardous Stump Worksheet where required by FEMA policy. In the event that there are changes to FEMA or other regulatory requirements for stump documentation, the most current guidance or policy shall apply.

Reduction costs of stumps shall be included in the debris processing costs established in the pricing template.

10.11. Work Safety:

Contractor shall provide and enforce a safe work environment as prescribed in the Occupational Safety and Health Act of 1970, as amended. Contractor shall provide such safety equipment, training, and supervision as may be required by County and/or other governmental regulations. Contractor shall ensure that its subcontracts contain a similar safety provision.

10.12. Inspection and Testing:

All debris shall be subject to inspection by County and other public authorities to ensure compliance with Contract, applicable federal, state, and local laws, and in accordance with generally accepted standards of emergency management professionals. County or its representatives will, at all times, have access to all work sites and disposal areas. In addition, authorized representatives and agents of the government shall be permitted to inspect all work, materials, invoices and other relevant records and documentation.

10.13. Retention of Collection Equipment:

Contractor shall supply and maintain a sufficient quantity of collection equipment to complete the debris management project in accordance with the collection rates established herein or as approved by County to complete the final stages of the project within the established timelines. Collection equipment shall remain in force until the debris collection is complete or when determined by County and Contractor to be adequate to complete the recovery effort. Equipment leaving the County prior to completion of the recovery effort shall be replaced with equal or better equipment. Unless the County determines that downsizing of the operation is warranted.

10.14. Chainsaw Crews:

Crews shall work only as directed by task order by the County; the number of crewmembers and scope of work to be performed shall be outlined in the task order. Following the initial cut and toss phase of the project, chainsaw crews must be monitored by the County's debris monitoring firm. Unauthorized work shall not be paid for. Detailed invoices consisting of at a minimum the number of crewmen, hours worked, location, and description of work performed shall be submitted with the monthly invoice.

10.15. Hazardous Trees:

Hazardous Trees are to be removed if the condition was caused by the disaster, it is an immediate threat to health and safety, and has a diameter breast height of six inches (6") or greater, and one of the following criteria is met:

- More than 50% of the crown is damaged or destroyed; or
- The trunk is split, or it has broken branches that expose the heartwood of the tree; or
- It is leaning at an angle greater than 30 degrees

Trees determined to be hazardous and that have less than 50% of the root-ball exposed should be cut flush at ground level.

FEMA policy for documentation shall be followed but at a minimum the following minimum documentation must be obtained for each hazardous tree prior to its removal:

- Photographs and GPS coordinates that establish the location is on public property
- Specific narrative describing the threat to health and safety

After hazardous trees are properly documented and determined eligible by the County or designated Debris Monitor, written authorization shall be given to the Contractor to remove the tree. Copies of these authorizations are required to be submitted with the invoice in order to be eligible for payment.

10.16. Hanging Limbs:

Limbs, authorized as eligible for reimbursement by the County must be:

- Located on improved public property
- Greater than two inches (2") in diameter at the point of breakage
- Still hanging in a tree and threatening a public use area

FEMA policy for documentation shall be followed but at a minimum the following documentation must be obtained for each hanging limb that is removed:

- Photographs and GPS coordinates that establish the location is on public property
- Specific narrative describing the threat to health and safety

After hazardous trees are properly documented and determined eligible by the County or County designated debris monitor, written authorization shall be given to the Contractor to remove the tree. Copies of these authorizations are required to be submitted with the invoice in order to be eligible for payment.

10.17. Hand Loaded Collection Equipment:

Hand load trucks, trailers or equipment are discouraged, and shall be used only in areas where typical collection equipment cannot access and only with prior written authorization of the County. These "hand loaders" must remove all eligible debris as outlined in section 8.4. All Contractor equipment must be capable of self-unloading, equipment that must be unloaded by hand or requires assistance from operator at DMS site will not be permitted to dump at DMS sites.

10.18. Dead Animals:

Dead animals found (or placed) in the right-of-way or inadvertently delivered to a debris management site shall be the responsibility of the Contractor to remove and lawfully dispose of under this contract.

11. REPORTS, CERTIFICATIONS, and DOCUMENTATION

11.1. Accountable Debris Load Forms:

County and Contractor shall, after reconciliation, accept the serialized copies of the debris reporting tickets or approved ticket data base as the certified, original source document to account for the measurement and accumulation of the volume of debris delivered and processed at the reduction and/or disposal sites as verified by County representative. The serialized ticketing system (paper or approved electronic) will also be used in the event of additional debris handling for volume reduction and/or the possible requirement for a debris transfer station. These tickets/data base shall be used as the basis of any electronic generated billing and/or reports.

- If requested, the Contractor shall provide, minimum 4 part carbon copy, debris load tickets for use through the recovery operations.
- All debris collection and disposal information required by FEMA or other regulations must be documented on each load ticket
- The Contractor shall submit all original load tickets to the County

At the option and request of the County, the Contractor shall reconcile their load ticket copies with County copies no less than one time per week. Discrepancies shall be noted and resolved prior to the next reconciliation period.

An approved and auditable electronic debris ticket database, established through the use of an approved ADMS provided by the County's debris monitoring Contractor, may be used in place of serialized copies of the debris reporting tickets. In this event, load tickets will be replaced by ADMS generated receipts or reconciled electronic database where applicable.

11.2. Reports:

Contractor shall submit periodic, written reports to County as requested or required, detailing the progress of debris removal and disposal. These reports shall include, but are not limited to:

11.2.1. Daily Reports:

Daily reports shall detail the locations where passes for debris removal were conducted, the quantity of debris (by type) removed and disposed of, the total number of personnel crews engaged in debris management operations, and the number of grinders, chippers and mulching machines in operation. Contractor shall also report and provide regular repair progress updates of any damages to private property caused by the debris operation or damage claims made by citizens and such other information as shall be required to completely describe the daily conduct of Contractor's operations.

11.2.2. Weekly Summaries:

A summary of all information contained in the daily reports as set out in Section 11.2.1 of this Contract or in a format required by County.

11.2.3. Report Delivery:

The scheduling, point of delivery and receiving personnel for the debris operations report will be directed by County in consultation with Contractor.

11.2.4. Final Project Closeout:

Upon final inspection and/or closeout of the project by County, Contractor shall prepare and submit a detailed description of all debris management activities to include, but not be limited to the total volume, by type of debris hauled, reduced and/or disposed of, plus the total cost of the project invoiced to County. Contractor shall provide any other additional information as may be necessary to adequately document the conduct of the debris management operations for County and/or other government entity. Report shall include a section detailing any private property damages or claims, the satisfaction of these claims, as well as the status of any outstanding claims that require further action by the Contractor.

11.2.5. Additional Supporting Documentation:

Contractor shall submit sufficient reports and/or documentation for debris loading, hauling, disposal, and load capacity measurements, and any other services provided by Contractor as may be required by County and/or other governmental entity to support requests for debris project reimbursement from external funding sources.

11.2.6. Report Maintenance:

Contractor will be subject to audit by federal, state and local agencies pursuant to this Contract. Contractor shall maintain all reports, records, debris reporting tickets and contract correspondence for a period of not less than three (3) years.

11.2.7. Contract File Maintenance:

Contractor shall maintain this Contract and the invoices that are generated for Contracted services for a period of five (5) years or the period of standard record retention of the County, whichever is longer. Public records law requires that all records that are not exempt, must be made available upon request by the public. COUNTY may unilaterally cancel this contract for refusal to comply with this provision.

12. PRICING AND PAYMENTS

12.1. Schedule of Values

12.1.1. Category A – Core Services includes pricing for debris removal; debris processing; debris disposal; stump extractions; hazardous limb removal; and storm damage tree removal.

12.1.1.1. The following notes are defined and assigned in each line item as individually listed in Category A of the Schedule of Values:

- Note 1 - Prices shall include disposal sites located in Lee County and at the Lee/Hendry Landfill in Felda, Florida. Tipping fees at final disposal site(s) shall be the responsibility of the Contractor and passed through to the County without mark-up, unless approved otherwise. See section 9.8.9. within scope of services for disposal at County Owned and Operated disposal sites.
- Note 2 - For out of county disposal sites (excluding the Lee/Hendry Landfill), additional mileage will begin and be measured from the Lee County boundary closest to the disposal site. The approved per load additional mileage cost will be applied to each ticketed out of county load and be applicable to the miles beyond the Lee County boundary. Mileage is based on a one-way haul distance.

- Note 3 - For a multi-year contract, the prices shown in Category A will be adjusted on the anniversary date of the contract according to a percentage equal to the percent change in the Consumer Price Index as published in the U.S. Department of Labor, Bureau of Labor Statistics as established in the CWUR0300SAO index.
- Note 4 – Includes all site services, including but not limited to, providing monitoring towers, sanitary portable restrooms, and site safety & security.
- Note 5 – Includes comprehensive management of all debris site activities, including grubbing and establishing ingress/egress as needed, maintaining driving and working surfaces, managing storm water & regulatory compliance, and close-out site remediation. See section 9.8 in the scope of services for more detail.
- Note 6 - All stumps placed on the right of way by citizens will be converted to CY per the Stump Conversion Chart provided in FEMA Guidance DAP9523.11 and charged as regular debris for items A2 through A7.
- Note 7 - Items must be documented as per the scope of services and in accordance with appropriate FEMA Guidance, including DAP9523.11 or as amended.

12.1.2. Category B – Specialty Removal and Restoration includes pricing for screening and hauling of sand/soil; removal of vehicles and vessels; sand raking and removal of dead fish/algae; beach/lake restoration; berm/beach construction; and canal shoreline restoration.

12.1.2.1. Activities within Category B require specific task authorizations and include all labor and management of tasks.

12.1.2.2. The following notes are defined and assigned in each line item as individually listed in Category A of the Schedule of Values:

- Note 1 - Prices shall include disposal sites located in Lee County and at the Lee/Hendry Landfill in Felda, Florida. Tipping fees at final disposal site(s) shall be the responsibility of the Contractor and passed through to the County without mark-up, unless approved otherwise. See section 9.8.9. within scope of services for disposal at County Owned and Operated disposal sites.
- Note 2 - For out of county disposal sites (excluding the Lee/Hendry Landfill), additional mileage will begin and be measured from the Lee County boundary closest to the disposal site. The approved per load additional mileage cost will be applied to each ticketed out of county load and be applicable to the miles beyond the Lee County boundary. Mileage is based on a one-way haul distance.
- Note 3 – Includes all site services, including but not limited to, providing monitoring towers, sanitary portable restrooms, and site safety & security.
- Note 4 – Includes comprehensive management of all debris site activities, including grubbing and establishing ingress/egress as needed, maintaining driving and working surfaces, managing storm water & regulatory compliance, and close-out site remediation. See section 9.8 in the scope of services for more detail.
- Note 5 – Items must be documented as per the scope of services and in accordance with appropriate FEMA Guidance, including DAP9523.11 or as amended.

12.1.3. Category C – Specialized Labor and Work Crews includes pricing for specialized labor; work crews (typical crew makeup for “first 70 hours of operation); and additional laborers.

12.1.4. Category D – Equipment includes pricing for equipment used while performing disaster recovery services.

12.2. Billing Cycle:

Contractor shall invoice County on a 30-day basis reflecting the close of business on the last working day of the billing period. Serialized debris reporting tickets and disposal site verification of the actual cubic yardage for each load of debris or itemized stumps shall support all invoices. Electronic copies of supporting documentation may be used if approved by the County.

12.3. Ineligible Work:

Contractor will not be paid for the removal, transportation, storage, reduction and/or disposal of any materials or stumps that were determined by County and/or other government entity as ineligible debris and for which the Contractor was not formally authorized to perform by the County.

12.4. Eligibility Inspections:

Contractor and County or its representatives shall inspect each load to verify that the contents are in accordance with the accepted definition of eligible debris as determined within this Contract.

12.5. Eligibility Determinations:

If any load is determined to contain material that does not meet the definition of eligible debris, e.g., debris collected from private property or not at the request of the County or its representatives, the load shall be directed to an alternate disposal or processing facility. No payment will be approved, and Contractor shall not invoice the County for ineligible loads. County, through its authorized representative, will be the sole judge as to whether the material conforms to the definition of eligible debris, and its decision will be final.

12.6. Unit Price/Service Negotiations:

Unknown and/or unforeseen events or conditions may require an adjustment to the stated unit prices within this Contract. Any amendments, extensions, or changes to the scope of services or unit prices are subject to full negotiations between County and Contractor and subject to the review of the government. *In addition, all costs related to labor, materials, and equipment shall be fair, reasonable, and consistent with costs set forth in the schedule of values and with the most current version of the Federal Emergency Management Agency's Schedule of Equipment Rates, to be applied at all times for implementation of this Contract.*

12.7. Specialized Services:

Contractor may invoice County for costs incurred to mobilize and demobilize specialized equipment required to perform services in addition to those specified under within this Contract. Additional specialized services will only be performed when directed by the County. The rate for specialized services shall be in accordance with the rates provided in the Schedule of Values. Items not included shall be negotiated and shall be fair and reasonable as determined by the County.

End of Detailed Specifications

EXHIBIT B

FEE SCHEDULE PRIMARY VENDOR

The Vendor is the Primary Vendor for services. The County shall contact the Primary Vendor first for services as detailed within the Scope of Work and Specifications. If the Primary Vendor is unable to fulfill the need or meet the timeline required, the County may contact the Secondary Vendor. Products and Services are to be charged in accordance with the unit price provided below.

RFP220362BJB - DISASTER RECOVERY SERVICES			
CATEGORY A: CORE SERVICES			
SECTION 1: DEBRIS REMOVAL, PROCESSING AND DISPOSAL			
Item	Description	Unit of Measure	Unit Price
A1	Debris Removal from Public Property (Right-of-Way) and Hauling to Debris Management Sites (DMS)	CY	\$ 7.95
A2	Debris Removal from Debris management Sites (DMS) and Hauling to Final Disposal Site (Note 1 & 2)	CY	\$ 4.20
A3	Debris Removal from Public Property (Right-of-Way) and Hauling directly to Final Disposal Site (Note 1 & 2)	CY	\$ 9.00
A4	Cost per mile for alternate disposal sites outside of Lee County. (Note 1 & 2)	Cost /Mile	\$ 40.00
A5	Management of Debris Management Sites (DMS) (Note 4&5)	CY	\$ 1.00
A6	Processing (Grinding/Chipping) of Debris at DMS or Final Disposal Site (Will Honor for C&D Compaction)	CY	\$ 2.90
A7	Processing (Burning) of Debris at DMS or Final Disposal Site	CY	\$ 1.50
A8	Pick Up and Haul of White Goods to Disposal Site within County (Note 1)	UNIT	\$ 60.00
A9	Pick Up and Disposal of Hazardous Material	LB	\$ 9.00
A10	Freon Management and Recycling (Note: 7)	UNIT	\$ 30.00
A11	Non Domestic Dead Animal Collection and Transportation to final disposal	EACH	\$ 25.00
SECTION 2: STUMP EXTRACTIONS			
Item	Description	Unit of Measure	Unit Price
A12	< 24 inch diameter (Note:7)	Per Stump	\$ 150.00
A13	> 24 inch diameter to 47.99 inch diameter (Note:7)	Per Stump	\$ 290.00
A14	48 inch diameter and greater (Note:7)	Per Stump	\$ 390.00
A15	On site stump grinding including filling hole with wood chips (Note:7)	Per Inch	\$ 15.00
SECTION 3: HAZARDOUS LIMB REMOVAL			
Item	Description	Unit of Measure	Unit Price
A16	>2 inches at the point of breakage, or whatever the current minimum is at the time of the storm event (Note:7)	Per Tree	\$ 70.00
SECTION 4: STORM DAMAGE TREE REMOVAL			
Item	Description	Unit of Measure	Unit Price
A17	Trees that require the "Climbing" and "Cut & Drop" method (e.g., trees over structures, homes, buildings, utilities or public ROW)		
	6" to 12.99" diameter	Per Tree	\$ 180.00
	13" to 23.99" diameter	Per Tree	\$ 280.00
	> 24" diameter	Per Tree	\$ 450.00
A18	Trees that can only be accessed by "Mechanized Equipment" (i.e., bucket trucks, skid steer loaders, log skidders, excavators, wheel loaders)		
	6" to 12.99" diameter	Per Tree	\$ 85.00
	13" to 23.99" diameter	Per Tree	\$ 185.00
	> 24" diameter	Per Tree	\$ 300.00
A19	Uprooted Trees; including those that have fallen in open areas, with easy access, or that have fallen on damaged structures		
	6" to 12.99" diameter	Per Tree	\$ 180.00
	13" to 23.99" diameter	Per Tree	\$ 280.00
	> 24" diameter	Per Tree	\$ 450.00
A20	Trees broken in two parts or snapped in half with debris not fallen on any dwelling or structure		
	6" to 12.99" diameter	Per Tree	\$ 85.00
	13" to 23.99" diameter	Per Tree	\$ 185.00
	> 24" diameter	Per Tree	\$ 300.00
NOTES - The following notes apply only to Category A within the Schedule of Values and only as identified in each individual line item			
1	Prices include disposal sites located in Lee County and at the Lee/Tendry Landfill in Felda Fl. Tipping fees at final disposal site(s) will be the responsibility of Contractor and passed through to the County without mark-up, unless approved otherwise. See section 9.8.9 in the scope of services for disposal at County Owned and Operated disposal sites.		
2	For out of county disposal sites (excluding the Lee/Tendry Landfill), additional mileage will begin and be measured from the Lee County boundary closest to the disposal site. The approved per load additional mileage cost will be applied to each ticketed out of county load and be applicable only to the miles beyond the Lee County boundary. Mileage is based on a one-way haul distance.		
3	For a multi-year contract, the prices shown in Category A would be adjusted on the anniversary date of Contract according a percentage equal to the percent change in the Consumer Price Index as published in the U. S. Department of Labor, Bureau of Labor Statistics. (CPIUR0300SA0) is the established index.		
4	Includes all site services, including but not limited to, providing monitoring towers, sanitary portable restrooms, and site safety & security.		
5	Includes comprehensive management of all debris and debris site activities, including grubbing & establishing ingress/egress as needed, maintaining driving and working surfaces, managing storm water & regulatory compliance, and close-out site remediation. See section 9.8 in the scope of services for more detail.		
6	All stumps placed on the rights of way by citizens will be converted to CY per the Stump Conversion Chart provided in FEMA Guidance DAP9523.11 and charged as regular debris for items A2 through A7.		
7	Items must be documented as per the scope of services and in accordance with appropriate FEMA Guidance, including DAP9523.11 or as amended.		

RFP220362BJB - DISASTER RECOVERY SERVICES			
CATEGORY B: SPECIALTY REMOVAL AND RESTORATION			
SECTION 1: SPECIALTY REMOVAL (Activities require specific task authorization and include all labor and management of tasks)			
Item	Description	Unit of Measure	Unit Price
B1	Sand/Soil Collection & Screening. Includes pick-up, screen, and return of screened sand to designated staging areas.	CY	\$ 18.90
B2	Pick-up & haul debris laden sand/mud/dirt/rock from sand screening operations to final disposal (Notes 1 & 2)	CY	\$ 14.00
B3	Removal of Eligible vehicles - haul to designated staging or final disposal. (Notes 1 & 2)	Unit	\$ 150.00
B4	Removal of eligible Vessel from (Land)	LF	\$ 80.00
B5	Demolition of Private Structure (NON-RACM)	CY	\$ 20.00
B6	Dead Fish and/or Algae, including removal and sand raking from beaches.	CY	\$ 4.00
SECTION 2: RESTORATION (Activities require specific task authorization and include all labor and management of tasks)			
Item	Description	Unit of Measure	Unit Price
B7	Beach/Lake Restoration - Berm/Beach Construction	CY	\$ 36.00
B8	Canal Shoreline Restoration	LF	\$ 32.00
ADDITIONAL SERVICES		Unit of Measure	Unit Price
1	Waterway Debris Removal (Canals, Open Water, or Ditches) hauled to DMS or Final Disposal Site		
	Water Based Operations	CY	\$ 120.00
	Land Based Operations	CY	\$ 42.00
2	Collect and Haul E-Waste to DMS or Final Disposal Site	Unit	\$ 40.00
3	Debris Collection and Hauling to DMS from County Owned or Maintained Properties other than ROW	CY	\$ 18.00
4	Private Property Debris Remove, Hauled to DMS or Final Disposal Site	CY	\$ 15.60
5	Private Property Leaners and Hanger Removal (Cut and Drop)		
	Hangers	Tree	\$ 125.00
	Leaners	Tree	\$ 450.00
6	Rental and Operation of Barge and Tug - 110 x 30 - (plus fuel)	Per Day	\$ 12,500.00
	Mobilization for Barge and Tug	LS	\$ 40,000.00
	De-Mobilization for Barge and Tug	LS	\$ 40,000.00
NOTES - The following notes apply only to Category B within the Schedule of Values and only as identified in each individual line item			
1	Prices include disposal sites located in Lee County and at the Lee/Hendry Landfill in Felda Fl. Tipping fees at final disposal site(s) will be the responsibility of Contractor and passed through to the County without mark-up, unless approved otherwise. See section 9.8.9 in the scope of services for disposal at County Owned and Operated disposal sites.		
2	For out of county disposal sites (excluding the Lee/Hendry Landfill), additional mileage will begin and be measured from the Lee County boundary closest to the disposal site. The approved per load additional mileage cost will be applied to each ticketed out of county load and be applicable only to the miles beyond the Lee County boundary. Mileage is based on a one-way haul distance.		
3	Includes all site services, including but not limited to, providing monitoring towers, sanitary portable restrooms, and site safety & security.		
4	Includes comprehensive management of all debris and debris site activities, including grubbing & establishing ingress/egress as needed, maintaining driving and working surfaces, managing storm water & regulatory compliance, and close-out site remediation. See section 9.8 in the scope of services for more detail.		
5	Items must be documented as per the scope of services and in accordance with appropriate FEMA Guidance, including DAP9523.11 or as amended.		

RFP220362BJB - DISASTER RECOVERY SERVICES			
CATEGORY C: SPECIALIZED LABOR AND WORK CREWS			
SECTION 1: SPECIALIZED LABOR			
Item	Description	Unit of Measure	Unit Price
C1	Field Supervisor with truck and cell phone	Hourly	\$ 65.00
C2	Administrative Assistant	Hourly	\$ 40.00
C3	Heavy Equipment Operator	Hourly	\$ 48.00
C4	Tool Operator (Chainsaw)	Hourly	\$ 48.00
C5	Laborer w/ small tools	Hourly	\$ 42.00
C6	Hazardous Material Worker w/ gear	Hourly	\$ 52.00
C7	Mechanic w/ truck and tools	Hourly	\$ 150.00
C8	Tree Climber w/ chainsaw and gear	Hourly	\$ 125.00
C9	22' - 31' Work Boat with Captain (Inclusive of Fuel, Mooring and Mobilization)	Per Boat / Per day	\$ 2,600.00
C10	Services of 2 - 4 Laborers per Vessel	Per Boat / Per day	\$ 1,200.00
SECTION 2: WORK CREWS (typical crew makeup for "First 70 Hours Operation")			
Item	Description	Unit of Measure	Unit Price
C11	WheelLoader w/ operator, 2.5 cy, Foreman with support vehicle and small equipment, Laborer w/ chainsaw & two (2) laborers with small tools	Hourly (entire crew)	\$ 295.00
SECTION 3: ADDITIONAL LABORERS			
Item	Description	Unit of Measure	Unit Price
C12	Project Manager	Hourly	\$ 80.00
C13	Safety Superintendent	Hourly	\$ 60.00
C14	Traffic Control Personnel	Hourly	\$ 40.00
C15	Project Engineer	Hourly	\$ 120.00
C16	Security Person (Unarmed)	Hourly	\$ 50.00
C17	Security Person (Armed)	Hourly	\$ 60.00
C18	Health / Safety or QC manager with Truck	Hourly	\$ 60.00

RFP220362BJB - DISASTER RECOVERY SERVICES						
CATEGORY D: EQUIPMENT						
SECTION 1: EQUIPMENT						
Item	Description	Specification	Capacity	Horse Power	Notes	Rate Per Hour
D1	Aerial Lift, Self Propelled	Max Platform Ht	37 ft	to 15	Articulated, telescoping, scissor	\$ 40.00
D2	Aerial Lift, Self Propelled	Max Platform Ht	60 ft	to 30	Articulated, telescoping, scissor	\$ 50.00
D3	Aerial Lift, Self Propelled	Max Platform Ht	70 ft	To 50	Articulated, telescoping, scissor	\$ 65.00
D4	Aerial Lift, Self Propelled	Max Platform Ht	125 ft	To 85	Articulated, telescoping, scissor	\$ 100.00
D5	Aerial Lift, Self Propelled	Max Platform Ht	150 ft	to 130	Articulated, telescoping, scissor	\$ 140.00
D6	Aerial Lift, Truck Mounted	Max Platform Ht	25 Ft		Articulated, telescoping, scissor	\$ 50.00
D7	Aerial Lift, Truck Mounted	Max Platform Ht	50 Ft		Articulated, telescoping, scissor	\$ 75.00
D8	Aerial Lift, Truck Mounted	Max Platform Ht	75 Ft		Articulated, telescoping, scissor	\$ 100.00
D9	Aerial Lift, Truck Mounted	Max Platform Ht	100 Ft		Articulated, telescoping, scissor	\$ 125.00
D10	Pavement	Weight	25 - 90 lbs			\$ 25.00
D11	Breaker, Pavement			to 70		\$ 35.00
D12	Breaker Pavement			to 105		\$ 45.00
D13	Breaker, Pavement			to 137		\$ 55.00
D14	Breaker, Pavement					\$ 60.00
D15	Bucket, Clamshell	Capacity	1.0 CY			\$ 20.00
D16	Bucket, Clamshell	Capacity	2.5 CY			\$ 30.00
D17	Bucket, Clamshell	Capacity	5.0 CY			\$ 40.00
D18	Bucket, Clamshell	Capacity	7.5 CY			\$ 60.00
D19	Chain Saw	Bar Length	16 Inch			\$ 8.00
D20	Chain Saw	Bar Length	25 inch			\$ 8.00
D21	Chain Saw Pole	Bar Size	18 inch			\$ 8.00
D22	Chipper, Brush	Chipping Capacity	6 inch	to 35	Trailer mounted	\$ 50.00
D23	Chipper, Brush	Chipping Capacity	12 inch	to 60	Trailer mounted	\$ 75.00
D24	Chipper, Brush	Chipping Capacity	16 Inch	to 100	Trailer mounted	\$ 125.00
D25	Chipper, Brush	Chipping Capacity	18 inch	to 125	Trailer mounted	\$ 150.00
D26	Chipper, Brush	Chipping Capacity	18 inch	to 200	Trailer mounted	\$ 300.00

D27	Chipper, Brush	Chipping Capacity	19 inch	to 300	Trailer mounted	\$ 350.00
D28	Chipper, Brush	Chipping Capacity	19 inch	to 450	Trailer mounted	\$ 400.00
D29	Chipper, Brush	Chipping Capacity		to 650	Trailer mounted	\$ 450.00
D30	Crane	Max Lift Capacity	8 MT	to 80		\$ 120.00
D31	Crane	Max Lift Capacity	15 MT	to 150		\$ 140.00
D32	Crane	Max Lift Capacity	27 MT	to 200		\$ 160.00
D33	Crane	Max Lift Capacity	45 MT	to 300		\$ 200.00
D34	Crane	Max Lift Capacity	70 MT	to 350		\$ 300.00
D35	Crane	Max Lift Capacity	110 MY	to 450		\$ 400.00
D36	Crane, Truck mounted	Max Lift Capacity	17,600 lbs			\$ 150.00
D37	Crane, Truck mounted	Max Lift Capacity	33,000 lbs			\$ 200.00
D38	Crane, Truck mounted	Max Lift Capacity	60,000 lbs			\$ 300.00
D39	Crane, Truck mounted	Max Lift Capacity	120,000 lbs			\$ 400.00
D40	Fork Lift	Capacity	6000 lbs	to 60		\$ 50.00
D41	Fork Lift	Capacity	12,000 lbs	to 90		\$ 80.00
D42	Fork Lift	Capacity	18,000 lbs	to 140		\$ 120.00
D43	Fork Lift	Capacity	50,000 lbs	to 215		\$ 150.00
D44	Load, Skid-Steer	Operating Capacity	1000 lbs	to 35		\$ 135.00
D45	Load, Skid-Steer	Operating Capacity	2000 lbs	to 65		\$ 125.00
D46	Load, Skid-Steer	Operating Capacity	3000 lbs	to 85		\$ 125.00
D47	Load, Skid-Steer	Operating Capacity	4000 lbs	to 94		\$ 125.00
D48	Loader, Wheel	Bucket Capacity	0.5 CY	To 38		\$ 125.00
D49	Loader, Wheel	Bucket Capacity	1 CY	To 60		\$ 135.00
D50	Loader, Wheel	Bucket Capacity	2 CY	To 105		\$ 145.00
D51	Loader, Wheel	Bucket Capacity	3 CY	To 152		\$ 155.00
D52	Loader, Wheel	Bucket Capacity	4 CY	To 200		\$ 165.00
D53	Loader, Wheel	Bucket Capacity	5 CY	To 250		\$ 175.00
D54	Loader, Wheel	Bucket Capacity	6 CY	To 305		\$ 185.00
D55	Loader, Wheel	Bucket Capacity	7 CY	To 360		\$ 195.00
D56	Loader, Wheel	Bucket Capacity	8 CY	To 415		\$ 205.00
D57	Loader, Wheel	Bucket Capacity	9 CY	To 470		\$ 215.00
D58	Loader, Wheel	Bucket Capacity	10 CY	To 530		\$ 225.00
D59	Loader-Backhoe, Wheel	Bucket Capacity	.05 CY	To 40	Loader and Backhoe bucket included	\$ 50.00
D60	Loader-Backhoe, Wheel	Bucket Capacity	1 CY	To 70	Loader and Backhoe bucket included	\$ 60.00
D61	Loader-Backhoe, Wheel	Bucket Capacity	1.5 CY	To 95	Loader and Backhoe bucket included	\$ 75.00
D62	Loader-Backhoe, Wheel	Bucket Capacity	1.75 CY	To 115	Loader and Backhoe bucket included	\$ 80.00
D63	Saw, Concrete	Blade Diameter	14 in	To 14		\$ 30.00
D64	Saw, Concrete	Blade Diameter	26 in	To 35		\$ 35.00
D65	Saw, Concrete	Blade Diameter	48 in	To 65		\$ 50.00

D66	Sweeper, Pavement			to 110		\$ 60.00
D67	Sweeper, Pavement			To 150		\$ 80.00
D68	Sweeper, Pavement			To 200		\$ 100.00
D69	Trailer, Dump	Capacity	20 CY		Does not include prime mover	\$ 60.00
D70	Trailer, Dump	Capacity	30 CY			\$ 80.00
D71	Trailer, Dump	Capacity	40 CY		Does not include prime mover	\$ 90.00
D72	Trailer, Equipment	Capacity	30 tons			\$ 120.00
D73	Trailer, Equipment	Capacity	40 tons			\$ 130.00
D74	Trailer, Equipment	Capacity	60 tons			\$ 150.00
D75	Trailer, Equipment	Capacity	120 tons			\$ 200.00
D76	Truck, Dump	Truck Capacity	8 CY	To 210		\$ 90.00
D77	Truck, Dump	Truck Capacity	10 CY	To 235		\$ 95.00
D78	Truck, Dump	Truck Capacity	12 CY	To 255		\$ 105.00
D79	Truck, Dump	Truck Capacity	18 CY	To 330		\$ 110.00
D80	Truck, Dump	Truck Capacity	28 CY	To 400		\$ 125.00
D81	Truck, Dump	Truck Capacity	40 CY	To 460		\$ 130.00
D82	Truck, Dump	Truck Capacity	50 CY	To 620		\$ 140.00
D83	Truck, Flatbed	Max Gross Vehicle Weight	15,000 lbs	To 150		\$ 60.00
D84	Truck, Flatbed	Max Gross Vehicle Weight	25,000 lbs	To 180		\$ 70.00
D85	Truck, Flatbed	Max Gross Vehicle Weight	30,000 lbs	To 215		\$ 80.00
D86	Truck, Flatbed	Max Gross Vehicle Weight	45,000 lbs	To 250		\$ 90.00
D87	Truck, Flatbed	Max Gross Vehicle Weight	50,000 lbs	To 300		\$ 100.00
D88	Truck, Flatbed	Max Gross Vehicle Weight		To 375		\$ 150.00
D89	Truck, Flatbed	Max Gross Vehicle Weight		To 450		\$ 175.00
D90	Truck, Knuckle Boom				Add flatbed truck to truck mounted crane	\$ 120.00
D91	Truck, Pickup			To 130		\$ 40.00
D92	Truck, Pickup			To 180		\$ 45.00
D93	Truck, Pickup			To 230		\$ 45.00
D94	Truck, Pickup			To 280		\$ 45.00
D95	Truck, Tractor			To 210		\$ 90.00
D96	Truck, Tractor			To 265		\$ 100.00
D97	Truck, Tractor			To 310		\$ 110.00
D98	Truck, Tractor			To 350		\$ 130.00
D99	Tub Grinder			To 400		\$ 250.00
D100	Tub Grinder			To 500		\$ 300.00
D101	Tub Grinder			To 600		\$ 350.00
D102	Tub Grinder			To 700		\$ 400.00
D103	Tub Grinder			To 800		\$ 450.00
D104	Tub Grinder			To 900		\$ 500.00
D105	Tub Grinder			To 1,000		\$ 550.00

D106	Light Tower	with 4 500 watt light	w/ 10kw power unit	13.5	Trailer mounted	\$ 170.00
D107	Light Tower					\$ 30.00
D108	All Terrain Vehicle	6- wheel				\$ 50.00
D109	All Terrain Vehicle	4-Wheel - 24"	250cc	15-17		\$ 60.00
D110	All Terrain Vehicle	4-Wheel - 24"	300cc	18-20		\$ 70.00
D111	All Terrain Vehicle	4-Wheel - 24"	400cc	26-28		\$ 80.00
D112	Graders	Moldboard Size	10 FT	to 110	Includes Rigid and Articulate equipment	\$ 50.00
D113	Graders	Moldboard Size	12 FT	To 150	Includes Rigid and Articulate equipment	\$ 65.00
D114	Graders	Moldboard Size	14 Ft	To 225	Includes Rigid and Articulate equipment	\$ 75.00
D115	Powerscreen	1400				\$ 175.00
D116	Powerscreen	1700				\$ 200.00
D117	Powerscreen	2100				\$ 225.00
D118	Stacking Conveyor	30 x 60 Portable Hydraulic			Complete Road package	\$ 50.00
D119	Water Truck	Tank Capacity	2500 Gal	to 175	Include pump and rear spray	\$ 130.00
D120	Water Truck	Tank Capacity	4000 Gal	to 250	Include pump and rear spray	\$ 140.00
D121	Loader - Tractor Knuckle boom	Model Barko	595 ML	To 240		\$ 140.00
D122	Clamshell & Dragline, Crawler		149,999 lbs	to 235	Bucket not included in rate	\$ 325.00
D123	Clamshell & Dragline, Crawler		250,000 lbs	to 520	Bucket not included in rate	\$ 425.00
D124	Clamshell & Dragline, Truck			to 240	Bucket not included in rate	\$ 325.00

EXHIBIT C INSURANCE REQUIREMENTS



Lee County Insurance Requirements including Pollution Liability

Minimum Insurance Requirements: *Risk Management in no way represents that the insurance required is sufficient or adequate to protect the vendors' interest or liabilities. The following are the required minimums the vendor must maintain throughout the duration of this contract. The County reserves the right to request additional documentation regarding insurance provided*

- a. **Commercial General Liability** - Coverage shall apply to premises and/or operations, products and completed operations, independent contractors, contractual liability exposures with minimum limits of:

\$1,000,000 per occurrence
\$2,000,000 general aggregate
\$1,000,000 products and completed operations
\$1,000,000 personal and advertising injury

- b. **Business Auto Liability** - The following Automobile Liability will be required and coverage shall apply to all owned, hired and non-owned vehicles use with minimum limits of:

\$1,000,000 combined single limit (CSL)

- c. **Workers' Compensation** - Statutory benefits as defined by FS 440 encompassing all operations contemplated by this contract or agreement to apply to all owners, officers, and employees regardless of the number of employees. Workers Compensation exemptions may be accepted with written proof of the State of Florida's approval of such exemption. Employers' liability will have minimum limits of:

\$500,000 per accident
\$500,000 disease limit
\$500,000 disease – policy limit

- d. **Pollution Liability** - Covering property loss and liability arising from pollution-related damages, for sites that have been inspected and found uncontaminated. Transporter moving hazardous products or waste as cargo aboard the transporter's truck:

\$1,000,000 bodily injury / property damage/ cleanup, including wrongful delivery.

**The required minimum limit of liability shown in a. or b. may be provided in the form of "Excess Insurance" or "Commercial Umbrella Policies." In which case, a "Following Form Endorsement" will be required on the "Excess Insurance Policy" or "Commercial Umbrella Policy."*

Revised 07/16/2018 – Page 1 of 2



Verification of Coverage:

1. Coverage shall be in place prior to the commencement of any work and throughout the duration of the contract. A certificate of insurance will be provided to the Risk Manager for review and approval. The certificate shall provide for the following:
 - a. **The certificate holder shall read as follows:**

**Lee County Board of County Commissioners
P.O. Box 398
Fort Myers, Florida 33902**
 - b. ***“Lee County, a political subdivision and Charter County of the State of Florida, its agents, employees, and public officials” will be named as an “Additional Insured” on the General Liability policy, including Products and Completed Operations coverage.***
 - c. Lee County will be given notice prior to cancellation or modification of any stipulated insurance. Such notification will be in writing by registered mail, return receipt requested and addressed to the Risk Manager (P.O. BOX 398 Ft. Myers, FL 33902).

Special Requirements:

1. An appropriate “Indemnification” clause shall be made a provision of the contract.
2. It is the responsibility of the general contractor to insure that all subcontractors comply with all insurance requirements.

Revised 07/16/2018 – Page 2 of 2

EXHIBIT D
VENDOR BACKGROUND SCREENING AFFIDAVIT



**VENDOR BACKGROUND
SCREENING AFFIDAVIT**

Florida Statutes Chapter 435 governs required background screenings for any employees, contractors, subcontractors, or agents of the Vendor who will have contact with any vulnerable person, as defined by statute, or who otherwise are required to undergo a Level 1 or Level 2 background screening in accordance with Florida law.

The Vendor is responsible for ensuring that such required background screenings are conducted in accordance with Florida Statutes Chapter 435. Documentation of such completed background screenings must be maintained for a period of no less than five (5) years and are subject to audit by Lee County at any time during such five (5) year period.

Under penalty of perjury, I declare that I have read and understand the requirements stated above, and that all required background screenings shall be conducted in accordance with this affidavit. I further understand that there may be additional local, state, and federal regulations that may require background screening, and that the Vendor will be solely responsible for complying with such legal requirements. Furthermore, the Vendor shall indemnify and hold Lee County harmless from any and all claims or actions resulting from failure to comply with this affidavit.

Date: _____

Signature

STATE OF _____
COUNTY OF _____

Name/Title

The foregoing instrument was sworn to (or affirmed) and subscribed before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, _____, by the above-named person and in their stated capacity, and is either personally known to me or who has produced the following type of identification: _____.

Type of Identification

[Stamp/seal required]

Signature, Notary Public

EXHIBIT A

SCOPE OF WORK AND SPECIFICATIONS

DETAILED SPECIFICATIONS

1. GENERAL SCOPE OF WORK

- 1.1. The Lee County Board of County Commissioners seeks to contract with a qualified Vendor to provide a variety of disaster recovery related services for Lee County, Florida. These services will be on an as-needed basis countywide with no work guaranteed. Not all tasks will be assigned for all events. Services shall include but are not limited to: Large and small scale debris removal projects, separation, staging, disposal, demolition work, vegetative and construction and demolition debris removal, hazardous waste handling, hazardous tree trimming and removal, stump grinding and removal, sand removal from roads, streets, and right-of-ways, and all additional scopes of work as described herein.
- 1.2. All work under this RFP shall be performed in accordance with FEMA rules and guidelines for federal reimbursements and with 2 CFR 200.317-326 as updated and where applicable.

2. DEFINITIONS

- **Contractor / Firm** – The successful proposer (s)
- **Debris Monitoring Consultant** - A Consultant retained by the County to manage administrative aspects of the recovery process including processing FEMA submittals.
- **Debris** – Scattered items and materials broken, destroyed, or displaced by a disaster, Example; trees, construction and demolition material, personal property.
- **FEMA** – Federal Emergency Management Agency
- **FDEM** – Florida Division of Emergency Management
- **DMS** – Debris Management Site- Predetermined site location for either temporary staging or final destination.
- **Storm Litter** - Debris such as leaves and small twigs that would normally require hand raking to collect. Does not include debris easily picked up by hand.
- **Government** - The term “government” as used in this Contract refers to those governmental agencies, which may have a regulatory or funding interest in this Contract.

3. CONTRACTOR RESPONSIBILITY & ADDITIONAL SCOPE CONDITIONS

- 3.1. The Contractor may be called upon throughout the contract to render services to assist the County with special needs and events related to disaster recovery and/or planning activities other than full-scale disasters. Each year of this contract, the Contractor shall provide a minimum of one (1) day (up to 8 hours) of on-site, pre-event training of County’s emergency management and recovery personnel at no additional charge to the County.
- 3.2. The Contractor shall provide technical guidance and consultation before, during, and after the disaster event. For contracted operations, the Contractor shall provide trained administrative support, onsite management staff to work with County officials, field supervisors, operators, drivers, laborers, and all associated vehicles, equipment, tools, and supplies necessary to ensure a successful recovery operation.
- 3.3. The selected Contractor(s) shall be responsible for knowledge and compliance with all federal, state, and local laws, rules, practices, and regulations. The Contractors shall be familiar with the County’s approved debris management plan.
- 3.4. No guarantee is expressed or implied as to the quantity of services to be procured under this request for proposal; no work is guaranteed.

4. INITIATING CONTRACT WHEN A MAJOR DISASTER OCCURS OR IS IMMINENT

- 4.1 When a major disaster occurs or is imminent, the County will contact the firm(s) holding Disaster Recovery Services Contract(s) to advise them of the County's intent to activate the contracts. Debris removal will generally be limited to debris in, upon, or brought to public streets and roads, right-of-ways, municipal properties and facilities, and other public sites, unless otherwise directed.
- 4.2 The County, upon contacting the Contractor, will issue a Notice to Proceed and work order assignment/task authorization. The issuance of the work order/task authorization will allow the Contractor to begin pre-storm preparations and allow the immediate response once the recovery begins. The Contractor shall also begin coordination with County Solid Waste Management personnel. This may include staffing or preparing reports for the Debris Operations and/or Emergency Operation Center.
- 4.3 The Contractor shall have a maximum of 24 hours from notification to proceed by the County to mobilize and begin their response. Failure to mobilize in the allowed time may result in the selection of another Contractor.
- 4.4 The Contractor shall be responsible for determining the method and manner of debris removal and for conducting lawful disposal operations, including regulated hazardous waste. County will determine the primary location of the reduction and disposal sites in consultation with Contractor. Additional sites may be utilized as directed and/or approved by County.
- 4.5 For "Event Types" that require Temporary Debris Staging and Reduction Sites (DMS) the Contractor shall be available for technical assistance to assist the County in determining which pre-approved DMS will be used. Selection of these sites is to be the first task completed by the Debris Management Team. With the completion of this initial task, the result will be a map of the various sites and a basic operation plan for each site.

5. RELATIONSHIP BETWEEN DEBRIS MONITORING CONSULTANT & DEBRIS REMOVAL CONTRACTOR

- 5.1 The County's Debris Monitoring Consultant and/or County Staff provide inspection, engineering, and administrative services as needed to meet the requirements for FEMA reimbursement. The interaction between the Contractor and the Consultant is crucial to the success of the response operation. Therefore, each Contractor shall be capable of working with different accounting and tracking systems.
- 5.2 Prior to the beginning of each hurricane season, the successful Contractor(s) shall meet with the County and the Debris Monitoring Consultant to finalize and test the processes for inspection and documentation that are to be used during the response and recovery phase of debris removal. This meeting is to occur annually or may be included as part of the required training day.

6. SCOPE OF WORK

- 6.1. Contractor shall provide all expertise, personnel, tools, materials, equipment, transportation, supervision and all other services and facilities of any nature necessary to execute, complete and deliver the timely removal and lawful disposal of all eligible storm-generated debris, including hazardous and industrial waste materials; and shall be provided in accordance with the Standards of Performance as set forth in Section 7. Emergency push, debris removal and demolition of structures will be limited to:
 - a) That which is determined to eliminate immediate threats to life, public health, and safety;
 - b) That which has been determined to eliminate immediate threats of significant damage to improved public or private property; and

- c) That which is considered essential to ensure the economic recovery of the affected community to the benefit of the community at large.

These contracted services shall provide for the cost effective and efficient removal and lawful disposal of debris accumulated on all public, residential, and commercial properties, streets, roads, other rights-of-way and public-school properties, including any other locally owned facility or site as may be directed by County. Contracted services shall only be performed when requested and as designated by County via task order.

Contractor shall load and haul the debris from within the legal boundaries of the municipality to a final disposal location defined by the County, or to Debris Management Site (DMS) site(s) and as specified by the County and set out in Section 9.8 of this Contract.

Furthermore, the vendor shall provide services as necessary to assist in the event of any Local, State, or Federal State of Emergency is declared.

6.2. Emergency Push / Road Clearance:

If directed by the County, Contractor shall accomplish the cutting, tossing and/or pushing of debris from the primary transportation routes as identified by and directed by County. This operational aspect of the scope of services shall be for the first 72 (plus or minus) hours after mobilization of 100% of the resources pursuant to Section 8.2. Once this task is accomplished, the following additional tasks shall begin as required.

6.3. Right-of-Way (ROW) Removal:

Contractor shall remove all debris from the ROW when directed to do so by County. Contractor shall use reasonable care not to damage any real or personal property not already damaged by the storm event. Damages shall be handled pursuant to section 9.5.

6.4. Right-of-Entry (ROE) Removal *(if Task Authorized by County)*:

Contractor shall exercise due diligence in removing ROE debris from private property, as authorized and directed by the County. The Contractor also agrees to make reasonable efforts to save from destruction items that the property owners wish to save (i.e., trees, small buildings, etc.). Contractor shall exercise caution when working around public utilities (i.e., gas, water, electric, etc.). Every effort will be made to mark these utilities, but County does not warrant that all utilities will be located before debris removal operations begin, nor does County warrant that utility damages will not occur as a result of properly conducting Contracted services.

6.5. Demolition of Structures *(if Task Authorized by County)*:

Contractor shall remove structures designated for removal by and at the direction of County, in a timely manner as determined by County.

6.6. Private Property Waivers:

County will secure all necessary permissions, waivers and Right-of-Entry Agreements from real property owners required for the lawful removal of debris and/or demolition of structures from real properties.

6.7. Disaster Recovery Technical Assistance:

Contractor shall provide Disaster Recovery Technical Assistance, to officials within County and designated staff members, to assist a local government with guidance and consultation on all aspects of the recovery process.

6.8. Vegetative Debris Reduction:

Contractor shall reduce the vegetative debris prior to taking it to the County's designated final site(s). This shall be performed through either a burning or chipping process. The County will decide which means is the better method at the time. Required permits are the responsibility of the Contractor. Reduction production rates will be sufficient to meet or exceed the daily collection rate after the fifteenth day. Direct hauling of vegetative debris from the ROW collection point to final disposal site, where the material will not be delivered to or managed at a DMS, will not require reduction and will not be subject to site management or reduction fees.

6.9. Construction and Demolition (C&D) Debris Removal:

Contractor shall collect, consolidate, and remove C&D debris to a location designated by the County. The production rate of this effort will be determined by the County and will be based on the volume of C&D estimated. The production rate should be similar to the vegetation rate. Direct hauling of Construction and demolition debris from the ROW collection point to final disposal site, where the material will not be delivered to or managed at a DMS for reduction or recycling, will not be subject to site management or reduction fees.

6.10. Construction and Demolition (C&D) Debris Recycling & Reduction:

When directed, the Contractor shall sort the C & D and make every effort to recycle as much material as possible to reduce the overall volume transported to the landfill. Funds generated from the recycling process shall be used to reduce the final cost to the County. The Contractor is responsible for handling and proper removal of all environmental hazards collected such as refrigerant in air conditioners and refrigerators, batteries, household hazardous wastes, etc. When directed and due to C&D volumes that justify the use of a DMS, the County will work with the Contractor and FDEP to establish an approved DMS suitable for C&D, including detailed site plans and required environmental protection protocols including but not limited to pre and post use monitoring prior to the use of a DMS for the staging, recycling, and reduction of C&D debris. Cost for environmental monitoring or testing shall be a pass through to the County without profit unless otherwise agreed or initiated and managed by the County. The method of size reduction shall be determined based on the material make-up and the fees for reduction shall be based on the type of equipment used as quoted or as allowed per negotiation for non-quoted specialty equipment.

6.11. Specialized Crews:

If requested by the County, the Contractor shall provide a dedicated crew to collect specific debris piles that cause health and safety issues around hospitals, public schools, County facilities, or other type properties.

7. PERFORMANCE OF SERVICES

7.1. Description of Service:

Contractor agrees to perform Contracted services in a professional and workmanlike manner and in compliance with all applicable laws, ordinances, rules, regulations and permits. Only the highest quality workmanship shall be acceptable. Services, equipment, and workmanship not conforming to the intent of Contract or meeting the approval of County may be rejected. Replacements and/or rework, as required, shall be accomplished at no additional cost to the County.

7.2. Cost of Services:

Contractor shall bear all of its own operating costs and is responsible for all permits, license fees, and maintenance of its own trucks and equipment to keep such property in a condition and manner adequate to accomplish contracted services.

7.3. Sub-Contractor(s):

Contractor may utilize the services of Sub-Contractors and shall be responsible for the acts or omissions of its Sub-Contractors to the same extent Contractor is responsible for the acts and omissions of its own employees. Contractor shall ensure that all its Sub-Contractors have and carry the same major provisions of this Contract and that the work of their Sub-Contractors is subject to said provisions. Nothing contained in this Contract shall create any contractual relationship between any Sub-Contractor and County. Contractor shall supply the names and addresses of Sub-Contractors and materials suppliers when requested to do so by County.

8. STANDARDS OF PERFORMANCE

8.1. Contractor Representative:

Contractor shall have a knowledgeable and responsible representative report to County's designated Contract representative within 24 hours following the execution of this Contract. The Contractor's representative shall have the authority to implement all actions required to begin the performance of contracted services as set out in this Contract and Contractor's General Operations Plan. A Contractor representative shall remain locally during the duration of recovery efforts and be available to routinely meet with County contract administrator. The Contractor shall also consider locating this representative at or near the Lee County EOC to facilitate coordination of debris removal operations. The Contractor shall also provide reports on debris removal operational progress as requested.

8.2. Mobilization:

The Contractor shall have sufficient equipment and forces in Lee County within 4 days of "notification to proceed" to begin removal operations at an initial rate of 3,000 cy per day and increasing that rate, after the sixth day, by a minimum of 3,000 cy each day, building to a consistent, minimum daily rate of 50,000 cy of debris collected, or as modified by the County based on need of the storm event(s). Additional resources may be required to meet the debris activities based on the scope and impact of the event. Adjustments to these minimums may be approved by the County based on the size and scope of the disaster event.

8.3. Time to Complete:

Contractor shall use all efforts to complete all work directed under this Contract as soon as feasibly possible, and in accordance with established timelines for completion of debris related activities for the specific event, as defined by FEMA or other federal reimbursement program guidelines or as agreed to with the County. County will direct the scope and nature of the work to be performed once the extent of damage has been determined.

8.4. Completion of Work:

Contractor shall be responsible for removal of all debris up to the point where remaining debris can only be described as storm litter and additional collection can only be accomplished by the use of hand labor and all DMS mitigation and damages by Contractor have been resolved.

9. GENERAL RESPONSIBILITIES

9.1. County Obligations:

County will furnish all information and documents necessary for the commencement of contracted services, including a written Notice To Proceed. A representative will be designated by County to be the primary point of contact for inspecting the work and answering any on-site questions prior to and after activation of this Contract via a written Notice to Proceed.

County will be responsible for issuing all Public Service Announcements (PSAs) to advise citizens and agencies of the available debris management services. Contractor may assist County with the development of debris management PSAs, if so requested.

9.2. Contractor's Conduct of Work:

Contractor shall be responsible for planning and conducting all operations in a satisfactory workmanship manner. Contractor shall demonstrate and maintain a courteous and responsive demeanor toward all citizens, especially when working on individual private properties. All operations shall be conducted under the review of a County representative at times, places, and by means as directed by County. Contractor shall have and require strict compliance with a written Code of Ethics to be provided by County.

9.3. Supervision by Contractor:

Contractor shall supervise and/or direct all contracted services performed by its employees, agents and Sub-Contractors. Contractor is solely responsible for all means, methods, techniques, safety, and other procedures.

Contractor shall employ and maintain a qualified supervisor at the work site who shall have full authority to act on behalf of Contractor. All communications given to the supervisor by County's authorized representative shall be as binding as if given to Contractor. Multiple work sites will require equal supervision as outlined above. Contractor must ensure that sufficient supervision is provided to manage multifaceted debris management operations that may include projects that require separate coordination, tracking, and documentation; additional supervision and/or project management staff shall be provided if requested by the County for these projects.

9.4. Damages by Contractor:

Contractor shall be responsible for conducting all operations, in such a manner as to cause the minimum damage possible to existing public, private, and commercial property and/or infrastructure. Contractor shall also be responsible for any damages due to the negligence of its employees and Sub-Contractors. Should any property be damaged due to negligence on the part of Contractor, the Contractor shall repair damages promptly and at no additional cost to the County; repairs must be sufficient and a release from claim of damage must be signed by the parties involved. If repairs are not made promptly or sufficiently as to obtain the signed release from claim, the County may elect to coordinate or hire an outside vendor to make the required repairs and will either bill the Contractor for the damages or withhold funds due to the Contractor. County shall make the determination of whether "negligence" has occurred. Contractor shall respond to all damage complaints within 48 hrs. of receipt and maintain a Damage Log tracking all damage complaints including date and point of contact, proposed resolution, status of repairs or settlement, and date of documented release. Contractor shall review this list with County designated contract manager a minimum of weekly and provide copies of all releases. All Contractor damages must be resolved prior to project closeout unless otherwise agreed to by County. If at any time the damage list exceeds 25 open claims without scheduled repairs or at the discretion of the County, the Contractor shall provide, at no additional cost to the County, a dedicated staff member to resolve damage claims.

9.5. Contractor's Duty Regarding Other Contractor(s):

Contractor acknowledges the presence of other Contractors involved in disaster response and recovery activities by the federal, state and local government and of any private utility, and shall not interfere with their work.

9.6. Contractor's Ownership of Debris:

Unless otherwise directed by County, All debris, including regulated hazardous waste, shall become the property of Contractor for removal and lawful disposal. The debris will consist of, but not be limited to vegetative, construction and demolition, white goods, and household solid waste. Disposal costs at Non-County managed disposal locations shall be passed through to the County without mark-up on the monthly invoices.

9.7. Contractor's Disposal of Debris:

Unless otherwise directed by County, Contractor shall be responsible for determining and executing the method and manner for lawful disposal of all eligible debris, including regulated hazardous waste. County shall determine the primary location of the reduction and disposal sites in consultation with Contractor. Additional sites may be utilized as directed and/or approved by County.

9.8. Debris Management Site (DMS):

9.8.1. Site Setup:

Prior to beginning operation at a debris management site, the condition of the site shall be photographed, or video recorded by the Contractor and its condition documented and agreed upon by the County, Contractor, and Property Owner if applicable. As directed by County, baseline environmental assessments shall be performed and supplied for County review. Site setup shall be completed by the Contractor to include but not limited to, grubbing, silt fencing, all weather tower construction and/or rental, and site operation plan. County shall approve additional materials if determined necessary to provide for safe access to the site, costs for these materials shall be a pass-through cost without mark-up.

9.8.2.Site Operation:

Debris shall be stored in accordance with all federal, state, and local regulations. Fire lanes and adequate access shall be provided. Debris reduction activities shall be performed at each DMS as to maintain the safe and efficient operation of the site.

9.8.3.Site Remediation:

Debris management sites shall be returned to equal or better than original condition and to the satisfaction of County. Contractor shall be responsible for any damages pursuant to section 9.4.

9.8.4.Site Security:

Contractor shall supply twenty-four (24) hours per day security for the DMS sites to ensure unlawful or unauthorized dumping of debris does not occur. Unauthorized debris shall become the responsibility of the Contractor and must be disposed of lawfully and without additional costs to the County.

9.8.5. Debris Management Site (DMS)

The Debris Monitoring Team will determine the minimum number of sites required for each storm event. Lee County will designate the DMS to be activated. The County will select these sites, at the beginning of each hurricane season. Preparation, maintenance, and operation of these DMS facilities are entirely the Contractor's responsibility.

Preparation and maintenance of facilities shall include maintenance of the DMS approach and interior road(s) for the entire period of debris hauling, including provision of rock for any roads that require stabilization for ingress and egress. Each facility shall include a roofed inspection tower sufficient for a minimum of three (3) inspectors for the inspection of all incoming and exiting loads. The Contractor will be responsible for obtaining any required permits, which shall be paid at cost by the County. At the County's discretion, owned rights of way or other entity owned property could be provided for temporary storage of debris.

If needed, additional Contractor identified DMS sites may be considered for approval by the County. Lease agreements, between the Contractor and the property owner, for these properties may be executed by the Contractor with approval from the County. Management of these sites shall be subject to all terms outlined in this document, including but not limited to DMS management, environmental controls, and site remediation.

9.8.6. DMS Debris Removal Operations Plan and Environmental Protection Plan

Contractor shall provide within 90 days of execution of this contract, their generic site management plan. Once the debris management site is selected for use, the CONTRACTOR shall provide a Site Management Plan. This plan is to address site setup, pre-use activities, post-use activities and operational activities. The plans shall include pre and post video and other checklists to assure proper management of the site. Contractor shall submit three (3) copies of the plan. The plan shall be drawn to a scale of 1" = 50' and address the following functions:

- Access to site
- Site preparation -clearing, erosion control, and grading
- Traffic control procedures
- Safety
- Segregation of debris
- Location of ash disposal area, hazardous material containment area, Contractor work area, and inspection tower
- Location of incineration operations, grinding operation (if required). Burning operations require a 100-foot clearance from the stockpile and a 1000-foot clearance from structures.
- Location of existing structures or sensitive areas requiring protection
- Restoration of Site

9.8.7. Debris Processing and Classification:

All debris shall be processed in accordance with local, state and federal law, standards, and regulations. Processing shall include, but is not limited to, reduction by grinding and/or incineration when approved by the County. Prior to reduction, all debris shall be segregated by common waste material classifications; e.g., vegetative debris, construction and demolition debris, recyclable debris, white goods, hazardous waste, etc.

9.8.8. Generated Hazardous Waste Abatement:

Abatement of hazardous waste identified by the County is to be disposed of in accordance with all applicable Federal, State, and local laws, standards, and regulations.

9.8.9. Debris Disposal:

Disposal of all eligible debris, reduced debris, ash residue and other products of the debris management process shall be in accordance with all applicable Federal, State, and local laws, standards, and regulations. Unless otherwise directed by the County, the Contractor shall be responsible for paying all landfill tipping or disposal fees and provide all scale tickets or other related & required documentation to the Debris Monitoring Consultant needed to receive eligible reimbursement through FEMA and (FHWA) for such fees.

Tipping or Disposal Fees at Final Disposal Sites shall be passed through to the County at cost without mark-up or escalation.

Unless otherwise notified, Tipping or Disposal costs for debris disposed of at approved County owned and operated Final Disposal Sites, shall be the responsibility of the County; in lieu of pass-through debris disposal costs. Disposal fees shall be the normally posted gate fees and be reconciled against load and scale tickets in the same manner as Contractor paid disposal fees. Tipping fees for debris from ineligible work, not approved by the County, shall be the responsibility of the Contractor and deducted from the invoice.

9.8.10. Debris Monitoring Assistance:

Assistance to the Debris Monitoring Consultant by the Contractor shall include, but is not limited to the following:

- Monitoring multiple Contractors and multiple trucks delivering materials to the DMS.
- Verify that each truck that delivers to the DMS matches its manifest ticket – truck and maximum capacity.
- Make sure load is properly secured for transport.
- Photograph of each loaded truck bed and attach photograph to truck's manifest ticket or link with digital photographic records, as applicable.
- Review trucks manifest and observe the truck bed to confirm that the truck was loaded to capacity or as described on manifest ticket, and completely empty on departure.
- Maintain manifest tickets in an organized manner for proper record review and storage.
- Initial load tickets before permitting truck to leave the DMS check-in area to empty its load.
- Document location of origin of debris.
- Troubleshoot questions and problems at the DMS and identify issues that could impact eligibility for cost reimbursements.
- Remain in contact with the central office/staging operation command center.
- Perform other duties as directed by County personnel, e.g., conduct final inspections and issue closeout reports.

9.8.11. Training:

Contractor shall provide training annually. Training shall take place for a minimum of one (1) day, for up to eight (8) hours of on-site. Training shall consist of pre-strike training for County field and supervisory personnel.

10. SCOPE OF SERVICES

10.1. Geographic Assignment:

The geographic boundary for work by Contractor's crews shall be only as directed by County and will be limited to properties located within the County's jurisdictional boundaries. Collection activities shall be monitored, and crews shall be responsible for providing detailed information of collection locations as requested.

10.2. Multiple, Scheduled Passes:

Contractor shall make complete scheduled passes at the direction of County and/or unscheduled passes of each area impacted by the storm event. County shall direct the interval timing of all passes. Passes shall be complete only when County deems they meet the definition outlined in section 8.4. Sufficient time shall be permitted between subsequent passes to accommodate reasonable recovery and additional debris placement at the ROW by the citizens and the County.

10.3. Operation of Equipment:

Contractor shall operate all trucks, trailers, and all other equipment in compliance with any/all applicable federal, state and local rules and regulations. Equipment shall be in good working condition, with no fluid leaks, and must have an enclosed rear or operable tailgate. NO unapproved improvised tailgates are allowed, e.g. chain link fencing, etc. All loading equipment shall be operated from the road, street or ROW using buckets and/or boom and grapple devices to collect and load debris. No equipment shall be allowed to operate on private property or outside of the public ROW unless otherwise directed by County. Damages by the Contractor or its representative shall be the Contractor's responsibility and repaired at no additional cost to the County as outlined in section 9.4. Should operation of equipment be required outside of the public ROW, County will provide a Right-of-Entry Agreement, as set out in Section 6.6 of this Contract.

10.4. Certification of Load Carrying Capacity:

Contractor shall submit to County a certified report indicating the type of vehicle, make and model, license plate number and/or trailer VIN number, assigned debris hauling number and measured maximum volume, in cubic yards, of the load bed of each piece of equipment to be utilized to haul debris. This report shall be maintained, updated, and provided to the County whenever equipment is added or deleted.

The measured volume of each piece of equipment shall be calculated from the actual physical measurement performed by County, County's Debris Monitoring Contractor, and Contractor representatives at a County designated location. A standard measurement form certifying actual physical measurements of each piece of equipment, including side boards and deductions shall be an attachment to the certified reports submitted to County.

Each vehicle shall be measured for cubic yard capacity. Each vehicle shall have one numbered certification form prepared with a written description of the measurements, detailed diagram showing the overall inside dimensions, the dimensions of any and all, side boards, and/or deductions, and photograph attached. Deductions, such as doghouses, slant plates, etc. shall be shown as a deduction from the total cubic yards. Example: Measure and diagram length times Width times Height divided by 27= Total CY. Second, measure and diagram the "deduction item" and subtract from the total CY. This is the number that will be certified on the certification form and the placard placed on the vehicle. Certification forms shall be in triplicate, sequentially numbered and verified by a County representative. County shall retain the original certification copy, the Contractor shall retain the second copy, and the third copy shall remain in the certified vehicle.

Any changes to the equipment size or capacity, i.e. adding or removing sideboards, tailgates etc. will require it to be recertified. This new certification shall be attached to the original certification and documented as to when and/or why recertification was required and occurred.

Any vehicle may at any time be re-measured for capacity. If determined the capacity is different due to mathematical error, this new capacity will be reflected on any previous loads and reconciled as such. Digital copies of truck certifications, forms, and photographs may be used in place of hard copies when applicable technologies are both available and if conform with and are compatible with an approved ADMS used by the debris monitoring Contractor.

10.5. Vehicle Information:

The maximum load capacity of each hauling vehicle will be rounded to the nearest whole cubic yard (CY) (Decimal values of .1 through .4 will be rounded down and decimal values of .5 through .9 will be rounded up). The measured maximum load capacity (as adjusted) of any vehicle load bed shall be the same as shown on the certification form and placarded on each numbered vehicle or piece of equipment used to haul debris. Contractor name and vehicle certification number shall be on the placard along with the certified CY. All vehicles or equipment used for hauling shall have and use a County / Contractor-approved tailgate. A complete list of all certified vehicles with total adjusted CY information including details of tailgates, sideboards, and deductions shall be supplied, maintained, and updated by the Contractor when any changes occur at all DMS sites.

10.6. Security of Debris during Hauling:

Contractor shall be responsible for the security of debris on/in each vehicle or piece of equipment utilized to haul debris. Prior to leaving the loading sites, Contractor shall ensure that each load is secure and trimmed so that no debris extends horizontally beyond the bed of the equipment in any direction or vertically above FDOT maximum height requirements; tailgates must be closed. All loose debris shall be reasonably compacted and secured during transport in accordance with FDOT guidelines. As required, Contractor will regularly survey the primary transportation routes used by Contractor & its subs and recover fallen or blown debris from the roadway(s).

10.7. Traffic Control:

Contractor shall mitigate impact on local traffic conditions to the greatest extent possible while collecting or managing debris. Contractor is responsible for establishing and maintaining appropriate traffic control in accordance with the most current edition of the US Department of Transportation Manual of Uniform Traffic Control Devices (MUTCD) (see <http://muted.fhwa.dot.gov> OR other appropriate address for manual). Contractor shall provide sufficient signage, flagging, and barricading to ensure the safety of vehicular and pedestrian traffic at all debris removal, reduction and/or disposal sites.

10.8. Workdays/Hours:

Contractor may conduct debris removal operations 30 minutes prior to and 30 minutes after the published sunrise/sunset, seven (7) days per week unless prohibited by ordinance. Any mechanical, debris reduction operations or burning operations may be conducted twenty-four (24) hours per day, seven (7) days per week or in accordance with Local, State or Federal decree. Adjustments to workdays and/or work hours shall be as directed by County following consultation and notification to Contractor.

10.9. Hazardous and Industrial Wastes:

Contractor shall provide within 90 days of execution of this contract, their Hazardous and Industrial Materials Cleanup and Disposal Plan. This plan shall outline procedures on how the Contractor shall identify, isolate, and reasonably protect all hazardous or industrial materials encountered during debris removal operations for collection and disposal.

Contractor shall build, operate, and maintain a Hazardous Waste and Industrial Material Storage area until proper disposal of such waste is feasible. Contractor may use the subcontracting services of a firm specializing in the management and disposal of such materials and waste as outlined in section 7.3.

10.10. Stumps:

All eligible stumps authorized by the County shall be extracted, loaded, transported, stored, reduced and disposed in accordance with the standards and pricing templates of this Contract and in accordance with FEMA guidance documents DAP9523.11 or as amended.

Small stumps placed within loose debris piles shall be collected as normal debris. Loose stumps, placed at the right-of-way by others shall be identified and converted to cubic yards prior to collection. The size of all eligible loose stumps shall be determined by measuring up 1 to 2 feet from the root system then measuring the circumference and dividing by (3.14) to determine the diameter; or in accordance with the most currently available FEMA guidelines. All stumps will be documented, invoiced and paid in accordance with FEMA guidance and details & conditions of this Contract.

The Contractor shall backfill the hole left from stump extractions. A stump will be determined eligible for extraction based on the most current FEMA guidance but at a minimum must meet the following:

- The stump poses a threat to health and safety, and
- Has 50% or more of the root-ball is exposed, and
- It is greater than 24" in diameter as measured 24" above the ground.

FEMA policy for documentation of stumps shall be followed but at a minimum the following documentation must be obtained for each stump removed:

- Photographs and GPS coordinates that establish the location is on public property.
- Specific narrative describing the threat to health and safety
- Diameter of the stump
- Quantity of material needed to fill the resultant hole

Prior to stump extraction, all documentation described above shall be provided to the County; once determined eligible, written authorization shall be provided to the Contractor to remove the eligible stump. Copies of this authorization shall be submitted with the invoice in order to justify payment.

The Contractor must complete a FEMA Hazardous Stump Worksheet where required by FEMA policy. In the event that there are changes to FEMA or other regulatory requirements for stump documentation, the most current guidance or policy shall apply.

Reduction costs of stumps shall be included in the debris processing costs established in the pricing template.

10.11. Work Safety:

Contractor shall provide and enforce a safe work environment as prescribed in the Occupational Safety and Health Act of 1970, as amended. Contractor shall provide such safety equipment, training, and supervision as may be required by County and/or other governmental regulations. Contractor shall ensure that its subcontracts contain a similar safety provision.

10.12. Inspection and Testing:

All debris shall be subject to inspection by County and other public authorities to ensure compliance with Contract, applicable federal, state, and local laws, and in accordance with generally accepted standards of emergency management professionals. County or its representatives will, at all times, have access to all work sites and disposal areas. In addition, authorized representatives and agents of the government shall be permitted to inspect all work, materials, invoices and other relevant records and documentation.

10.13. Retention of Collection Equipment:

Contractor shall supply and maintain a sufficient quantity of collection equipment to complete the debris management project in accordance with the collection rates established herein or as approved by County to complete the final stages of the project within the established timelines. Collection equipment shall remain in force until the debris collection is complete or when determined by County and Contractor to be adequate to complete the recovery effort. Equipment leaving the County prior to completion of the recovery effort shall be replaced with equal or better equipment. Unless the County determines that downsizing of the operation is warranted.

10.14. Chainsaw Crews:

Crews shall work only as directed by task order by the County; the number of crewmembers and scope of work to be performed shall be outlined in the task order. Following the initial cut and toss phase of the project, chainsaw crews must be monitored by the County's debris monitoring firm. Unauthorized work shall not be paid for. Detailed invoices consisting of at a minimum the number of crewmen, hours worked, location, and description of work performed shall be submitted with the monthly invoice.

10.15. Hazardous Trees:

Hazardous Trees are to be removed if the condition was caused by the disaster, it is an immediate threat to health and safety, and has a diameter breast height of six inches (6") or greater, and one of the following criteria is met:

- More than 50% of the crown is damaged or destroyed; or
- The trunk is split, or it has broken branches that expose the heartwood of the tree; or
- It is leaning at an angle greater than 30 degrees

Trees determined to be hazardous and that have less than 50% of the root-ball exposed should be cut flush at ground level.

FEMA policy for documentation shall be followed but at a minimum the following minimum documentation must be obtained for each hazardous tree prior to its removal:

- Photographs and GPS coordinates that establish the location is on public property
- Specific narrative describing the threat to health and safety

After hazardous trees are properly documented and determined eligible by the County or designated Debris Monitor, written authorization shall be given to the Contractor to remove the tree. Copies of these authorizations are required to be submitted with the invoice in order to be eligible for payment.

10.16. Hanging Limbs:

Limbs, authorized as eligible for reimbursement by the County must be:

- Located on improved public property
- Greater than two inches (2") in diameter at the point of breakage
- Still hanging in a tree and threatening a public use area

FEMA policy for documentation shall be followed but at a minimum the following documentation must be obtained for each hanging limb that is removed:

- Photographs and GPS coordinates that establish the location is on public property
- Specific narrative describing the threat to health and safety

After hazardous trees are properly documented and determined eligible by the County or County designated debris monitor, written authorization shall be given to the Contractor to remove the tree. Copies of these authorizations are required to be submitted with the invoice in order to be eligible for payment.

10.17. Hand Loaded Collection Equipment:

Hand load trucks, trailers or equipment are discouraged, and shall be used only in areas where typical collection equipment cannot access and only with prior written authorization of the County. These "hand loaders" must remove all eligible debris as outlined in section 8.4. All Contractor equipment must be capable of self-unloading, equipment that must be unloaded by hand or requires assistance from operator at DMS site will not be permitted to dump at DMS sites.

10.18. Dead Animals:

Dead animals found (or placed) in the right-of-way or inadvertently delivered to a debris management site shall be the responsibility of the Contractor to remove and lawfully dispose of under this contract.

11. REPORTS, CERTIFICATIONS, and DOCUMENTATION

11.1. Accountable Debris Load Forms:

County and Contractor shall, after reconciliation, accept the serialized copies of the debris reporting tickets or approved ticket data base as the certified, original source document to account for the measurement and accumulation of the volume of debris delivered and processed at the reduction and/or disposal sites as verified by County representative. The serialized ticketing system (paper or approved electronic) will also be used in the event of additional debris handling for volume reduction and/or the possible requirement for a debris transfer station. These tickets/data base shall be used as the basis of any electronic generated billing and/or reports.

- If requested, the Contractor shall provide, minimum 4 part carbon copy, debris load tickets for use through the recovery operations.
- All debris collection and disposal information required by FEMA or other regulations must be documented on each load ticket
- The Contractor shall submit all original load tickets to the County

At the option and request of the County, the Contractor shall reconcile their load ticket copies with County copies no less than one time per week. Discrepancies shall be noted and resolved prior to the next reconciliation period.

An approved and auditable electronic debris ticket database, established through the use of an approved ADMS provided by the County's debris monitoring Contractor, may be used in place of serialized copies of the debris reporting tickets. In this event, load tickets will be replaced by ADMS generated receipts or reconciled electronic database where applicable.

11.2. Reports:

Contractor shall submit periodic, written reports to County as requested or required, detailing the progress of debris removal and disposal. These reports shall include, but are not limited to:

11.2.1. Daily Reports:

Daily reports shall detail the locations where passes for debris removal were conducted, the quantity of debris (by type) removed and disposed of, the total number of personnel crews engaged in debris management operations, and the number of grinders, chippers and mulching machines in operation. Contractor shall also report and provide regular repair progress updates of any damages to private property caused by the debris operation or damage claims made by citizens and such other information as shall be required to completely describe the daily conduct of Contractor's operations.

11.2.2. Weekly Summaries:

A summary of all information contained in the daily reports as set out in Section 11.2.1 of this Contract or in a format required by County.

11.2.3. Report Delivery:

The scheduling, point of delivery and receiving personnel for the debris operations report will be directed by County in consultation with Contractor.

11.2.4. Final Project Closeout:

Upon final inspection and/or closeout of the project by County, Contractor shall prepare and submit a detailed description of all debris management activities to include, but not be limited to the total volume, by type of debris hauled, reduced and/or disposed of, plus the total cost of the project invoiced to County. Contractor shall provide any other additional information as may be necessary to adequately document the conduct of the debris management operations for County and/or other government entity. Report shall include a section detailing any private property damages or claims, the satisfaction of these claims, as well as the status of any outstanding claims that require further action by the Contractor.

11.2.5. Additional Supporting Documentation:

Contractor shall submit sufficient reports and/or documentation for debris loading, hauling, disposal, and load capacity measurements, and any other services provided by Contractor as may be required by County and/or other governmental entity to support requests for debris project reimbursement from external funding sources.

11.2.6. Report Maintenance:

Contractor will be subject to audit by federal, state and local agencies pursuant to this Contract. Contractor shall maintain all reports, records, debris reporting tickets and contract correspondence for a period of not less than three (3) years.

11.2.7. Contract File Maintenance:

Contractor shall maintain this Contract and the invoices that are generated for Contracted services for a period of five (5) years or the period of standard record retention of the County, whichever is longer. Public records law requires that all records that are not exempt, must be made available upon request by the public. COUNTY may unilaterally cancel this contract for refusal to comply with this provision.

12. PRICING AND PAYMENTS

12.1. Schedule of Values

12.1.1. Category A – Core Services includes pricing for debris removal; debris processing; debris disposal; stump extractions; hazardous limb removal; and storm damage tree removal.

12.1.1.1. The following notes are defined and assigned in each line item as individually listed in Category A of the Schedule of Values:

- Note 1 - Prices shall include disposal sites located in Lee County and at the Lee/Hendry Landfill in Felda, Florida. Tipping fees at final disposal site(s) shall be the responsibility of the Contractor and passed through to the County without mark-up, unless approved otherwise. See section 9.8.9. within scope of services for disposal at County Owned and Operated disposal sites.
- Note 2 - For out of county disposal sites (excluding the Lee/Hendry Landfill), additional mileage will begin and be measured from the Lee County boundary closest to the disposal site. The approved per load additional mileage cost will be applied to each ticketed out of county load and be applicable to the miles beyond the Lee County boundary. Mileage is based on a one-way haul distance.

- Note 3 - For a multi-year contract, the prices shown in Category A will be adjusted on the anniversary date of the contract according to a percentage equal to the percent change in the Consumer Price Index as published in the U.S. Department of Labor, Bureau of Labor Statistics as established in the CWUR0300SAO index.
- Note 4 – Includes all site services, including but not limited to, providing monitoring towers, sanitary portable restrooms, and site safety & security.
- Note 5 – Includes comprehensive management of all debris site activities, including grubbing and establishing ingress/egress as needed, maintaining driving and working surfaces, managing storm water & regulatory compliance, and close-out site remediation. See section 9.8 in the scope of services for more detail.
- Note 6 - All stumps placed on the right of way by citizens will be converted to CY per the Stump Conversion Chart provided in FEMA Guidance DAP9523.11 and charged as regular debris for items A2 through A7.
- Note 7 - Items must be documented as per the scope of services and in accordance with appropriate FEMA Guidance, including DAP9523.11 or as amended.

12.1.2. Category B – Specialty Removal and Restoration includes pricing for screening and hauling of sand/soil; removal of vehicles and vessels; sand raking and removal of dead fish/algae; beach/lake restoration; berm/beach construction; and canal shoreline restoration.

12.1.2.1. Activities within Category B require specific task authorizations and include all labor and management of tasks.

12.1.2.2. The following notes are defined and assigned in each line item as individually listed in Category A of the Schedule of Values:

- Note 1 - Prices shall include disposal sites located in Lee County and at the Lee/Hendry Landfill in Felda, Florida. Tipping fees at final disposal site(s) shall be the responsibility of the Contractor and passed through to the County without mark-up, unless approved otherwise. See section 9.8.9. within scope of services for disposal at County Owned and Operated disposal sites.
- Note 2 - For out of county disposal sites (excluding the Lee/Hendry Landfill), additional mileage will begin and be measured from the Lee County boundary closest to the disposal site. The approved per load additional mileage cost will be applied to each ticketed out of county load and be applicable to the miles beyond the Lee County boundary. Mileage is based on a one-way haul distance.
- Note 3 – Includes all site services, including but not limited to, providing monitoring towers, sanitary portable restrooms, and site safety & security.
- Note 4 – Includes comprehensive management of all debris site activities, including grubbing and establishing ingress/egress as needed, maintaining driving and working surfaces, managing storm water & regulatory compliance, and close-out site remediation. See section 9.8 in the scope of services for more detail.
- Note 5 – Items must be documented as per the scope of services and in accordance with appropriate FEMA Guidance, including DAP9523.11 or as amended.

12.1.3. Category C – Specialized Labor and Work Crews includes pricing for specialized labor; work crews (typical crew makeup for “first 70 hours of operation); and additional laborers.

12.1.4. Category D – Equipment includes pricing for equipment used while performing disaster recovery services.

12.2. Billing Cycle:

Contractor shall invoice County on a 30-day basis reflecting the close of business on the last working day of the billing period. Serialized debris reporting tickets and disposal site verification of the actual cubic yardage for each load of debris or itemized stumps shall support all invoices. Electronic copies of supporting documentation may be used if approved by the County.

12.3. Ineligible Work:

Contractor will not be paid for the removal, transportation, storage, reduction and/or disposal of any materials or stumps that were determined by County and/or other government entity as ineligible debris and for which the Contractor was not formally authorized to perform by the County.

12.4. Eligibility Inspections:

Contractor and County or its representatives shall inspect each load to verify that the contents are in accordance with the accepted definition of eligible debris as determined within this Contract.

12.5. Eligibility Determinations:

If any load is determined to contain material that does not meet the definition of eligible debris, e.g., debris collected from private property or not at the request of the County or its representatives, the load shall be directed to an alternate disposal or processing facility. No payment will be approved, and Contractor shall not invoice the County for ineligible loads. County, through its authorized representative, will be the sole judge as to whether the material conforms to the definition of eligible debris, and its decision will be final.

12.6. Unit Price/Service Negotiations:

Unknown and/or unforeseen events or conditions may require an adjustment to the stated unit prices within this Contract. Any amendments, extensions, or changes to the scope of services or unit prices are subject to full negotiations between County and Contractor and subject to the review of the government. *In addition, all costs related to labor, materials, and equipment shall be fair, reasonable, and consistent with costs set forth in the schedule of values and with the most current version of the Federal Emergency Management Agency's Schedule of Equipment Rates, to be applied at all times for implementation of this Contract.*

12.7. Specialized Services:

Contractor may invoice County for costs incurred to mobilize and demobilize specialized equipment required to perform services in addition to those specified under within this Contract. Additional specialized services will only be performed when directed by the County. The rate for specialized services shall be in accordance with the rates provided in the Schedule of Values. Items not included shall be negotiated and shall be fair and reasonable as determined by the County.

End of Detailed Specifications

EXHIBIT B

FEE SCHEDULE PRIMARY VENDOR

The Vendor is the Primary Vendor for services. The County shall contact the Primary Vendor first for services as detailed within the Scope of Work and Specifications. If the Primary Vendor is unable to fulfill the need or meet the timeline required, the County may contact the Secondary Vendor. Products and Services are to be charged in accordance with the unit price provided below.

RFP220362BJB - DISASTER RECOVERY SERVICES			
CATEGORY A: CORE SERVICES			
SECTION 1: DEBRIS REMOVAL, PROCESSING AND DISPOSAL			
Item	Description	Unit of Measure	Unit Price
A1	Debris Removal from Public Property (Right-of-Way) and Hauling to Debris Management Sites (DMS)	CY	\$ 7.95
A2	Debris Removal from Debris management Sites (DMS) and Hauling to Final Disposal Site (Note 1 & 2)	CY	\$ 4.20
A3	Debris Removal from Public Property (Right-of-Way) and Hauling directly to Final Disposal Site (Note 1 & 2)	CY	\$ 9.00
A4	Cost per mile for alternate disposal sites outside of Lee County. (Note 1 & 2)	Cost /Mile	\$ 40.00
A5	Management of Debris Management Sites (DMS) (Note 4&5)	CY	\$ 1.00
A6	Processing (Grinding/Chipping) of Debris at DMS or Final Disposal Site	CY	\$ 2.90
A7	Processing (Burning) of Debris at DMS or Final Disposal Site	CY	\$ 1.50
A8	Pick Up and Haul of White Goods to Disposal Site within County (Note 1)	UNIT	\$ 60.00
A9	Pick Up and Disposal of Hazardous Material	LB	\$ 9.00
A10	Freon Management and Recycling (Note: 7)	UNIT	\$ 30.00
A11	Non Domestic Dead Animal Collection and Transportation to final disposal.	EACH	\$ 25.00
SECTION 2: STUMP EXTRACTIONS			
Item	Description	Unit of Measure	Unit Price
A12	< 24 inch diameter (Note:7)	Per Stump	\$ 150.00
A13	> 24 inch diameter to 47.99 inch diameter (Note:7)	Per Stump	\$ 290.00
A14	48 inch diameter and greater (Note:7)	Per Stump	\$ 390.00
A15	On site stump grinding including filling hole with wood chips (Note:7)	Per Inch	\$ 15.00
SECTION 3: HAZARDOUS LIMB REMOVAL			
Item	Description	Unit of Measure	Unit Price
A16	>24 inch diameter to 47.99 inch diameter (Note:7)	Per Tree	\$ 70.00
SECTION 4: STORM DAMAGE TREE REMOVAL			
Item	Description	Unit of Measure	Unit Price
A17	Trees that require the "Climbing" and "Cut & Drop" method (e.g., trees over structures, homes, buildings, utilities or public ROW)		
	6" to 12.99" diameter	Per Tree	\$ 180.00
	13" to 23.99" diameter	Per Tree	\$ 280.00
	> 24" diameter	Per Tree	\$ 450.00
A18	Trees that can only be accessed by "Mechanized Equipment" (i.e., bucket trucks, skid steer loaders, log skidders, excavators, wheel loaders)		
	6" to 12.99" diameter	Per Tree	\$ 85.00
	13" to 23.99" diameter	Per Tree	\$ 185.00
	> 24" diameter	Per Tree	\$ 300.00
A19	Uprooted Trees; including those that have fallen in open areas, with easy access, or that have fallen on damaged structures		
	6" to 12.99" diameter	Per Tree	\$ 180.00
	13" to 23.99" diameter	Per Tree	\$ 280.00
	> 24" diameter	Per Tree	\$ 450.00
A20	Trees broken in two parts or snapped in half with debris not fallen on any dwelling or structure		
	6" to 12.99" diameter	Per Tree	\$ 85.00
	13" to 23.99" diameter	Per Tree	\$ 185.00
	> 24" diameter	Per Tree	\$ 300.00
NOTES - The following notes apply only to Category A within the Schedule of Values and only as identified in each individual line item			
1	Prices include disposal sites located in Lee County and at the Lee/Handy Landfill in Felda FL. Tipping fees at final disposal site(s) will be the responsibility of Contractor and passed through to the County without mark-up, unless approved otherwise. See section 9.8.9 in the scope of services for disposal at County Owned and Operated disposal sites.		
2	For out of county disposal sites (excluding the Lee/Handy Landfill), additional mileage will begin and be measured from the Lee County boundary closest to the disposal site. The approved per load additional mileage cost will be applied to each ticketed out of county load and be applicable only to the miles beyond the Lee County boundary. Mileage is based on a one-way haul distance.		
3	For a multi-year contract, the prices shown in Category A would be adjusted on the anniversary date of Contract according a percentage equal to the percent change in the Consumer Price Index as published in the U. S. Department of Labor, Bureau of Labor Statistics. (CWL803005AO) is the established index.		
4	Includes all site services, including but not limited to, providing monitoring towers, sanitary portable restrooms, and site safety & security.		
5	Includes comprehensive management of all debris and debris site activities, including grubbing & establishing ingress/egress as needed, maintaining driving and working surfaces, managing storm water & regulatory compliance, and close-out site remediation. See section 9.8 in the scope of services for more detail.		
6	All stumps placed on the right of way by citizens will be converted to CY per the Stump Conversion Chart provided in FEMA Guidance DAP9523.11 and charged as regular debris for items A2 through A7.		
7	Items must be documented as per the scope of services and in accordance with appropriate FEMA Guidance, including DAP9523.11 or as amended.		

RFP220362BJB - DISASTER RECOVERY SERVICES			
CATEGORY B: SPECIALTY REMOVAL AND RESTORATION			
SECTION 1: SPECIALTY REMOVAL (Activities require specific task authorization and include all labor and management of tasks)			
Item	Description	Unit of Measure	Unit Price
B1	Sand/Soil Collection & Screening. Includes pick-up, screen, and return of screened sand to designated staging areas.	CY	\$ 18.90
B2	Pick-up & haul debris laden sand/mud/dirt/rock from sand screening operations to final disposal (Notes 1 & 2)	CY	\$ 14.00
B3	Removal of Eligible vehicles - haul to designated staging or final disposal. (Notes 1 & 2)	Unit	\$ 150.00
B4	Removal of eligible Vessel from (Land)	LF	\$ 80.00
B5	Demolition of Private Structure	CY	\$ 20.00
B6	Dead Fish and/or Algae, including removal and sand raking from beaches.	CY	\$ 4.00
SECTION 2: RESTORATION (Activities require specific task authorization and include all labor and management of tasks)			
Item	Description	Unit of Measure	Unit Price
B7	Beach/Lake Restoration - Berm/Beach Construction	CY	\$ 36.00
B8	Canal Shoreline Restoration	LF	\$ 32.00
ADDITIONAL SERVICES		Unit of Measure	Unit Price
1	Waterway Debris Removal (Canals, Open Water, or Ditches) hauled to DMS or Final Disposal Site		
	Water Based Operations	CY	\$ 120.00
	Land Based Operations	CY	\$ 42.00
2	Collect and Haul E-Waste to DMS or Final Disposal Site	Unit	\$ 40.00
3	Debris Collection and Hauling to DMS from County Owned or Maintained Properties other than ROW	CY	\$ 18.00
4	Private Property Debris Remove, Hauled to DMS or Final Disposal Site	CY	\$ 15.60
5	Private Property Leaners and Hanger Removal (Cut and Drop)		
	Hangers	Tree	\$ 125.00
	Leaners	Tree	\$ 450.00
NOTES - The following notes apply only to Category B within the Schedule of Values and only as identified in each individual line item			
1	Prices include disposal sites located in Lee County and at the Lee/Hendry Landfill in Felda FL. Tipping fees at final disposal site(s) will be the responsibility of Contractor and passed through to the County without mark-up, unless approved otherwise. See section 9.8.9 in the scope of services for disposal at County Owned and Operated disposal sites.		
2	For out of county disposal sites (excluding the Lee/Hendry Landfill), additional mileage will begin and be measured from the Lee County boundary closest to the disposal site. The approved per load additional mileage cost will be applied to each ticketed out of county load and be applicable only to the miles beyond the Lee County boundary. Mileage is based on a one-way haul distance.		
3	Includes all site services, including but not limited to, providing monitoring towers, sanitary portable restrooms, and site safety & security.		
4	Includes comprehensive management of all debris and debris site activities, including grubbing & establishing ingress/egress as needed, maintaining driving and working surfaces, managing storm water & regulatory compliance, and close-out site remediation. See section 9.8 in the scope of services for more detail.		
5	Items must be documented as per the scope of services and in accordance with appropriate FEMA Guidance, including DAP9523.11 or as amended.		

RFP220362BJB - DISASTER RECOVERY SERVICES			
CATEGORY C: SPECIALIZED LABOR AND WORK CREWS			
SECTION 1: SPECIALIZED LABOR			
Item	Description	Unit of Measure	Unit Price
C1	Field Supervisor with truck and cell phone	Hourly	\$ 65.00
C2	Administrative Assistant	Hourly	\$ 40.00
C3	Heavy Equipment Operator	Hourly	\$ 48.00
C4	Tool Operator (Chainsaw)	Hourly	\$ 48.00
C5	Laborer w/ small tools	Hourly	\$ 42.00
C6	Hazardous Material Worker w/ gear	Hourly	\$ 52.00
C7	Mechanic w/ truck and tools	Hourly	\$ 150.00
C8	Tree Climber w/ chainsaw and gear	Hourly	\$ 125.00
C9	22' - 31' Work Boat with Captain (Inclusive of Fuel, Mooring and Mobilization)	Per Boat / Per day	\$ 2,600.00
C10	Services of 2 - 4 Laborers per Vessel	Per Boat / Per day	\$ 1,200.00
SECTION 2: WORK CREWS (typical crew makeup for "First 70 Hours Operation")			
Item	Description	Unit of Measure	Unit Price
C11	WheelLoader w/ operator, 2.5 cy, Foreman with support vehicle and small equipment, Laborer w/ chainsaw & two (2) laborers with small tools	Hourly (entire crew)	\$ 295.00
SECTION 3: ADDITIONAL LABORERS			
Item	Description	Unit of Measure	Unit Price
C12	Project Manager	Hourly	\$ 80.00
C13	Safety Superintendent	Hourly	\$ 60.00
C14	Traffic Control Personnel	Hourly	\$ 40.00
C15	Project Engineer	Hourly	\$ 120.00
C16	Security Person (Unarmed)	Hourly	\$ 50.00
C17	Security Person (Armed)	Hourly	\$ 60.00
C18	Health / Safety or QC manager with Truck	Hourly	\$ 60.00

RFP220362BJB - DISASTER RECOVERY SERVICES						
CATEGORY D: EQUIPMENT						
SECTION 1: EQUIPMENT						
Item	Description	Specification	Capacity	Horse Power	Notes	Rate Per Hour
D1	Aerial Lift, Self Propelled	Max Platform Ht	37 ft	to 15	Articulated, telescoping, scissor	\$ 40.00
D2	Aerial Lift, Self Propelled	Max Platform Ht	60 ft	to 30	Articulated, telescoping, scissor	\$ 50.00
D3	Aerial Lift, Self Propelled	Max Platform Ht	70 ft	To 50	Articulated, telescoping, scissor	\$ 65.00
D4	Aerial Lift, Self Propelled	Max Platform Ht	125 ft	To 85	Articulated, telescoping, scissor	\$ 100.00
D5	Aerial Lift, Self Propelled	Max Platform Ht	150 ft	to 130	Articulated, telescoping, scissor	\$ 140.00
D6	Aerial Lift, Truck Mounted	Max Platform Ht	25 Ft		Articulated, telescoping, scissor	\$ 50.00
D7	Aerial Lift, Truck Mounted	Max Platform Ht	50 Ft		Articulated, telescoping, scissor	\$ 75.00
D8	Aerial Lift, Truck Mounted	Max Platform Ht	75 Ft		Articulated, telescoping, scissor	\$ 100.00
D9	Aerial Lift, Truck Mounted	Max Platform Ht	100 Ft		Articulated, telescoping, scissor	\$ 125.00
D10	Pavement	Weight	25 - 90 lbs			\$ 25.00
D11	Breaker, Pavement			to 70		\$ 35.00
D12	Breaker Pavement			to 105		\$ 45.00
D13	Breaker, Pavement			to 137		\$ 55.00
D14	Breaker, Pavement					\$ 60.00
D15	Bucket, Clamshell	Capacity	1.0 CY			\$ 20.00
D16	Bucket, Clamshell	Capacity	2.5 CY			\$ 30.00
D17	Bucket, Clamshell	Capacity	5.0 CY			\$ 40.00
D18	Bucket, Clamshell	Capacity	7.5 CY			\$ 60.00
D19	Chain Saw	Bar Length	16 Inch			\$ 8.00
D20	Chain Saw	Bar Length	25 inch			\$ 8.00
D21	Chain Saw Pole	Bar Size	18 inch			\$ 8.00
D22	Chipper, Brush	Chipping Capacity	6 inch	to 35	Trailer mounted	\$ 50.00
D23	Chipper, Brush	Chipping Capacity	12 inch	to 60	Trailer mounted	\$ 75.00
D24	Chipper, Brush	Chipping Capacity	16 Inch	to 100	Trailer mounted	\$ 125.00
D25	Chipper, Brush	Chipping Capacity	18 inch	to 125	Trailer mounted	\$ 150.00
D26	Chipper, Brush	Chipping Capacity	18 inch	to 200	Trailer mounted	\$ 300.00

D27	Chipper, Brush	Chipping Capacity	19 inch	to 300	Trailer mounted	\$ 350.00
D28	Chipper, Brush	Chipping Capacity	19 inch	to 450	Trailer mounted	\$ 400.00
D29	Chipper, Brush	Chipping Capacity		to 650	Trailer mounted	\$ 450.00
D30	Crane	Max Lift Capacity	8 MT	to 80		\$ 120.00
D31	Crane	Max Lift Capacity	15 MT	to 150		\$ 140.00
D32	Crane	Max Lift Capacity	27 MT	to 200		\$ 160.00
D33	Crane	Max Lift Capacity	45 MT	to 300		\$ 200.00
D34	Crane	Max Lift Capacity	70 MT	to 350		\$ 300.00
D35	Crane	Max Lift Capacity	110 MY	to 450		\$ 400.00
D36	Crane, Truck mounted	Max Lift Capacity	17,600 lbs			\$ 150.00
D37	Crane, Truck mounted	Max Lift Capacity	33,000 lbs			\$ 200.00
D38	Crane, Truck mounted	Max Lift Capacity	60,000 lbs			\$ 300.00
D39	Crane, Truck mounted	Max Lift Capacity	120,000 lbs			\$ 400.00
D40	Fork Lift	Capacity	6000 lbs	to 60		\$ 50.00
D41	Fork Lift	Capacity	12,000 lbs	to 90		\$ 80.00
D42	Fork Lift	Capacity	18,000 lbs	to 140		\$ 120.00
D43	Fork Lift	Capacity	50,000 lbs	to 215		\$ 150.00
D44	Load, Skid-Steer	Operating Capacity	1000 lbs	to 35		\$ 135.00
D45	Load, Skid-Steer	Operating Capacity	2000 lbs	to 65		\$ 125.00
D46	Load, Skid-Steer	Operating Capacity	3000 lbs	to 85		\$ 125.00
D47	Load, Skid-Steer	Operating Capacity	4000 lbs	to 94		\$ 125.00
D48	Loader, Wheel	Bucket Capacity	0.5 CY	To 38		\$ 125.00
D49	Loader, Wheel	Bucket Capacity	1 CY	To 60		\$ 135.00
D50	Loader, Wheel	Bucket Capacity	2 CY	To 105		\$ 145.00
D51	Loader, Wheel	Bucket Capacity	3 CY	To 152		\$ 155.00
D52	Loader, Wheel	Bucket Capacity	4 CY	To 200		\$ 165.00
D53	Loader, Wheel	Bucket Capacity	5 CY	To 250		\$ 175.00
D54	Loader, Wheel	Bucket Capacity	6 CY	To 305		\$ 185.00
D55	Loader, Wheel	Bucket Capacity	7 CY	To 360		\$ 195.00
D56	Loader, Wheel	Bucket Capacity	8 CY	To 415		\$ 205.00
D57	Loader, Wheel	Bucket Capacity	9 CY	To 470		\$ 215.00
D58	Loader, Wheel	Bucket Capacity	10 CY	To 530		\$ 225.00
D59	Loader-Backhoe, Wheel	Bucket Capacity	.05 CY	To 40	Loader and Backhoe bucket included	\$ 50.00
D60	Loader-Backhoe, Wheel	Bucket Capacity	1 CY	To 70	Loader and Backhoe bucket included	\$ 60.00
D61	Loader-Backhoe, Wheel	Bucket Capacity	1.5 CY	To 95	Loader and Backhoe bucket included	\$ 75.00
D62	Loader-Backhoe, Wheel	Bucket Capacity	1.75 CY	To 115	Loader and Backhoe bucket included	\$ 80.00
D63	Saw, Concrete	Blade Diameter	14 in	To 14		\$ 30.00
D64	Saw, Concrete	Blade Diameter	26 in	To 35		\$ 35.00
D65	Saw, Concrete	Blade Diameter	48 in	To 65		\$ 50.00

D66	Sweeper, Pavement			to 110		\$ 60.00
D67	Sweeper, Pavement			To 150		\$ 80.00
D68	Sweeper, Pavement			To 200		\$ 100.00
D69	Trailer, Dump	Capacity	20 CY		Does not include prime mover	\$ 60.00
D70	Trailer, Dump	Capacity	30 CY			\$ 80.00
D71	Trailer, Dump	Capacity	40 CY		Does not include prime mover	\$ 90.00
D72	Trailer, Equipment	Capacity	30 tons			\$ 120.00
D73	Trailer, Equipment	Capacity	40 tons			\$ 130.00
D74	Trailer, Equipment	Capacity	60 tons			\$ 150.00
D75	Trailer, Equipment	Capacity	120 tons			\$ 200.00
D76	Truck, Dump	Truck Capacity	8 CY	To 210		\$ 90.00
D77	Truck, Dump	Truck Capacity	10 CY	To 235		\$ 95.00
D78	Truck, Dump	Truck Capacity	12 CY	To 255		\$ 105.00
D79	Truck, Dump	Truck Capacity	18 CY	To 330		\$ 110.00
D80	Truck, Dump	Truck Capacity	28 CY	To 400		\$ 125.00
D81	Truck, Dump	Truck Capacity	40 CY	To 460		\$ 130.00
D82	Truck, Dump	Truck Capacity	50 CY	To 620		\$ 140.00
D83	Truck, Flatbed	Max Gross Vehicle Weight	15,000 lbs	To 150		\$ 60.00
D84	Truck, Flatbed	Max Gross Vehicle Weight	25,000 lbs	To 180		\$ 70.00
D85	Truck, Flatbed	Max Gross Vehicle Weight	30,000 lbs	To 215		\$ 80.00
D86	Truck, Flatbed	Max Gross Vehicle Weight	45,000 lbs	To 250		\$ 90.00
D87	Truck, Flatbed	Max Gross Vehicle Weight	50,000 lbs	To 300		\$ 100.00
D88	Truck, Flatbed	Max Gross Vehicle Weight		To 375		\$ 150.00
D89	Truck, Flatbed	Max Gross Vehicle Weight		To 450		\$ 175.00
D90	Truck, Knuckle Boom				Add flatbed truck to truck mounted crane	\$ 120.00
D91	Truck, Pickup			To 130		\$ 40.00
D92	Truck, Pickup			To 180		\$ 45.00
D93	Truck, Pickup			To 230		\$ 45.00
D94	Truck, Pickup			To 280		\$ 45.00
D95	Truck, Tractor			To 210		\$ 90.00
D96	Truck, Tractor			To 265		\$ 100.00
D97	Truck, Tractor			To 310		\$ 110.00
D98	Truck, Tractor			To 350		\$ 130.00
D99	Tub Grinder			To 400		\$ 250.00
D100	Tub Grinder			To 500		\$ 300.00
D101	Tub Grinder			To 600		\$ 350.00
D102	Tub Grinder			To 700		\$ 400.00
D103	Tub Grinder			To 800		\$ 450.00
D104	Tub Grinder			To 900		\$ 500.00
D105	Tub Grinder			To 1,000		\$ 550.00

D106	Light Tower	with 4 500 watt light	w/ 10kw power unit	13.5	Trailer mounted	\$ 170.00
D107	Light Tower					\$ 30.00
D108	All Terrain Vehicle	6- wheel				\$ 50.00
D109	All Terrain Vehicle	4-Wheel - 24"	250cc	15-17		\$ 60.00
D110	All Terrain Vehicle	4-Wheel - 24"	300cc	18-20		\$ 70.00
D111	All Terrain Vehicle	4-Wheel - 24"	400cc	26-28		\$ 80.00
D112	Graders	Moldboard Size	10 FT	to 110	Includes Rigid and Articulate equipment	\$ 50.00
D113	Graders	Moldboard Size	12 FT	To 150	Includes Rigid and Articulate equipment	\$ 65.00
D114	Graders	Moldboard Size	14 Ft	To 225	Includes Rigid and Articulate equipment	\$ 75.00
D115	Powerscreen	1400				\$ 175.00
D116	Powerscreen	1700				\$ 200.00
D117	Powerscreen	2100				\$ 225.00
D118	Stacking Conveyor	30 x 60 Portable Hydraulic			Complete Road package	\$ 50.00
D119	Water Truck	Tank Capacity	2500 Gal	to 175	Include pump and rear spray	\$ 130.00
D120	Water Truck	Tank Capacity	4000 Gal	to 250	Include pump and rear spray	\$ 140.00
D121	Loader - Tractor Knuckle boom	Model Barko	595 ML	To 240		\$ 140.00
D122	Clamshell & Dragline, Crawler		149,999 lbs	to 235	Bucket not included in rate	\$ 325.00
D123	Clamshell & Dragline, Crawler		250,000 lbs	to 520	Bucket not included in rate	\$ 425.00
D124	Clamshell & Dragline, Truck			to 240	Bucket not included in rate	\$ 325.00

EXHIBIT C INSURANCE REQUIREMENTS



Lee County Insurance Requirements including Pollution Liability

Minimum Insurance Requirements: *Risk Management in no way represents that the insurance required is sufficient or adequate to protect the vendors' interest or liabilities. The following are the required minimums the vendor must maintain throughout the duration of this contract. The County reserves the right to request additional documentation regarding insurance provided*

- a. **Commercial General Liability** - Coverage shall apply to premises and/or operations, products and completed operations, independent contractors, contractual liability exposures with minimum limits of:

\$1,000,000 per occurrence
\$2,000,000 general aggregate
\$1,000,000 products and completed operations
\$1,000,000 personal and advertising injury

- b. **Business Auto Liability** - The following Automobile Liability will be required and coverage shall apply to all owned, hired and non-owned vehicles use with minimum limits of:

\$1,000,000 combined single limit (CSL)

- c. **Workers' Compensation** - Statutory benefits as defined by FS 440 encompassing all operations contemplated by this contract or agreement to apply to all owners, officers, and employees regardless of the number of employees. Workers Compensation exemptions may be accepted with written proof of the State of Florida's approval of such exemption. Employers' liability will have minimum limits of:

\$500,000 per accident
\$500,000 disease limit
\$500,000 disease – policy limit

- d. **Pollution Liability** - Covering property loss and liability arising from pollution-related damages, for sites that have been inspected and found uncontaminated. Transporter moving hazardous products or waste as cargo aboard the transporter's truck:

\$1,000,000 bodily injury / property damage/ cleanup, including wrongful delivery.

**The required minimum limit of liability shown in a. or b. may be provided in the form of "Excess Insurance" or "Commercial Umbrella Policies." In which case, a "Following Form Endorsement" will be required on the "Excess Insurance Policy" or "Commercial Umbrella Policy."*

Revised 07/16/2018 – Page 1 of 2



Verification of Coverage:

1. Coverage shall be in place prior to the commencement of any work and throughout the duration of the contract. A certificate of insurance will be provided to the Risk Manager for review and approval. The certificate shall provide for the following:
 - a. **The certificate holder shall read as follows:**

**Lee County Board of County Commissioners
P.O. Box 398
Fort Myers, Florida 33902**
 - b. ***“Lee County, a political subdivision and Charter County of the State of Florida, its agents, employees, and public officials” will be named as an "Additional Insured" on the General Liability policy, including Products and Completed Operations coverage.***
 - c. Lee County will be given notice prior to cancellation or modification of any stipulated insurance. Such notification will be in writing by registered mail, return receipt requested and addressed to the Risk Manager (P.O. BOX 398 Ft. Myers, FL 33902).

Special Requirements:

1. An appropriate "Indemnification" clause shall be made a provision of the contract.
2. It is the responsibility of the general contractor to insure that all subcontractors comply with all insurance requirements.

Revised 07/16/2018 – Page 2 of 2

EXHIBIT D
VENDOR BACKGROUND SCREENING AFFIDAVIT



**VENDOR BACKGROUND
SCREENING AFFIDAVIT**

Florida Statutes Chapter 435 governs required background screenings for any employees, contractors, subcontractors, or agents of the Vendor who will have contact with any vulnerable person, as defined by statute, or who otherwise are required to undergo a Level 1 or Level 2 background screening in accordance with Florida law.

The Vendor is responsible for ensuring that such required background screenings are conducted in accordance with Florida Statutes Chapter 435. Documentation of such completed background screenings must be maintained for a period of no less than five (5) years and are subject to audit by Lee County at any time during such five (5) year period.

Under penalty of perjury, I declare that I have read and understand the requirements stated above, and that all required background screenings shall be conducted in accordance with this affidavit. I further understand that there may be additional local, state, and federal regulations that may require background screening, and that the Vendor will be solely responsible for complying with such legal requirements. Furthermore, the Vendor shall indemnify and hold Lee County harmless from any and all claims or actions resulting from failure to comply with this affidavit.

Date: _____

Signature

STATE OF _____
COUNTY OF _____

Name/Title

The foregoing instrument was sworn to (or affirmed) and subscribed before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, _____, by the above-named person and in their stated capacity, and is either personally known to me or who has produced the following type of identification: _____.

Type of Identification

[Stamp/seal required]

Signature, Notary Public



Advertise Date: Friday, July 01, 2022

Lee County Board of County Commissioners
DIVISION OF PROCUREMENT MANAGEMENT

Request for Proposal (RFP) NON-CCNA

Solicitation No.: RFP220362BJB

Solicitation

Name:

Disaster Recovery Services for Lee County

Open

Date/Time:

Tuesday, August 02, 2022

Time: 2:30 PM

Location:

Lee County Procurement Management
2115 Second Street, 1st Floor
Fort Myers, FL 33901

Procurement

Contact:

Brian Boehs

Title Procurement Analyst

Phone:

(239) 533-8887

Email:

bboehs@leegov.com

Requesting

Dept.

Solid Waste

Pre-Solicitation Meeting:

Type: No meeting scheduled at this time

Date/Time: N/A

Location: N/A

All solicitation documents are available for download at
www.leegov.com/procurement

FEMA

**Vendors are required to comply in accordance with
Federal Grant Requirements, 2 CFR part 200,
terms, conditions, and specifications**



Notice to Contractor / Vendor / Proposer(s)

REQUEST FOR PROPOSAL (RFP)

Lee County, Florida, is requesting proposals from qualified individuals/firms for

RFP220362BJB – Disaster Recovery Services for Lee County

Then and there to be publicly opened and read aloud for the purpose of selecting a vendor to furnish; all necessary labor, services, materials, equipment, tools, consumables, transportation, skills and incidentals required for Lee County, Florida, in conformance with proposal documents, which include technical specifications and/or a scope of work.

Those individuals/firms interested in being considered for (RFP) are instructed to submit, in accordance with specifications, their proposals, pertinent to this project prior to

2:30 PM Tuesday, August 02, 2022

to the office of the **Procurement Management Director, 2115 Second Street, 1st Floor, Fort Myers, Florida 33901**. The Request for Proposal shall be received in a sealed envelope, prior to the time scheduled to receive proposals, and shall be clearly marked with the solicitation name, solicitation number, proposer name, and contact information as identified in these solicitation documents.

The Scope of Services for this RFP is available from www.leegov.com/procurement. Vendors who obtain scope of services from sources other than www.Leegov.com/procurement are cautioned that the solicitation package may be incomplete. The County's official bidders list, addendum(s) and information must be obtained from www.Leegov.com/procurement. It is the proposer's responsibility to check for posted information. The County may not accept incomplete proposals.

There will be no Pre-proposal Conference for this RFP

It has been determined that the specifications and scope of work within this solicitation are adequate to describe the product or services being requested. A pre-proposal conference and site visit has not been scheduled for this solicitation. Questions regarding this Request for Proposal are to be directed, in writing, to the individual listed below using the email address listed below or faxed to (239) 485 8383 during normal working hours.

Brian Boehs, bboehs@LeeGov.com

Sincerely,

A blue ink signature of Adam Brooke, consisting of stylized initials and a surname.

Adam Brooke, CPPO, CPPB
Procurement Manager

*WWW.LeeGov.Com/Procurement is the County's official posting site

PROJECT FUNDING PACKAGE
EXHIBIT E
Terms and Conditions
Request for Proposal

1. DEFINITIONS

- 1.1. **Addendum/Addenda:** A written change, addition, alteration, correction or revision to a bid, proposal or contract agreement. Addendum/Addenda may be issued following a pre-bid/pre-proposal conference or as a result of a specification or work scope change to the solicitation.
- 1.2. **Approved Alternate:** Solicitation documents may make reference of specific manufacturer(s) or product(s). These references serve only as a recommendation and a guide to minimum quality and performance. The references are not intended to exclude approved alternatives of other manufacturer(s) or product(s).
- 1.3. **Bid/Proposal Package:** A bid/proposal is a document submitted by a vendor in response to some type of solicitation to be used as a basis for negotiations or for entering into a contract.
- 1.4. **Bidder/Responder/Proposer:** One who submits a response to a solicitation.
- 1.5. **County:** Refers to Lee County Board of County Commissioners.
- 1.6. **Due Date and Time/Opening:** Is defined as the date and time upon which a bid or proposal shall be submitted to the Lee County Procurement Management Division. Only bids or proposals received prior to the established date and time will be considered.
- 1.7. **Liquidated Damages:** Damages paid usually in the form of monetary payment, agreed by the parties to a contract which are due and payable as damages by the party who breaches all or part of the contract. May be applied on a daily basis for as long as the breach is in effect.
- 1.8. **Procurement Management:** shall mean the Director of Lee County's Procurement Management Department or designee.
- 1.9. **Responsible:** A vendor, business entity or individual who is fully capable to meet all of the requirements of the bid/proposal solicitation documents and subsequent contract. Must possess the full capability including financial and technical, to perform as contractually required. Must be able to fully document the ability to provide good faith performance.
- 1.10. **Responsive:** A vendor, business entity or individual who has submitted a bid or request for proposal that fully conforms in all material respects to the bid/proposal solicitation documents and all of its requirements, including all form and substance.
- 1.11. **Solicitation:** An invitation to bid, a request for proposal, invitation to negotiate or any document used to obtain bids or proposals for the purpose of entering into a contract.

2. ORDER OF PRECEDENCE

- 2.1. If a conflict exists between the "Terms and Conditions" the following order of precedents will apply:
 - 2.1.1. Florida State Law as applied to Municipal Purchasing in accordance with Title XIX, "Public Business", Chapter 287 "Procurement of Personal Property and Services."
 - 2.1.2. Lee County Procurement Management Ordinance 22-06
 - 2.1.3. Special Conditions and Supplemental Instructions
 - 2.1.4. Detailed Scope of Work
 - 2.1.5. These Terms and Conditions

3. RULES, REGULATIONS, LAWS, ORDINANCES AND LICENSES

- 3.1. It shall be the responsibility of the proposer to assure compliance with all other federal, state, or county codes, rules, regulations, or other requirements, as each may apply. Any involvement with the Lee County shall be in accordance with but not limited to:
 - 3.1.1. Lee County Procurement Policy Ordinance 22-06
 - 3.1.2. Pursuant to FL § Section 119.071, Public Records, General exemptions from inspection or copying of public records, sealed bids or proposals received by the County. Pursuant to this, solicitation are exempt from public records request (s. 119.07(1) and s. 24(a), Art. I, of the Florida Constitution) until such time as the agency provides notice of a decision or intended decision (pursuant to s. 119.071(2)) or within 30 days after bid or proposal opening, whichever is earlier.
 - 3.1.3. Florida Statute 218 Public Bid Disclosure Act.

PROJECT FUNDING PACKAGE

EXHIBIT E

- 3.1.4. Florida Statute 337.168 Confidentiality of official estimates, identities of potential bidders, and bid analysis and monitoring.
 - 3.1.5. FL § Section 607.1501(1) states: A foreign corporation may not transact business in the State of Florida until it obtains a certificate of authority from the Department of State.
- 3.2. **Local Business Tax:** If applicable, provide with proposal.
- 3.3. **License(s):** Proposer should provide, at the time of the opening of the proposal, all necessary permits and/or licenses required for this product and/or service.
4. RFP – PREPARATION OF PROPOSAL
 - 4.1. Proposals must be sealed in an envelope, and the outside of the envelope must be affixed with the label included in the forms section.
 - 4.2. **Submission Format:**
 - 4.2.1. Required Forms: complete and return **all** required forms. If the form is not applicable, please return with “Not Applicable” or “N/A” in large letters across the form.
 - 4.2.2. Execution of Proposal: All documents must be properly signed by corporate authorized representative, witnessed, and where applicable corporate and/or notary seals affixed. All proposals shall be typed or printed in ink. The proposer may not use erasable ink. All corrections made to the proposal shall be initialed.
 - 4.2.3. Should not contain links to other Web pages.
 - 4.3. **Preparation Cost:**
 - 4.3.1. The Proposer is solely responsible for any and all costs associated with responding to this solicitation. No reimbursement will be made for any costs associated with the preparation and submittal of any proposal, or for any travel and per diem costs that are incurred by any Proposer.
5. RESPONSES RECEIVED LATE
 - 5.1. It shall be the proposer’s sole responsibility to deliver the proposal submission to the Lee County Procurement Management Division prior to or on the time and date stated.
 - 5.2. Any proposals received after the stated time and date will not be considered. The proposal shall not be opened at the public opening. Arrangements may be made for the unopened proposal to be returned at the proposer’s request and expense.
 - 5.3. The Lee County Procurement Management Division shall not be responsible for delays caused by the method of delivery such as, but not limited to; Internet, United States Postal Service, overnight express mail service(s), or delays caused by any other occurrence.
6. PROPOSER REQUIREMENTS (unless otherwise noted)
 - 6.1. **Responsive and Responsible:** Only proposals received from responsive and responsible proposers will be considered. The County reserves the right before recommending any award to inspect the facilities and organization; or to take any other necessary action, such as background checks, to determine ability to perform is satisfactory, and reserves the right to reject submission packages where evidence submitted, or investigation and evaluation indicates an inability for the proposer to perform.
 - 6.1.1. Additional sources may be utilized to determine credit worthiness and ability to perform.
 - 6.1.2. Any Proposer or sub-Proposer that will have access to County facilities or property may be required to be screened to a level that may include, but is not limited to fingerprints, statewide criminal. There may be fees associated with these procedures. These costs are the responsibility of the Proposer or sub-Proposer.
 - 6.1.3. Proposers are responsible for ensuring that any required background screening are conducted in accordance with Chapter 435. Proposers shall be aware, understand, and ensure compliance with the statutory requirements regarding background checks. FL Statutes Chapter 435 governs required background screenings for any employees, contractors, subcontractors, or agents of the Proposer who will have contact with any vulnerable person, as defined by statute, or who otherwise are required to undergo a Level 1 or Level 2 background screening in accordance with Florida law. Such requirements shall flow down to sub-contractors/consultants of the prime Proposer and prime Proposer shall ensure compliance with Chapter 435 of such parties.

PROJECT FUNDING PACKAGE

EXHIBIT E

- 6.1.3.1.1. Documentation of such completed background screenings must be maintained for a period of no less than five (5) years and are subject to audit by Lee County at any time during such five (5) year period.

6.2. **Past Performance:** All vendors will be evaluated on their past performance and prior dealings with Lee County (i.e., failure to meet specifications, poor workmanship, late delivery, etc.) Poor or unacceptable past performance may result in proposer disqualification.

7. PRE-SOLICITATION CONFERENCE

- 7.1. A pre-solicitation conference will be held in the location, date, and time specified on the cover of this solicitation. The cover will also note if the pre-solicitation conference is Non-Mandatory or Mandatory. All questions and answers are considered informal. All prospective proposers are encouraged to obtain and review the solicitation documents prior to the pre-proposal so they may be prepared to discuss any questions or concerns they have concerning this project. All questions must be submitted formally in writing to the procurement staff noted on the first page of the solicitation document. A formal response will be provided in the form of an addendum (see "County Interpretation/Addendums" for additional information.) A site visit may follow the pre-proposal conference, if applicable.
- 7.2. **Non-Mandatory:** Pre-solicitation conferences are generally non-mandatory, but it is highly recommended that prospective proposers participate.
- 7.3. **Mandatory:** Failure to attend a mandatory pre-solicitation conference will result in the proposal being considered **non-responsive**.

8. COUNTY INTERPRETATION/ADDENDUMS

- 8.1. Each Proposer shall examine the solicitation documents and shall judge all matters relating to the adequacy and accuracy of such documents. Any inquiries, suggestions or requests concerning interpretation, clarification or additional information pertaining to the solicitation shall be **submitted in writing prior to 5:00 PM at least eight (8) calendar days prior to the date when the submission is due**.
- 8.2. Response(s) will be in the form of an Addendum posted on www.leegov.com/procurement. It is solely the proposer's responsibility to check the website for information. No notifications will be sent by Lee County Procurement Management Division.
- 8.3. All Addenda shall become part of the Contract Documents.
- 8.4. The County shall not be responsible for oral interpretations given by any County employee, representative, or others. Interpretation of the meaning of the plans, specifications or any other contract document, or for correction of any apparent ambiguity, inconsistency or error there in, shall be in writing. Issuance of a written addendum by the County's Procurement Management Division is the only official method whereby interpretation, clarification or additional information can be given.

9. QUALITY GUARANTEE/WARRANTY (as applicable)

- 9.1. Proposer will guarantee their work without disclaimers, unless otherwise specifically approved by the County, for a minimum of twelve (12) months from final completion.
- 9.2. Unless otherwise specifically provided in the specifications, all equipment and materials and articles incorporated in the work covered by this contract shall be new, unused and of the most suitable grade for the purpose intended. Refurbished parts or equipment are not acceptable unless otherwise specified in the specifications. All warranties will begin from the date of final completion.
- 9.3. Unless otherwise specifically provided in the specifications, the equipment must be warranted for twelve (12) months, shipping, parts and labor. Should the equipment be taken out of service for more than forty-eight (48) hours to have warranty work performed, a loaner machine of equal capability or better shall be provided for use until the repaired equipment is returned to service at no additional charge to the County.
- 9.4. If any product does not meet performance representation or other quality assurance representations as published by manufacturers, producers or distributors of such products or the specifications listed, the vendor shall pick up the product from the County at no expense to the County. The County reserves the right to reject any or all materials, if in its judgment the item reflects unsatisfactory workmanship or manufacturing or shipping damage. The vendor shall refund, to the County, any money which has been paid for same.

**PROJECT FUNDING PACKAGE
EXHIBIT E**

10. SUBSTITUTION(S)/APPROVED ALTERNATE(S)

- 10.1. Unless otherwise specifically provided in the specifications, reference to any equipment, material, article or patented process, by trade name, brand name, make or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. If a proposer wishes to make a substitution in the specifications, the bidder shall furnish to the County, **no later than ten (10) business days prior to the solicitation opening date**, the name of the manufacturer, the model number, and other identifying data and information necessary to aid the County in evaluating the substitution. Such information is submitted through the Procurement Management Division. Any such substitution shall be subject to County approval through the issuance of a written addendum by the County's Procurement Management Division. Substitutions shall be approved only if determined by the County to be an **Approved Alternate** to the prescribed specifications.
- 10.2. A proposal containing a substitution is subject to disqualification if the substitution is not approved by the County. Items bid must be identified by brand name, number, manufacturer and model, and shall include full descriptive information, brochures, and appropriate attachments. Brand names are used for descriptive purposes only. An **Approved Alternate** product or service may be used.

11. ADDITIONS, REVISIONS AND DELETIONS

- 11.1. Additions, revisions, or deletions to the Terms and Conditions, specifications that change the intent of the solicitation will cause the solicitation to be non-responsive and the proposal will not be considered. The Procurement Management Director shall be the sole judge as to whether or not any addition, revision, or deletion changes the intent of the solicitation.

12. NEGOTIATED ITEMS

- 12.1. Any item not outlined in the Scope of Services may be subject to negotiations between the County and the successful Proposer.
- 12.2. After award of this proposal the County reserves the right to add or delete items/services at prices to be negotiated at the time of addition or deletion.
- 12.3. At contract renewal time(s) or in the event of significant industry wide market changes, the County may negotiate justified adjustments such as price, terms, etc., to this contract with the County, in its sole judgment, considers such adjustments to be in the best interest of the County.

13. ERRORS, OMISSIONS, CALCULATION ERRORS (as applicable)

- 13.1. **Errors/Omissions:** Approval by County of the successful proposer's work product for the project shall not constitute nor be deemed a release of the responsibility and liability of the successful proposer for the accuracy and competency of the successful proposer's designs, drawings, specifications or other documents and work pertaining to the project. Additionally, approval by the County of the successful proposer's work product shall not be deemed to be an assumption of drawings, specifications or other documents prepared by the successful proposer for the project. After acceptance of the final plans by the County, the successful proposer agrees, prior to and during the construction of the project, to perform such successful proposer services, at no additional cost to the County, as may be required by the County to correct errors or omissions on the plans prepared by the successful proposer pertaining to the project.
- 13.2. **Calculation Errors:** In the event of multiplication/addition error(s), the unit price shall prevail. Written prices shall prevail over figures where applicable. All proposals shall be reviewed mathematically and corrected, if necessary, using these standards, prior to additional evaluation.

14. CONFIDENTIALITY

- 14.1. Proposers should be aware that all proposals provided are subject to public disclosure and will **not** be afforded confidentiality, unless provided by Chapter 119 Florida Statute.
- 14.2. If information is submitted with a proposal that is deemed "Confidential" the proposer must stamp those pages of the proposal that are considered confidential. The proposer must provide documentation as to validate why these documents should be declared confidential in accordance with Chapter 119, "Public Records," exemptions.

PROJECT FUNDING PACKAGE

EXHIBIT E

- 14.3. Lee County **will not reveal engineering estimates or budget amounts for a project** unless required by grant funding or unless it is in the best interest of the County. According to Florida State Statute 337.168: A document or electronic file revealing the official cost estimate of the department of a project is confidential and exempt from the provisions of s. 119.07(1) until the contract for the project has been executed or until the project is no longer under active consideration.
15. CONFLICT OF INTEREST
- 15.1. All proposers are hereby placed on formal notice that per Section 3 of Lee County Ordinance No. 92-22: The County is prohibited from solicitation of a professional services firm to perform project design and/or construction services if the firm has or had been retained to perform the project feasibility or study analysis.
- And:
- 15.2. A professional services firm who has performed or participated in the project feasibility planning, study analysis, development of a program for future implementation or drafting of solicitation documents directly related to this County project, as the primary vendor/consulting team, cannot be selected or retained, as the primary consultant/vendor or named a member of the consulting/contracting team, to perform project design, engineering or construction services for subsequent phase(s) or scope of work for this project. Pursuant to FS. S287.057 (17) the firm will be deemed to have a prohibited conflict of interest that creates an unfair competitive advantage.
- 15.3. Should your proposal be found in violation of the above stated provisions; the County will consider this previous involvement in the project to be a conflict of interest, which will be cause for immediate disqualification of the proposal from consideration for this project.
- 15.4. **Business Relationship Disclosure Requirement:** The award hereunder is subject to the provisions of Chapter 112, Public Officers and Employees: General Provisions, Florida Statutes. All proposers must disclose with their proposal the name of any officer, director or agent who is also an employee of the Lee County or any of its agencies. Further, all proposers must disclose the name of any County employee who owns directly or indirectly, an interest of five percent (5%) or more in the proposer's firm or any of its branches.
16. ANTI-LOBBYING CLAUSE (Cone of Silence)
- 16.1. Following Florida Statute Section 287.057(23), Upon the issuance of the solicitation, prospective proposers or any agent, representative or person acting at the request of such proposer shall not have any contact, communicate with or discuss any matter relating in any way to the solicitation with any Commissioner, Evaluation Review Committee, agent or employee of the County other than the Procurement Management Director or their designee. This prohibition begins with the issuance of any solicitation and ends upon execution of the final contract or when the solicitation has been cancelled. **If it is determined that improper communications were conducted, the Proposer maybe declared non- responsible.**
17. DRUG FREE WORKPLACE
- 17.1. Lee County Board of County Commissioners encourages Drug Free Workplace programs.
18. FLORIDA CERTIFIED ENTERPRISES
- 18.1. The County encourages the use of Florida Certified Enterprises such as such as Disadvantaged, Minority, Women, Veterans Business Enterprise (DBE, MBE, WBE, VBE) firms.
- 18.2. Bidder/Proposer is requested to indicate whether the Firm and/or any proposed sub-consultants are a Florida Certified Enterprise. Lee County encourages the utilization and participation of DBE, MBE, WBE, VBE or similar in procurements, and evaluation proceedings will be conducted within the established guidelines regarding equal employment opportunity and nondiscriminatory action based upon the grounds of race, color, sex or national origin. Interested Florida Certified Enterprises such as Disadvantaged, Minority, Women, Veterans Business Enterprise (DBE, MBE, WBE, VBE) firms and similar are encouraged to submit.
19. ANTI-DISCRIMINATION/EQUAL EMPLOYMENT OPPORTUNITY
- 19.1. The proposer agrees to comply, in accordance with Florida Statute 287.134, 504 of the Rehabilitation Act of 1973 as amended, the Americans with Disabilities Act of 1990 (ADA), the ADA Amendments Act of

**PROJECT FUNDING PACKAGE
EXHIBIT E**

2008 (ADAAA) that furnishing goods or services to the County hereunder, no person on the grounds of race, religion, color, age, sex, national origin, disability or marital status shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.

- 19.2. The proposer will not discriminate against any employee or applicant for employment because of race, religion, color, age, sex, national origin, disability, or marital status. The proposer will make affirmative efforts to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, age, sex, national origin, disability, or marital status.
- 19.3. The proposer will include the provisions of this section in every sub-contract under this contract to ensure its provisions will be binding upon each sub-contractor. The proposer will take such actions in respect to any sub-contractor, as the contracting agency may direct, as a means of enforcing such provisions, including sanctions for non-compliance.
- 19.4. An entity or affiliate who has been placed on the State of Florida's Discriminatory Vendor List (This list may be viewed by going to the Department of Management Services website at <http://www.dms.myflorida.com>) may not submit a bid on a contract to provide goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not award or perform work as a vendor, supplier, sub-contractor, or consultant under contract with any public entity, and may not transact business with any public entity.

20. SUB-PROPOSER/CONSULTANT

- 20.1. The use of sub-proposer/consultant under this solicitation is not allowed without prior written authorization from the County representative.

21. RFP - PROJECT GUIDELINES

- 21.1. The County has established the following Guidelines, Criteria, Goals, Objectives, Constraints, Schedule, Budget and or Requirements which shall service as a guide to the proposer(s) in conforming the professional services and work to provide pursuant to this Agreement/Contract:
 - 21.1.1. No amount of work is guaranteed upon the execution of an agreement/contract.
 - 21.1.2. Hourly rates and all other negotiated expenses will remain in effect throughout the duration of the agreement/contract period.
 - 21.1.3. This contract does not entitle any firm to exclusive rights to County agreements/contracts. The County reserves the right to perform any and all available required work in-house or by any other means it so desires.
 - 21.1.4. In reference to vehicle travel, mileage and man-hours spent in travel time, is considered incidental to the work and not an extra compensable expense.
 - 21.1.5. Lee County reserves the right to add or delete, at any time, and or all tasks or services associated with this agreement.
 - 21.1.6. Any Single Large Project: The County, in its sole discretion, reserves the right to separately solicit any project that is outside the scope of this solicitation, whether through size, complexity or the dollar value.

22. RFP – EVALUATION

- 22.1. **Ranking Method:** Lee County uses the Dense Ranking (1223" ranking). In Dense Ranking, items that compare equal, receive the same ranking number, and the next item(s) receive the immediately following ranking number. Equivalently, each item's ranking number is 1 plus the number of items ranked above it that are distinct with respect to the ranking order. This ranking method is used for each individual committee member's scores. Thus, if A ranks ahead of B and C (which compare equal) which are both ranked ahead of D, then A is ranked number 1 ("first"), B is ranked number 2 ("joint second"), C is also ranked number 2 ("joint second") and D is ranked number 3 ("third").
- 22.2. **Evaluation Meeting(s):**
 - 22.2.1. The first evaluation will rank Proposers based on the scores from the selection criteria point values.
 - 22.2.2. Following the initial evaluation process, the short-listed proposer(s) may be required to provide an on-site interview/presentation.

PROJECT FUNDING PACKAGE

EXHIBIT E

- 22.2.3. Such subsequent evaluations are to be accomplished by simply ranking the Proposers based off the details provided through the on-site interview/presentation. Proposers will be ranked in sequential order with one (1) being the highest ranking. Proposers' rankings will then be totaled with the total lowest scores receiving final rank order starting with one (1) that shall indicate the highest technically evaluated and most qualified Proposer by the evaluation committee.
- 22.2.4. Proposed short-list and final selection meeting dates are posted on the Procurement Management web page: www.lee.gov/procurement (Projects, Award Pending.)

23. RFP – SELECTION PROCEDURE

- 23.1. The selection will be made in accordance with Lee County Procurement Policy. Some or all of the responding proposer(s) may be requested to provide interviews and/or presentations of their proposal, for the ranking process.
- 23.2. The recommendation to award, negotiated rates and agreement/contract(s) will be submitted to the Board of County Commissioners for approval.
- 23.3. If a satisfactory agreement/contract(s) cannot be negotiated, in a reasonable amount of time, the County, in its sole discretion, may terminate negotiations with the selected proposer(s) and begin agreement/contract negotiations with the next finalist.
- 23.4. The Procurement Management Director reserves the right to exercise their discretion to:
 - 23.4.1. Make award(s) to one or multiple proposers.
 - 23.4.2. Waive minor informalities in any response;
 - 23.4.3. Reject any and all proposals with or without cause;
 - 23.4.4. Accept the response that in its judgment will be in the best interest of Lee County

24. RFP – TIEBREAKER

- 24.1. In the event of a tie, two or more proposers that have the same ranking, the following steps will be taken to determine the highest ranked proposer. This method shall be used for all (RFP) ties.
 - 24.1.1. Step 1: The proposer that has the highest number of 1st place rankings shall be deemed the first ranked proposer. In the event a tie still exists the proposer with the highest number of 2nd, place rankings shall be the first ranked proposer. Should a tie still remain the method used above will continue with each ranking level, 3rd, then 4th, then 5th, etc. rank, will be counted until the tie is broken.
 - 24.1.2. Step 2: At the conclusion of step 1, if all is equal, the proposer having a drug-free work place program, shall be deemed the first ranked proposer.
 - 24.1.3. Step 3: In the event the tie exists then the highest ranked proposer from the first evaluation committee meeting, in which point values were applied, will win the award. One being the highest.
 - 24.1.4. Step 4: At the conclusion of steps 1, 2, 3, if all are equal, the 1st place proposer shall be determined by the flip of a coin.
- 24.2. When the tiebreaker is determined the highest ranked proposer shall be awarded the contract or receive the first opportunity to negotiate, as applicable.
- 24.3. If an award or negotiation is unsuccessful with the highest ranked proposer, award or negotiations may commence with the next highest ranked proposer.

25. RFP – EVALUATION/ SELECTION COMMITTEE

- 25.1. The selection shall be by a Selection Committee consisting of staff representatives from the appropriate County Departments as approved by the Procurement Management Director or designee unless otherwise mandated by law.
- 25.2. The Selection Committee will receive and review written proposals in response to this Request for Proposal (RFP). Responses will be evaluated against a set of criteria to determine those Proposers/Firms most qualified and suited for this project, resulting, where applicable, in a short-list of no fewer than the top ranked three (3) firms to be interviewed or provide presentations.
- 25.3. The County reserves the right, where allowable and applicable, to begin negotiations with the top ranked firm(s) without hosting interviews/presentations.

26. WITHDRAWAL OF PROPOSAL

PROJECT FUNDING PACKAGE

EXHIBIT E

- 26.1. No proposal may be withdrawn for a period of **180 calendar days** after the scheduled time for receiving proposals. A proposal may be withdrawn prior to the proposal opening date and time. Withdrawal requests must be made in writing to the Procurement Management Director, who will approve or disapprove the request.
- 26.2. A proposer may withdraw a proposal any time prior to the opening of the solicitation.
- 26.3. After proposals are opened, but prior to award of the contract by the County Commission, the Procurement Management Director may allow the withdrawal of a proposal because of the mistake of the proposer in the preparation of the proposal document. In such circumstance, the decision of the Procurement Management Director to allow the proposal withdrawal, although discretionary, shall be based upon a finding that the proposer, by clear and convincing evidence, has met each of the following four tests:
 - 26.3.1. The proposer acted in good faith in submitting the proposal,
 - 26.3.2. The mistake in proposal preparation that was of such magnitude that to enforce compliance by the proposer would cause a severe hardship on the proposer,
 - 26.3.3. The mistake was not the result of gross negligence or willful inattention by the proposer; and
 - 26.3.4. The mistake was discovered and was communicated to the County prior to the County Commission having formally awarded the contract/agreement.

27. PROTEST RIGHTS

- 27.1. Any Bidder that has submitted a formal Response to Lee County, and who is adversely affected by an intended decision with respect to the Award, has the right to protest an intended decision posted by the County as part of the Solicitation process.
- 27.2. Notice of Intended Decision is posted on the Lee County Department of Procurement Management website (www.leegov.com/procurement). Bidders are solely responsible to check for information regarding the Solicitation.
- 27.3. Refer to the "Procurement Protest" section of the Lee County Procurement Ordinance 22-06 for a complete description of the protest process and associated requirements. The ordinance is posted on the Lee County website or may be obtained by contacting the Procurement Management Director.
- 27.4. In order to preserve the right to protest, a written **"Notice Of Intent To File A Protest" must be filed with the Lee County Procurement Management Director within seventy-two (72) hours of Posting of the Notice of Intended Decision.**
 - 27.4.1. The notice shall clearly indicate all grounds being claimed for the protest.
 - 27.4.2. The notice must be physically received by the Procurement Management Director within the required time frame described above. No additional time will be granted for mailing.
- 27.5. Following receipt of the Notice of Intent to File a Protest, a **"Protest Bond"** and **"Formal Written Protest"** must be filed **within ten (10) business days** of Posting of the Notice of Intended Decision.
- 27.6. **Failure to follow the protest procedures requirement within the time frames as prescribed herein and in the Lee County Procurement Ordinance 22-06 shall constitute a waiver of the right to protest and shall bar any resulting claims.**

28. AUTHORITY TO UTILIZE BY OTHER GOVERNMENT ENTITIES

- 28.1. This opportunity is also made available to any government entity. Pursuant to their own governing laws, and subject to the agreement of the vendor, other entities may be permitted to make purchases at the terms and conditions contained herein. Lee County Board of County Commissioners will not be financially responsible for the purchases of other entities from this solicitation.

29. CONTRACT ADMINISTRATION

29.1. Designated Contact:

- 29.1.1. The awarded proposer shall appoint a person(s) to act as a primary contact for all County departments. This person or back-up shall be readily available during normal working hours by phone or in person, and shall be knowledgeable of the terms and procedures involved.
- 29.1.2. Lee County requires that the awarded proposer to provide the name of a contact person(s) and phone number(s) which will afford Lee County access 24 hours per day, 365 days per year, of this service in the event of major breakdowns or natural disasters.

- 29.2. **RFP – Term:** (unless otherwise stated in the Scope of Work or Detailed Specifications)
- 29.2.1. Unless otherwise stated in the scope of work, specifications, or special conditions the default **contract term shall be for one (1) three-year (3) period. Upon mutual written agreement of both parties, the parties may renew the Agreement, in whole or in part, for a renewal term or terms not to exceed the initial Agreement term of three (3) years. The increments of renewal shall be at the sole discretion of the County as deemed in its best interest.**
- 29.2.2. The County reserves the right to renew this contract, or any portion thereof, and to negotiate pricing as a condition for each.
- 29.2.3. The County's performance and obligation to pay under this contract, and any applicable renewal options, is contingent upon annual appropriation of funds.
- 29.3. **RFP – Basis of Award:**
- 29.3.1. Award will be made to the most responsible and responsive proposer based on the evaluation criteria.
- 29.4. **Agreement/Contract:**
- 29.4.1. The awarded proposer will be required to execute an Agreement/Contract as a condition of award. A sample of this document may be viewed on-line at <http://www.leegov.com/procurement/forms>.
- 29.5. **Records:**
- 29.5.1. **Retention:** The proposer shall maintain such financial records and other records as may be prescribed by Lee County or by applicable federal and state laws, rules and regulations. Unless otherwise stated in the specifications, the proposer shall retain these records for a period of five years after final payment, or until they are audited by Lee County, whichever event occurs first.
- 29.5.2. **Right to Audit/Disclosure:** These records shall be made available during the term of the contract as well as the retention period. These records shall be made readily available to County personnel with reasonable notice and other persons in accordance with the Florida General Records Schedule. Awarded Bidder/Proposer(s) are hereby informed of their requirement to comply with FL §119 specifically to:
- 29.5.2.1. Keep and maintain public records required by the County to perform the service.
- 29.5.2.2. Upon request from the County's custodian of public records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided or as otherwise provided by law.
- 29.5.2.3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the County.
- 29.5.2.4. Upon completion of the contract, transfer, at no cost, to the County all public records in possession of the contractor or keep and maintain public records required by the County to perform the service. If the contractor transfers all public records to the County upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the County, upon request from the County's custodian of public records, in a format that is compatible with the information technology systems of the County.
- 29.5.3. **Public Record: IF THE VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FL § , TO THE VENDOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 239-533-2221, 2115 SECOND STREET, FORT MYERS, FL 33901, Email at PRRCustodian@leegov.com or Visit <http://www.leegov.com/publicrecords>.**

PROJECT FUNDING PACKAGE

EXHIBIT E

29.5.4. **Ownership:** It is understood and agreed that all documents, including detailed reports, plans, original tracings, specifications and all data prepared or obtained by the successful proposer in connection with its services hereunder, include all documents bearing the professional seal of the successful proposer, and shall be delivered to and become the property of Lee County, prior to final payment to the successful proposer or the termination of the agreement. This includes any electronic versions, such as CAD or other computer aided drafting programs.

29.6. **Termination:**

29.6.1. Any agreement as a result of this solicitation may be terminated by either party giving **thirty (30) calendar days' advance written notice**. The County reserves the right to accept or not accept a termination notice submitted by the proposer, and no such termination notice submitted by the vendor shall become effective unless and until the vendor is notified in writing by the County of its acceptance.

29.6.2. The Procurement Management Director may immediately terminate any agreement as a result of this solicitation for emergency purposes, as defined by the Lee County Procurement Ordinance 22-06.

29.6.3. Any proposer who has voluntarily withdrawn from a solicitation without the County's mutual consent during the contract period shall be barred from further County procurement for a **period of 180 days**. The vendor may apply to the Board for a waiver of this debarment. Such application for waiver of debarment must be coordinated with and processed by the Procurement Management Department.

29.6.4. The County reserves the right to terminate award or contract following any of the below for goods or services over \$1,000,000:

29.6.4.1. Contractor is found to have submitted a false certification as provided under FL § 287.135 (5);

29.6.4.2. Contractor has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List;

29.6.4.3. Contractor has engaged in business operations in Cuba or Syria;

29.6.4.4. Contractor has been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel – beginning October 1, 2016.

30. WAIVER OF CLAIMS

30.1. Once this contract expires, or final payment has been requested and made, the awarded vendor shall have no more than **thirty (30) calendar days** to present or file any claims against the County concerning this contract. After that period, the County will consider the vendor to have waived any right to claims against the County concerning this agreement.

31. LEE COUNTY PAYMENT PROCEDURES

31.1. All vendors are requested to mail an original invoice to:

**Lee County Finance Department
Post Office Box 2238
Fort Myers, FL 33902-2238**

31.2. All invoices will be paid as directed by the Lee County payment procedure unless otherwise stated in the detailed specification portion of this project.

31.3. Lee County will not be liable for requests for payment deriving from aid, assistance, or help by any individual, vendor, proposer, or bidder for the preparation of these specifications.

31.4. Lee County is generally a tax exempt entity subject to the provisions of the 1987 legislation regarding sales tax on services. Lee County will pay those taxes for which it is obligated, or it will provide a Certificate of Exemption furnished by the Department of Revenue. All proposers should include in their proposal, all sales or use taxes, which they will pay when making purchases of material or sub-contractor's services.

32. MATERIAL SAFETY DATA SHEETS (MSDS/SDS) (if applicable)

32.1. In accordance with Chapter 443 of the FL §, it is the vendor's responsibility to provide Lee County with Material Safety Data Sheets on bid materials, as may apply to this procurement.

33. DEBRIS DISPOSAL (if applicable)

PROJECT FUNDING PACKAGE

EXHIBIT E

- 33.1. Unless otherwise stated, the Proposer shall be fully responsible for the lawful removal and disposal of any materials, debris, garbage, vehicles or other such items which would interfere with the undertaking and completion of the project. There shall not be an increase in time or price associated with such removal.
34. SHIPPING (if applicable)
- 34.1. Cost of all shipping to the site, including any inside delivery charges and all unusual storage requirements shall be borne by the proposer unless otherwise agreed upon in writing prior to service. It shall be the proposer's responsibility to make appropriate arrangements, and to coordinate with authorized personnel at the site, for proper acceptance, handling, protection and storage (if available) of equipment and material delivered. All pricing to be F.O. B. destination.
- 34.2. The materials and/or services delivered under the proposal shall remain the property of the seller until a physical inspection and actual usage of these materials and/or services is accepted by the County and is deemed to be in compliance with the terms herein, fully in accord with the specifications and of the highest quality.
35. LOCAL VENDOR PREFERENCE
- 35.1. The Procurement Management Department will adhere to the Lee County Ordinance No. 22-06, and as may be amended from time to time (the County's "Local Vendor Preference"). It shall be at the discretion of the County Manager or Designee whether to apply Local Vendor Preference to any particular Solicitation.
- 35.2. The County's Local Vendor Preference, as it relates to Bidding preferences for local Vendors, is not applicable to Solicitations or Contracts when Commodities and/or Services may be provided in the event of an Emergency.
- 35.3. The County's Local Vendor Preference shall not apply in any procurement for Commodities or Services if the use of the Local Vendor Preference is prohibited by the terms of a grant or funding agreement or other prevailing law or policy.
36. INSURANCE (AS APPLICABLE)
- 36.1. Insurance shall be provided by the awarded proposer. Upon request, a certificate of insurance (COI) complying with the attached guide shall be provided by the proposer.

End of Terms and Conditions Section

PROJECT FUNDING PACKAGE
EXHIBIT E
INSURANCE REQUIREMENTS



**Lee County Insurance Requirements
including Pollution Liability**

Minimum Insurance Requirements: *Risk Management in no way represents that the insurance required is sufficient or adequate to protect the vendors' interest or liabilities. The following are the required minimums the vendor must maintain throughout the duration of this contract. The County reserves the right to request additional documentation regarding insurance provided*

- a. **Commercial General Liability** - Coverage shall apply to premises and/or operations, products and completed operations, independent contractors, contractual liability exposures with minimum limits of:

\$1,000,000 per occurrence
\$2,000,000 general aggregate
\$1,000,000 products and completed operations
\$1,000,000 personal and advertising injury

- b. **Business Auto Liability** - The following Automobile Liability will be required and coverage shall apply to all owned, hired and non-owned vehicles use with minimum limits of:

\$1,000,000 combined single limit (CSL)

- c. **Workers' Compensation** - Statutory benefits as defined by FS 440 encompassing all operations contemplated by this contract or agreement to apply to all owners, officers, and employees regardless of the number of employees. Workers Compensation exemptions may be accepted with written proof of the State of Florida's approval of such exemption. Employers' liability will have minimum limits of:

\$500,000 per accident
\$500,000 disease limit
\$500,000 disease – policy limit

- d. **Pollution Liability** - Covering property loss and liability arising from pollution-related damages, for sites that have been inspected and found uncontaminated. Transporter moving hazardous products or waste as cargo aboard the transporter's truck:

\$1,000,000 bodily injury / property damage/ cleanup, including wrongful delivery.

**The required minimum limit of liability shown in a. or b. may be provided in the form of "Excess Insurance" or "Commercial Umbrella Policies." In which case, a "Following Form Endorsement" will be required on the "Excess Insurance Policy" or "Commercial Umbrella Policy."*

Revised 07/16/2018 – Page 1 of 2

PROJECT FUNDING PACKAGE
EXHIBIT E



Verification of Coverage:

1. Coverage shall be in place prior to the commencement of any work and throughout the duration of the contract. A certificate of insurance will be provided to the Risk Manager for review and approval. The certificate shall provide for the following:
 - a. **The certificate holder shall read as follows:**

**Lee County Board of County Commissioners
P.O. Box 398
Fort Myers, Florida 33902**
 - b. ***“Lee County, a political subdivision and Charter County of the State of Florida, its agents, employees, and public officials” will be named as an "Additional Insured" on the General Liability policy, including Products and Completed Operations coverage.***
 - c. Lee County will be given notice prior to cancellation or modification of any stipulated insurance. Such notification will be in writing by registered mail, return receipt requested and addressed to the Risk Manager (P.O. BOX 398 Ft. Myers, FL 33902).

Special Requirements:

1. An appropriate "Indemnification" clause shall be made a provision of the contract.
2. It is the responsibility of the general contractor to insure that all subcontractors comply with all insurance requirements.

Revised 07/16/2018 – Page 2 of 2

End of Insurance Guide section

**PROJECT FUNDING PACKAGE
EXHIBIT E
SUPPLEMENTAL CONDITIONS AND CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY
CONTRACTS UNDER FEDERAL AWARDS**

1. FEDERAL FUNDING

- 1.1 When property or services are procured using funds derived from a Federal grant or Agreement whether direct to the County or “pass-through” from another entity, the County is required to and will follow the Federal procurement standards in the “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards”, 2 C.F.R. Sections 200.213 and 200.317 through 200.326.
- 1.2 CONTRACTOR, further referred to as CONSULTANT/CONTRACTOR/VENDOR within this section, shall work with the County under this Agreement to assure that it will comply with the following statutes and regulations to the extent applicable:
- (1) 2 CFR, Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; Appendix II
 - (2) The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended, 42 U.S.C. 5121 et seq., and Related Authorities
 - (3) Sections 1361(A) of the National Flood Insurance Act of 1968, 42 U.S.C. 4104c, as amended by the National Flood Insurance Reform Act of 1994, Public Law 103-325 and the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004, Public Law 108-264
 - (4) 31 CFR Part 25 Rules and Procedures for Funds Transfers

Contract Cost and Price: For every procurement in excess of the Simplified Acquisition Threshold, including contract modifications, the County shall perform a cost or price analysis in connection with every procurement subject to Federal procurement guidelines, which shall include an independent estimate of cost prior to issuing bids or proposals. For proposals where price is not considered in the award, profit shall be negotiated as a separate element of the price. In determining whether profit is fair and reasonable, the County shall consider the complexity of work, the risk to be borne by the contractor, the contractor’s investment, the amount of subcontracting necessary, the quality of the contractor’s record and past performance, and industry profit rates for the surrounding geographical area. “Cost Plus Percentage” methods for determining profit may not be used.

2. EQUAL EMPLOYMENT OPPORTUNITY

2.1. During the performance of this contract, the contractor agrees as follows:

- 2.1.1. The CONSULTANT/CONTRACTOR/VENDOR will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The CONSULTANT/CONTRACTOR/VENDOR will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONSULTANT/CONTRACTOR/VENDOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- 2.1.2. The CONSULTANT/CONTRACTOR/VENDOR will, in all solicitations or advertisements for employees placed by or on behalf of the CONSULTANT/CONTRACTOR/VENDOR, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- 2.1.3. The CONSULTANT/CONTRACTOR/VENDOR will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has

PROJECT FUNDING PACKAGE

EXHIBIT E

inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the CONSULTANT/CONTRACTOR/VENDOR's legal duty to furnish information.

- 2.1.4. The CONSULTANT/CONTRACTOR/VENDOR will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the CONSULTANT/CONTRACTOR/VENDOR's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 2.1.5. The CONSULTANT/CONTRACTOR/VENDOR will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 2.1.6. The CONSULTANT/CONTRACTOR/VENDOR will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 2.1.7. In the event of the CONSULTANT/CONTRACTOR/VENDOR's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the CONSULTANT/CONTRACTOR/VENDOR may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- 2.1.8. The CONSULTANT/CONTRACTOR/VENDOR will include the provisions of paragraphs (a) through (h) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each sub-CONSULTANT/CONTRACTOR/VENDOR. The CONSULTANT/CONTRACTOR/VENDOR will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the CONSULTANT/CONTRACTOR/VENDOR becomes involved in, or is threatened with, litigation with a sub-CONSULTANT/CONTRACTOR/VENDOR as a result of such direction, the CONSULTANT/CONTRACTOR/VENDOR may request the United States to enter into such litigation to protect the interests of the United States.

3. MAINTENANCE OF RECORDS

- 3.1. The CONSULTANT/CONTRACTOR/VENDOR will keep and maintain adequate records and supporting documentation applicable to all of the services, work, information, expense, costs, invoices and materials provided and performed pursuant to the requirements of this agreement. Said records and documentation will be retained by the CONSULTANT/CONTRACTOR/VENDOR for a minimum of five (5) years from the date of termination of this agreement, or for such period is required by law.

**PROJECT FUNDING PACKAGE
EXHIBIT E**

- 3.2. CONSULTANT/CONTRACTOR/VENDOR shall provide, when requested, access by the County, Federal granting agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the CONSULTANT/CONTRACTOR/VENDOR which are directly pertinent to this contract for the purpose of making audit, examination, excerpts, and transcriptions.
- 3.3. CONSULTANT/CONTRACTOR/VENDOR agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- 3.4. CONSULTANT/CONTRACTOR/VENDOR agrees to provide the GRANT AGENCY Administrator or his authorized representatives' access to construction or other work sites pertaining to the work being completed under the contract.
- 3.5. CONSULTANT/CONTRACTOR/VENDOR shall retain all records associated with this solicitation and any agreements that are created in response to the solicitation for a period of no less than five (5) years after final payments and all other pending matters are closed.
- 3.6. The County and its authorized agents shall, with reasonable prior notice, have the right to audit, inspect and copy all such records and documentation as often as the County deems necessary during the period of this agreement, and during the period as set forth in the paragraphs above; provided, however, such activities shall be conducted only during normal business hours of the CONSULTANT/CONTRACTOR/VENDOR and at the expense of the County.

4. DHS SEAL, LOGO, AND FLAGS

- 4.1. The CONSULTANT/CONTRACTOR/VENDOR shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific GRANT AGENCY pre-approval.

5. LOCAL VENDOR PREFERENCE EXCLUSION:

- 5.1. Local Vendor Preference Ordinance has been waived for this service/purchase request and any and all references contained herein are non-applicable to this request and subsequent contract and/or purchase order(s).

6. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, and EXECUTIVE ORDERS

- 6.1. This is an acknowledgment that GRANT AGENCY financial assistance will be used only to fund the services requested. The CONSULTANT/CONTRACTOR/VENDOR will comply with all applicable federal law, regulations, executive orders, GRANT AGENCY policies, procedures, and directives.

7. NO OBLIGATION BY THE FEDERAL GOVERNMENT

- 7.1. The Federal Government is not a party to this solicitation and is not subject to any obligations or liabilities to the non-Federal entity, CONSULTANT/CONTRACTOR/VENDOR, or any other party pertaining to any matter resulting from the Solicitation.

8. FRAUD and FALSE OR FRAUDULENT OR RELATED ACTS

- 8.1. The CONSULTANT/CONTRACTOR/VENDOR acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the CONSULTANT/CONTRACTOR/VENDORS actions pertaining to this solicitation.

9. SUBCONTRACTS

- 9.1. The selected firm must require compliance with all federal requirements of all sub-CONSULTANT/CONTRACTOR/VENDORS performing work for Prime CONSULTANT/CONTRACTOR/VENDOR under this Agreement, by including these federal requirements in all contracts with sub-CONSULTANT/CONTRACTOR/VENDORS.

10. CONFLICT OF INTEREST

- 10.1. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officers, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity must neither solicit nor accept gratuities, favors, or anything of monetary value from CONSULTANT/CONTRACTOR/VENDORS or parties to subcontracts.

11. EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM (E-VERIFY)

- 11.1. Statutes and Executive Orders require employers to abide by the Immigration laws of the United States and to employ only individuals who are eligible to work in the United States. The Employment Eligibility Verification System (E-Verify) operated by the U.S. Department of Homeland Security (DHS) in partnership with the Social Security Administration (SSA) to provides an internet-based means of verifying employment eligibility of workers in the united States; it is not a substitute for any other employment eligibility verification requirements.
- 11.2. Sub-CONSULTANT/CONTRACTOR/VENDOR requirement: Vendors shall require all subcontracted vendors to flow down the requirement to use E-Verify to sub-CONSULTANT/CONTRACTOR/VENDORS.
- 11.3. It shall be the vendor's responsibility to familiarize themselves with all rules and regulations governing this program.
- 11.4. For additional information regarding the Employment Eligibility Verification System (E-Verify) program visit the following website: <http://www.dhs.gov/E-Verify>.

12. ENERGY POLICY AND CONSERVATION ACT

- 12.1. CONSULTANT/CONTRACTOR/VENDOR must follow any 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 (42 U.S.C. 6201).

13. SMALL AND MINORITY BUSINESS, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS

- 13.1. Place qualified small and minority businesses and women's business enterprises on solicitation lists.
- 13.2. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources.
- 13.3. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

- 13.4. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises.
- 13.5. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises.
- 13.6. Requiring the prime CONSULTANT/CONTRACTOR/VENDOR, if subcontracts are to be let, to take the five previous affirmative steps.

14. DOMESTIC PREFERENCES FOR PROCUREMENT (2 C.F.R. § 200.322)

- 14.1. As appropriate and to the greatest extent consistent with law, state and non-state entities should, to the greatest extent practicable under its GRANT AGENCY award, provide a preference for the purchase of goods, products or materials produced in the United States (including but not limited to iron, aluminum, steel, cement and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award. 2 C.F.R. § 200.322 also provides specific definitions for "Produced in the United States" and "manufactured products" that states should review.

15. PROHIBITION ON CONTRACTING FOR COVERED TELECOMMUNICATIONS OR SERVICES (2 C.F.R. § 200.216)

- 15.1. 2 C.F.R. § 200.216 prohibits state and non-state entities from obligating or expending loan or grant funds to procure or obtain, extend or renew a contract to procure or obtain, or enter into a contract (or extend or renew a contract) to procure or obtain, equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as a critical technology as part of any system as identified in Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (FY 2019 NDAA), Pub. L. No. 115-232 (2018) and 2 C.F.R. §§ 200.216, 200.327, 200.471, and Appendix II to 2 C.F.R. Part 200. See Prohibitions on Expending GRANT AGENCY Award Funds for Covered Telecommunications Equipment or Services- Interim Policy for additional information.

16. TERMINATION FOR CAUSE AND/OR CONVENIENCE

- 16.1. The County, by written notice to the CONSULTANT/CONTRACTOR/VENDOR, may terminate this Agreement with or without cause (for convenience), in whole or in part, when the County determines in its sole discretion that it is in the County's best interest to do so. In the event of termination, the CONSULTANT/CONTRACTOR/VENDOR will not incur any new obligations for the terminated portion of the Agreement after the CONSULTANT/CONTRACTOR/VENDOR has received notification of termination.
- 16.2. If the Agreement is terminated before performance is completed, the CONSULTANT/CONTRACTOR/VENDOR shall be paid only for that work satisfactorily performed for which costs can be substantiated. Such payment, however, may not exceed an amount that is the same percentage of the Agreement price as the amount of work satisfactorily completed is a percentage of the total work called for by this Agreement. All work in progress shall become the property of the County and shall be turned over promptly by the CONSULTANT/CONTRACTOR/VENDOR.

17. SUSPENSION AND DEBARMENT

- 17.1. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the CONSULTANT/CONTRACTOR/VENDOR is required to verify that none of the CONSULTANT/CONTRACTOR/VENDOR, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- 17.2. The CONSULTANT/CONTRACTOR/VENDOR must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- 17.3. This certification is a material representation of fact relied upon by the awarded CONSULTANT/CONTRACTOR/VENDOR. If it is later determined that the CONSULTANT/CONTRACTOR/VENDOR did not comply with 2 C.F.R. pt.180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to Lee County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- 17.4. The CONSULTANT/CONTRACTOR/VENDOR agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

18. RECOVERED MATERIALS

- 18.1. In the performance of this contract, the CONSULTANT/CONTRACTOR/VENDOR shall make maximum use of products containing recovered material that are EPA-designated items unless the product cannot be acquired:
- Competitively within a timeframe providing for compliance with the contract performance schedule;
 - Meeting contract performance requirements; or
 - At a reasonable price.
- 18.2. Information about this requirement is available EPA'S Comprehensive Procurement Guidelines web site, <http://www.epa.gov/cpg/> The list of EPA- designate items is available at <http://www.epa.gov/cpg/products/htm>

19. REMEDIES

- 19.1. In the event the CONSULTANT/CONTRACTOR/VENDOR fails to satisfactorily perform or has failed to adhere to the terms and conditions under this Agreement, the County may, upon fifteen (15) calendar days written notice to the CONSULTANT/CONTRACTOR/VENDOR and upon the CONSULTANT/CONTRACTOR/VENDOR's failure to cure within those fifteen (15) calendar days, exercise any one or more of the following remedies, either concurrently or consecutively:
- 19.1.1. Withhold or suspend payment of all or any part of a request for payment.
- 19.1.2. Require that the CONSULTANT/CONTRACTOR/VENDOR refund to the County any monies used for ineligible purposes under the laws, rules and regulations governing the use of these funds.
- 19.1.3. Exercise any corrective or remedial actions, to include but not be limited to:

PROJECT FUNDING PACKAGE

EXHIBIT E

- 19.1.4. Requesting additional information from the CONSULTANT/CONTRACTOR/VENDOR to determine the reasons for or the extent of non-compliance or lack of performance;
- 19.1.5. Issuing a written warning to advise that more serious measures may be taken if the situation is not corrected;
- 19.1.6. Advising the CONSULTANT/CONTRACTOR/VENDOR to suspend, discontinue or refrain from incurring costs for any activities in question; or
- 19.1.7. Requiring the CONSULTANT/CONTRACTOR/VENDOR to reimburse the County for the amount of costs incurred for any items determined to be ineligible.

20. OTHER REMEDIES AND RIGHTS

- 20.1. Pursuing any of the above remedies will not keep the County from pursuing any other rights or remedies, which may be otherwise available under law or in equity. If the County waives any right or remedy in this Agreement or fails to insist on strict performance by the CONSULTANT/CONTRACTOR/VENDOR, it will not affect, extend or waive any other right or remedy of the County, or affect the later exercise of the same right or remedy by the County for any other default by the CONSULTANT/CONTRACTOR/VENDOR.
- 20.2. Unless otherwise provided by the Contract, all claims, counterclaims, disputes and other matters in question between the County and the CONSULTANT/CONTRACTOR/VENDOR arising out of or relating to the Agreement between the parties, or the breach of it, that cannot be resolved by and between the parties after conferring in good faith, will be decided by a court of competent jurisdiction pursuant to Florida law. If such dispute is in state court, venue shall be in the Twentieth Judicial Circuit Court in and for Lee County, Florida. If in federal court, venue shall be in the U.S. District Court for the Middle District of Florida, Ft. Myers Division.

21. CONTRACT WORK HOURS & SAFETY STANDARDS (40 U.S.C. 3701-3708)

- 21.1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- 21.2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- 21.3. Withholding for unpaid wages and liquidated damages. The State of Florida Division of Emergency Management shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary

**PROJECT FUNDING PACKAGE
EXHIBIT E**

to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

- 21.4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

22. CLEAN AIR ACT

- 22.1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- 22.2. The contractor agrees to report each violation to the GRANT AGENCY and the Regional Office of the Environmental Protection Agency and understands and agrees that the GRANT AGENCY and the Regional Office of the Environmental Protection Agency will, in turn, report each violation as required to assure notification to the County, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- 22.3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by GRANT AGENCY.

23. FEDERAL WATER POLLUTION CONTROL ACT

- 23.1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- 23.2. The contractor agrees to report each violation to the GRANT AGENCY and the Regional Office of the Environmental Protection Agency and understands and agrees that the GRANT AGENCY and the Regional Office of the Environmental Protection Agency will, in turn, report each violation as required to assure notification to the County, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- 23.3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by GRANT AGENCY.

24. BYRD ANTI-LOBBYING AMENDMENT

- 24.1. CONSULTANT/CONTRACTOR/VENDORS who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with nonfederal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

End of Supplemental Conditions

**PROJECT FUNDING PACKAGE
EXHIBIT E
SPECIAL CONDITIONS**

These are conditions that are in relation to this solicitation only and have not been included in the County's standard Terms and Conditions or the Scope of Work.

1. PROJECT TERM

1.1. The Vendor shall be responsible for furnishing and delivering to the Lee County requesting Department(s) the commodity or services on an "as needed basis" for one (1) five-year (5) period. Upon mutual written agreement of both parties, the parties may renew the Agreement, in whole or in part, for a renewal term or terms not to exceed five (5) years. The increments of renewal shall be at the sole discretion of the County as deemed in its best interest.

2. FEMA REIMBURSEMENT

2.1. Work completed under this Agreement may be reimbursed by FEMA as a result of an emergency or disaster. The Vendor agrees to abide by and comply with all Federal terms, conditions, provisions, certifications, affidavits, or otherwise as applicable and stated within this solicitation package. Vendors are required to comply in accordance with Federal Grant Requirements, 2 CFR part 200, terms, conditions, and specifications.

3. CONTRACT TYPE

3.1. Work to be performed under this contract will be authorized, scheduled, funded, and accounted for by issuance of a County Purchase Order (PO) or equivalent work authorization, by and the discretion of the County. The County reserves the right to provide additional project or service clarifications with the issuance of the work authorization.

3.2. As a labor only contract, this contract shall be considered a time and materials contract. As such, each work authorization issued shall contain a not-to-exceed amount. At any time should the Vendor exceed the notated not-to-exceed amount without prior written authorization to do so by the County, all such costs exceeding the noted not-to exceed amount shall be at the risk of the Vendor and may not be charged to the County.

4. COST BREAKDOWN NOTICE

4.1. Upon request of the County, the Vendor may be expected to provide a proposal or fee that includes a detailed cost breakdown including General and Administrative Expenses, Overhead, and Profit rates, if requested by the County. Vendor must advise if audited rates are available and shall provide such rates and documentation for use in negotiation and Cost Analysis if such method is used. Vendor shall provide fee and cost breakdown supporting documentation where and as requested by the County.

5. LOCAL VENDOR PREFERENCE EXCLUSION:

5.1. Local Vendor Preference Ordinance has been waived for this solicitation and any and all references contain herein are non-applicable to this solicitation and subsequent contract and/or purchase order(s).

6. PERFORMANCE AND PAYMENT BOND

6.1 The County reserves the right to require the Contractor to furnish to the County, prior to the commencement of operations, a Performance and Payment Bond in an amount equal to the value established within an issued Work Order or Work Authorization, which bond shall be conditioned upon the successful completion of all work, labor, services, materials to be provided and furnished, and the payment of all Sub-Contractors, materials, and laborers. If the value of the contracted work increases, the Contractor shall be required to provide an updated Performance and Payment Bond in an amount equal to the new value.

**PROJECT FUNDING PACKAGE
EXHIBIT E**

7. COPYRIGHTED MATERIAL

- 7.1. Copyrighted material will be accepted as part of a proposal only if accompanied by a waiver that will allow the County to make paper and electronic copies necessary for the use of County staff and agents. Copyrighted material is not exempt from the Public Records Law, Chapter 119, Florida Statutes. Therefore, such material will be subject to viewing by the public.

End of Special Conditions

**PROJECT FUNDING PACKAGE
EXHIBIT E
DETAILED SPECIFICATIONS**

1. GENERAL SCOPE OF WORK

- 1.1. The Lee County Board of County Commissioners seeks to contract with a qualified Vendor to provide a variety of disaster recovery related services for Lee County, Florida. These services will be on an as-needed basis countywide with no work guaranteed. Not all tasks will be assigned for all events. Services shall include but are not limited to: Large and small scale debris removal projects, separation, staging, disposal, demolition work, vegetative and construction and demolition debris removal, hazardous waste handling, hazardous tree trimming and removal, stump grinding and removal, sand removal from roads, streets, and right-of-ways, and all additional scopes of work as described herein.
- 1.2. All work under this RFP shall be performed in accordance with FEMA rules and guidelines for federal reimbursements and with 2 CFR 200.317-326 as updated and where applicable.

2. DEFINITIONS

- **Contractor / Firm** – The successful proposer (s)
- **Debris Monitoring Consultant** - A Consultant retained by the County to manage administrative aspects of the recovery process including processing FEMA submittals.
- **Debris** – Scattered items and materials broken, destroyed, or displaced by a disaster, Example; trees, construction and demolition material, personal property.
- **FEMA** – Federal Emergency Management Agency
- **FDEM** – Florida Division of Emergency Management
- **DMS** – Debris Management Site- Predetermined site location for either temporary staging or final destination.
- **Storm Litter** - Debris such as leaves and small twigs that would normally require hand raking to collect. Does not include debris easily picked up by hand.
- **Government** - The term “government” as used in this Contract refers to those governmental agencies, which may have a regulatory or funding interest in this Contract.

3. CONTRACTOR RESPONSIBILITY & ADDITIONAL SCOPE CONDITIONS

- 3.1. The Contractor may be called upon throughout the contract to render services to assist the County with special needs and events related to disaster recovery and/or planning activities other than full-scale disasters. Each year of this contract, the Contractor shall provide a minimum of one (1) day (up to 8 hours) of on-site, pre-event training of County’s emergency management and recovery personnel at no additional charge to the County.
- 3.2. The Contractor shall provide technical guidance and consultation before, during, and after the disaster event. For contracted operations, the Contractor shall provide trained administrative support, onsite management staff to work with County officials, field supervisors, operators, drivers, laborers, and all associated vehicles, equipment, tools, and supplies necessary to ensure a successful recovery operation.
- 3.3. The selected Contractor(s) shall be responsible for knowledge and compliance with all federal, state, and local laws, rules, practices, and regulations. The Contractors shall be familiar with the County’s approved debris management plan.
- 3.4. No guarantee is expressed or implied as to the quantity of services to be procured under this request for proposal; no work is guaranteed.

4. INITIATING CONTRACT WHEN A MAJOR DISASTER OCCURS OR IS IMMINENT

- 4.1 When a major disaster occurs or is imminent, the County will contact the firm(s) holding Disaster Recovery Services Contract(s) to advise them of the County's intent to activate the contracts. Debris removal will generally be limited to debris in, upon, or brought to public streets and roads, right-of-ways, municipal properties and facilities, and other public sites, unless otherwise directed.
- 4.2 The County, upon contacting the Contractor, will issue a Notice to Proceed and work order assignment/task authorization. The issuance of the work order/task authorization will allow the Contractor to begin pre-storm preparations and allow the immediate response once the recovery begins. The Contractor shall also begin coordination with County Solid Waste Management personnel. This may include staffing or preparing reports for the Debris Operations and/or Emergency Operation Center.
- 4.3 The Contractor shall have a maximum of 24 hours from notification to proceed by the County to mobilize and begin their response. Failure to mobilize in the allowed time may result in the selection of another Contractor.
- 4.4 The Contractor shall be responsible for determining the method and manner of debris removal and for conducting lawful disposal operations, including regulated hazardous waste. County will determine the primary location of the reduction and disposal sites in consultation with Contractor. Additional sites may be utilized as directed and/or approved by County.
- 4.5 For "Event Types" that require Temporary Debris Staging and Reduction Sites (DMS) the Contractor shall be available for technical assistance to assist the County in determining which pre-approved DMS will be used. Selection of these sites is to be the first task completed by the Debris Management Team. With the completion of this initial task, the result will be a map of the various sites and a basic operation plan for each site.

5. RELATIONSHIP BETWEEN DEBRIS MONITORING CONSULTANT & DEBRIS REMOVAL CONTRACTOR

- 5.1 The County's Debris Monitoring Consultant and/or County Staff provide inspection, engineering, and administrative services as needed to meet the requirements for FEMA reimbursement. The interaction between the Contractor and the Consultant is crucial to the success of the response operation. Therefore, each Contractor shall be capable of working with different accounting and tracking systems.
- 5.2 Prior to the beginning of each hurricane season, the successful Contractor(s) shall meet with the County and the Debris Monitoring Consultant to finalize and test the processes for inspection and documentation that are to be used during the response and recovery phase of debris removal. This meeting is to occur annually or may be included as part of the required training day.

6. SCOPE OF WORK

- 6.1. Contractor shall provide all expertise, personnel, tools, materials, equipment, transportation, supervision and all other services and facilities of any nature necessary to execute, complete and deliver the timely removal and lawful disposal of all eligible storm-generated debris, including hazardous and industrial waste materials; and shall be provided in accordance with the Standards of Performance as set forth in Section 7. Emergency push, debris removal and demolition of structures will be limited to:
 - a) That which is determined to eliminate immediate threats to life, public health, and safety;
 - b) That which has been determined to eliminate immediate threats of significant damage to improved public or private property; and

- c) That which is considered essential to ensure the economic recovery of the affected community to the benefit of the community at large.

These contracted services shall provide for the cost effective and efficient removal and lawful disposal of debris accumulated on all public, residential, and commercial properties, streets, roads, other rights-of-way and public-school properties, including any other locally owned facility or site as may be directed by County. Contracted services shall only be performed when requested and as designated by County via task order.

Contractor shall load and haul the debris from within the legal boundaries of the municipality to a final disposal location defined by the County, or to Debris Management Site (DMS) site(s) and as specified by the County and set out in Section 9.8 of this Contract.

Furthermore, the vendor shall provide services as necessary to assist in the event of any Local, State, or Federal State of Emergency is declared.

6.2. Emergency Push / Road Clearance:

If directed by the County, Contractor shall accomplish the cutting, tossing and/or pushing of debris from the primary transportation routes as identified by and directed by County. This operational aspect of the scope of services shall be for the first 72 (plus or minus) hours after mobilization of 100% of the resources pursuant to Section 8.2. Once this task is accomplished, the following additional tasks shall begin as required.

6.3. Right-of-Way (ROW) Removal:

Contractor shall remove all debris from the ROW when directed to do so by County. Contractor shall use reasonable care not to damage any real or personal property not already damaged by the storm event. Damages shall be handled pursuant to section 9.5.

6.4. Right-of-Entry (ROE) Removal (*if Task Authorized by County*):

Contractor shall exercise due diligence in removing ROE debris from private property, as authorized and directed by the County. The Contractor also agrees to make reasonable efforts to save from destruction items that the property owners wish to save (i.e., trees, small buildings, etc.). Contractor shall exercise caution when working around public utilities (i.e., gas, water, electric, etc.). Every effort will be made to mark these utilities, but County does not warrant that all utilities will be located before debris removal operations begin, nor does Contractor warrant that utility damages will not occur as a result of properly conducting Contracted services.

6.5. Demolition of Structures (*if Task Authorized by County*):

Contractor shall remove structures designated for removal by and at the direction of County, in a timely manner as determined by County.

6.6. Private Property Waivers:

County will secure all necessary permissions, waivers and Right-of-Entry Agreements from real property owners required for the lawful removal of debris and/or demolition of structures from real properties.

6.7. Disaster Recovery Technical Assistance:

Contractor shall provide Disaster Recovery Technical Assistance, to officials within County and designated staff members, to assist a local government with guidance and consultation on all aspects of the recovery process.

6.8. Vegetative Debris Reduction:

Contractor shall reduce the vegetative debris prior to taking it to the County's designated final site(s). This shall be performed through either a burning or chipping process. The County will decide which means is the better method at the time. Required permits are the responsibility of the Contractor. Reduction production rates will be sufficient to meet or exceed the daily collection rate after the fifteenth day. Direct hauling of vegetative debris from the ROW collection point to final disposal site, where the material will not be delivered to or managed at a DMS, will not require reduction and will not be subject to site management or reduction fees.

6.9. Construction and Demolition (C&D) Debris Removal:

Contractor shall collect, consolidate, and remove C&D debris to a location designated by the County. The production rate of this effort will be determined by the County and will be based on the volume of C&D estimated. The production rate should be similar to the vegetation rate. Direct hauling of Construction and demolition debris from the ROW collection point to final disposal site, where the material will not be delivered to or managed at a DMS for reduction or recycling, will not be subject to site management or reduction fees.

6.10. Construction and Demolition (C&D) Debris Recycling & Reduction:

When directed, the Contractor shall sort the C & D and make every effort to recycle as much material as possible to reduce the overall volume transported to the landfill. Funds generated from the recycling process shall be used to reduce the final cost to the County. The Contractor is responsible for handling and proper removal of all environmental hazards collected such as refrigerant in air conditioners and refrigerators, batteries, household hazardous wastes, etc. When directed and due to C&D volumes that justify the use of a DMS, the County will work with the Contractor and FDEP to establish an approved DMS suitable for C&D, including detailed site plans and required environmental protection protocols including but not limited to pre and post use monitoring prior to the use of a DMS for the staging, recycling, and reduction of C&D debris. Cost for environmental monitoring or testing shall be a pass through to the County without profit unless otherwise agreed or initiated and managed by the County. The method of size reduction shall be determined based on the material make-up and the fees for reduction shall be based on the type of equipment used as quoted or as allowed per negotiation for non-quoted specialty equipment.

6.11. Specialized Crews:

If requested by the County, the Contractor shall provide a dedicated crew to collect specific debris piles that cause health and safety issues around hospitals, public schools, County facilities, or other type properties.

7. PERFORMANCE OF SERVICES

7.1. Description of Service:

Contractor agrees to perform Contracted services in a professional and workmanlike manner and in compliance with all applicable laws, ordinances, rules, regulations and permits. Only the highest quality workmanship shall be acceptable. Services, equipment, and workmanship not conforming to the intent of Contract or meeting the approval of County may be rejected. Replacements and/or rework, as required, shall be accomplished at no additional cost to the County.

7.2. Cost of Services:

Contractor shall bear all of its own operating costs and is responsible for all permits, license fees, and maintenance of its own trucks and equipment to keep such property in a condition and manner adequate to accomplish contracted services.

7.3. Sub-Contractor(s):

Contractor may utilize the services of Sub-Contractors and shall be responsible for the acts or omissions of its Sub-Contractors to the same extent Contractor is responsible for the acts and omissions of its own employees. Contractor shall ensure that all its Sub-Contractors have and carry the same major provisions of this Contract and that the work of their Sub-Contractors is subject to said provisions. Nothing contained in this Contract shall create any contractual relationship between any Sub-Contractor and County. Contractor shall supply the names and addresses of Sub-Contractors and materials suppliers when requested to do so by County.

8. STANDARDS OF PERFORMANCE

8.1. Contractor Representative:

Contractor shall have a knowledgeable and responsible representative report to County's designated Contract representative within 24 hours following the execution of this Contract. The Contractor's representative shall have the authority to implement all actions required to begin the performance of contracted services as set out in this Contract and Contractor's General Operations Plan. A Contractor representative shall remain locally during the duration of recovery efforts and be available to routinely meet with County contract administrator. The Contractor shall also consider locating this representative at or near the Lee County EOC to facilitate coordination of debris removal operations. The Contractor shall also provide reports on debris removal operational progress as requested.

8.2. Mobilization:

The Contractor shall have sufficient equipment and forces in Lee County within 4 days of "notification to proceed" to begin removal operations at an initial rate of 3,000 cy per day and increasing that rate, after the sixth day, by a minimum of 3,000 cy each day, building to a consistent, minimum daily rate of 50,000 cy of debris collected, or as modified by the County based on need of the storm event(s). Additional resources may be required to meet the debris activities based on the scope and impact of the event. Adjustments to these minimums may be approved by the County based on the size and scope of the disaster event.

8.3. Time to Complete:

Contractor shall use all efforts to complete all work directed under this Contract as soon as feasibly possible, and in accordance with established timelines for completion of debris related activities for the specific event, as defined by FEMA or other federal reimbursement program guidelines or as agreed to with the County. County will direct the scope and nature of the work to be performed once the extent of damage has been determined.

8.4. Completion of Work:

Contractor shall be responsible for removal of all debris up to the point where remaining debris can only be described as storm litter and additional collection can only be accomplished by the use of hand labor and all DMS mitigation and damages by Contractor have been resolved.

9. GENERAL RESPONSIBILITIES

9.1. County Obligations:

County will furnish all information and documents necessary for the commencement of contracted services, including a written Notice To Proceed. A representative will be designated by County to be the primary point of contact for inspecting the work and answering any on-site questions prior to and after activation of this Contract via a written Notice to Proceed.

County will be responsible for issuing all Public Service Announcements (PSAs) to advise citizens and agencies of the available debris management services. Contractor may assist County with the development of debris management PSAs, if so requested.

9.2. Contractor's Conduct of Work:

Contractor shall be responsible for planning and conducting all operations in a satisfactory workmanship manner. Contractor shall demonstrate and maintain a courteous and responsive demeanor toward all citizens, especially when working on individual private properties. All operations shall be conducted under the review of a County representative at times, places, and by means as directed by County. Contractor shall have and require strict compliance with a written Code of Ethics to be provided by County.

9.3. Supervision by Contractor:

Contractor shall supervise and/or direct all contracted services performed by its employees, agents and Sub-Contractors. Contractor is solely responsible for all means, methods, techniques, safety, and other procedures.

Contractor shall employ and maintain a qualified supervisor at the work site who shall have full authority to act on behalf of Contractor. All communications given to the supervisor by County's authorized representative shall be as binding as if given to Contractor. Multiple work sites will require equal supervision as outlined above. Contractor must ensure that sufficient supervision is provided to manage multifaceted debris management operations that may include projects that require separate coordination, tracking, and documentation; additional supervision and/or project management staff shall be provided if requested by the County for these projects.

9.4. Damages by Contractor:

Contractor shall be responsible for conducting all operations, in such a manner as to cause the minimum damage possible to existing public, private, and commercial property and/or infrastructure. Contractor shall also be responsible for any damages due to the negligence of its employees and Sub-Contractors. Should any property be damaged due to negligence on the part of Contractor, the Contractor shall repair damages promptly and at no additional cost to the County; repairs must be sufficient and a release from claim of damage must be signed by the parties involved. If repairs are not made promptly or sufficiently as to obtain the signed release from claim, the County may elect to coordinate or hire an outside vendor to make the required repairs and will either bill the Contractor for the damages or withhold funds due to the Contractor. County shall make the determination of whether "negligence" has occurred. Contractor shall respond to all damage complaints within 48 hrs. of receipt and maintain a Damage Log tracking all damage complaints including date and point of contact, proposed resolution, status of repairs or settlement, and date of documented release. Contractor shall review this list with County designated contract manager a minimum of weekly and provide copies of all releases. All Contractor damages must be resolved prior to project closeout unless otherwise agreed to by County. If at any time the damage list exceeds 25 open claims without scheduled repairs or at the discretion of the County, the Contractor shall provide, at no additional cost to the County, a dedicated staff member to resolve damage claims.

9.5. Contractor's Duty Regarding Other Contractor(s):

Contractor acknowledges the presence of other Contractors involved in disaster response and recovery activities by the federal, state and local government and of any private utility, and shall not interfere with their work.

9.6. Contractor's Ownership of Debris:

Unless otherwise directed by County, All debris, including regulated hazardous waste, shall become the property of Contractor for removal and lawful disposal. The debris will consist of, but not be limited to vegetative, construction and demolition, white goods, and household solid waste. Disposal costs at Non-County managed disposal locations shall be passed through to the County without mark-up on the monthly invoices.

9.7. Contractor's Disposal of Debris:

Unless otherwise directed by County, Contractor shall be responsible for determining and executing the method and manner for lawful disposal of all eligible debris, including regulated hazardous waste. County shall determine the primary location of the reduction and disposal sites in consultation with Contractor. Additional sites may be utilized as directed and/or approved by County.

9.8. Debris Management Site (DMS):

9.8.1. Site Setup:

Prior to beginning operation at a debris management site, the condition of the site shall be photographed, or video recorded by the Contractor and its condition documented and agreed upon by the County, Contractor, and Property Owner if applicable. As directed by County, baseline environmental assessments shall be performed and supplied for County review. Site setup shall be completed by the Contractor to include but not limited to, grubbing, silt fencing, all weather tower construction and/or rental, and site operation plan. County shall approve additional materials if determined necessary to provide for safe access to the site, costs for these materials shall be a pass-through cost without mark-up.

9.8.2.Site Operation:

Debris shall be stored in accordance with all federal, state, and local regulations. Fire lanes and adequate access shall be provided. Debris reduction activities shall be performed at each DMS as to maintain the safe and efficient operation of the site.

9.8.3.Site Remediation:

Debris management sites shall be returned to equal or better than original condition and to the satisfaction of County. Contractor shall be responsible for any damages pursuant to section 9.4.

9.8.4.Site Security:

Contractor shall supply twenty-four (24) hours per day security for the DMS sites to ensure unlawful or unauthorized dumping of debris does not occur. Unauthorized debris shall become the responsibility of the Contractor and must be disposed of lawfully and without additional costs to the County.

9.8.5. Debris Management Site (DMS)

The Debris Monitoring Team will determine the minimum number of sites required for each storm event. Lee County will designate the DMS to be activated. The County will select these sites, at the beginning of each hurricane season. Preparation, maintenance, and operation of these DMS facilities are entirely the Contractor's responsibility.

Preparation and maintenance of facilities shall include maintenance of the DMS approach and interior road(s) for the entire period of debris hauling, including provision of rock for any roads that require stabilization for ingress and egress. Each facility shall include a roofed inspection tower sufficient for a minimum of three (3) inspectors for the inspection of all incoming and exiting loads. The Contractor will be responsible for obtaining any required permits, which shall be paid at cost by the County. At the County's discretion, owned rights of way or other entity owned property could be provided for temporary storage of debris.

If needed, additional Contractor identified DMS sites may be considered for approval by the County. Lease agreements, between the Contractor and the property owner, for these properties may be executed by the Contractor with approval from the County. Management of these sites shall be subject to all terms outlined in this document, including but not limited to DMS management, environmental controls, and site remediation.

9.8.6. DMS Debris Removal Operations Plan and Environmental Protection Plan

Contractor shall provide within 90 days of execution of this contract, their generic site management plan. Once the debris management site is selected for use, the CONTRACTOR shall provide a Site Management Plan. This plan is to address site setup, pre-use activities, post-use activities and operational activities. The plans shall include pre and post video and other checklists to assure proper management of the site. Contractor shall submit three (3) copies of the plan. The plan shall be drawn to a scale of 1" = 50' and address the following functions:

- Access to site
- Site preparation -clearing, erosion control, and grading
- Traffic control procedures
- Safety
- Segregation of debris
- Location of ash disposal area, hazardous material containment area, Contractor work area, and inspection tower
- Location of incineration operations, grinding operation (if required). Burning operations require a 100-foot clearance from the stockpile and a 1000-foot clearance from structures.
- Location of existing structures or sensitive areas requiring protection
- Restoration of Site

9.8.7. Debris Processing and Classification:

All debris shall be processed in accordance with local, state and federal law, standards, and regulations. Processing shall include, but is not limited to, reduction by grinding and/or incineration when approved by the County. Prior to reduction, all debris shall be segregated by common waste material classifications; e.g., vegetative debris, construction and demolition debris, recyclable debris, white goods, hazardous waste, etc.

9.8.8. Generated Hazardous Waste Abatement:

Abatement of hazardous waste identified by the County is to be disposed of in accordance with all applicable Federal, State, and local laws, standards, and regulations.

9.8.9. Debris Disposal:

Disposal of all eligible debris, reduced debris, ash residue and other products of the debris management process shall be in accordance with all applicable Federal, State, and local laws, standards, and regulations. Unless otherwise directed by the County, the Contractor shall be responsible for paying all landfill tipping or disposal fees and provide all scale tickets or other related & required documentation to the Debris Monitoring Consultant needed to receive eligible reimbursement through FEMA and (FHWA) for such fees.

Tipping or Disposal Fees at Final Disposal Sites shall be passed through to the County at cost without mark-up or escalation.

Unless otherwise notified, Tipping or Disposal costs for debris disposed of at approved County owned and operated Final Disposal Sites, shall be the responsibility of the County; in lieu of pass-through debris disposal costs. Disposal fees shall be the normally posted gate fees and be reconciled against load and scale tickets in the same manner as Contractor paid disposal fees. Tipping fees for debris from ineligible work, not approved by the County, shall be the responsibility of the Contractor and deducted from the invoice.

9.8.10. Debris Monitoring Assistance:

Assistance to the Debris Monitoring Consultant by the Contractor shall include, but is not limited to the following:

- Monitoring multiple Contractors and multiple trucks delivering materials to the DMS.
- Verify that each truck that delivers to the DMS matches its manifest ticket – truck and maximum capacity.
- Make sure load is properly secured for transport.
- Photograph of each loaded truck bed and attach photograph to truck's manifest ticket or link with digital photographic records, as applicable.
- Review trucks manifest and observe the truck bed to confirm that the truck was loaded to capacity or as described on manifest ticket, and completely empty on departure.
- Maintain manifest tickets in an organized manner for proper record review and storage.
- Initial load tickets before permitting truck to leave the DMS check-in area to empty its load.
- Document location of origin of debris.
- Troubleshoot questions and problems at the DMS and identify issues that could impact eligibility for cost reimbursements.
- Remain in contact with the central office/staging operation command center.
- Perform other duties as directed by County personnel, e.g., conduct final inspections and issue closeout reports.

9.8.11. Training:

Contractor shall provide training annually. Training shall take place for a minimum of one (1) day, for up to eight (8) hours of on-site. Training shall consist of pre-strike training for County field and supervisory personnel.

10. SCOPE OF SERVICES

10.1. Geographic Assignment:

The geographic boundary for work by Contractor's crews shall be only as directed by County and will be limited to properties located within the County's jurisdictional boundaries. Collection activities shall be monitored, and crews shall be responsible for providing detailed information of collection locations as requested.

10.2. Multiple, Scheduled Passes:

Contractor shall make complete scheduled passes at the direction of County and/or unscheduled passes of each area impacted by the storm event. County shall direct the interval timing of all passes. Passes shall be complete only when County deems they meet the definition outlined in section 8.4. Sufficient time shall be permitted between subsequent passes to accommodate reasonable recovery and additional debris placement at the ROW by the citizens and the County.

10.3. Operation of Equipment:

Contractor shall operate all trucks, trailers, and all other equipment in compliance with any/all applicable federal, state and local rules and regulations. Equipment shall be in good working condition, with no fluid leaks, and must have an enclosed rear or operable tailgate. NO unapproved improvised tailgates are allowed, e.g. chain link fencing, etc. All loading equipment shall be operated from the road, street or ROW using buckets and/or boom and grapple devices to collect and load debris. No equipment shall be allowed to operate on private property or outside of the public ROW unless otherwise directed by County. Damages by the Contractor or its representative shall be the Contractor's responsibility and repaired at no additional cost to the County as outlined in section 9.4. Should operation of equipment be required outside of the public ROW, County will provide a Right-of-Entry Agreement, as set out in Section 6.6 of this Contract.

10.4. Certification of Load Carrying Capacity:

Contractor shall submit to County a certified report indicating the type of vehicle, make and model, license plate number and/or trailer VIN number, assigned debris hauling number and measured maximum volume, in cubic yards, of the load bed of each piece of equipment to be utilized to haul debris. This report shall be maintained, updated, and provided to the County whenever equipment is added or deleted.

The measured volume of each piece of equipment shall be calculated from the actual physical measurement performed by County, County's Debris Monitoring Contractor, and Contractor representatives at a County designated location. A standard measurement form certifying actual physical measurements of each piece of equipment, including side boards and deductions shall be an attachment to the certified reports submitted to County.

Each vehicle shall be measured for cubic yard capacity. Each vehicle shall have one numbered certification form prepared with a written description of the measurements, detailed diagram showing the overall inside dimensions, the dimensions of any and all, side boards, and/or deductions, and photograph attached. Deductions, such as doghouses, slant plates, etc. shall be shown as a deduction from the total cubic yards. Example: Measure and diagram length times Width times Height divided by 27= Total CY. Second, measure and diagram the "deduction item" and subtract from the total CY. This is the number that will be certified on the certification form and the placard placed on the vehicle. Certification forms shall be in triplicate, sequentially numbered and verified by a County representative. County shall retain the original certification copy, the Contractor shall retain the second copy, and the third copy shall remain in the certified vehicle.

Any changes to the equipment size or capacity, i.e. adding or removing sideboards, tailgates etc. will require it to be recertified. This new certification shall be attached to the original certification and documented as to when and/or why recertification was required and occurred.

Any vehicle may at any time be re-measured for capacity. If determined the capacity is different due to mathematical error, this new capacity will be reflected on any previous loads and reconciled as such. Digital copies of truck certifications, forms, and photographs may be used in place of hard copies when applicable technologies are both available and if conform with and are compatible with an approved ADMS used by the debris monitoring Contractor.

10.5. Vehicle Information:

The maximum load capacity of each hauling vehicle will be rounded to the nearest whole cubic yard (CY) (Decimal values of .1 through .4 will be rounded down and decimal values of .5 through .9 will be rounded up). The measured maximum load capacity (as adjusted) of any vehicle load bed shall be the same as shown on the certification form and placarded on each numbered vehicle or piece of equipment used to haul debris. Contractor name and vehicle certification number shall be on the placard along with the certified CY. All vehicles or equipment used for hauling shall have and use a County / Contractor-approved tailgate. A complete list of all certified vehicles with total adjusted CY information including details of tailgates, sideboards, and deductions shall be supplied, maintained, and updated by the Contractor when any changes occur at all DMS sites.

10.6. Security of Debris during Hauling:

Contractor shall be responsible for the security of debris on/in each vehicle or piece of equipment utilized to haul debris. Prior to leaving the loading sites, Contractor shall ensure that each load is secure and trimmed so that no debris extends horizontally beyond the bed of the equipment in any direction or vertically above FDOT maximum height requirements; tailgates must be closed. All loose debris shall be reasonably compacted and secured during transport in accordance with FDOT guidelines. As required, Contractor will regularly survey the primary transportation routes used by Contractor & its subs and recover fallen or blown debris from the roadway(s).

10.7. Traffic Control:

Contractor shall mitigate impact on local traffic conditions to the greatest extent possible while collecting or managing debris. Contractor is responsible for establishing and maintaining appropriate traffic control in accordance with the most current edition of the US Department of Transportation Manual of Uniform Traffic Control Devices (MUTCD) (see <http://mutcd.fhwa.dot.gov> OR other appropriate address for manual). Contractor shall provide sufficient signage, flagging, and barricading to ensure the safety of vehicular and pedestrian traffic at all debris removal, reduction and/or disposal sites.

10.8. Workdays/Hours:

Contractor may conduct debris removal operations 30 minutes prior to and 30 minutes after the published sunrise/sunset, seven (7) days per week unless prohibited by ordinance. Any mechanical, debris reduction operations or burning operations may be conducted twenty-four (24) hours per day, seven (7) days per week or in accordance with Local, State or Federal decree. Adjustments to workdays and/or work hours shall be as directed by County following consultation and notification to Contractor.

10.9. Hazardous and Industrial Wastes:

Contractor shall provide within 90 days of execution of this contract, their Hazardous and Industrial Materials Cleanup and Disposal Plan. This plan shall outline procedures on how the Contractor shall identify, isolate, and reasonably protect all hazardous or industrial materials encountered during debris removal operations for collection and disposal.

Contractor shall build, operate, and maintain a Hazardous Waste and Industrial Material Storage area until proper disposal of such waste is feasible. Contractor may use the subcontracting services of a firm specializing in the management and disposal of such materials and waste as outlined in section 7.3.

10.10. Stumps:

All eligible stumps authorized by the County shall be extracted, loaded, transported, stored, reduced and disposed in accordance with the standards and pricing templates of this Contract and in accordance with FEMA guidance documents DAP9523.11 or as amended.

PROJECT FUNDING PACKAGE

EXHIBIT E

Small stumps placed within loose debris piles shall be collected as normal debris. Loose stumps, placed at the right-of-way by others shall be identified and converted to cubic yards prior to collection. The size of all eligible loose stumps shall be determined by measuring up 1 to 2 feet from the root system then measuring the circumference and dividing by (3.14) to determine the diameter; or in accordance with the most currently available FEMA guidelines. All stumps will be documented, invoiced and paid in accordance with FEMA guidance and details & conditions of this Contract.

The Contractor shall backfill the hole left from stump extractions. A stump will be determined eligible for extraction based on the most current FEMA guidance but at a minimum must meet the following:

- The stump poses a threat to health and safety, and
- Has 50% or more of the root-ball is exposed, and
- It is greater than 24" in diameter as measured 24" above the ground.

FEMA policy for documentation of stumps shall be followed but at a minimum the following documentation must be obtained for each stump removed:

- Photographs and GPS coordinates that establish the location is on public property.
- Specific narrative describing the threat to health and safety
- Diameter of the stump
- Quantity of material needed to fill the resultant hole

Prior to stump extraction, all documentation described above shall be provided to the County; once determined eligible, written authorization shall be provided to the Contractor to remove the eligible stump. Copies of this authorization shall be submitted with the invoice in order to justify payment.

The Contractor must complete a FEMA Hazardous Stump Worksheet where required by FEMA policy. In the event that there are changes to FEMA or other regulatory requirements for stump documentation, the most current guidance or policy shall apply.

Reduction costs of stumps shall be included in the debris processing costs established in the pricing template.

10.11. **Work Safety:**

Contractor shall provide and enforce a safe work environment as prescribed in the Occupational Safety and Health Act of 1970, as amended. Contractor shall provide such safety equipment, training, and supervision as may be required by County and/or other governmental regulations. Contractor shall ensure that its subcontracts contain a similar safety provision.

10.12. **Inspection and Testing:**

All debris shall be subject to inspection by County and other public authorities to ensure compliance with Contract, applicable federal, state, and local laws, and in accordance with generally accepted standards of emergency management professionals. County or its representatives will, at all times, have access to all work sites and disposal areas. In addition, authorized representatives and agents of the government shall be permitted to inspect all work, materials, invoices and other relevant records and documentation.

10.13. **Retention of Collection Equipment:**

Contractor shall supply and maintain a sufficient quantity of collection equipment to complete the debris management project in accordance with the collection rates established herein or as approved by County to complete the final stages of the project within the established timelines. Collection equipment shall remain in force until the debris collection is complete or when determined by County and Contractor to be adequate to complete the recovery effort. Equipment leaving the County prior to completion of the recovery effort shall be replaced with equal or better equipment. Unless the County determines that downsizing of the operation is warranted.

10.14. Chainsaw Crews:

Crews shall work only as directed by task order by the County; the number of crewmembers and scope of work to be performed shall be outlined in the task order. Following the initial cut and toss phase of the project, chainsaw crews must be monitored by the County's debris monitoring firm. Unauthorized work shall not be paid for. Detailed invoices consisting of at a minimum the number of crewmen, hours worked, location, and description of work performed shall be submitted with the monthly invoice.

10.15. Hazardous Trees:

Hazardous Trees are to be removed if the condition was caused by the disaster, it is an immediate threat to health and safety, and has a diameter breast height of six inches (6") or greater, and one of the following criteria is met:

- More than 50% of the crown is damaged or destroyed; or
- The trunk is split, or it has broken branches that expose the heartwood of the tree; or
- It is leaning at an angle greater than 30 degrees

Trees determined to be hazardous and that have less than 50% of the root-ball exposed should be cut flush at ground level.

FEMA policy for documentation shall be followed but at a minimum the following minimum documentation must be obtained for each hazardous tree prior to its removal:

- Photographs and GPS coordinates that establish the location is on public property
- Specific narrative describing the threat to health and safety

After hazardous trees are properly documented and determined eligible by the County or designated Debris Monitor, written authorization shall be given to the Contractor to remove the tree. Copies of these authorizations are required to be submitted with the invoice in order to be eligible for payment.

10.16. Hanging Limbs:

Limbs, authorized as eligible for reimbursement by the County must be:

- Located on improved public property
- Greater than two inches (2") in diameter at the point of breakage
- Still hanging in a tree and threatening a public use area

FEMA policy for documentation shall be followed but at a minimum the following documentation must be obtained for each hanging limb that is removed:

- Photographs and GPS coordinates that establish the location is on public property
- Specific narrative describing the threat to health and safety

After hazardous trees are properly documented and determined eligible by the County or County designated debris monitor, written authorization shall be given to the Contractor to remove the tree. Copies of these authorizations are required to be submitted with the invoice in order to be eligible for payment.

10.17. Hand Loaded Collection Equipment:

Hand load trucks, trailers or equipment are discouraged, and shall be used only in areas where typical collection equipment cannot access and only with prior written authorization of the County. These "hand loaders" must remove all eligible debris as outlined in section 8.4. All Contractor equipment must be capable of self-unloading, equipment that must be unloaded by hand or requires assistance from operator at DMS site will not be permitted to dump at DMS sites.

10.18. Dead Animals:

Dead animals found (or placed) in the right-of-way or inadvertently delivered to a debris management site shall be the responsibility of the Contractor to remove and lawfully dispose of under this contract.

11. REPORTS, CERTIFICATIONS, and DOCUMENTATION

11.1. Accountable Debris Load Forms:

County and Contractor shall, after reconciliation, accept the serialized copies of the debris reporting tickets or approved ticket data base as the certified, original source document to account for the measurement and accumulation of the volume of debris delivered and processed at the reduction and/or disposal sites as verified by County representative. The serialized ticketing system (paper or approved electronic) will also be used in the event of additional debris handling for volume reduction and/or the possible requirement for a debris transfer station. These tickets/data base shall be used as the basis of any electronic generated billing and/or reports.

- If requested, the Contractor shall provide, minimum 4 part carbon copy, debris load tickets for use through the recovery operations.
- All debris collection and disposal information required by FEMA or other regulations must be documented on each load ticket
- The Contractor shall submit all original load tickets to the County

At the option and request of the County, the Contractor shall reconcile their load ticket copies with County copies no less than one time per week. Discrepancies shall be noted and resolved prior to the next reconciliation period.

An approved and auditable electronic debris ticket database, established through the use of an approved ADMS provided by the County's debris monitoring Contractor, may be used in place of serialized copies of the debris reporting tickets. In this event, load tickets will be replaced by ADMS generated receipts or reconciled electronic database where applicable.

11.2. Reports:

Contractor shall submit periodic, written reports to County as requested or required, detailing the progress of debris removal and disposal. These reports shall include, but are not limited to:

11.2.1. Daily Reports:

Daily reports shall detail the locations where passes for debris removal were conducted, the quantity of debris (by type) removed and disposed of, the total number of personnel crews engaged in debris management operations, and the number of grinders, chippers and mulching machines in operation. Contractor shall also report and provide regular repair progress updates of any damages to private property caused by the debris operation or damage claims made by citizens and such other information as shall be required to completely describe the daily conduct of Contractor's operations.

11.2.2. Weekly Summaries:

A summary of all information contained in the daily reports as set out in Section 11.2.1 of this Contract or in a format required by County.

11.2.3. Report Delivery:

The scheduling, point of delivery and receiving personnel for the debris operations report will be directed by County in consultation with Contractor.

**PROJECT FUNDING PACKAGE
EXHIBIT E**

11.2.4. Final Project Closeout:

Upon final inspection and/or closeout of the project by County, Contractor shall prepare and submit a detailed description of all debris management activities to include, but not be limited to the total volume, by type of debris hauled, reduced and/or disposed of, plus the total cost of the project invoiced to County. Contractor shall provide any other additional information as may be necessary to adequately document the conduct of the debris management operations for County and/or other government entity. Report shall include a section detailing any private property damages or claims, the satisfaction of these claims, as well as the status of any outstanding claims that require further action by the Contractor.

11.2.5. Additional Supporting Documentation:

Contractor shall submit sufficient reports and/or documentation for debris loading, hauling, disposal, and load capacity measurements, and any other services provided by Contractor as may be required by County and/or other governmental entity to support requests for debris project reimbursement from external funding sources.

11.2.6. Report Maintenance:

Contractor will be subject to audit by federal, state and local agencies pursuant to this Contract. Contractor shall maintain all reports, records, debris reporting tickets and contract correspondence for a period of not less than three (3) years.

11.2.7. Contract File Maintenance:

Contractor shall maintain this Contract and the invoices that are generated for Contracted services for a period of five (5) years or the period of standard record retention of the County, whichever is longer. Public records law requires that all records that are not exempt, must be made available upon request by the public. COUNTY may unilaterally cancel this contract for refusal to comply with this provision.

12. PRICING AND PAYMENTS

12.1. Schedule of Values

12.1.1. Category A – Core Services includes pricing for debris removal; debris processing; debris disposal; stump extractions; hazardous limb removal; and storm damage tree removal.

12.1.1.1. The following notes are defined and assigned in each line item as individually listed in Category A of the Schedule of Values:

- Note 1 - Prices shall include disposal sites located in Lee County and at the Lee/Hendry Landfill in Felda, Florida. Tipping fees at final disposal site(s) shall be the responsibility of the Contractor and passed through to the County without mark-up, unless approved otherwise. See section 9.8.9. within scope of services for disposal at County Owned and Operated disposal sites.
- Note 2 - For out of county disposal sites (excluding the Lee/Hendry Landfill), additional mileage will begin and be measured from the Lee County boundary closest to the disposal site. The approved per load additional mileage cost will be applied to each ticketed out of county load and be applicable to the miles beyond the Lee County boundary. Mileage is based on a one-way haul distance.

**PROJECT FUNDING PACKAGE
EXHIBIT E**

- Note 3 - For a multi-year contract, the prices shown in Category A will be adjusted on the anniversary date of the contract according to a percentage equal to the percent change in the Consumer Price Index as published in the U.S. Department of Labor, Bureau of Labor Statistics as established in the CWUR0300SAO index.
- Note 4 – Includes all site services, including but not limited to, providing monitoring towers, sanitary portable restrooms, and site safety & security.
- Note 5 – Includes comprehensive management of all debris site activities, including grubbing and establishing ingress/egress as needed, maintaining driving and working surfaces, managing storm water & regulatory compliance, and close-out site remediation. See section 9.8 in the scope of services for more detail.
- Note 6 - All stumps placed on the right of way by citizens will be converted to CY per the Stump Conversion Chart provided in FEMA Guidance DAP9523.11 and charged as regular debris for items A2 through A7.
- Note 7 - Items must be documented as per the scope of services and in accordance with appropriate FEMA Guidance, including DAP9523.11 or as amended.

12.1.2. Category B – Specialty Removal and Restoration includes pricing for screening and hauling of sand/soil; removal of vehicles and vessels; sand raking and removal of dead fish/algae; beach/lake restoration; berm/beach construction; and canal shoreline restoration.

12.1.2.1. Activities within Category B require specific task authorizations and include all labor and management of tasks.

12.1.2.2. The following notes are defined and assigned in each line item as individually listed in Category A of the Schedule of Values:

- Note 1 - Prices shall include disposal sites located in Lee County and at the Lee/Hendry Landfill in Felda, Florida. Tipping fees at final disposal site(s) shall be the responsibility of the Contractor and passed through to the County without mark-up, unless approved otherwise. See section 9.8.9. within scope of services for disposal at County Owned and Operated disposal sites.
- Note 2 - For out of county disposal sites (excluding the Lee/Hendry Landfill), additional mileage will begin and be measured from the Lee County boundary closest to the disposal site. The approved per load additional mileage cost will be applied to each ticketed out of county load and be applicable to the miles beyond the Lee County boundary. Mileage is based on a one-way haul distance.
- Note 3 – Includes all site services, including but not limited to, providing monitoring towers, sanitary portable restrooms, and site safety & security.
- Note 4 – Includes comprehensive management of all debris site activities, including grubbing and establishing ingress/egress as needed, maintaining driving and working surfaces, managing storm water & regulatory compliance, and close-out site remediation. See section 9.8 in the scope of services for more detail.
- Note 5 – Items must be documented as per the scope of services and in accordance with appropriate FEMA Guidance, including DAP9523.11 or as amended.

**PROJECT FUNDING PACKAGE
EXHIBIT E**

12.1.3. Category C – Specialized Labor and Work Crews includes pricing for specialized labor; work crews (typical crew makeup for “first 70 hours of operation); and additional laborers.

12.1.4. Category D – Equipment includes pricing for equipment used while performing disaster recovery services.

12.2. Billing Cycle:

Contractor shall invoice County on a 30-day basis reflecting the close of business on the last working day of the billing period. Serialized debris reporting tickets and disposal site verification of the actual cubic yardage for each load of debris or itemized stumps shall support all invoices. Electronic copies of supporting documentation may be used if approved by the County.

12.3. Ineligible Work:

Contractor will not be paid for the removal, transportation, storage, reduction and/or disposal of any materials or stumps that were determined by County and/or other government entity as ineligible debris and for which the Contractor was not formally authorized to perform by the County.

12.4. Eligibility Inspections:

Contractor and County or its representatives shall inspect each load to verify that the contents are in accordance with the accepted definition of eligible debris as determined within this Contract.

12.5. Eligibility Determinations:

If any load is determined to contain material that does not meet the definition of eligible debris, e.g., debris collected from private property or not at the request of the County or its representatives, the load shall be directed to an alternate disposal or processing facility. No payment will be approved, and Contractor shall not invoice the County for ineligible loads. County, through its authorized representative, will be the sole judge as to whether the material conforms to the definition of eligible debris, and its decision will be final.

12.6. Unit Price/Service Negotiations:

Unknown and/or unforeseen events or conditions may require an adjustment to the stated unit prices within this Contract. Any amendments, extensions, or changes to the scope of services or unit prices are subject to full negotiations between County and Contractor and subject to the review of the government. *In addition, all costs related to labor, materials, and equipment shall be fair, reasonable, and consistent with costs set forth in the schedule of values and with the most current version of the Federal Emergency Management Agency's Schedule of Equipment Rates, to be applied at all times for implementation of this Contract.*

12.7. Specialized Services:

Contractor may invoice County for costs incurred to mobilize and demobilize specialized equipment required to perform services in addition to those specified under within this Contract. Additional specialized services will only be performed when directed by the County. The rate for specialized services shall be in accordance with the rates provided in the Schedule of Values. Items not included shall be negotiated and shall be fair and reasonable as determined by the County.

End of Detailed Specifications

PROJECT FUNDING PACKAGE
EXHIBIT E



Procurement Management Department
2115 Second Street, 1st Floor
Fort Myers, FL 33901
Main Line: (239) 533-8881
Fax Line: (239) 485-8383
www.leegov.com/procurement

Posted Date: July 22, 2022

Solicitation No.: RFP220362BJB

Solicitation Name: Disaster Recovery Services for Lee County

Subject: Addendum Number 1

The following represents clarification, additions, deletions, and/or modifications to the above referenced bid. This addendum shall hereafter be regarded as part of the solicitation. Items not referenced herein remain unchanged, including the response date. Words, phrases or sentences with a strikethrough represent deletions to the original solicitation. Underlined words and bolded, phrases or sentences represent additions to the original solicitation.

1. ATTACHMENT: NONE

2. QUESTIONS/ANSWERS

1.	Can the City confirm that payment and performance bonds will not be due until a notice to proceed has been issued?
Answer	Page 45 of the solicitation, Tab 4 – Financial Stability, requires that Proposers shall provide a letter of bond-ability with their submittals. The letter of bond-ability provided by the awarded Contractor shall be held by the County and good for the entire duration of the contract. When a major disaster occurs or is imminent, the County confirms that the Contractor shall be required to submit to the County a payment and performance bond after a Notice to Proceed has been issued by the County, but prior to the commencement of operations by the Contractor.
2.	Can you please confirm if the debris resulting from cutting Hazardous Trees and Dangerous hanging Limbs are to be placed in the ROW for collection under line item 1 as vegetative debris? If the Scope of work dictates that the debris resulting from the removal of hazardous trees and hanging limbs is to include hauling the resulting debris to DMS or final disposal site then the contractor would need dedicated collection trucks to follow the tree removal crews and ONLY pick up debris from their work, thereby skipping piles of debris and leaving it on the street to be picked up by another collection truck. If there is a major event, collection trucks will be more efficiently used if they could travel the ROW and pick up ALL debris rather than skipping piles and only following the tree crew. ALSO, the proposed rates will be higher to include the transport and disposal of debris. The typical method is to price hazardous trees and hanging limbs as a cut only rate and to place the resulting debris in the ROW for collection as vegetative debris. This method frees up collection trucks and expedites the collection process.
Answer	Hazardous Trees and Hanging Limbs collection must be in accordance with sections 10.15 (Hazardous Trees) and 10.16 (Hanging Limbs) of scope of work. It is the responsibility of the contractor(s) to determine method of collection for the

**PROJECT FUNDING PACKAGE
EXHIBIT E**

	debris in accordance with the most recent FEMA guidance at the time of the event. Proposal and pricing should reflect recommended process. Number of passes for debris collection would be mutually agreed upon by the County and Contractor during the disaster debris recovery process of each storm event where contract is activated.
--	--

3.	Due to the high volume of reference survey requests from our clients, is it acceptable to submit a letter of recommendation in place of form 3?
Answer	A letter of recommendation will not be accepted in lieu of the 3 reference surveys required. Reference surveys shall be submitted with your proposal in accordance with and as instructed within the solicitation documents.

4.	I'm sure most companies don't specialize in all the listed items on the "Price Proposal Form" so can we bid on only certain items or do we need to bid on all items?
Answer	See page 45 of the solicitation documents, Tab 5 - Price Proposal. As stated in the first bullet point, "Proposer shall complete the attachment in its entirety, by providing all rates as requested within the worksheets identified as Categories A, B, C and D." It is the intent of the County to award a contract to a vendor(s) capable of providing all the services requested and as outlined within the solicitation. Pricing reflected would be indicative of your own pricing or your sub-contracted rates.

BIDDER/PROPOSER IS ADVISED, YOU ARE REQUIRED TO ACKNOWLEDGE RECEIPT OF THIS ADDENDUM WHEN SUBMITTING A BID/PROPOSAL. FAILURE TO COMPLY WITH THIS REQUIREMENT MAY RESULT IN THE BIDDER/PROPOSER BEING CONSIDERED NON-RESPONSIVE.

ALL OTHER TERMS AND CONDITIONS OF THE SOLICITATION DOCUMENTS ARE AND SHALL REMAIN THE SAME.

Brian Boehs

Brian Boehs - Procurement Analyst
Procurement Analyst Direct Line: 239-533-8887
Lee County Procurement Management

PROJECT FUNDING PACKAGE
EXHIBIT E



Procurement Management Department
2115 Second Street, 1st Floor
Fort Myers, FL 33901
Main Line: (239) 533-8881
Fax Line: (239) 485-8383
www.leegov.com/procurement

Posted Date: July 27, 2022

Solicitation No.: RFP220362BJB

Solicitation Name: Disaster Recovery Services for Lee County

Subject: Addendum Number 2

The following represents clarification, additions, deletions, and/or modifications to the above referenced bid. This addendum shall hereafter be regarded as part of the solicitation. Items not referenced herein remain unchanged, including the response date. Words, phrases or sentences with a strikethrough represent deletions to the original solicitation. Underlined words and bolded, phrases or sentences represent additions to the original solicitation.

1. OPEN DATE / BID DUE DATE EXTENSION NOTICE:

FROM: August 2, 2022 at 2:30 PM

TO: August 9, 2022 at 2:30 PM

2. QUESTIONS/ANSWERS:

1.	With the due date being less than a week away and our anticipated proposal ship date being in two days, will the county consider an extension to the current due date?
Answer	Open date / bid due date has been extended to August 9, 2022 at 2:30 PM
2.	does the County intend to extend the proposal deadline?
Answer	Open date / bid due date has been extended to August 9, 2022 at 2:30 PM

Bidders must ensure they continue to monitor the Lee County Procurement website for any follow-up information regarding this solicitation.

BIDDER/PROPOSER IS ADVISED, YOU ARE REQUIRED TO ACKNOWLEDGE RECEIPT OF THIS ADDENDUM WHEN SUBMITTING A BID/PROPOSAL. FAILURE TO COMPLY WITH THIS REQUIREMENT MAY RESULT IN THE BIDDER/PROPOSER BEING CONSIDERED NON-RESPONSIVE.

ALL OTHER TERMS AND CONDITIONS OF THE SOLICITATION DOCUMENTS ARE AND SHALL REMAIN THE SAME.

Brian Bochs

Brian Bochs - Procurement Analyst
Procurement Analyst Direct Line: 239-533-8887
Lee County Procurement Management

PROJECT FUNDING PACKAGE
EXHIBIT E



Procurement Management Department
2115 Second Street, 1st Floor
Fort Myers, FL 33901
Main Line: (239) 533-8881
Fax Line: (239) 485-8383
www.leegov.com/procurement

Posted Date: July 28, 2022

Solicitation No.: RFP220362BJB

Solicitation Name: Disaster Recovery Services for Lee County

Subject: Addendum Number 3

The following represents clarification, additions, deletions, and/or modifications to the above referenced bid. This addendum shall hereafter be regarded as part of the solicitation. Items not referenced herein remain unchanged, including the response date. Words, phrases or sentences with a strikethrough represent deletions to the original solicitation. Underlined words and bolded, phrases or sentences represent additions to the original solicitation.

1. REVISED PRICE PROPOSAL FORM

The price proposal form has been updated and a revised Price Proposal Form has been uploaded to the solicitation webpage on the Lee County Procurement website.

Please ensure that your firm has downloaded the Revised Price Proposal Form and are able to successfully use the Excel format. Any firm having compatibility issues or difficulty downloading the Revised Price Proposal Form needs to contact the Procurement Analyst for this project at their earliest convenience. Do not wait until submission day to download. Procurement is not required to extend a closing due to Contractor delay or difficulty in receipt of download of documents.

Proposers **MUST** use the Revised Price Proposal Form when submitting their proposal. The County will not accept pricing proposals submitted on forms or in formats other than the Revised Price Proposal Form, as provided by the County. Proposal submitted on forms, other than the Revised Form will be deemed non-responsive and ineligible for award.

2. ATTACHMENT:

- Attachment # 1 – Map of Disaster Debris Staging Site *(for informational purposes only)*

3. REVISION:

The following shall be considered revised to the technical specifications and drawings provided with this solicitation: Submittal Requirements & Evaluation Criteria; Page 45, Tab 4 – Financial Stability:

- Proposer must demonstrate financial stability sufficient for the Evaluation Selection Committee to conclude Proposer has the financial ability to perform and support the required services proposed for the term of the contract and the financial resources and capabilities to assume extensive and large expenditures; including sufficient cash flow such as to not negatively impact staffing and resource levels through uninterrupted timely payment of Sub-Contractor's for the duration of a large scale extended recovery event.
- The Proposer must provide a statement of the Proposer's financial stability, including information regarding any current or previous bankruptcy proceedings.

**PROJECT FUNDING PACKAGE
EXHIBIT E**

- ~~Proposer must include a copy of the most recent annual financial report/annual audit, independent certified audit, Dunn & Bradstreet report, or 10K or the most recent 10Q, if appropriate. **Financial reports must include, at a minimum, a Balance Sheet, an Income Statement, and a Statement of Cash Flow.**~~

*~~*Financial report documents are not included within page restrictions but should be limited as possible to five (5) pages.*~~*

- ~~The Proposer shall provide evidence of having or obtaining a revolving loan or “Bridge Loan” or six weeks operating cash-on-hand for a storm event.~~
- The proposer shall provide a listing of any penalties, fines, or settlements exceeding \$10,000.00 for any acts related to environmental regulations and levied by a state or federal agency during the past ten (10) years of providing debris management services.
- Proposer must provide a letter of bond-ability from your firm’s Surety, on their letterhead or equivalent, specifying and confirming your firm’s bonding capability.
- ~~**Notice: Florida has very broad public records laws and records submitted with this RFP may be made available for public records requests following applicable Florida Public Records laws and processes. Florida Statute’s financial statement exemption only applies to submittals in response to a solicitation for a “public works” project as provided for in Section 119.071(1)c. This solicitation is not for “public works” project.**~~

4. QUESTIONS / ANSWERS

1.	What was the last event that impacted the County which required activation and performance by the county’s disaster debris management contractor?
Answer	January 2022 – EF2 tornado

2.	How many cubic yards of debris was collected in that event?
Answer	546.65 cubic yards

3.	Which Contractor held the previous or holds the current contract for the services requested in this solicitation?
Answer	All information regarding the current contract for these services can be found at the following link on the Lee County Procurement webpage: https://www.leegov.com/procurement/awarded-annual-contracts/downloads?fid=4866&fn=Project2016-11-03T16_45_46.xml

4.	Does the county currently have a disaster debris monitoring firm under contract, and if so, with which company(ies)?
Answer	All information regarding the current contract for these services can be found at the following link on the Lee County Procurement webpage: https://www.leegov.com/procurement/awarded-annual-contracts/downloads?fid=4866&fn=Project2016-11-03T16_45_46.xml

**PROJECT FUNDING PACKAGE
EXHIBIT E**

5.	Please confirm if the scope of work for white good removal includes the removal and disposal of any putrescent food from refrigerators or freezers .
Answer	Yes. White good removal includes removal and disposal of any putrescent food from refrigerators or freezers.
6.	With the understanding that the county may award(s) to one or multiple vendors, will those vendors be ranked such as primary, secondary, etc. based on the evaluation criteria and scoring?
Answer	Yes. It is the intent to award a contract to a primary and secondary vendor.
7.	Please confirm the term (length) of the subsequent agreement resulting from this solicitation. Section 29.2 appears to indicate a possible 6-year term, where Item #1- Project Term, under Special Conditions, appears to indicate a possible 10-year term.
Answer	See Special Conditions, Section 1.1 – Project Term: The Vendor shall be responsible for furnishing and delivering to the Lee County requesting Department(s) the commodity or services on an “as needed basis” for one (1) five-year (5) period. Upon mutual written agreement of both parties, the parties may renew the Agreement, in whole or in part, for a renewal term or terms not to exceed five (5) years. The increments of renewal shall be at the sole discretion of the County as deemed in its best interest.
8.	With Hurricane Season upon us, does the county have any pre-approved DMS locations? If so, where are they located?
Answer	Yes, Lee County has 44 pre-approved DMS locations for 2022 that are spread across the County. See attachment # 1 to this addendum for map of designated Lee County Disaster Debris Sites
9.	Please confirm that the removal of storm-damaged trees and hanging limbs are to be placed at the ROW after they have been “cut and dropped.” If so, please also confirm that the collection of the material will be paid at the cubic yardage rate for ROW debris removal.
Answer	Yes. Removal of storm-damaged trees and hanging limbs are to be placed at the ROW after they have been “cut and dropped”. Collection of the material will be paid at the cubic yardage rate for ROW debris removal.
10.	Item #A16 of the price proposal form, Hazardous Limb Removal, has “> 24-inch diameter to 47.99-inch diameter (Note:7)” as the description. Shouldn’t the description be ”>2 inches at the point of the breakage?”
Answer	Yes. Line Item A16 has been revised to reflect “>2” inches at the point of breakage, or whatever the current minimum is at the time of the storm event”. See attached revised price proposal form to this addendum.
11.	Page 45. Financial Stability. The County has stated: Notice: Florida has very broad public records laws and records submitted with this RFP may be made available for public records requests following applicable Florida Public Records laws and processes. Florida Statute’s financial statement exemption only applies to submittals in response to a solicitation for a [road or any other] “public works” project as provided for in Section 119.071(1)c. This solicitation is not for “public works” project. The Statute that was quoted was missing the information highlighted and in red. We very often include financial documents within our proposal to Florida

**PROJECT FUNDING PACKAGE
EXHIBIT E**

	Municipalities and always mark them as confidential and exempt from public records request. The exemption request has never been denied since the disaster debris removal is considered a road project under Public Works. Can the County please double check the accuracy of this statement and advise if Financial Documents will remain confidential and will not be released under a public records request? We are happy to indemnify the County and argue this out with any requestor under the Florida Court System.
Answer	See Section # 3 within this addendum. Page 45, Tab 4. Financial Stability has been revised. Financial audit, balance sheet, evidence of revolving loan have been removed from the submittal requirements.

12.	Page 48, Form 4. This page indicates that the form may be used to disclose litigation. However, page 56 indicates not to modify this form or submit your own variation. May we include “Please see attached” on this form and include our own document, ensuring that each column matches the data being requested on the Form?
Answer	The County requests that its form be completed in its entirety. As stated on the form, you may make as many copies of the sheet as necessary in order to provide a 10-year history of the requested information.

13.	In the Price Proposal Form, Line Item A4 requests a Cost per mile for alternate disposal sites outside of Lee County (Note 1&2). Is the intent for this item to be “per CUBIC YARD mile?” That unit of measure multiplied by the actual volumetric load call and ticket multiplied by one-way mileage is the industry standard for this line item. Will the County consider making this change?
Answer	No, it is not per cubic yard mile. Item A4 on the price proposal form is straight cost per mile as indicated on cell D22 “Unit of Measure” showing “Cost/Mile”.

14.	In Category B of the Price Proposal, Line Item B6-Dead Fish and/or Algae, including removal and sand raking from beaches. Many fish kills create a debris/fish cleanup field that is spread out and produces low quantities of material collected. This will cause the cost of the operation to be extreme if bid on a CY basis. Will the County consider an hourly approach to this operation or payment on a PER LB rate since the fish and algae can be classified as hazardous material? Both approaches have been utilized in past Red Tide operations.
Answer	Line Item B6 has been revised to reflect a unit of measure of LB. See attached revised price proposal form to this addendum. Loads of dead fish and/or algae will only go to final disposal, and they will be weighed. The loads shall be screened to remove sand unless expressly approved by LC due to contamination.

15.	Page 11, Section 29.2.1 states the contract term is for one three-year period, unless otherwise stated. Page 24, Section 1.1 states the contract term is for one five-year period. Please confirm the contract term is for five years.
Answer	See Special Conditions, Section 1.1 – Project Term: The Vendor shall be responsible for furnishing and delivering to the Lee County requesting Department(s) the commodity or services on an “as needed basis” for one (1) five-year (5) period. Upon mutual written agreement of both parties, the parties may renew the Agreement, in whole or in part, for a renewal term or terms not to exceed five (5) years. The increments of renewal shall be at the sole discretion of the County as deemed in its best interest.

**PROJECT FUNDING PACKAGE
EXHIBIT E**

16.	Do the Signing Authority and licenses count toward the 30-page limit?
Answer	Required Forms do not count towards the 30 page limit. Forms shall be included in the designated forms section.

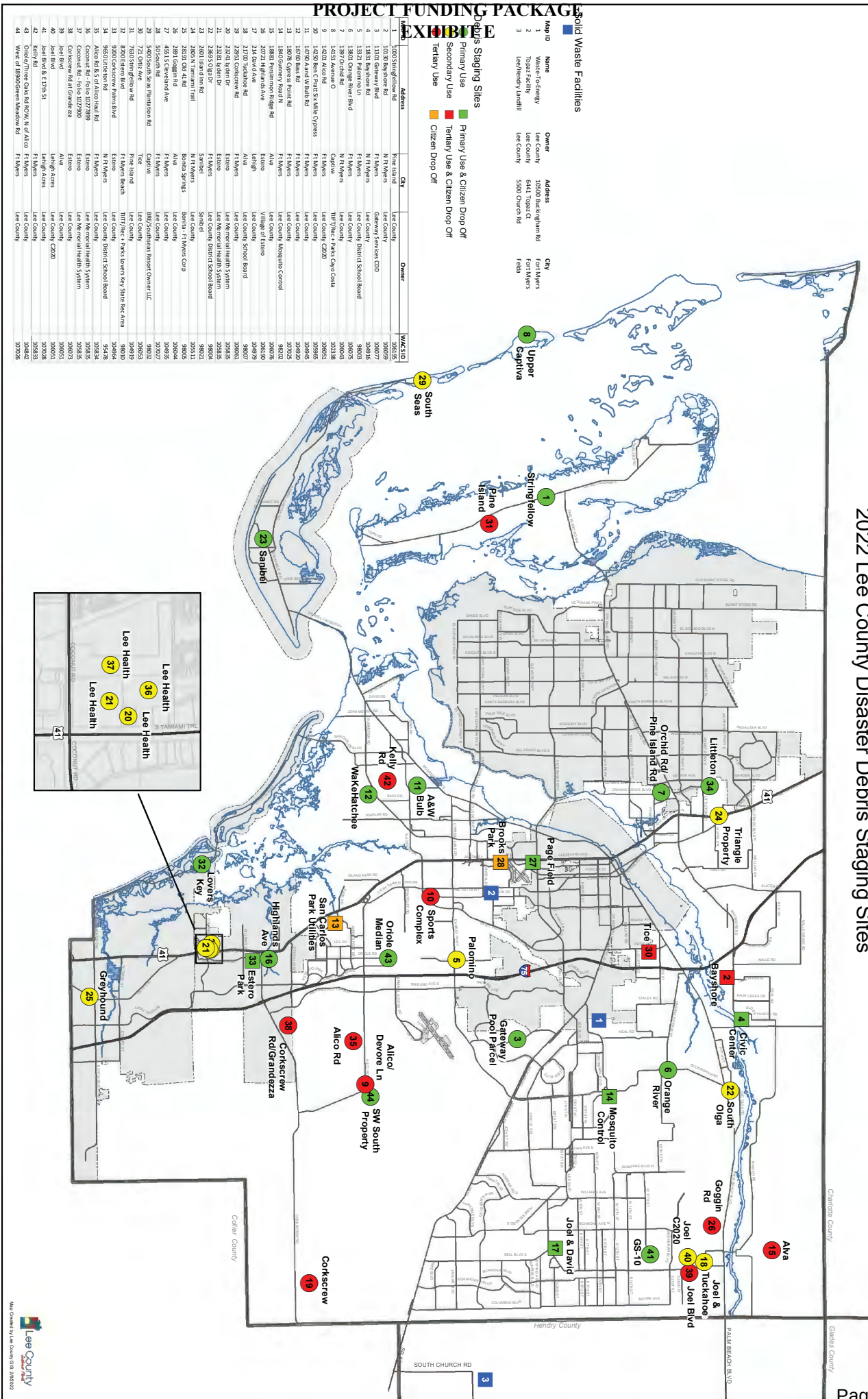
17.	Tab 1: Experience & References states that the Executive Summary is limited to 3 pages. Only a portion of Tab 1 includes the executive summary, please confirm only the executing summary and not Tab 1 as a whole is limited to 3 pages.
Answer	Only the Executive Summary and not Tab 1 as a whole is limited to 3 pages.

BIDDER/PROPOSER IS ADVISED, YOU ARE REQUIRED TO ACKNOWLEDGE RECEIPT OF THIS ADDENDUM WHEN SUBMITTING A BID/PROPOSAL. FAILURE TO COMPLY WITH THIS REQUIREMENT MAY RESULT IN THE BIDDER/PROPOSER BEING CONSIDERED NON-RESPONSIVE.

ALL OTHER TERMS AND CONDITIONS OF THE SOLICITATION DOCUMENTS ARE AND SHALL REMAIN THE SAME.

Brian Bochs - Procurement Analyst
Procurement Analyst Direct Line: 239-533-8887
Lee County Procurement Management

2022 Lee County Disaster Debris Staging Sites



Solid Waste Facilities			
Map ID	Name	Owner	Address
1	Waste-to-Energy	Lee County	10500 Buckingham Rd
2	Toxist Facility	Lee County	6441 Toxist Ct
3	Lee/Hendry Landfill	Lee County	5500 Church Rd
Debris Staging Sites			
Map ID	Name	Owner	Address
1	Primary Use	Lee County	10500 Buckingham Rd
2	Secondary Use	Lee County	6441 Toxist Ct
3	Tertiary Use	Lee County	5500 Church Rd
Citizen Drop Off			
Map ID	Name	Owner	Address
1	10500 Buckingham Rd	Lee County	10500 Buckingham Rd
2	10500 Buckingham Rd	Lee County	10500 Buckingham Rd
3	10500 Buckingham Rd	Lee County	10500 Buckingham Rd
4	10500 Buckingham Rd	Lee County	10500 Buckingham Rd
5	10500 Buckingham Rd	Lee County	10500 Buckingham Rd
6	10500 Buckingham Rd	Lee County	10500 Buckingham Rd
7	10500 Buckingham Rd	Lee County	10500 Buckingham Rd
8	10500 Buckingham Rd	Lee County	10500 Buckingham Rd
9	10500 Buckingham Rd	Lee County	10500 Buckingham Rd
10	10500 Buckingham Rd	Lee County	10500 Buckingham Rd
11	10500 Buckingham Rd	Lee County	10500 Buckingham Rd
12	10500 Buckingham Rd	Lee County	10500 Buckingham Rd
13	10500 Buckingham Rd	Lee County	10500 Buckingham Rd
14	10500 Buckingham Rd	Lee County	10500 Buckingham Rd
15	10500 Buckingham Rd	Lee County	10500 Buckingham Rd
16	10500 Buckingham Rd	Lee County	10500 Buckingham Rd
17	10500 Buckingham Rd	Lee County	10500 Buckingham Rd
18	10500 Buckingham Rd	Lee County	10500 Buckingham Rd
19	10500 Buckingham Rd	Lee County	10500 Buckingham Rd
20	10500 Buckingham Rd	Lee County	10500 Buckingham Rd
21	10500 Buckingham Rd	Lee County	10500 Buckingham Rd
22	10500 Buckingham Rd	Lee County	10500 Buckingham Rd
23	10500 Buckingham Rd	Lee County	10500 Buckingham Rd
24	10500 Buckingham Rd	Lee County	10500 Buckingham Rd
25	10500 Buckingham Rd	Lee County	10500 Buckingham Rd
26	10500 Buckingham Rd	Lee County	10500 Buckingham Rd
27	10500 Buckingham Rd	Lee County	10500 Buckingham Rd
28	10500 Buckingham Rd	Lee County	10500 Buckingham Rd
29	10500 Buckingham Rd	Lee County	10500 Buckingham Rd
30	10500 Buckingham Rd	Lee County	10500 Buckingham Rd
31	10500 Buckingham Rd	Lee County	10500 Buckingham Rd
32	10500 Buckingham Rd	Lee County	10500 Buckingham Rd
33	10500 Buckingham Rd	Lee County	10500 Buckingham Rd
34	10500 Buckingham Rd	Lee County	10500 Buckingham Rd
35	10500 Buckingham Rd	Lee County	10500 Buckingham Rd
36	10500 Buckingham Rd	Lee County	10500 Buckingham Rd
37	10500 Buckingham Rd	Lee County	10500 Buckingham Rd
38	10500 Buckingham Rd	Lee County	10500 Buckingham Rd
39	10500 Buckingham Rd	Lee County	10500 Buckingham Rd
40	10500 Buckingham Rd	Lee County	10500 Buckingham Rd
41	10500 Buckingham Rd	Lee County	10500 Buckingham Rd
42	10500 Buckingham Rd	Lee County	10500 Buckingham Rd
43	10500 Buckingham Rd	Lee County	10500 Buckingham Rd
44	10500 Buckingham Rd	Lee County	10500 Buckingham Rd

**PROJECT FUNDING PACKAGE
EXHIBIT E
SUBMITTAL REQUIREMENTS & EVALUATION CRITERIA**

1. SUBMITTAL REQUIREMENTS & EVALUATION CRITERIA

- 1.1 Interested firms shall include the following information in their submittal responses to this solicitation. The following format and sequence should be followed in order to provide consistency in the firm's responses and to ensure each proposal receives full consideration. Use 8 ½ x 11 sheet pages only with minimum font size of 10 points and with tabs or section dividers to separate sections as defined below. More than one section is permitted on one page unless otherwise indicated below. Undesignated information shall be inserted at the rear of each package. Place page numbers at the bottom of every page, excluding dividers. Proposal documents should not contain links to other web pages; such links will not be reviewed for evaluation purposes.
- 1.2 Submittal package may not exceed **30 pages** printed single-sided; **page restriction excludes required forms found herein and dividers. PLEASE INCLUDE PAGE TABS/SECTION DIVIDERS** so that those evaluating your submittal can easily compare each section with others that are submitted. If any of the information provided by the Proposer is found to be, in the sole opinion of the Evaluation Committee and Procurement Management Director, substantially unreliable their proposal may be rejected.
- 1.3 Proposers shall submit one (1) original hard copy (clearly marked as such) and one (1) electronic version(s) on a USB flash drive set(s) containing the proposal submittal in an unlocked PDF format. The County may request specific files be submitted in specialty format (IE: Provide a Project Timeline in Excel format.) Vendor shall accommodate such specialty requests as stated within the submittal requirements describe herein. Should files not be provided in the format or quantity as requested Vendor may be deemed Non-Responsive and therefore ineligible for award. In case of any discrepancies, the original will be considered by the County in evaluating the Proposal, and the electronic version is provided for the County's administrative convenience only. Limit the color and number of images to avoid unmanageable file sizes.

COVER PAGE: Introduction and Description of Firm

- Project RFP Number & Name
- Firm's Name & Address
- Firm's Contact Person & Information (phone, fax and email address)
- How many years has proposer been in business under present name?
- Under what other former names has your organization operated?
- Proposed responsible office location.
- How many full-time employees are assigned to responsible office?

Cover Page should be brief and concise not exceeding 1 to 2 pages in length. Cover page does NOT count towards page restriction requested herein.

TAB 1: Experience & References

- Proposer shall provide an Executive Summary, limited to 3 pages, to be written in non-technical language that summarizes the Proposer's overall capabilities, approaches for accomplishing the services specified herein, and demonstrates the proposer has had a minimum of five (5) years of successful experience and is primarily engaged in year-round debris management services similar to those outlined in this solicitation and typically performed in federally declared events experienced in Florida.

PROJECT FUNDING PACKAGE

EXHIBIT E

- Proposer shall provide written documentation describing similar Disaster Recovery projects that it has successfully completed within the last ten (10) years of this proposal. **A maximum of five (5) projects** shall be provided and the proposer must provide sufficient detail to allow the evaluation committee to easily determine whether the work is similar and comparable to disaster events typical to Florida and the scope of work being requested within this RFP document.
 - a. Project example information should include:
 - i. Project Name
 - ii. Description of Project
 - iii. Dates of Services
 - iv. Contract Award Amount
 - v. Estimated volume of debris removed (In CY)
 - vi. Client Name
 - vii. Client Point of Contact
 - viii. Client Phone Number
 - ix. Client Email Address
- Separate, and in addition to, the experience described above, the Proposer shall provide written documentation indicative of experience in Disaster Recovery projects **for a city or county government**, with populations exceeding 100,000, completed within the last fifteen (15) years of this proposal, and typical in scope & type of events which occurs in Florida. **A maximum of two (2) projects** shall be provided and details included shall **indicate daily operational capacity in cubic yards removed per day and total amount of debris processed in cubic yards**.
 - a. Project example information should include:
 - i. Project Name
 - ii. Description of Project
 - iii. Dates of Services
 - iv. Contract Award Amount
 - v. Daily Operational Capacity (*Amount of CY removed per day*) (In CY)
 - vi. Estimated total volume of debris removed (In CY)
 - vii. Agency Name
 - viii. Agency Point of Contact
 - ix. Agency Phone Number
 - x. Agency Email Address
- If applicable, Proposer shall provide supporting evidence of previous experience with simultaneous event activations in Florida and how this was managed.
- Proposer shall provide a complete list of all **current** contractual clients within the state of Florida.
 - a. This list shall include:
 - i. Client Name
 - ii. Client Contact Information
 - Point of Contact Name, Phone, Email
 - iii. Brief Description of Contract
 - iv. Effective/Start Date of Contract
 - v. Expiration Date of Contract
 - vi. Amount or Estimated Amount of contract award

**PROJECT FUNDING PACKAGE
EXHIBIT E**

TAB 2: Company Resources: Facilities, Equipment, & Personnel

- Proposer must provide a list of **facilities, equipment, personnel and listing of Sub-Contractors** available to do the work proposed.
 - Proposer must state how these resources will be sufficient to handle the proposer's total workload including other non-Lee County projects and sufficient for periods of prolonged activation.
 - Proposer shall provide and demonstrate their capability of performing during simultaneous events.
- Provide a detailed description of the firm's **specific** project management team that will be assigned to the Lee County contract. Identify the roles and responsibilities of the primary team members and include details that demonstrate individual's knowledge and understanding of the types of services to be performed as well as previous experience in similar or related work.
- Provide a statement acknowledging your firm's understanding that the project management team/key team members assigned to the Lee County contract, as described above, shall not be substituted without the expressed permission of Lee County.
- Provide resumes of proposed project management team to be assigned to the Lee County contract.

Resumes are not included within page restrictions but should be limited to one (1) page per person.

TAB 3: Company Capabilities

- Proposer shall provide a Work Plan demonstrating the firm's grasp of the scope of service required for a declared emergency disaster assistance, and the firm's ability to adapt to changing conditions during a recovery project. This Work Plan shall be inclusive of the below specifications:
 - ◆ Provide details and/or demonstrate the firm's experience with the following items;
 - Ability to establish, operate, and remediate DMS sites; including environmental and regulatory experience.
 - Data management and tracking system; including ADMS.
 - Ability to work with different accounting and tracking systems.
 - Communications systems.
 - Ability to mobilize recovery teams and full scale recovery efforts in a timely manner.
 - The removal of hazardous and special debris/waste.
 - Community relations (public meetings, public outreach, media, etc.)
 - ◆ Proposer shall demonstrate their ability to be fully operational in providing all services required within 48 hours of initial notice to proceed, depending upon the service(s) requested.
 - ◆ Proposer shall detail their ability to maintain full operational capability (Minimum of 12 hours a day, seven days a week) for an extended period.
 - ◆ Proposer shall clearly indicate the scope of services to be performed by Sub-Contractors or other third parties hired by the Proposer.

**PROJECT FUNDING PACKAGE
EXHIBIT E**

TAB 4: Financial Stability

- Proposer must demonstrate financial stability sufficient for the Evaluation Selection Committee to conclude Proposer has the financial ability to perform and support the required services proposed for the term of the contract and the financial resources and capabilities to assume extensive and large expenditures; including sufficient cash flow such as to not negatively impact staffing and resource levels through uninterrupted timely payment of Sub-Contractor's for the duration of a large scale extended recovery event.
- The Proposer must provide a statement of the Proposer's financial stability, including information regarding any current or previous bankruptcy proceedings.
- Proposer must include a copy of the most recent annual financial report/annual audit, independent certified audit, Dunn & Bradstreet report, or 10K or the most recent 10Q, if appropriate. **Financial reports must include, at a minimum, a Balance Sheet, an Income Statement, and a Statement of Cash Flow.**

Financial report documents are not included within page restrictions but should be limited as possible to five (5) pages.

- The Proposer shall provide evidence of having or obtaining a revolving loan or "Bridge Loan" or six weeks operating cash-on-hand for a storm event.
- The proposer shall provide a listing of any penalties, fines, or settlements exceeding \$10,000.00 for any acts related to environmental regulations and levied by a state or federal agency during the past ten (10) years of providing debris management services.
- Proposer must provide a letter of bond-ability from your firm's Surety, on their letterhead or equivalent, specifying and confirming your firm's bonding capability.
- **Notice: Florida has very broad public records laws and records submitted with this RFP may be made available for public records requests following applicable Florida Public Records laws and processes. Florida Statute's financial statement exemption only applies to submittals in response to a solicitation for a "public works" project as provided for in Section 119.071(1)c. This solicitation is not for "public works" project.**

TAB 5: Price Proposal

- Within Tab 5, the Proposer shall submit the Price Proposal Form containing the Schedule of Values as provided within the Excel Attachment A. Proposer shall complete the attachment in its entirety, by providing all rates as requested within the worksheets identified as Categories A, B, C and D.
- **Pricing submitted on the worksheet identified as Category A, Core Services, is the only pricing that will be utilized for evaluation purposes. However, pricing across all four worksheets will be contracted and shall remain firm for the duration of the contract, inclusive of any renewals.**
- The lowest Price Proposal of Category A will be awarded the maximum score as listed in the scoring criteria section. All other proposals will be scored according to the following formula: (Lowest Price Proposal/ Proposer's Price Proposal) x Maximum points.
 - For example, the maximum score available for price is 25. If the lowest proposed Price Proposal is \$150,000.00 that Proposer will receive the full 25 points. Another Proposer with a Price Proposal of \$160,000.00 will receive points calculated as follows: $\$150,000.00 / \$160,000.00 = .9375$; $.9375 \times 25 = 23.4375$

**PROJECT FUNDING PACKAGE
EXHIBIT E**

TAB 6: Required Forms

➤ Forms 1- 11

2. SCORING CRITERIA & WEIGHT

CRITERIA	CRITERIA DESCRIPTION	MAX. POINTS AVAILABLE
1	EXPERIENCE AND REFERENCES (TAB 1)	25
2	COMPANY RESOURCES: FACILITIES, EQUIPMENT & PERSONNEL (TAB 2)	15
3	COMPANY CAPABILITIES (TAB 3)	25
4	FINANCIAL STABILITY (TAB 4)	20
5	PRICE PROPOSAL (TAB 5)	15
TOTAL POINTS		100
*Additional details and documents found within submittal package, although not located within tabs as listed above, may be reviewed, and considered by evaluation committee when scoring Proposers.		

3. RFP SUBMISSION SCHEDULE

Submission Description	Date(s)	Time
Advertise Request for Proposal (RFP)	Friday, July 1, 2022	N/A
Pre-Proposal Meeting	N/A	N/A
Proposal Question Deadline	8 Calendar days prior to submission deadline	Prior to 5:00 PM
Submission Deadline	Tuesday, August 2, 2022	Prior to 2:30 PM
First Committee Meeting Short list discussion	Tuesday, August 16, 2022	TBD *
Notify Shortlist Selection via e-mail	Wednesday, August 17, 2022	N/A
Final Scoring/Selection Meeting	Tuesday, August 30, 2022	TBD *
Board Meeting	November 15, 2022	9:30 AM
Additional notes on Submission Schedule: <i>Submission Schedule is provided as a guideline only and is subject to change at the discretion of Lee County authorized personnel.</i> <i>Changes in closing date or other parameters may occur and will be posted to the Lee County Procurement website. It shall be the responsibility of Contractor to verify all dates through County website.</i> <i>Unless otherwise stated, location of all openings and meetings will take place at 2115 Second Street, 1st Floor, Fort Myers, FL 33901 – Procurement Management.</i>		

End of Section

**PROJECT FUNDING PACKAGE
EXHIBIT E**

**LEE COUNTY DOCUMENT MANAGEMENT FORM
For
RFP220362BJB Disaster Recovery Services for Lee County**

These forms are required as indicated below and all required forms should be submitted with all submissions. If it is determined that forms in this selection are not applicable to your company or solicitation they should be marked “N/A or Not Applicable” across the form in large letters and returned with your submission package.

FORM #	TITLE / DESCRIPTION	REQUIRED STATUS (Required, Not Required, If Applicable)	VENDOR CHECK-OFF
1	Solicitation Response Form	Required	
1a	Proposal Form	Required	
N/A	Business Relationship Disclosure Requirement	If Applicable	
2	Affidavit Certification Immigration Laws	Required	
3	Reference Survey	Required	
4	Negligence or Breach of Contract Disclosure Form	Required	
5	Affidavit Principal Place of Business	Required	
6	Sub-Contractor List	If Applicable	
7	Public Entity Crime Form	Required	
GRANT FUNDING – REQUIRED DOCUMENTS			
8	Certification Regarding Lobbying	Required	
9	Certification of Lobbying Activities	Required	
10	Immigration Law Affidavit Certification (E-Verify) (Provide evidence of E-Verify account)	Required	
11	Certification Regarding Debarment, Suspension, Ineligibility And Voluntary Exclusion CONSULTANT shall ensure that any SUB-CONSULTANTS added following award of this project shall receive approval by the COUNTY authorized representative and shall complete this form and submit to COUNTY.	Required	
*	Proposal Label	Required	
*	Inclusion of any licenses of certifications requested.	If Applicable	

It is the Proposer’s responsibility to review the submittal request in its entirety and ensure that all submittal requirements are included within you submission package.

PROJECT FUNDING PACKAGE
EXHIBIT E

FORMS DESCRIPTION & INSTRUCTIONS
REQUEST FOR PROPOSAL (NON-CCNA)

This table provides a brief list, description, and instructions regarding the standard requested forms that should be submitted with all bids or proposals. This is not intended to be an all-inclusive list of forms required for your submission, but rather a guide to assist in completion of the County's standard forms.

Form # **Title/Description**

1 Solicitation Response Form (Required)

All signatures must be by a corporate authorized representative, witnessed, and corporate and/or notary seal (if applicable.) The corporate or mailing address must match the company information as it is listed on the Florida Department of State Division of Corporations. Attach a copy of the web-page(s) as certification of this required information. Sample attached for your reference. Verify that all addenda and tax identification number have been provided.

1a Price Proposal Form (Required)

This form is used to provide itemization of project cost and a "Schedule of Values".

**** Business Relationship Disclosure Requirement (if Applicable)***

Sections 112.313(3) and 112.313(7), F.S., prohibit certain business relationships on the part of public officers and employees, their spouses, and their children. If this **disclosure is applicable, the Bidder must request the form** entitled "**INTEREST IN COMPETITIVE BID FOR PUBLIC BUSINESS**" (Required by § 112.313(12)(b), F.S.) to be completed and **returned with the Solicitation Response**. **It is the Bidder's responsibility to request the form and disclose this relationship; failure to do so may result in being declared non-responsive.** NOTICE: UNDER THE PROVISIONS OF § 112.317, F.S., A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR, AND MAY BE PUNISHED BY, ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$10,000.00.

2 Affidavit Certification Immigration Laws (Required)

Form is acknowledgement that the proposer is in compliance in regard to Immigration Laws.

3 Reference Survey (Required)

Provide this form to reference respondents. This form **will be turned in with the proposal** package.

1. **Section 1:** Bidder/Proposer to complete with reference respondent's information prior to providing to them for their response. (This is **not** the Bidder/Proposer's information.)
2. **Section 2:** Enter the name of the Bidder/Proposer; provide the project information in which the reference respondent is to provide a response.
3. The reference respondent should complete "**Section 3.**"
4. **Section 4:** The reference respondent to print and sign name
5. **Three (3) Reference responses** are to be **returned with the proposal package**.
6. Failure to obtain reference surveys may make your company non-responsive.

4 Negligence or Breach of Contract Disclosure Form (Required)

The form may be used to disclose negligence or breach of contract litigation that your company may be a part of over the past ten years. You may need to duplicate this form to list all history. If the proposer has more than 10 lawsuits, you may narrow them to litigation of the company or subsidiary submitting the solicitation response.

Include, at a minimum, litigation for similar projects completed in the State of Florida. Final outcome should include in whose favor the litigation was settled and was a monetary amount awarded. The settlement amount may remain anonymous. If you have **no litigation, enter "None" in the first "type of incident" block** of the form. Please do not write N/A on this form.

**PROJECT FUNDING PACKAGE
EXHIBIT E**

5 *Affidavit Principal Place of Business (Required)*

Certifies proposer's location information.

6 *Sub-Contractor/Consultant List (If applicable)*

To be completed and returned when sub-contractor/consultants are to be utilized and are known at the time of the submission.

7 *Public Entity Crimes Form (Required)*

Any person or affiliate as defined by statute who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid or a contract to provide any goods or services to the County; may not submit a bid on a contract with the County for the construction or repair of a public building or public work; may not submit bids or leases of real property to the County; may not be awarded or perform works as a contractor, supplier, subcontractor, or consultant under a contract with the County, and may not transact business with the County in excess of \$25,000.00 for a period of 36 months from the date of being placed on the convicted vendor list.

8 *Certification Regarding Lobbying (Required)*

To be completed and returned by Vendor with submittal. Certifies that no Federal appropriated funds have been paid or will be paid by the Vendor any person for influencing or attempting to influence the awarding of a contract.

9 *Disclosure of Lobbying Activities (if applicable)*

To be completed and returned by the Vendor with submittal if applicable. Provides disclosure of lobbying activities.

10 *Immigration Law Affidavit Certification (E-Verify) (Required)*

To be completed and returned by the Vendor with submittal. Certifies that the Vendor is fully compliant with all immigration laws, comply with and provide proof of enrollment in E-Verify program.

11 *Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion (Required)*

To be completed and returned by the Vendor with submittal. Certifies that the Vendor is not presently debarred, suspended, and ineligible or voluntary excluded from participating in this contract.

*** *Proposal Label* (Required)**

Self-explanatory. Please affix to the outside of the sealed submission documents.

Include any licenses or certifications requested

Local Business Tax Account (as applicable) issued by City and/or County entity. This is necessary for all Florida vendors.

It is the Proposer's responsibility to insure the Solicitation Response is mailed or delivered in time to be received no later than the specified opening date and time. (If solicitation is not received prior to deadline it cannot be considered or accepted.)

PROJECT FUNDING PACKAGE
EXHIBIT E

Form 1 – Solicitation Response Form



LEE COUNTY PROCUREMENT MANAGEMENT
SOLICITATION RESPONSE FORM

Date Submitted: 07/29/2022 Deadline Date: 8/2/2022

SOLICITATION IDENTIFICATION: RFP220362BJB

SOLICITATION NAME: Disaster Recovery Services for Lee County

COMPANY NAME: CrowderGulf Joint Venture, Inc.

NAME & TITLE: (TYPED OR PRINTED) Ashley Ramsay-Naile, President

BUSINESS ADDRESS: (PHYSICAL) 5629 Commerce Blvd. E Mobile, AL 36619

CORPORATE OR MAILING ADDRESS:

☒ SAME AS PHYSICAL

ADDRESS MUST MATCH SUNBIZ.ORG

E-MAIL ADDRESS: jramsay@crowdergulf.com

PHONE NUMBER: 800-992-6207 FAX NUMBER: 251-459-7430

NOTE REQUIREMENT: IT IS THE SOLE RESPONSIBILITY OF THE VENDOR TO CHECK LEE COUNTY PROCUREMENT MANAGEMENT WEB SITE FOR ANY ADDENDA ISSUED FOR THIS PROJECT. THE COUNTY WILL POST ADDENDA TO THIS WEB PAGE BUT WILL NOT NOTIFY.

In submitting this proposal, Proposer makes all representations required by the instructions to Proposer and further warrants and represents that: Proposer has examined copies of all the solicitation documents and the following addenda:

No. 1 Dated: 07.22.22 No. 3 Dated: 07.28.22 No. _____ Dated: _____

No. 2 Dated: 07.27.22 No. _____ Dated: _____ No. _____ Dated: _____

Tax Payer Identification Number: 01-0626019

(1) Employer Identification Number -OR- (2) Social Security Number:

**** Lee County collects your social security number for tax reporting purposes only**

Please submit a copy of your registration from the website www.sunbiz.org establishing the Proposer/firm as authorized (including authorized representatives) to conduct business in the State of Florida, as provided by the *Florida Department of State, Division of Corporations*.

1 **Collusion Statement:** Lee County, Florida The undersigned, as Proposer, hereby declares that no person or other persons, other than the undersigned, are interested in this solicitation as Principal, and that this solicitation is submitted without collusion with others; and that we have carefully read and examined the specifications or scope of work, and with full knowledge of all conditions under which the services herein is contemplated must be furnished, hereby propose and agree to furnish this service according to the requirements set out in the solicitation documents, specifications or scope of work for said service for the prices as listed on the county provided price sheet or (CCNA) agree to negotiate prices in good faith if a contract is awarded.

2 **Scrutinized Companies Certification:**

Section 287.135, FL § , prohibits agencies from contracting with companies, for goods or services over \$1,000,000, that are on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. Both lists are created pursuant to section 215.473, FL§.

As the person authorized to sign on behalf of Respondent, I hereby certify that the company identified above not listed on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. I understand that pursuant to section 287.135, FL§, the submission of a false certification may subject company to civil penalties, attorney's fees, and/or costs.

PROJECT FUNDING PACKAGE
EXHIBIT E

Form 1 – Solicitation Form, Page 2

- 3 **Business Relationship Disclosure Requirement:** Sections 112.313(3) and 112.313(7), FL§, prohibit certain business relationships on the part of public officers and employees, their spouses, and their children. See Part III, Chapter 112, FL § and/or the brochure entitled "A Guide to the Sunshine Amendment and Code of Ethics for Public Officers, Candidates and Employees" for more details on these prohibitions. However, Section 112.313(12), FL § (1983), provides certain limited exemptions to the above-referenced prohibitions, including one where the business is awarded under a system of sealed, competitive bidding; the public official has exerted no influence on bid negotiations or specifications; and where disclosure is made, prior to or at the time of the submission of the bid, of the official's or his spouse's or child's interest and the nature of the intended business. The Commission on Ethics has promulgated this form for such disclosure, if and when applicable to a public officer or employee.
- If this disclosure is applicable request form "INTEREST IN COMPETITIVE BID FOR PUBLIC BUSINESS" (Required by 112.313(12)(b), Florida Statute (1983)) to be completed and returned with solicitation response. It is the proposer's responsibility to disclose this relationship, failure to do so could result in being declared non-responsive.**

☐ Business Relationship Applicable (request form)

☒ Business Relationship NOT Applicable

- 4 Disadvantaged, Minority, Women, Veterans Business Enterprise (DBE, MBE, WBE, VBE) ☐ Yes ☒ No
Proposer? If yes, please attach a current certificate.

**ALL PROPOSALS MUST BE EXECUTED BY AN AUTHORIZED AUTHORITY OF THE PROPOSER.
WITNESSED AND SEALED (IF APPLICABLE)**

CrowderGulf Joint Venture, Inc.

Company Name (Name printed or typed)

Ashley Ramsay-Naile

Authorized Representative Name (printed or typed)

President

Authorized Representative's Title (printed or typed)

Ashley Ramsay-Naile

Authorized Representative's Signature



(Affix Corporate Seal, if applicable)

J. Anthony Dees

Witnessed/Attested by:

(Witness/Secretary name and title printed or typed)

J. Anthony Dees

Witness/Secretary Signature

Any blank spaces on the form(s), qualifying notes or exceptions, counter offers, lack of required submittals, or signatures, on County's Form may result in the submission being declared non-responsive by the County.

State of Florida

Department of State

I certify from the records of this office that CROWDER-GULF JOINT VENTURE, INC. is a corporation organized under the laws of the State of Florida, filed on September 3, 2002.

The document number of this corporation is P02000095020.

I further certify that said corporation has paid all fees due this office through December 31, 2022, that its most recent annual report/uniform business report was filed on January 13, 2022, and that its status is active.

I further certify that said corporation has not filed Articles of Dissolution.

*Given under my hand and the
Great Seal of the State of Florida
at Tallahassee, the Capital, this
the Thirteenth day of January,
2022*



Randy R.
Secretary of State

Tracking Number: 1229535139CC

To authenticate this certificate, visit the following site, enter this number, and then follow the instructions displayed.

<https://services.sunbiz.org/Filings/CertificateOfStatus/CertificateAuthentication>



[Department of State](#) / [Division of Corporations](#) / [Search Records](#) / [Search by Entity Name](#) /

Detail by Entity Name

Florida Profit Corporation
CROWDER-GULF JOINT VENTURE, INC.

Filing Information

Document Number	P02000095020
FEI/EIN Number	01-0626019
Date Filed	09/03/2002
State	FL
Status	ACTIVE
Last Event	AMENDMENT
Event Date Filed	04/27/2020
Event Effective Date	NONE

Principal Address

5629 Commerce Blvd E
Mobile, AL 36619

Changed: 06/23/2020

Mailing Address

5629 Commerce Blvd E
Mobile, AL 36619

Changed: 06/23/2020

Registered Agent Name & Address

MADIO, DONALD
938 VALLEY VIEW CIRCLE
PALM HARBOR, FL 34684

Name Changed: 04/27/2020

Address Changed: 04/27/2020

Officer/Director Detail

Name & Address

Title President

RAMSAY-Naile, ASHLEY

5629 Commerce Blvd E
 Mobile, AL 36619

Title VP

Loper, Edward Reid
 5629 Commerce Blvd E
 Mobile, AL 36619

Title CFO

Dees, Anthony
 5629 Commerce Blvd E
 Mobile, AL 36619

Annual Reports

Report Year	Filed Date
2021	02/03/2021
2021	04/15/2021
2022	01/13/2022

Document Images

01/13/2022 -- ANNUAL REPORT	View image in PDF format
04/15/2021 -- AMENDED ANNUAL REPORT	View image in PDF format
02/03/2021 -- ANNUAL REPORT	View image in PDF format
06/23/2020 -- AMENDED ANNUAL REPORT	View image in PDF format
04/27/2020 -- Amendment	View image in PDF format
01/21/2020 -- ANNUAL REPORT	View image in PDF format
02/07/2019 -- ANNUAL REPORT	View image in PDF format
01/15/2018 -- ANNUAL REPORT	View image in PDF format
03/20/2017 -- ANNUAL REPORT	View image in PDF format
02/11/2016 -- ANNUAL REPORT	View image in PDF format
01/09/2015 -- ANNUAL REPORT	View image in PDF format
04/08/2014 -- ANNUAL REPORT	View image in PDF format
01/08/2013 -- ANNUAL REPORT	View image in PDF format
03/12/2012 -- ANNUAL REPORT	View image in PDF format
04/12/2011 -- ANNUAL REPORT	View image in PDF format
03/01/2010 -- ANNUAL REPORT	View image in PDF format
04/15/2009 -- ANNUAL REPORT	View image in PDF format
02/13/2008 -- ANNUAL REPORT	View image in PDF format
03/20/2007 -- ANNUAL REPORT	View image in PDF format
04/17/2006 -- ANNUAL REPORT	View image in PDF format
04/29/2005 -- ANNUAL REPORT	View image in PDF format
04/30/2004 -- ANNUAL REPORT	View image in PDF format
03/07/2003 -- ANNUAL REPORT	View image in PDF format
09/03/2002 -- Domestic Profit	View image in PDF format

PROCUREMENT MANAGEMENT DEPARTMENT
PRICE PROPOSAL FORM



COMPANY NAME: _____

SOLICITATION: RFP220362BJB – Disaster Recovery Services

This page serves as a header/placeholder only. Please refer to the Excel document provided with the solicitation for the complete schedule. The Excel document contains 4 worksheets identified as Category A, Category B, Category C and Category D. All highlighted fields in green must be completed. Pricing submitted on the worksheet identified as Category A, *Core Services*, is the only pricing that will be utilized for evaluation purposes. However, pricing across all four worksheets will be contracted and shall remain firm for the duration of the contract, inclusive of any renewals. Estimated quantities provided are for evaluation purposes only and do not guarantee any amounts.

The Excel document provides formulas for convenience; however, it is the Proposer's responsibility to verify all pricing and calculations are CORRECT. Lee County is not responsible for errors in formulas or calculations contained within Excel documents(s).

REMINDER: In the event there is a discrepancy between the total proposed amount, or the extended amounts and the unit prices proposed, the unit prices will prevail, and the corrected sum will be considered the quoted price.

The County will only accept proposals submitted on the proposal form provided by the County. Proposals submitted on other forms, other than those provided by the County, will deem Proposer as non-responsive and ineligible for award. Proposers may not adjust or modify data provided within the Price Proposal Form. Proposals received with modified data may deem the Proposer as non-responsive and ineligible for award.

PLEASE ENSURE you have provided a printed copy of the Bid/Proposal Form with your hard copy submission packages and provided the excel version with your digital submission package.

PRICING

Pricing shall be inclusive of all labor, equipment, supplies, overhead, profit, materials, and any other incidental costs required to perform and complete all work as specified herein.

PROJECT FUNDING PACKAGE
EXHIBIT E

Form 2 – Affidavit Certification of Immigration Laws



AFFIDAVIT CERTIFICATION IMMIGRATION LAWS

SOLICITATION NO.: **RFP220362BJB** SOLICITATION NAME: **Disaster Recovery Services**

LEE COUNTY WILL NOT INTENTIONALLY AWARD COUNTY CONTRACTS TO ANY CONTRACTOR WHO KNOWINGLY EMPLOYS UNAUTHORIZED ALIEN WORKERS, CONSTITUTING A VIOLATION OF THE EMPLOYMENT PROVISIONS CONTAINED IN 8 U.S.C. SECTION 1324 a(e) {SECTION 274A(e) OF THE IMMIGRATION AND NATIONALITY ACT ("INA").

LEE COUNTY MAY CONSIDER THE EMPLOYMENT BY ANY CONTRACTOR OF UNAUTHORIZED ALIENS A VIOLATION OF SECTION 274A(e) OF THE INA. SUCH VIOLATION BY THE RECIPIENT OF THE EMPLOYMENT PROVISIONS CONTAINED IN SECTION 274A(e) OF THE INA SHALL BE GROUNDS FOR UNILATERAL CANCELLATION OF THE CONTRACT BY LEE COUNTY. PROPOSER ATTESTS THAT THEY ARE FULLY COMPLIANT WITH ALL APPLICABLE IMMIGRATION LAWS (SPECIFICALLY TO THE 1986 IMMIGRATION ACT AND SUBSEQUENT AMENDMENTS).

BY REGISTERING AS A VENDOR, SUBMITTING A RESPONSE TO A SOLICITATION, OR ENTERING INTO A CONTRACT, YOU ARE OBLIGATED TO COMPLY WITH THE PROVISIONS OF SECTION 448.095, FLA. STAT., "EMPLOYMENT ELIGIBILITY." FURTHER, BY YOUR REGISTRATION AS A VENDOR, RESPONSE TO A SOLICITATION, ENTERING INTO A CONTRACT, YOU AFFIRM AND REPRESENT THAT YOU ARE REGISTERED WITH THE E-VERIFY SYSTEM AND ARE USING SAME, AND WILL CONTINUE TO USE SAME AS REQUIRED BY SECTION 448.095, F.S. COMPLIANCE WITH SECTION 448.095 INCLUDES, BUT IS NOT LIMITED TO, UTILIZATION OF THE E-VERIFY SYSTEM TO VERIFY THE WORK AUTHORIZATION STATUS OF ALL NEWLY HIRED EMPLOYEES, AND REQUIRING ALL SUBCONTRACTORS TO PROVIDE AN AFFIDAVIT ATTESTING THAT THE SUBCONTRACTOR DOES NOT EMPLOY, CONTRACT WITH, OR SUBCONTRACT WITH, AN UNAUTHORIZED ALIEN. FAILURE TO COMPLY WILL LEAD TO TERMINATION AS A VENDOR, DISQUALIFYING YOU FOR AWARD OF A SOLICITATION, DENIAL OF ENTERING INTO A CONTRACT AND/OR, CANCELLATION OF AN ACTIVE CONTRACT, OR IF YOUR SUBCONTRACTOR KNOWINGLY VIOLATES THE STATUTE, THE SUBCONTRACT MUST BE TERMINATED IMMEDIATELY. ANY CHALLENGE TO TERMINATION UNDER THIS PROVISION MUST BE FILED NO LATER THAN 20 CALENDAR DAYS AFTER THE DATE OF TERMINATION. IF TERMINATED FOR A VIOLATION OF THE STATUTE BY THE VENDOR, THE VENDOR MAY NOT BE ALLOWED TO DO BUSINESS WITH THE COUNTY OR BE AWARDED A SOLICITATION OR CONTRACT FOR A PERIOD OF 1 YEAR AFTER THE DATE OF TERMINATION. ALL COSTS INCURRED TO INITIATE AND SUSTAIN THE AFOREMENTIONED PROGRAMS SHALL BE THE RESPONSIBILITY OF THE VENDOR.

Company Name: CrowderGulf Joint Venture, Inc.

Ashley Ramsay-Naile
Signature

President

07/25/2022

Date

STATE OF Alabama

COUNTY OF Mobile

The foregoing instrument was signed and acknowledged before me, by means of ☒ physical presence or ☐ online notarization, this 25th day of July, 2022, by Ashley Ramsay-Naile who has produced

(Print or Type Name)

Driver's License as identification.

(Type of Identification and Number)

Kerrie A. Noll
Notary Public Signature

Kerrie A. Noll

Printed Name of Notary Public

09/14/2022

Notary Commission Number/Expiration

KERRIE A. NOLL
Notary Public, State of Alabama
Alabama State At Large
My Commission Expires
September 14, 2022

The signee of this Affidavit guarantees, as evidenced by the sworn affidavit required herein, the truth and accuracy of this affidavit to interrogatories hereinafter made. **LEE COUNTY RESERVES THE RIGHT TO REQUEST SUPPORTING DOCUMENTATION, AS EVIDENCE OF SERVICES PROVIDED, AT ANY TIME.**

**PROJECT FUNDING PACKAGE
EXHIBIT E**

Form 3 - Reference Survey

**Lee County Procurement Management
Reference Survey**

Reference surveys submitted can be a maximum of twelve (12) months old. If using a previous reference, Proposers must clearly identify the project name and number the reference is being submitted for.

Project Name & Number: Lee County RFP220362BJB / Disaster Recovery Services

Section 1	Reference Respondent Information	Please return completed form to:	
FROM:	Brandon Franklin	Bidder/Proposer:	CrowderGulf Joint Venture, Inc.
COMPANY:	City of Gulf Shores, AL	Due Date:	08/02/2022
PHONE #:	251-968-1149	Total # Pages:	1
FAX #:		Phone #:	800-992-6207
EMAIL:	bfranklin@gulfshoresal.gov	Fax #:	251-459-7430
		Bidder/Proposer E-Mail:	knoll@crowdnergulf.com

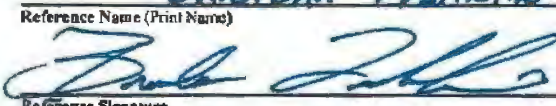
Section 2	Enter Bidder/Proposer Information. If applicable Similar Performed Project (Bidder/Proposer to enter details of a project performed for above reference respondent)		
Proposer Name:	CrowderGulf Joint Venture, Inc.		
Reference Project Name:	Project Address:	Project Cost:	
2020 Hurricane Sally	City of Gulf Shores, AL	\$9,741,393	
Summarize Scope:	Debris Removal following Hurricane Sally		

You as an individual or your company has been given as a reference on the project identified above. Please provide your responses in section 3 below.

Section 3		Indicate: "Yes" or "No"
1. Did this company have the proper resources and personnel by which to get the job done?		YES
2. Were any problems encountered with the company's work performance?		NO
3. Were any change orders or contract amendments issued, other than owner initiated?		NO
4. Was the job completed on time?		YES
5. Was the job completed within budget?		YES
6. On a scale of one to ten, ten being best, how would you rate the overall work performance, considering professionalism; final product; personnel; resources. Rate from 1 to 10. (10 being highest)		10
7. If the opportunity were to present itself, would you rehire this company?		YES
8. Please provide any additional comments pertinent to this company and the work performed for you: This Company is punctual, highly professional and extremely accomodating during our time of need after this disaster		

Section 4 Please submit non-Lee County employees as references

Reference Name (Print Name): BRANDAN FRANKLIN

Reference Signature: 

**PROJECT FUNDING PACKAGE
EXHIBIT E**

Form 3 - Reference Survey

**Lee County Procurement Management
Reference Survey**

Reference surveys submitted can be a maximum of twelve (12) months old. If using a previous reference, Proposers must clearly identify the project name and number the reference is being submitted for.

Project Name & Number: Lee County RFP220362BJB / Disaster Recovery Services

Section 1		Reference Respondent Information		Please return completed form to:	
FROM:	Phillip West			Bidder/Proposer:	CrowderGulf Joint Venture, Inc.
COMPANY:	City of Orange Beach, AL			Due Date:	07/27/2022
PHONE #:	251-981-6788			Total # Pages:	1
FAX #:				Phone #:	800-992-6207
EMAIL:	pwest@cityoforangebeach.com			Fax #:	251-459-7430
				Bidder/Proposer E-Mail:	knoll@crowdorgulf.com
Section 2		Enter Bidder/Proposer Information, if applicable Similar Performed Project (Bidder/Proposer to enter details of a project performed for above reference respondent)			
Proposer Name:		CrowderGulf Joint Venture, Inc.			
Reference Project Name:		Project Address:		Project Cost:	
2020 Hurricane Sally		City of Orange Beach		\$13,593,239	
Summarize Scope:					
- Removed & Disposed: vegetation, C&D, Municipal Debris, Beach Debris Trail Debris, Waterway Debris, Wetlands, C&D Compacted, HHW, White Goods, Hangers, Leaners, and Stumps. - Reduction by Grinding and Compacting					
You as an individual or your company has been given as a reference on the project identified above. Please provide your responses in section 3 below.					
Section 3					Indicate: "Yes" or "No"
1. Did this company have the proper resources and personnel by which to get the job done?					Yes
2. Were any problems encountered with the company's work performance?					No
3. Were any change orders or contract amendments issued, other than owner initiated?					No
4. Was the job completed on time?					Yes!
5. Was the job completed within budget?					Yes
6. On a scale of one to ten, ten being best, how would you rate the overall work performance, considering professionalism; final product; personnel; resources. Rate from 1 to 10. (10 being highest)					10
7. If the opportunity were to present itself, would you rehire this company?					Yes!
8. Please provide any additional comments pertinent to this company and the work performed for you: <i>Excellent customer service & communication; innovative when dealing w/ challenging conditions.</i>					
Section 4		Please submit non-Lee County employees as references			
Reference Name (Print Name)		Phillip A. West			
Reference Signature		<i>Phillip A. West</i>			

**PROJECT FUNDING PACKAGE
EXHIBIT E**

Form 3 - Reference Survey

**Lee County Procurement Management
Reference Survey**

Reference surveys submitted can be a maximum of twelve (12) months old. If using a previous reference, Proposers must clearly identify the project name and number the reference is being submitted for.

Project Name & Number: Lee County RFP220362BJB / Disaster Recovery Services

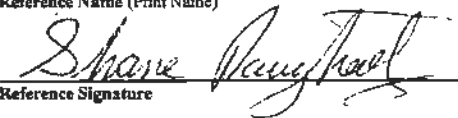
Section 1	Reference Respondent Information	Please return completed form to:	
FROM:	<u>Shane Daugherty</u>	Bidder/Proposer:	<u>CrowderGulf Joint Venture, Inc.</u>
COMPANY:	<u>City of Panama City, FL</u>	Due Date:	<u>08/02/2022</u>
PHONE #:	<u>850-872-3172</u>	Total # Pages:	<u>1</u>
FAX #:		Phone #:	<u>800-992-6207</u>
EMAIL:	<u>sdaugherty@panamacity.gov</u>	Fax #:	<u>251-459-7430</u>
		Bidder/Proposer E-Mail:	<u>knoil@crowdergulf.com</u>

Section 2	Enter Bidder/Proposer Information, if applicable Similar Performed Project (Bidder/Proposer to enter details of a project performed for above reference respondent)		
Proposer Name:	<u>CrowderGulf Joint Venture, Inc.</u>		
Reference Project Name:	Project Address:	Project Cost:	
<u>2018 Hurricane Michael</u>	<u>City of Panama City</u>		
Summarize Scope:	<u>City of Panama City debris contractor for Hurricane Michael</u>		

You as an individual or your company has been given as a reference on the project identified above. Please provide your responses in section 3 below.

Section 3		Indicate: "Yes" or "No"
1. Did this company have the proper resources and personnel by which to get the job done?		Yes
2. Were any problems encountered with the company's work performance?		No
3. Were any change orders or contract amendments issued, other than owner initiated?		No
4. Was the job completed on time?		Yes
5. Was the job completed within budget?		Yes
6. On a scale of one to ten, ten being best, how would you rate the overall work performance, considering professionalism; final product; personnel; resources. Rate from 1 to 10. (10 being highest)		10
7. If the opportunity were to present itself, would you rehire this company?		Yes
8. Please provide any additional comments pertinent to this company and the work performed for you: Crowder gulf was our contractor for the clean up of Hurricane Michael, which generated approx. 5.7 million cubic yards of debris. They exceeded our expectations. They were very professional, experienced, highly competent and had courteous personnel. We just renewed our contract for debris removal and selected Crowder Gulf as our primary contractor for the City of Panama City. I highly recommend and can attest to their abilities.		

Section 4 Please submit non-Lee County employees as references

Shane Daugherty
 Reference Name (Print Name)

 Reference Signature

**PROJECT FUNDING PACKAGE
EXHIBIT E**

Form 3 - Reference Survey

*Lee County Procurement Management
Reference Survey*

Reference surveys submitted can be a maximum of twelve (12) months old. If using a previous reference, Proposers must clearly identify the project name and number the reference is being submitted for.

Project Name & Number: Lee County RFP220362BJB / Disaster Recovery Services

Section 1		Reference Respondent Information		Please return completed form to:	
FROM:	<u>Allen Wainwright</u>			Bidder/Proposer:	<u>CrowderGulf Joint Venture, Inc.</u>
COMPANY:	<u>Calcasieu Parish, LA</u>			Due Date:	<u>08/02/2022</u>
PHONE #:	<u>337-721-3700</u>			Total # Pages:	<u>1</u>
FAX #:				Phone #:	<u>800-992-6207</u>
EMAIL:	<u>awainwright@calcasieuparish.gov</u>			Fax #:	<u>251-459-7430</u>
Section 2		Enter Bidder/Proposer Information, if applicable Similar Performed Project (Bidder/Proposer to enter details of a project performed for above reference respondent)			
Proposer Name:		<u>CrowderGulf Joint Venture, Inc.</u>			
Reference Project Name:		Project Address:	Project Cost:		
<u>2021 Flooding & Storms / Tornado & 2020 Hurricane Laura</u>		<u>Calcasieu Parish</u>	<u>\$222,312 / \$28,960 / \$132,554,091</u>		
Summarize Scope:					
<u>2021 Flooding & Severe Storms (08/07/2021-08/04/2021)</u>					
<u>Removed & Disposed: Vegetation, C&D, Mulch, White Goods, Refrigerator Contents, E-waste, Reduced by Compacting & Grinding - 3 Sites / 2021 Tornado (11/30/2021-12/04/2021) Removed & disposed C&D debris direct to final disposal / 2020 Hurricane Laura (08/2020-08/2/2021) Removed & Disposed: vegetation, C&D, Mulch, Hangers, Leaners, Stumps, White Goods, Refrigerator Contents Reduced by Grinding, Burning & Compacting 12 Sites / Lateralis Project (10/8/2021-Ongoing) Removed & Disposed: vegetation, C&D with land based and water based equipment in canals and waterways</u>					
You as an individual or your company has been given as a reference on the project identified above. Please provide your responses in section 3 below.					
Section 3					Indicate: "Yes" or "No"
1. Did this company have the proper resources and personnel by which to get the job done?					<u>Yes</u>
2. Were any problems encountered with the company's work performance?					<u>No</u>
3. Were any change orders or contract amendments issued, other than owner initiated?					<u>No</u>
4. Was the job completed on time?					<u>Yes</u>
5. Was the job completed within budget?					<u>Yes</u>
6. On a scale of one to ten, ten being best, how would you rate the overall work performance, considering professionalism; final product; personnel; resources. Rate from 1 to 10. (10 being highest)					<u>10</u>
7. If the opportunity were to present itself, would you rehire this company?					<u>Yes</u>
8. Please provide any additional comments pertinent to this company and the work performed for you:					

Section 4 Please submit non-Lee County employees as references

ALLEN WAINWRIGHT
Reference Name (Print Name)

A W W
Reference Signature

55 RFP220362BJB – Disaster Recovery Services for Lee County

**PROJECT FUNDING PACKAGE
EXHIBIT E**

Form 3 - Reference Survey

**Lee County Procurement Management
Reference Survey**

Reference surveys submitted can be a maximum of twelve (12) months old. If using a previous reference, Proposers must clearly identify the project name and number the reference is being submitted for.

Project Name & Number: Lee County RFP220362BJB / Disaster Recovery Services

Section 1		Reference Respondent Information		Please return completed form to:	
FROM:		Matt Powell		Bidder/Proposer: CrowderGulf Joint Venture, Inc.	
COMPANY:		Bowling Green, KY		Due Date: 08/02/2022	
PHONE #:		270-393-3071		Total # Pages: 1	
FAX #:				Phone #: 800-992-6207 Fax #: 251-459-7430	
EMAIL:		Matt.Powell@bgky.org		Bidder/Proposer E-Mail: knoll@crowdergulf.com	
Section 2		Enter Bidder/Proposer Information, if applicable Similar Performed Project (Bidder/Proposer to enter details of a project performed for above reference respondent)			
Proposer Name:		CrowderGulf Joint Venture, Inc.			
Reference Project Name:		Project Address:		Project Cost:	
2021 KY Tornado		Bowling Green, KY		\$3,022,273	
Summarize Scope:					
Debris removed from Tornadoes and 4630DR - KY.					
You as an individual or your company has been given as a reference on the project identified above. Please provide your responses in section 3 below.					
Section 3					Indicate: "Yes" or "No"
1. Did this company have the proper resources and personnel by which to get the job done?					Yes
2. Were any problems encountered with the company's work performance?					No
3. Were any change orders or contract amendments issued, other than owner initiated?					No
4. Was the job completed on time?					Yes
5. Was the job completed within budget?					Yes
6. On a scale of one to ten, ten being best, how would you rate the overall work performance, considering professionalism; final product; personnel; resources. Rate from 1 to 10. (10 being highest)					10 !!
7. If the opportunity were to present itself, would you rehire this company?					Yes
8. Please provide any additional comments pertinent to this company and the work performed for you: Excellent service throughout and after. Highly recommend.					

Section 4 Please submit non-Lee County employees as references

Matt Powell
Reference Name (Print Name)

[Signature]
Reference Signature

**PROJECT FUNDING PACKAGE
EXHIBIT E**

Form 3 - Reference Survey

*Lee County Procurement Management
Reference Survey*

Reference surveys submitted can be a maximum of twelve (12) months old. If using a previous reference, Proposers must clearly identify the project name and number the reference is being submitted for.

Project Name & Number: Lee County RFP220362BJB / Disaster Recovery Services

Section 1 Reference Respondent Information		Please return completed form to:	
FROM:	Pete Montz	Bidder/Proposer:	CrowderGulf Joint Venture, Inc.
COMPANY:	St. John the Baptist Parish, LA	Due Date:	07/26/2022
PHONE #:	985-652-9569	Total # Pages:	1
FAX #:		Phone #:	800-992-6207
EMAIL:	p.montz@stjohn-la.gov	Fax #:	251-459-7430
		Bidder/Proposer E-Mail:	knoll@crowderygulf.com
Section 2 Enter Bidder/Proposer Information - if applicable Similar Performed Project (Bidder/Proposer to enter details of a project performed for above reference respondent)			
Proposer Name: CrowderGulf Joint Venture, Inc.			
Reference Project Name:	Project Address:	Project Cost:	
2021 Hurricane Ida	St. John the Baptist Parish, LA	\$30,274,216 to date	
Summarize Scope: Debris Removal operations after Hurricane Ida. Work included: PUSH, Veg, C&D, Parks debris, Hangers (2,198 trees), Leaners (28), stumps (2,800), Ewaste (18,087), HHW (255,580 Lbs), White Goods (2,618), Freon, Refrigerator Contents (661,460 Lbs); Reduced by Compaction (836,043 CY) & Grinding (380,779 CY) (3) DMS Sites			
You as an individual or your company has been given as a reference on the project identified above. Please provide your responses in section 3 below.			
Section 3			Indicate: "Yes" or "No"
1. Did this company have the proper resources and personnel by which to get the job done?			Yes
2. Were any problems encountered with the company's work performance?			No
3. Were any change orders or contract amendments issued, other than owner initiated?			No
4. Was the job completed on time?			Job still active
5. Was the job completed within budget?			Job still active
6. On a scale of one to ten, ten being best, how would you rate the overall work performance, considering professionalism; final product; personnel; resources. Rate from 1 to 10. (10 being highest)			9
7. If the opportunity were to present itself, would you rehire this company?			Yes
8. Please provide any additional comments pertinent to this company and the work performed for you:			
Outstanding company. Very fortunate to have CG part of our team.			

Section 4 Please submit non-Lee County employees as references
Peter Montz

Reference Name (Print Name)

Peter Montz

Reference Signature

**PROJECT FUNDING PACKAGE
EXHIBIT E**

Form 3 - Reference Survey

**Lee County Procurement Management
Reference Survey**

Reference surveys submitted can be a maximum of twelve (12) months old. If using a previous reference, Proposers must clearly identify the project name and number the reference is being submitted for.

Project Name & Number: Lee County RFP220362BJB / Disaster Recovery Services

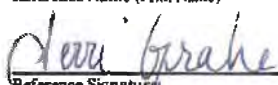
Section 1	Reference Respondent Information	Please return completed form to:	
FROM:	<u>Terri Graham</u>	Bidder/Proposer:	<u>CrowderGulf Joint Venture, Inc.</u>
COMPANY:	<u>Baldwin County, AL</u>	Due Date:	<u>08/02/2022</u>
PHONE #:	<u>251-972-6878</u>	Total # Pages:	<u>1</u>
FAX #:		Phone #:	<u>800-992-6207</u>
EMAIL:	<u>tGraham@baldwincountyal.gov</u>	Fax #:	<u>251-459-7430</u>
		Bidder/Proposer E-Mail:	<u>knoll@crowdengulf.com</u>

Section 2	Enter Bidder/Proposer Information, if applicable Similar Performed Project (Bidder/Proposer to enter details of a project performed for above reference respondent)		
Proposer Name:	<u>CrowderGulf Joint Venture, Inc.</u>		
Reference Project Name:	Project Address:	Project Cost	
<u>2020 Hurricane Sally</u>	<u>Baldwin County, AL</u>	<u>\$61,443,088</u>	
Summarize Scope:			
<u>Removed & disposed of vegetation, C&D, compacted C&D, Mulch, Leaners and Hangers, White Goods and E-Waste - Reduction by grinding. Recovered and reduced: 5,656,293 Cubic Yards of Debris.</u>			

You as an individual or your company has been given as a reference on the project identified above. Please provide your responses in section 3 below.

Section 3	Indicate: "Yes" or "No"
1. Did this company have the proper resources and personnel by which to get the job done?	Yes
2. Were any problems encountered with the company's work performance?	No
3. Were any change orders or contract amendments issued, other than owner initiated?	No
4. Was the job completed on time?	Yes
5. Was the job completed within budget?	N/A
6. On a scale of one to ten, ten being best, how would you rate the overall work performance, considering professionalism; final product; personnel; resources. Rate from 1 to 10. (10 being highest)	9
7. If the opportunity were to present itself, would you rehire this company?	Yes
8. Please provide any additional comments pertinent to this company and the work performed for you:	

Section 4 Please submit non-Lee County employees as references

Terri Graham
Reference Name (Print Name)

Reference Signature

**PROJECT FUNDING PACKAGE
EXHIBIT E**

Form 3 - Reference Survey

**Lee County Procurement Management
Reference Survey**

Reference surveys submitted can be a maximum of twelve (12) months old. If using a previous reference, Proposers must clearly identify the project name and number the reference is being submitted for.

Project Name & Number: Lee County RFP220362BJB / Disaster Recovery Services

Section 1	Reference Respondent Information	Please return completed form to:	
FROM:	John Cardone, Jr.	Bidder/Proposer:	CrowderGulf Joint Venture, Inc.
COMPANY:	City of Lake Charles, LA	Due Date:	08/02/2022
PHONE #:	337-491-1381	Total # Pages:	1
FAX #:		Phone #:	800-992-6207
EMAIL:	jcardone@cityoflc.us	Fax #:	251-459-7430
		Bidder/Proposer E-Mail:	knoll@crowdergulf.com
Section 2	Enter Bidder/Proposer Information, if applicable Similar Performed Project (Bidder/Proposer to enter details of a project performed for above reference respondent)		
Proposer Name:	CrowderGulf Joint Venture, Inc.		
Reference Project Name:	Project Address:	Project Cost:	
2021 Flooding/ 2020 Hurricane Laura	City of Lake Charles, LA		
Summarize Scope:			
You as an individual or your company has been given as a reference on the project identified above. Please provide your responses in section 3 below.			
Section 3		Indicate: "Yes" or "No"	
1.	Did this company have the proper resources and personnel by which to get the job done?	yes	
2.	Were any problems encountered with the company's work performance?	no	
3.	Were any change orders or contract amendments issued, other than owner initiated?	no/na	
4.	Was the job completed on time?	yes	
5.	Was the job completed within budget?	N/A	
6.	On a scale of one to ten, ten being best, how would you rate the overall work performance, considering professionalism; final product; personnel; resources. Rate from 1 to 10. (10 being highest)	very Good	
7.	If the opportunity were to present itself, would you rehire this company?	yes	
8.	Please provide any additional comments pertinent to this company and the work performed for you.		

Section 4 Please submit non-Lee County employees as references

John Cardone
Reference Name (Print Name)

John Cardone
Reference Signature

**PROJECT FUNDING PACKAGE
EXHIBIT E**

Additional Reference Information

(Due to space limitations on reference surveys we have provided additional information on the clients that have completed the surveys)

1. **Client:** St John The Baptist Parish, LA **Population:** 20,278 / Calcasieu Parish
Address: 1801 W Airline Hwy, LaPlace, LA 70068
Contact: **Jaclyn Hotard, Parish President** Ofc: 985-652-6569 ext 1244 Fax: 985-652-7527 j.hotard@stjohn-la.gov
Peter Montz, 985-652-9569 ext 1171, p.montz@stjohn-la.gov
Project Title: **2021 Hurricane Ida (09/06/2021-Ongoing)**
 - Removed & Disposed: vegetation, C&D, Mulch, Compacted C&D, Hangers, Leaners, Stumps & White Goods, HHW, E-waste, Refrigerator Contents
 - Provided portable showers / Event Restrooms for volunteer services**2016 LA Flooding (02/26/2016-03/06/2016)**
 - Reduced by Grinding & Compacting

Contract Value:	CY Recovered & Reduced:
Ida \$23,841,877	1,481,794
Flooding \$7,574	Lump Sum

2. **Client:** City of Gulf Shores, AL **Population:** 11,809 / Baldwin County
Address: P.O. Box 299, Gulf Shores, AL 36547
Contact: **Brandan Franklin**, Chief Building Official 251-968-1149 Office, 251-269-7363 cell, bfranklin@gulfshoresal.gov
Mark Acreman, PE, City Engineer, 251-968-1155, macreman@gulfshoresal.gov
Project Title: **2020 Hurricane Sally (09/2020-01/27/2021)**
 - Removed & Disposed: vegetation**2013 Tropical Storm Andrea (6/2013)**
 - Special Projects: Cleaned the beaches of debris**2005 Hurricane Katrina (10/2005-2/2006)**
 - Special Projects: Removed & disposed of debris at West Beach; Beach plowing, sand screening & 7 miles of berm reconstruction

Contract Value:	CY Recovered & Reduced:
Sally \$8,972,998	580,181
TS Andrea \$8,029	Hourly
Katrina \$7,147,306	270,218

3. **Client:** City of Orange Beach, AL **Population:** 6029 / Baldwin County
Address: 4101 Orange Beach Blvd, Orange Beach, AL 36561
Contact: **Phillip West**, Coastal Resource Manager, 251-981-6788, pwest@cityoforangebeach.com
Nicole Woerner, Coastal Resource Planner, 251-981-1063, nwoerner@cityoforangebeach.com
Tony Kennon, Mayor, 251-981-6810, tkennon@cityoforangebeach.com
Project Title: **2020 Hurricane Sally (09/2020-05/21/2021)**
 - Removed & Disposed: vegetation, C&D, Municipal Debris, Beach Debris Trail Debris, Waterway Debris, Wetlands, C&D Compacted, HHW, White Goods, Hangers, Leaners, and Stumps.
 - Reduction by Grinding and Compacting**2015 Non Disaster Related (Dead Fish Removal) (8/2015)**
 - Dead fish removal and disposal from coastal waters & beaches**2015 Non Disaster Related (Demo) (4/2015)**
 - Demolition of Coastal Arts Center & Asbestos & Abatement of Children Studio**2014 Severe Storms – Flooding & Tornados (5/2014)**
 - Special Projects: Remove heavy seaweed from 7 miles of beach**2012 Hurricane Isaac (8/2012-9/2012)**
 - Special Projects: Cleaned the beaches of debris**2010 BP Oil Spill Cleanup (7/2010-8/2010)**
 - Provided debris clearance, sand reclamation & hazardous materials extraction**2005 Hurricane Katrina (8/2005)**

**PROJECT FUNDING PACKAGE
EXHIBIT E**

- Special Projects: beach work, sand screening & various projects

Contract Value:		CY Recovered & Reduced:
Sally	\$13,593,239	424,952
Fish	\$22,538	Hourly
Demo	\$24,760	Lump Sum
Severe Storms	\$13,071	Hourly
Isaac	\$8,265	Hourly
BP	\$664,326	Hourly
Katrina	\$265,701	181,974

4. **Client:** Calcasieu Parish, LA **Population: 202,445**
Address: 1015 Pithon St, 4th Floor, Lake Charles, LA 70602
Contact: Allen Wainwright, Public Works Operations Manager, 337-721-3700, awainwright@calcasieuparish.gov
Project Title: **2021 Flooding & Severe Storms (06/07/2021-08/04/2021)**
- Removed & Disposed: Vegetation, C&D, Mulch, White Goods, Refrigerator Contents, E-waste
 - Reduced by Compacting & Grinding
 - 3 Sites
- 2021 Tornado (11/30/2021-12/04/2021)**
- Removed & disposed C&D debris direct to final disposal
- 2020 Hurricane Laura (08/2020-09/2/2021)**
- Removed & Disposed: vegetation, C&D, Mulch, Hangers, Leaners, Stumps, White Goods, Refrigerator Contents
 - Reduced by Grinding, Burning & Compacting
 - 12 Sites
 - **Laterals Project (10/8/2021-Ongoing)**
 - Removed & Disposed: vegetation, C&D with land based and water based equipment in canals and waterways
- 2008 Hurricane Ike (9/2008-10/2008)**
- Removed & Disposed: vegetation, C&D
- 2005 Hurricane Rita – Subcontractor for Ceres (USACE) (9/2005-8/2006)**
- Removed & Disposed: vegetation, C&D, ash, mulch, white goods (44,432), e-goods (2,464), leaners (9,698) /hangers (26,741), stumps (5,333), small engines (110)
 - Reduced by burning & grinding (14 disposal sites)
 - Special Projects: Surveyed houses for asbestos demo & proper disposal of asbestos
- | Contract Value: | | CY Recovered & Reduced: |
|------------------------|----------------------|------------------------------------|
| Flood | \$222,312 | 14,027 |
| Tornado | \$28,960 | 1,679 |
| Laura | \$132,554,091 | 6,955,974 |
| Laura Laterals | \$21,579,943+ | 288,685+ |
| Ike | \$78,350 | 7,891 |
| Rita | \$81,506,090 | 9,463,080 |
5. **Client:** Baldwin County, AL **Population: 212,628**
Address: 22070 Hwy 59, Central Annex II 3rd & 4th floor, Robertsdale, AL 36567
Contact: Terri Graham, Solid Waste, 251-972-6878, TGraham@baldwincountyal.gov
Joey Nunnally, Pre-Construction Manager, Public Works, 251-972-8557, jnunnally@baldwincountyal.gov
Project Title: **2020 Hurricane Sally (09/2020-04/07/2021)**
- Removed & Disposed: vegetation, C&D, Compacted C&D, Mulch, Hangers, Leaners, White Goods and E-Waste. Reduction by grinding and C&D Compaction.
- 2014 Severe Storms, Flooding & Tornadoes (5/2014)**
- Removed & Disposed: vegetation
- 2010 BP Oil Spill (5/2010-7/2010)**
- Implemented proactive measures to contain oil spill by providing & installing containment & absorbent boom along the Coastal Waters of Baldwin County
- 2005 Hurricane Katrina (9/2005-3/2006)**
- Removed & Disposed: vegetation, C&D, concrete, reduced by grinding

**PROJECT FUNDING PACKAGE
EXHIBIT E**

2005 Hurricane Dennis (7/2005-8/2005)

- Removed & Disposed: vegetation, C&D, concrete, reduced by grinding

2004 Hurricane Ivan (9/2004-4/2005)

- Removed & Disposed: vegetation, concrete, stumps
- Reduced by burning

Contract Value:		CY Recovered & Reduced:
Sally	\$61,443,088	5,656,293
Severe Storms	\$12,897	1,066
BP Oil	\$4,280,107	Lump Sum
Katrina	\$3,748,310	309,998
Dennis	\$564,552	44,563
Ivan	\$33,164,762	1,967,622

6. **Client:** City of Panama City, FL **POP: 36,986 / Bay County**
Address: 9 Harrison Ave, Panama City, FL 32402
Contact: **Shane Daugherty** Solid Waste Superintendent, 850-872-3172 Ofc. 850-814-5396 cell,
sdaugherty@panamacity.gov
Project Title: **2018 Hurricane Michael (10/2018-09/15/2020)**

- PUSH Operations
- Removed & Disposed: vegetation, C&D, C&D Compaction, L&H, Stumps
- Special Projects – Right of Entry and Private Property Debris Removal Operations / Waterway, Drainage Ditches, Cemeteries, Parks
- Provided satellite phones
- Reduction by Grinding

2004 Hurricane Ivan (9/2004-10/2004)

- Removed & Disposed: vegetation, C&D, Stumps (12)
- Reduced by burning
- Provided generators

1995 Hurricane Opal

- Removed & Disposed: vegetation, C&D
- Reduced by grinding

Contract Value:		CY Recovered & Reduced:
Michael	\$81,636,958	3,950,059
Ivan	\$264,161	22,165
Opal	\$2,000,000	300,000

Form 4 - Negligence or Breach of Contract Disclosure Form



**ALLEGED NEGLIGENCE OR BREACH OF CONTRACT
DISCLOSURE FORM**

Please fill in the form below. Provide each incident in regard to alleged negligence or breach of contract that has occurred over the past 10 years. Please compete in chronological order with the most recent incident on starting on page 1. Please do not modify this form (expansion of spacing allowed) or submit your own variation.

Company Name: CrowderGulf Joint Venture, Inc.

Type of Incident <i>Alleged Negligence or Breach of Contract</i>	Incident Date And Date Filed	Plaintiff <i>(Who took action against your company)</i>	Case Number	Court County/State	Project	Claim Reason <i>(initial circumstances)</i>	Final Outcome <i>(who prevailed)</i>
N/A NONE							

PROJECT FUNDING PACKAGE
EXHIBIT E

Make as many copies of this sheet as necessary in order to **provide a 10-year history** of the requested information. If there is no action pending or action taken in the last 10 years, complete the **company name** and write **"NONE"** in the first **"Type of Incident"** box of this page and return with your proposal package. This form should also include the primary partners listed in your proposal. Do not include litigation with your company as the plaintiff. Final outcome should include **who prevailed** and what method of settlement was made. If a monetary settlement was made the amount may remain anonymous.

Page Number: _____ Of _____ Total pages

Update the page number to reflect the current page and the total number of pages. Example: Page 3, of 5 total submitted pages of this form.

Proposals may be declared "non-responsive" due to omissions of "Negligence or Breach of Contract" on this disclosure form. Additionally, proposals may be declared "not responsible" due to past or pending lawsuits that are relevant to the subject procurement such that they call into question the ability of the proposer to assure good faith performance. This determination may be made by the Procurement Management Director, after consulting with the County Attorney.

PROJECT FUNDING PACKAGE
EXHIBIT E

Form 5 - Affidavit Principal Place of Business



Lee County
Southwest Florida

AFFIDAVIT PRINCIPAL PLACE OF BUSINESS

Instructions: Please complete all information that is applicable to your firm

Company Name: CrowderGulf Joint Venture, Inc.

Ashley Ramsay-Naile

Printed name of authorized signer

President

Title

⇒ Ashley Ramsay-Naile

Authorized Signature

07/25/2022

Date

The signee of this Affidavit guarantee, as evidenced by the sworn affidavit required herein, the truth and accuracy of this affidavit to interrogatories hereinafter made. **LEE COUNTY RESERVES THE RIGHT TO REQUEST SUPPORTING DOCUMENTATION, AS EVIDENCE OF SERVICES PROVIDED, AT ANY TIME.**

The foregoing instrument was signed and acknowledged before me, by means of ☒ physical presence or ☐ online notarization, this 25th day of July, 2022, by Ashley Ramsay-Naile who has produced
(Print or Type Name)

Driver's License as identification.
(Type of Identification and Number)

Notary:

State of

Alabama

County of

Mobile

KERRIE A. NOLL
Notary Public, State of Alabama
Alabama State At Large
My Commission Expires
September 14, 2022

⇒ Kerrie A. Noll

Notary Public Signature

09/14/2022

Notary Commission Number and expiration

1. Principal place of business is located within the boundaries of: Lee County

X

Non-Local

Local Business Tax License #

2. Address of Principal Place of Business:

5629 Commerce Blvd. E

Mobile, AL 36619

3. Number of years at this location

2 years

4. Have you provided goods or services to Lee County on a regular basis within the past 3 consecutive years

X Yes*

No

*If yes, attach contractual history for past 3 consecutive years

5. Number of available employees for this contract

38 Full Time Debris Employees / Additional 150 Reservists

6. Does your company have a Drug Free Workplace Policy

X Yes

No

Form 6 - Sub-contractor/consultant List



SUB-CONTRACTOR/CONSULTANT LIST

Sub-Contractor/Consultant Company Name	Area Of Work	Point Of Contact Or Project Supervisor	Contact Info Phone or Email	Qualified DBE, MBE, WBE, VBE or Similar	Amount or Percentage of Total
4M Services, Inc	ROW Debris Hauling	Matt Martell 239-770-4427 cell	martell3406@gmail.com		TBD
Barry Recycling, Inc.	Recycling/ DumpSite	John Barry 239-390-1442	barryrecycling@aol.com		TBD
MW Horticulture Recycling Facility, Inc.	Recycling/ Dump	Denise Houghtaling 239-332-1188	deniseisgreen@aol.com	VET	TBD
Xtreme Property Services, Inc.	ROW Debris Hauling	Danielle Shockley 863-634-9104	danielle@xpsinc.com	WBE	TBD
RAL Services Corp	Haul Outs	Rudy Largaespada 786-972-5642	abchauling12@gmail.com		TBD
Dotson & Sons	ROW/L&H	Tim Dotson 573-682-7600	loghardtd@hotmail.com		TBD
Four R Equipment / Coastline Energy Ventures	ROW/L&H	JR Ruiz 954-347-0280	fourrequipment@yahoo.com		TBD
Gaston Tree / Wood Resource Recovery	DMS Site/ Dump	Bill Gaston 352-378-3348	bill@gastontr.com		TBD
Hauling Away, LLC	ROW/ DMS/ L&H Demo/ Wateways	Sara Pratt 251-402-3058	sara@haulingaway.net	WBE	TBD
Lawn Rescue Plus	ROW/ Haul Outs/ L&H	Giorgio Cesti 786-446-2469	lawnplusrescue@yahoo.com	MBE- Applied For	TBD
S. St. George Enterprises	ROW/ DMS	Steve St. George 716-672-2488	steve@sstgeorge.com		TBD
Zehendner Disaster Relief, LLC	ROW/ DMS/ L&H	Carolyn Zehendner 816-797-2135	carolynzdr@yahoo.com		TBD

Please include sub-contractor/consultant name, area of work (i.e. mechanical, electrical, etc.) and a valid phone number and/or email. Also include the dollar value or percentage that the sub-contractor/consultant will be performing. If sub-contractor/consultant qualifies as a current certificate Florida Certified Business Enterprise such as MBE, WBE, DBE, VBE or similar please indicate such above and provide proof of certification.

**PROJECT FUNDING PACKAGE
EXHIBIT E**

Form 7 - Public Entity Crime Form

Page 1 of 2

This form must be signed and sworn to in the presence of a notary public or other officer authorized to administer oaths.

1. This sworn statement is submitted to Lee County, FL
(Print name of the public entity)

by Ashley Ramsay-Naile, President
(Print individual's name and title)

for CrowderGulf Joint Venture, Inc.
(Print name of entity submitting sworn statement)

whose business address is 5629 Commerce Blvd. E Mobile, AL 36619

(If applicable) its Federal Employer Identification Number (FEIN) is 01-0626019

(If the entity has no FEIN, include the Social Security Number of the individual signing this sworn statement: On the attached sheet.) Required as per IRS Form W-9.

2. I understand that a "public entity crime" as defined in Paragraph 287.133(1) (g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or with the United States, including but not limited to, and bid or contract for goods or services to be provided to any public entity or agency or political subdivision or any other state or of the United States, and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.

3. I understand that "convicted" or "conviction" as defined in Paragraph 287.133(1) (b), Florida Statutes, means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere.

4. I understand that "affiliate" as defined in Paragraph 287.133(1)(a), Florida Statutes, means:

1. A predecessor or successor of a person convicted of a public entity crime:
or:

2. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members and agents who are active in the management of the affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not fair market value under an arm's length agreement, shall be a facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.

5. I understand that a "person" as defined in Paragraph 287.133(1) (c), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of the entity.

6. Based on information and belief, the statement which I have marked below is true in relation to the entity submitting those sworn statement. (Please indicate which statement applies.)

☒ Neither the entity submitted this sworn statement, nor any officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity nor affiliate of the entity have been charged with and convicted of a public entity crime subsequent to July 1, 1989.

PROJECT FUNDING PACKAGE
EXHIBIT E

Form 7 - Public Entity Crime Form

Page 2 of 2

_____ The entity submitting this sworn statement, or one or more of the officers, directors, executives, partners, shareholders, employees, member, or agents who are active in management of the entity, or an affiliate of the entity have been charged with and convicted of a public entity crime subsequent to July 1, 1989.

_____ The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, member, or agents who are active in management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989. However, there has been subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearing and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list. (Attach a copy of the final order)

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 (ONE) ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES, FOR CATEGORY TWO OR ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

Ashley Ramsay-Naile
(Signature)

07/25/2022

(Date)

STATE OF Alabama
COUNTY OF Mobile

The foregoing instrument was signed and acknowledged before me, by means of ☒ physical presence or ☐ online notarization, this 25th day of July 20 22, by Ashley Ramsay-Naile who has produced
(Print or Type Name)

Driver's License as identification.
(Type of Identification and Number)

Kerrie A. Noll
(NOTARY PUBLIC)

My Commission Expires: 09/14/2022

KERRIE A. NOLL
Notary Public, State of Alabama
Alabama State At Large
My Commission Expires
September 14, 2022

Form 8: Certification Regarding Lobbying

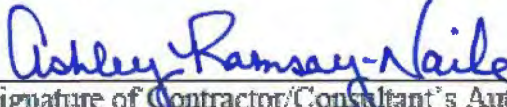
CERTIFICATION REGARDING LOBBYING

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

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents of all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, United States Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor/Consultant, CrowderGulf Joint Venture, Inc., certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 *et seq.*, apply to this certification and disclosure, if any.


Signature of Contractor/Consultant's Authorized Official

Ashley Ramsay-Naile, President

Name & Title of Contractor/Consultant's Authorized Official

07/25/2022

Date

PROJECT FUNDING PACKAGE
EXHIBIT E

Form 9: Disclosure of Lobbying Activities

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

Approved by OMB
4040-0013

1. * Type of Federal Action: ☐ a. contract ☒ b. grant ☐ c. cooperative agreement ☐ d. loan ☐ e. loan guarantee ☐ f. loan insurance		2. * Status of Federal Action: ☐ a. bid/offer/acceptation ☒ b. initial award ☐ c. postaward		3. * Report Type: ☒ a. initial filing ☐ b. material change	
4. Name and Address of Reporting Entity: ☒ Prime ☐ Subawardee * Name: CrowderGulf Joint Venture, Inc. * Street 1: 5629 Commerce Blvd. E Street 2: * City: Mobile State: AL Zip: 36619 Congressional District, if known:					
5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:					
6. * Federal Department/Agency:			7. * Federal Program Name/Description:		
			CFDA Number, if applicable:		
8. Federal Action Number, if known:			9. Award Amount, if known:		
			\$		
10. a. Name and Address of Lobbying Registrant: Prefix: * First Name: Middle Name: Last Name: Suffix: * Street 1: Street 2: City: State: Zip:					
b. Individual Performing Services (including address if different from 10a): Prefix: * First Name: Middle Name: Last Name: Suffix: * Street 1: Street 2: City: State: Zip:					
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the fee above when the transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1353. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.					
* Signature: Ashley Ramsay-Naile * Name: Prefix: First Name: Ashley Middle Name: Last Name: Ramsay-Naile Suffix: Title: President Telephone No.: 800-992-6207 Date: 07/25/2022					
Federal Use Only: Authorized for Local Reproduction Standard Form - LLL (Rev. 7-97)					

PROJECT FUNDING PACKAGE
EXHIBIT E

Form # 10: Immigration Law Affidavit Certification (E-Verify)

Attachment: Immigration Law Affidavit Certification

This Affidavit is required and should be signed by an authorized principal of the firm, notarized and submitted with County Procurements where applicable. Further, Vendors / Bidders are required to enroll in the E-Verify program, and provide acceptable evidence of their enrollment, upon request by County personnel. Acceptable evidence consists of a copy of the properly completed E-Verify Company Profile page or a copy of the fully executed E-Verify Memorandum of Understanding for the company.

Lee County will not intentionally award County contracts to any vendor who knowingly employs unauthorized alien workers, constituting a violation of the employment provision contained in 8 U.S.C. Section 1324 a(e) Section 274A(e) of the Immigration and Nationality Act ("INA").

Lee County may consider the employment by any vendor of unauthorized aliens a violation of Section 274A (e) of the INA. Such Violation by the recipient of the Employment Provisions contained in Section 274A (e) of the INA shall be grounds for unilateral termination of the contract by Lee County.

Vendor attests that they are fully compliant with all applicable immigration laws (specifically to the 1986 Immigration Act and subsequent Amendment(s)) and agrees to comply with the provisions of the Memorandum of Understanding with E-Verify and to provide proof of enrollment in The Employment Eligibility Verification System (E-Verify), operated by the Department of Homeland Security in partnership with the Social Security Administration at any time upon request by the County.

Company Name CrowderGulf Joint Venture, Inc.

Print Name Ashley Ramsay-Naile Title President

Signature Ashley Ramsay-Naile Date 07/25/2022

State of Alabama

County of Mobile

The foregoing instrument was signed and acknowledged before me, by means of ☒ physical presence or ☐ online notarization, this 25th day of July, 2022, by

Ashley Ramsay-Naile who has produced Driver's License as identification.

(Print or Type Name)

(Type of Identification and Number)

Kerrie A. Noll
Notary Public Signature

KERRIE A. NOLL
Notary Public, State of Alabama
Alabama State At Large
My Commission Expires
September 14, 2022

Kerrie A. Noll
Printed Name of Notary Public

09/14/2022
Notary Commission Number/Expiration

The signee of these Affidavit guarantees, as evidenced by the sworn affidavit required herein, the truth and accuracy of this affidavit to interrogatories hereinafter made.

PROJECT FUNDING PACKAGE
EXHIBIT E

Form # 11: Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion

**Certification Regarding
Debarment, Suspension, Ineligibility
And Voluntary Exclusion**

CONSULTANT/CONTRACTOR/VENDOR Covered Transactions

- (1) The prospective CONSULTANT/CONTRACTOR/VENDOR, CrowderGulf Joint Venture, Inc.
of the Sub-Recipient certifies, by submission of this document, that neither it nor its principals is
presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded
from participation in this transaction by any Federal department or agency.
- (2) Where the Sub-Recipient's subcontractor is unable to certify to the above statement, the prospective
subcontractor shall attach an explanation to this form.

CONSULTANT/CONTRACTOR/VENDOR

CrowderGulf Joint Venture, Inc.

By:

Signature

Ashley Ramsay-Naile, President

Name and Title

5629 Commerce Blvd. E

Street Address

Mobile, AL 36619

City, State, Zip

07/25/2022

Date



WOMEN'S BUSINESS ENTERPRISE
NATIONAL COUNCIL

JOIN FORCES. SUCCEED TOGETHER.

**HEREBY GRANTS
WOMAN OWNED SMALL BUSINESS (WOSB) CERTIFICATION TO**

Hauling Away, LLC

The identified small business is an eligible WOSB for the WOSB Program, as set forth in 13 C.F.R. part 127 and has been certified as such by an SBA approved Third Party Certifier pursuant to the Third Party Agreement, dated June 30, 2011, and available at www.sba.gov/wosb.

The WOSB Certification expires on the date herein unless there is a change to the SBA's regulation that makes the WOSB ineligible or there is a change in the WOSB that makes the WOSB ineligible. If either occurs, this WOSB Certification is immediately invalid. The WOSB must not misrepresent its certification status to any other party, including any local or State government or contracting official or the Federal government or any of its contracting officials.

Majority Female Owner: Sara Pratt

NAICS: 562119
UNSPSC: 22100000, 22102000, 81112004

Certification Number: WOSB191749

Expiration Date: July 25, 2022



Phala Mire, Women's Business Enterprise
Council - South President

Pamela Prince-Easton, WBENC President &
CEO

LaKesha White, Vice President, Certification



WOMEN'S BUSINESS ENTERPRISE
NATIONAL COUNCIL

JOIN FORCES. SUCCEED TOGETHER.

hereby grants

National Women's Business Enterprise Certification

to

Hauling Away, LLC

who has successfully met WBENC's standards as a Women's Business Enterprise (WBE).
This certification affirms the business is woman-owned, operated and controlled and is valid through the date herein.

Certification Granted: July 25, 2019

Expiration Date: July 31, 2022

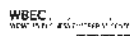
WBENC National Certification Number: WBE1901646

WBENC National WBE Certification was processed and validated by Women's Business Enterprise Council - South, a WBENC Regional Partner Organization.

Authorized by Phala Mire, President Women's
Business Enterprise Council - South



NAICS: 562119
UNSPSC: 22100000, 22102000, 81112004



5629 Commerce Blvd. East
Mobile, AL 36619Office: (800) 992-8207
Fax: (251) 451-7433**EQUAL EMPLOYMENT OPPORTUNITY****AFFIRMATIVE ACTION PROGRAM**

This company is an equal employment opportunity employer. It is the policy of this company to assure that applicants are employed, and that applicants are treated during employment, without regard to their race, religion, sex, color, national origin, age, disability, veteran status, military obligations, genetic information or any other characteristics protected by law. Such action shall include: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training.

- Publication and dissemination of this company's written policy of equal employment opportunity.
 - Each employee is informed that we are an equal opportunity employer and where our policy is posted.
 - Our policy is reviewed annually, or more frequently if required by contract, with all supervisory personnel.
- Appointment of Equal Employment Officer charged with the responsibility of securing compliance and advising corporate Officials of progress.
 Equal Employment Officer: Mary G. White
 Office #: 251-478-8848
 Email: m@crowdergulf.com
- Notification of all recruitment sources that the company, as an equal opportunity employer, solicits referral of qualified applicants without regard to race, religion, sex, color, national origin, age, disability, veteran status, military obligations, genetic information or any other characteristics protected by law.
- The upgrading and promotion of employees shall be made based on qualifications and ability without regard to race, religion, sex, color, national origin, age, disability, veteran status, military obligations, genetic information or any other characteristics protected by law.
- We request from all employees, especially minorities and females, that they refer any qualified friends or relatives to us for employment.
- All company facilities and activities shall be non-segregated.
- All Advertisements for employment shall contain the statement, "We are an Equal Opportunity Employer".
- We continuously monitor, control, evaluate, and obtain feedback in regard to the application of our Equal Employment Opportunity policy at all levels.
- All personnel activities shall be monitored to ensure that this Equal Employment Opportunity policy is being carried out.
- CrowderGulf complies with all federal and state laws and regulations regarding Equal Employment Opportunity.
- In succession to the previous EEO Officer, effective Mary G. White was appointed EEO Officer for the company effective 8/15/2011. Any person who believes he or she has been discriminated against should direct their complaint to Mary G. White.

Ashley Ramsay-Nade
President



Photo:
Kelly James

ID #: KJAM1800

Last Log: 12/27 PM - 11:41/2010 Log Out
**Company Information**

Home

My Choice

New Case

View Cases

My Profile

Edit Profile

Change Password

Change Security Questions

My Company

Edit Company Profile

Add New User

View Existing Users

Close Company Account

My Reports

View Reports

My Resources

View Essential Resources

Take Tutorial

View User Manual

Contact Us

Company Name: CrowderGulf Joint Ventures

View / Edit

Company ID Number: 812229

Doing Business As (DBA):

None

DUNS Number:

Physical Location:

Address 1:

Address 2:

City:

State:

Zip Code:

County:

6435 Business Parkway

Theodore

AL

36682

MOBILE

Mailing Address:

Address 1:

Address 2:

City:

State:

Zip Code:

Additional Information:

Employer Identification Number: 10628019

Total Number of Employees: 20 to 99

Parent Organization:

Administration:

Organization Designation:

Employer Category: None of these categories apply

NAICS Code: 882 - WASTE MANAGEMENT AND REMEDIATION SERVICES

View / Edit

Total Hiring Sites: 1

View / Edit

Total Points of Contact: 3

View / Edit

U.S. Department of Homeland Security - view this page U.S. Citizenship and Immigration Services - view this page

Accessibility - Download Viewers

<https://e-verify.uscis.gov/emp/EmployerWizard.aspx>

Page 217 of 858



Florida Department of Transportation

RON DESANTIS
GOVERNOR

605 Suwannee Street
Tallahassee, FL 32399-0450

KEVIN J. THIBAUT, P.E.
SECRETARY

August 4, 2021

CROWDER-GULF JOINT VENTURE, INC.
5435 BUSINESS PARKWAY
THEODORE, ALABAMA 36582

RE: CERTIFICATE OF QUALIFICATION

Dear Sir/Madam:

The Department of Transportation has qualified your company for the type of work indicated below. Unless your company is notified otherwise, this Certificate of Qualification will expire 6/30/2022. However, the new application is due 4/30/2022.

In accordance with S.337.14 (1) F.S. your next application must be filed within (4) months of the ending date of the applicant's audited annual financial statements.

If your company's maximum capacity has been revised, you can access it by logging into the Contractor Prequalification Application System via the following link:
[HTTPS://fdotwpl.dot.state.fl.us/ContractorPreQualification/](https://fdotwpl.dot.state.fl.us/ContractorPreQualification/)

Once logged in, select "View" for the most recently approved application, and then click the "Manage" and "Application Summary" tabs.

FDOT APPROVED WORK CLASSES:
DEBRIS REMOVAL (EMERGENCY)

You may apply for a Revised Certificate of Qualification at any time prior to the expiration date of this certificate according to Section 14-22.0041(3), Florida Administrative Code (F.A.C.), by accessing your most recently approved application as shown above and choosing "Update" instead of "View." If certification in additional classes of work is desired, documentation is needed to show that your company has done such work with your own forces and equipment or that experience was gained with another contractor and that you have the necessary equipment for each additional class of work requested.

All prequalified contractors are required by Section 14-22.006(3), F.A.C., to certify their work underway monthly in order to adjust maximum bidding capacity to available bidding capacity. You can find the link to this report at the website shown above.

Sincerely,

Alan D. Autry

Alan Autry, Manager
Contracts Administration Office

AA:cg

Improve Safety, Enhance Mobility, Inspire Innovation
www.fdot.gov



FLORIDA DEPARTMENT OF Environmental Protection

Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, FL 32399

Ron DeSantis
Governor

Jeanette Nuñez
Lt. Governor

Noah Valenzuela
Secretary

October 13, 2020

Wesley Smallwood
Crowder-Gulf Joint Venture, Inc.
5629 Commerce Blvd. East
Mobile, AL 36619
Email: knoll@crowderygulf.com
RE: Pre-Qualification Package

Hello:

The pre-qualification as of October 13, 2020 for Crowder-Gulf Joint Venture, Inc. is hereby acknowledged. This pre-qualification approves your firm to bid on the Florida Department of Environmental Protection's Bureau of Design and Construction projects requiring your State licenses until August 31, 2022.

Please feel free to contact me at (850) 245-2781 with any questions or concerns you may have.

Sincerely,

Alyssa
Skehan

Digitally signed by Alyssa
Skehan
Date: 2020.10.13
08:35:01 -0400

Alyssa Skehan, FCCM
Government Operations Consultant II
Bureau of Design and Construction
Florida Department of Environmental Protection
Phone: 850-245-2781 - Office

PROJECT FUNDING PACKAGE
EXHIBIT E

www.dep.state.fl.us

Sealed Proposal Label

**Cut along the outer border and affix this label to
your sealed solicitation envelope to identify it as
a “Sealed Submission/Proposal”.**

PROPOSAL DOCUMENTS • DO NOT OPEN	
SOLICITATION No.:	RFP220362BJB
SOLICITATION TITLE:	Disaster Recovery Services
DATE DUE:	Tuesday, August 2, 2022
TIME DUE:	Prior to: 2:30 PM
SUBMITTED BY:	
	(Name of Company)
e-mail address	Telephone
DELIVER TO:	Lee County Procurement Management 2115 Second Street, 1st Floor Fort Myers FL 33901
<i>Note: proposals received after the time and date above will not be accepted.</i>	

***Notice:** the Date Due/Submission Deadline Date/Opening Date as stated on this label and other forms contained herein may have been updated via issuance of Addenda against this project. It is the sole responsibility of the Contractor/Vendor to monitor the County project webpage for any updates to the Date Due/Submission Deadline Date/Opening Date via Addenda. This label nor other original forms may not be updated. Contractor/Vendor may strike through and update Date Due/Submission Deadline Date/Opening Date at their discretion to match any updates to this date that have been published via Addenda.

Submission received after the time and date of the Date Due/Submission Deadline Date/Opening Date will not be accepted at the sole discretion of the County.

PLEASE PRINT CLEARLY

FIRST AMENDMENT OF THE DISASTER RECOVERY
SERVICES FOR LEE COUNTY AGREEMENT

FIRST AMENDMENT OF THE DISASTER RECOVERY SERVICES FOR LEE COUNTY AGREEMENT, made and entered into by and between the Lee County Board of County Commissioners, a political subdivision of the State of Florida ("County") and Crowder-Gulf Joint Venture, Inc. ("Vendor"), collectively, the "Parties."

WHEREAS, the County entered into an Agreement for disaster recovery services through Solicitation No. RFP220362BJB with Vendor on the 2nd day of October, 2022 ("Agreement"); and,

WHEREAS, after the execution of the agreement, it was determined that it would be in the best interests of the County to lower the cost per mile for alternate disposal sites outside of Lee County in Category A of the Exhibit B Fee Schedule; and,

WHEREAS, after the execution of the agreement, it was determined that it would be in the best interests of the County to reduce the number of additional services contracted for in Category B of the Exhibit B Fee Schedule; and,

WHEREAS, the Parties desire to modify the Agreement pursuant to Article XV. MISCELLANEOUS of the Agreement.

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING AND THE MUTUAL COVENANTS CONTAINED HEREIN, IT IS AGREED AS FOLLOWS:

1. In order to memorialize the cost reduction for alternate disposal sites outside of Lee County, the Parties agree that the following table shall supersede the table in Category A of the Exhibit B Fee Schedule:

RFP220362BJB - DISASTER RECOVERY SERVICES			
CATEGORY A: CORE SERVICES			
SECTION 1: DEBRIS REMOVAL, PROCESSING AND DISPOSAL			
Item	Description	Unit of Measure	Unit Price
A1	Debris Removal from Public Property (Right-of-Way) and Hauling to Debris Management Sites (DMS)	CY	\$ 7.95
A2	Debris Removal from Debris management Sites (DMS) and Hauling to Final Disposal Site (Note 1 & 2)	CY	\$ 4.20
A3	Debris Removal from Public Property (Right-of-Way) and Hauling directly to Final Disposal Site (Note 1 & 2)	CY	\$ 9.00
A4	Cost per mile for alternate disposal sites outside of Lee County. (Note 1 & 2)	Cost /Mile	\$ 20.00
A5	Management of Debris Management Sites (DMS) (Note 4&5)	CY	\$ 1.00
A6	Processing (Grinding/Chipping) of Debris at DMS or Final Disposal Site (Will Honor for C&D Compaction)	CY	\$ 2.90
A7	Processing (Burning) of Debris at DMS or Final Disposal Site	CY	\$ 1.50
A8	Pick Up and Haul of White Goods to Disposal Site within County (Note 1)	UNIT	\$ 60.00
A9	Pick Up and Disposal of Hazardous Material	LB	\$ 9.00
A10	Freon Management and Recycling (Note: 7)	UNIT	\$ 30.00
A11	Non Domestic Dead Animal Collection and Transportation to final disposal.	EACH	\$ 25.00
SECTION 2: STUMP EXTRACTIONS			
Item	Description	Unit of Measure	Unit Price
A12	< 24 inch diameter (Note:7)	Per Stump	\$ 150.00
A13	> 24 inch diameter to 47.99 inch diameter (Note:7)	Per Stump	\$ 290.00
A14	48 inch diameter and greater (Note:7)	Per Stump	\$ 390.00
A15	On site stump grinding including filling hole with wood chips (Note:7)	Per Inch	\$ 15.00
SECTION 3: HAZARDOUS LIMB REMOVAL			
Item	Description	Unit of Measure	Unit Price
A16	>2 inches at the point of breakage, or whatever the current minimum is at the time of the storm event (Note:7)	Per Tree	\$ 70.00
SECTION 4: STORM DAMAGE TREE REMOVAL			
Item	Description	Unit of Measure	Unit Price
A17	Trees that require the "Climbing" and "Cut & Drop" method (e.g., trees over structures, homes, buildings, utilities or public ROW)		
	6" to 12.99" diameter	Per Tree	\$ 180.00
	13" to 23.99" diameter	Per Tree	\$ 280.00
	> 24" diameter	Per Tree	\$ 450.00
A18	Trees that can only be accessed by "Mechanized Equipment" (i.e., bucket trucks, skid steer loaders, log skidders, excavators, wheel loaders)		
	6" to 12.99" diameter	Per Tree	\$ 85.00
	13" to 23.99" diameter	Per Tree	\$ 185.00
	> 24" diameter	Per Tree	\$ 300.00
A19	Uprooted Trees; including those that have fallen in open areas, with easy access, or that have fallen on damaged structures		
	6" to 12.99" diameter	Per Tree	\$ 180.00
	13" to 23.99" diameter	Per Tree	\$ 280.00
	> 24" diameter	Per Tree	\$ 450.00
A20	Trees broken in two parts or snapped in half with debris not fallen on any dwelling or structure		
	6" to 12.99" diameter	Per Tree	\$ 85.00
	13" to 23.99" diameter	Per Tree	\$ 185.00
	> 24" diameter	Per Tree	\$ 300.00

NOTES - The following notes apply only to Category A within the Schedule of Values and only as identified in each individual line item	
1	Prices include disposal sites located in Lee County and at the Lee Hendry Landfill in Felda FL. Tipping fees at final disposal site(s) will be the responsibility of Contractor and passed through to the County without mark-up, unless approved otherwise. See section 9.8.9 in the scope of services for disposal at County Owned and Operated disposal sites.
2	For out of county disposal sites (excluding the Lee Hendry Landfill), additional mileage will begin and be measured from the Lee County boundary closest to the disposal site. The approved per load additional mileage cost will be applied to each ticketed out of county load and be applicable only to the miles beyond the Lee County boundary. Mileage is based on a one-way haul distance.
3	For a multi-year contract, the prices shown in Category A would be adjusted on the anniversary date of Contract according to a percentage equal to the percent change in the Consumer Price Index as published in the U. S. Department of Labor, Bureau of Labor Statistics. (CWLUR0300SAO) is the established index.
4	Includes all site services, including but not limited to, providing monitoring towers, sanitary portable restrooms, and site safety & security.
5	Includes comprehensive management of all debris and debris site activities, including grubbing & establishing ingress/egress as needed, maintaining driving and working surfaces, managing storm water & regulatory compliance, and close-out site remediation. See section 9.8 in the scope of services for more detail.
6	All stumps placed on the right of way by citizens will be converted to CY per the Stump Conversion Chart provided in FEMA Guidance DAP9523.11 and charged as regular debris for items A2 through A7.
7	Items must be documented as per the scope of services and in accordance with appropriate FEMA Guidance, including DAP9523.11 or as amended.

2. In order to memorialize the removal of additional services, the Parties agree that the following table shall supersede the table in Category B of the Exhibit B Fee Schedule:

RFP220362BJB - DISASTER RECOVERY SERVICES			
CATEGORY B: SPECIALTY REMOVAL AND RESTORATION			
SECTION 1: SPECIALTY REMOVAL (Activities require specific task authorization and include all labor and management of tasks)			
Item	Description	Unit of Measure	Unit Price
B1	Sand/Soil Collection & Screening. Includes pick-up, screen, and return of screened sand to designated staging areas.	CY	\$ 18.90
B2	Pick-up & haul debris laden sand/mud/dirt/rock from sand screening operations to final disposal (Notes 1 & 2)	CY	\$ 14.00
B3	Removal of Eligible vehicles - haul to designated staging or final disposal. (Notes 1 & 2)	Unit	\$ 150.00
B4	Removal of eligible Vessel from (Land)	LF	\$ 80.00
B5	Demolition of Private Structure (NON-RACM)	CY	\$ 20.00
B6	Dead Fish and/or Algae, including removal and sand raking from beaches.	CY	\$ 4.00
SECTION 2: RESTORATION (Activities require specific task authorization and include all labor and management of tasks)			
Item	Description	Unit of Measure	Unit Price
B7	Beach/Lake Restoration - Berm/Beach Construction	CY	\$ 36.00
B8	Canal Shoreline Restoration	LF	\$ 32.00
ADDITIONAL SERVICES		Unit of Measure	Unit Price
1	Collect and Haul E-Waste to DMS of Final Disposal Site	Unit	\$ 40.00
2	Rental and Operation of Barge and Tug - 110 x 30 - (plus fuel)	Per Day	\$ 12,500.00
	Mobilization for Barge and Tug	LS	\$ 40,000.00
	De-Mobilization for Barge and Tug	LS	\$ 40,000.00
NOTES - The following notes apply only to Category B within the Schedule of Values and only as identified in each individual line item			
1	Prices include disposal sites located in Lee County and at the Lee/Hendry Landfill in Felda FL. Tipping fees at final disposal site(s) will be the responsibility of Contractor and passed through to the County without mark-up, unless approved otherwise. See section 9.8.9 in the scope of services for disposal at County Owned and Operated disposal sites.		
2	For out of county disposal sites (excluding the Lee/Hendry Landfill), additional mileage will begin and be measured from the Lee County boundary closest to the disposal site. The approved per load additional mileage cost will be applied to each ticketed out of county load and be applicable only to the miles beyond the Lee County boundary. Mileage is based on a one-way haul distance.		
3	Includes all site services, including but not limited to, providing monitoring towers, sanitary portable restrooms, and site safety & security.		
4	Includes comprehensive management of all debris and debris site activities, including grubbing & establishing ingress/egress as needed, maintaining driving and working surfaces, managing storm water & regulatory compliance, and close-out site remediation. See section 9.8 in the scope of services for more detail.		
5	Items must be documented as per the scope of services and in accordance with appropriate FEMA Guidance, including DAP9523.11 or as amended.		

IN WITNESS WHEREOF this First Amendment of the Agreement has been signed and sealed, in duplicate,
by the respective parties hereto.

WITNESS:

Signed By: Wesley Naile
Print Name: Wesley Naile

Crowder-Gulf Joint Venture, Inc.

Signed By: Ashley Ramsay-Naile
Print Name: Ashley Ramsay-Naile
Title: President
Date: 10-25-22

LEE COUNTY

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

Signed By: Mary G Tucker
Print Name: Mary G Tucker
Title: Director of Procurement
Date: October 27, 2022

APPROVED AS TO FORM FOR THE
RELIANCE OF LEE COUNTY ONLY:

BY: Amanda Linder
OFFICE OF THE COUNTY ATTORNEY

SECOND AMENDMENT OF THE DISASTER RECOVERY
SERVICES FOR LEE COUNTY AGREEMENT

THIS SECOND AMENDMENT OF THE DISASTER RECOVERY SERVICES FOR LEE COUNTY AGREEMENT is made and entered into by and between the Lee County Board of County Commissioners, a political subdivision of the State of Florida ("County") and Crowder-Gulf Joint Venture, Inc. ("Vendor"), collectively, the "Parties."

WHEREAS, the County entered into an Agreement for disaster recovery services through Solicitation No. RFP220362BJB with Vendor on the 2nd day of October 2022 ("Agreement"); and,

WHEREAS, after the execution of the agreement, it was determined that it would be in the best interests of the County to add concrete removal services for the rights-of-way within Unincorporated Lee County, as deemed necessary by the County to protect the health and safety of the general public, to Category B of the Exhibit B Fee Schedule of the Agreement; and,

WHEREAS, the Parties desire to modify the Agreement pursuant to Article XV. MISCELLANEOUS of the Agreement.

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING AND THE MUTUAL COVENANTS CONTAINED HEREIN, IT IS AGREED AS FOLLOWS:

1. In order to add the concrete removal services for rights-of-way within Unincorporated Lee County, as deemed necessary by the County to protect the health and safety of the general public, the Parties agree that the following table shall supersede the table in Category B of the Exhibit B Fee Schedule:

CATEGORY B: SPECIALTY REMOVAL AND RESTORATION			
SECTION 1: SPECIALTY REMOVAL (Activities require specific task authorization and include all labor and management of tasks)			
Item	Description	Unit of Measure	Unit Price
B1	Sand/Soil Collection & Screening. Includes pick-up, screen, and return of screened sand to designated staging areas.	CY	\$18.90
B2	Pick-up & haul debris laden sand/mud/dirt/rock from sand screening operations to final disposal (Notes 1 & 2)	CY	\$14.00

B3	Removal of Eligible vehicles - haul to designated staging or final disposal. (Notes 1 & 2)	Unit	\$150.00
B4	Removal of eligible Vessel from (Land)	LF	\$80.00
B5	Demolition of Private Structure (NON-RACM)	CY	\$20.00
B6	Dead Fish and/or Algae, including removal and sand raking from beaches.	CY	\$4.00
SECTION 2: RESTORATION (Activities require specific task authorization and include all labor and management of tasks)			
Item	Description	Unit of Measure	Unit Price
B7	Beach/Lake Restoration - Berm/Beach Construction	CY	\$36.00
B8	Canal Shoreline Restoration	LF	\$32.00
SECTION 3: Concrete Removal for Rights-of-Way within Unincorporated Lee County (as deemed necessary by the County to protect the health and safety of the general public)			
Item	Description	Unit of Measure	Unit Price
B9	Load and haul concrete debris for the ROW within Unincorporated Lee County to a Final Disposal Location	CY	\$38.00
B10	Pass Through Disposal Fees - USA Mulch (Clean Concrete)	NA	At cost
B11	Pass Through Disposal Fees - WM Gulf Coast Landfill	NA	At cost
ADDITIONAL SERVICES		Unit of Measure	Unit Price
1	Collect and Haul E-Waste to DMS of Final Disposal Site	Unit	\$40.00
2	Rental and Operation of Barge and Tug - 110 x 30 - (plus fuel)	Per Day	\$12,500.00
	Mobilization for Barge and Tug	LS	\$40,000.00
	De-Mobilization for Barge and Tug	LS	\$40,000.00
NOTES - The following notes apply only to Category B within the Schedule of Values and only as identified in each individual line item			
1	Prices include disposal sites located in Lee County and at the Lee/Hendry Landfill in Felda Fl. Tipping fees at final disposal site(s) will be the responsibility of Contractor and passed through to the County without mark-up, unless approved otherwise. See section 9.8.9 in the scope of services for disposal at County Owned and Operated disposal sites.		
2	For out of county disposal sites (excluding the Lee/Hendry Landfill), additional mileage will begin and be measured from the Lee County boundary closest to the disposal site. The approved per load additional mileage cost will be applied to each ticketed out of county load and be applicable only to the miles beyond the Lee County boundary. Mileage is based on a one-way haul distance.		
3	Includes all site services, including but not limited to, providing monitoring towers, sanitary portable restrooms, and site safety & security.		
4	Includes comprehensive management of all debris and debris site activities, including grubbing & establishing ingress/egress as needed, maintaining driving and working surfaces, managing storm water & regulatory compliance, and close-out site remediation. See section 9.8 in the scope of services for more detail.		
5	Items must be documented as per the scope of services and in accordance with appropriate FEMA Guidance, including DAP9523.11 or as amended.		
6	Allow Vendor to charge at cost for disposal fees for USA Mulch (clean concrete) and WM Gulf Coast Landfill. Vendor will be required to provide original receipts.		

IN WITNESS WHEREOF this Second Amendment of the Agreement has been signed and sealed,
in duplicate, by the respective Parties hereto.

WITNESS:

Signed By: Wesley Naile

Print Name: Wesley Naile

Crowder-Gulf Joint Venture, Inc.

Signed By: Ashley Ramsay-Naile

Print Name: Ashley Ramsay-Naile

Title: President

Date: 05-11-23

LEE COUNTY

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: [Signature]
CHAIR

DATE: 6/8/23



ATTEST:
CLERK OF THE CIRCUIT COURT

BY: [Signature]

CHRIS JAGODZINSKI

DEPUTY CLERK

APPROVED AS TO FORM FOR THE
RELIANCE OF LEE COUNTY ONLY.

BY: [Signature]
OFFICE OF THE COUNTY ATTORNEY

1. **Request:**

Meeting Date: May 6, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING AN AGREEMENT FOR DEMOLITION SERVICES WITH SOUTHWEST BUILDERS INC., BASED ON PRICING COMPETITIVELY PROCURED BY THE CITY OF FORT MYERS, FLORIDA THROUGH AN AGREEMENT; AUTHORIZING THE MAYOR OR TOWN MANAGER TO SIGN THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

The Town is in need of an on-call demolition contractor to remove unsafe structures.

What the action accomplishes:

Provides the Town with resources to keep the Town safe.

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

Frankie Kropacek, Operations &
Compliance Director

5. **Background:**

The Town is in need of an on-call demolition contractor. City of Fort Myers and Southwest Builders, Inc., ("Contractor") entered into a contract for demolition services on or about July 10, 2021. Pursuant to the Contract, the Contractor has agreed to provide the City of Fort Myers with demolition services. Section 2-480(f) of the Town's Code of Ordinances provides that when it is in the best interest of the Town, it may cooperatively purchase goods or services from any other government agency, which has competitively bid and awarded a 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's competitive bid policy. The City of Fort Myers RFQ 0006-21 and the resulting Contract were competitively bid with procedural guarantees of fairness and competitiveness equivalent to those of the Town and the Contractor has agreed to allow the Town to "piggyback" on the competitive pricing provided to the City of Fort Myers.

Attachments:

1. 24-93, Demolition Southwest Builders Piggyback
2. Exhibit A - Continuing_Contract_for_City-Generated_Demolitions_-
_Southwest_Builders_Inc_-_RFQ_0006-21
3. Draft Demolition Piggyback Contract - City of Ft. Myers ns

Financial Impact:

Pursuant to the Unsafe Building Code, the cost of demoliton can be recovered by the impositon of a special assessment lien on the property.

6. **Alternative Action**

7. **Management Recommendations:**

Approve

8. **Recommended Approval:**

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

Created/Initiated - 4/30/2024
Approved - 4/30/2024
Approved - 5/1/2024
Final Approval - 5/1/2024

RESOLUTION NUMBER 24-93

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING AN AGREEMENT FOR DEMOLITION SERVICES WITH SOUTHWEST BUILDERS INC., BASED ON PRICING COMPETITIVELY PROCURED BY THE CITY OF FORT MYERS, FLORIDA THROUGH AN AGREEMENT; AUTHORIZING THE MAYOR OR TOWN MANAGER TO SIGN THE AGREEMENT; 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 City of Fort Myers and Southwest Builders, Inc., (“Contractor”) entered into a contract for demolition services on or about July 10, 2021 (hereinafter the “Contract”); and

WHEREAS, pursuant to the Contract, the Contractor has agreed to provide the City of Fort Myers with demolition services; 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, Section 2-480(f) of the Town’s Code of Ordinances provides that when it is in the best interest of the Town, it may cooperatively purchase goods or services from any other government agency, which has competitively bid and awarded a 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’s competitive bid policy; and

WHEREAS, the Town Council finds the City of Fort Myers RFQ 0006-21 and the resulting Contract were competitively bid with procedural guarantees of fairness and competitiveness equivalent to those of the Town and the Contractor has agreed to allow the Town to “piggyback” on the competitive pricing provided to the City of Fort Myers; and

WHEREAS, it is in the best interests of the residents of the Town of Fort Myers Beach to execute an agreement with the Contractor containing similar terms and conditions as contained in the Contract.

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 Agreement to Piggyback a Contract for Demolition Services Procured by the City of Fort Myers, and authorizes the Mayor or Town Manager to execute the Agreement, which is attached hereto as Exhibit “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 ____ day of _____ 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, Town Attorney

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

**ANNUAL CONSTRUCTION CONTRACT
BETWEEN OWNER AND CONTRACTOR**

THIS CONTRACT is dated as of the 19 day of July in the year 2021 by and between **THE CITY OF FORT MYERS** (hereinafter called OWNER) and **SOUTHWEST BUILDERS, INC.** (hereinafter called CONTRACTOR).

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1. WORK.

Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

RFQ #0006-21 Continuing Contract for City-Generated Demolitions

The Project for which the Work under the Contract Documents may be the whole, or only a part, is generally described as follows:

Demolition and removal of structures located at various locations throughout the City of Fort Myers on an as-needed basis.

Article 2. CONTRACT TIME.

- 2.1 The contract time will be for a period of three (3) years (August 1, 2021 – July 31, 2024) with the option of renewal for two (2) additional one (1) year periods.
- 2.2 Each project will have its own construction time approved between Owner and Contractor.
- 2.3 Liquidated Damages: Owner reserves the right to access liquidated damages on any project, which will be agreed on between Owner and Contractor.

Article 3. CONTRACT PRICE.

- 3.1 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents in current funds as follows:

Various project costs will be determined based on the Contractors Bid to the City on an as needed basis and subject to appropriation of Owner funds.

- 3.2 Any individual project that totals \$100,000.00 or more will require City Council approval.

- 3.3 Projects \$200,000 or more will require Payment and Performance Bonds.

Article 4. PAYMENT PROCEDURES.

Contractor shall submit invoice and/or Applications for Payment. Applications for Payment will be processed by Owner. E-mail one original invoice (in PDF format) to: apinvoices@cityftmyers.com

Article 5. INTEREST.

All moneys not paid when due shall bear interest at the maximum rate allowed by law at the place of the Project.

Article 6. CONTRACTOR'S REPRESENTATIONS.

In order to induce OWNER to enter into this Contract Contractor makes the following representations:

- 6.1 For each project given, Contractor will familiarize themselves with the nature and extent of the Contract Documents, work, site, locality, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the Work.
- 6.2 Contractor will give Owner written notice of all conflicts, errors, or discrepancies that they have discovered in the Contract Documents and is acceptable to Contractor.

Article 7. CONTRACT DOCUMENTS.

The Contract Documents, which comprise the entire Contract between Owner and Contractor concerning the Work, consist of the following:

- 7.1 Contract (this document)
- 7.2 General Conditions
- 7.3 Specifications
- 7.4 Technical Requirements
- 7.5 Construction Forms
- 7.6 Notice of Award
- 7.7 Documentation submitted by Contractor prior to Notice of Award (if any)
- 7.8 Certificate of Insurance and all supporting endorsements meeting City requirements.

The documents listed above are attached to this Contract (except as expressly noted otherwise above).

There are no Contract Documents other than those listed above. The Contract Documents may only be amended, modified, or supplemented in accordance with standard Owner documents.

Article 8. NOTICES

All notices from the Owner to the Contractor shall be deemed duly served if mailed by registered or certified mail, hand delivered, or electronically transmitted to the Contractor at the following address:

Southwest Builders, Inc.
Attn: Ms. Tiana Kaufmann
11997 Princess Grace Ct.
Cape Coral, FL 33991
Phone: 239-673-9288
Email: office@southwestbuilderscorp.com

All notices from the Contractor to the Owner shall be deemed duly served if mailed by registered or certified mail, hand delivered, or electronically transmitted to the Owner at the following address:

City of Fort Myers
Procurement Services, City Clerk, and Attorney's Office
2200 Second Street
Fort Myers, FL 33901
Phone: 239.321.7232
Email: cfmpurchasing@cityftmyers.com

Article 9. MISCELLANEOUS.

- 9.1 No assignment by a party hereto of any rights under, or interests in the Contract Documents, will be binding on another party hereto without the written consent of the party sought to be bound; and specifically, but without limitation, monies that may become due and monies that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an

assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

- 9.2 Owner and Contractor each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.

Article 10. ACCEPTANCE.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this contract on the dates shown below to be effective the day and year first shown above.

CITY OF FORT MYERS, FLORIDA
a Municipal Corporation

By: [Signature]
Kevin B. Anderson, Mayor

Date: 7/27/2021

By: [Signature]
Marty K. Lawing, City Manager

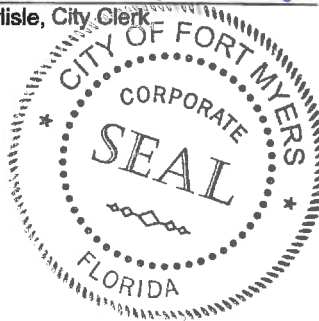
Date: 7-27-21

APPROVED AS TO FORM:

[Signature]
Grant Williams Alley, City Attorney

ATTEST:

[Signature]
Gwen Carlisle, City Clerk



COMPANY WITNESSES

[Signature]
(Witness)
[Signature]
(Witness)

SOUTHWEST BUILDERS, INC.

BY: [Signature]
(Authorized Signature)
President
(Title)

DATE: 7/23/21

CORPORATE SEAL:

GENERAL CONDITIONS

The Contractor shall not be entitled to compensation beyond its bid price when required to incur expenses because of tolls, weight limits of trucks, access to the site, permanent or temporary power at the job site, delivery of materials, temporary utilities, or compliance with OSHA requirements when examination and/or investigation of the site conditions and access routes would have revealed the extra expense involved. The above list is intended to be illustrative and not all-inclusive.

Work shall include furnishing all necessary materials, labor, mobilization, transportation, supervision, equipment, and traffic control incidental to the project(s).

All work performed to follow Federal, State, Local, OSHA, and department mandated regulations and specifications for work being performed.

Damage to Property: Contractor shall provide protection to prevent damage to the structure, materials and equipment to be incorporated therein and other property at the site or adjacent thereto, including trees, shrubs, lawns, pavements, structures, and utilities not designated for removal or replacement. All damage caused by the Contractor or any subcontractors shall be replaced or repaired and restored to original condition by the Contractor at no cost to the Owner.

Maintenance of Traffic: The Contractor will be responsible for Maintenance of Traffic on each project awarded and shall abide with the City's Maintenance of Traffic Policy.

Submission of Working Schedule/Order of Completion: At the pre-construction conference, the Contractor shall have in hand, a working schedule for the Project, showing in detail the order in which the Contractor proposes to perform the work. Contractor shall indicate the dates on which various major items of work will start and the estimated completion dates of the major items. The schedule shall also show the Contractor's proposed operations for the various items of work that would affect or be affected by utility adjustments.

Provisions for Convenience of Public: The Contractor shall schedule their operations so as to minimize any inconvenience to adjacent businesses or residences. Where necessary, the City may require the Contractor to construct first the work in any areas along the Project where restrictions caused by construction operations would present a more serious handicap, before beginning construction in the less affected areas.

Conformity of Work with Plans - All work performed, and all materials furnished shall be in reasonably close conformity with grades, cross sections, dimensions, and material requirements, including tolerances, shown on any plans, provided within written request for work, or indicated in Technical Specifications or Special Provisions.

The City shall examine and inspect the work to assure compliance with any contract standards. The City shall determine the quality and acceptability of materials and workmanship relative to the requirements of any plans and technical specifications. The City has the authority as follows:

- (1) To stop the work whenever such stoppage may be necessary to ensure the proper execution of the contract.
- (2) To reject all work which does not conform to the contract.
- (3) To resolve questions which arise in the execution of the work.

The City and their representative shall at all times have access to the work wherever it is in preparation or progress and the Contractor shall provide proper facilities for such access and for inspection. If the Technical Specifications & Conditions, the City's instruction, laws, ordinances, or any public authority require any work to be specially tested or approved, the Contractor shall give the City timely notice of its readiness for inspection and, if the inspection is by an authority other than the City, the date fixed for such inspection. Inspections by the City shall be promptly made and, where practicable, at the source of supply.

The City's Inspectors shall be authorized to inspect all work done and all materials furnished. They shall be authorized to call to the attention of the Contractor any failure of the work or materials to conform to the Technical Specifications & Conditions and contract and shall have the authority to reject materials or suspend the work until any questions at issue can be referred to and resolved by the City. The presence of the Inspector shall in no way lessen the responsibility of the Contractor. If any work should be covered up without approval or consent of the City, it must, if required by the City, be uncovered for examination at the

Contractor's expense. Re-examination of questioned work may be ordered, and the work must be uncovered by the Contractor.

Suspension of Work - The City may at any time suspend work by giving ten (10) days' notice to the Contractor in writing. The City shall reimburse the Contractor for expenses incurred by the Contractor in connection with work under the contract as a result of such suspension, unless such suspension was caused by actions of the Contractor. However, if the work or any part thereof shall be stopped by a notice in writing aforesaid, and if the City does not give written notice to the Contractor to resume work within thirty (30) days of the date fixed in the written notice to suspend, then the Contractor will be entitled to the estimates and payment for all work done, unless such suspension was caused by actions of the Contractor.

The City's Right to do Work - If the Contractor should neglect to perform the work properly or fail to perform in accordance with provisions of the contract, the City, after three (3) days written notice, may without prejudice to any other remedy it may have, make good any deficiencies and deduct the cost from the payment due the Contractor.

Contractor's Supervision and Employees - The Contractor shall supervise, inspect, and direct the work completely and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the work in accordance with the Contract Documents.

The Contractor shall be solely responsible for the means, methods, techniques, sequence, and procedures necessary for the orderly progress of the work, and to maintain all safety precautions and programs incidental thereto. The Contractor shall, at all times enforce strict discipline and good order among their employees and shall not employ any unfit person or anyone unskilled in the work assigned to them.

The Contractor shall be responsible to see that the completed work complies fully with the Contract Documents. As the work progresses, the Contractor shall keep on the job, at all times, a Superintendent or designee, technically qualified, who is an employee of the Contractor and who shall not be replaced without written notice and approval from the City.

The Superintendent will be the Contractor's representative on the job and shall have authority to act on behalf of the Contractor. The Superintendent, or qualified designee, shall be present at the job site, and direct the work of sub-contractors, as well as employees of the Contractor. This supervisor will be equipped with a communication device enabling them to contact suppliers, sub-contractors or their office who in turn can convey necessary communications to others. All communications given to the Superintendent shall be as binding as if given to the Contractor. The Contractor shall issue all communications to the City or representative.

The Contractor's Superintendent shall be present on the job site at all times while work is in progress and shall be available by phone for emergencies twenty-four (24) hours per day, seven (7) days per week. Failure to observe this requirement shall be considered suspension of the work by the Contractor until such time as such Superintendent is again present on the job.

Contractor's Understanding - It is understood and agreed that the Contractor has, by careful examination, satisfied themselves as to the nature and location of the work, the conformation of the ground, the character, quality, and quantity of the materials to be encountered, the character of equipment and facilities needed prior to and during prosecution of the work, the general and local conditions, and other matters which can in affect the work under the contract. No verbal agreement or conversation with any officer, agent, or employee of the City, either before or after execution of the contract, shall affect or modify the terms or obligations herein contained.

The Contractor shall give all notices and comply with all laws, ordinances, rules, and regulations bearing on the conduct of the work as drawn and specified. If the Contractor observes that the specifications and drawings are at variance therewith, he shall promptly notify the City in writing, and any necessary changes shall be adjusted as provided in the contract for changes in the work. If the Contractor performs any work knowing it to be contrary to such laws, ordinances, rules, and regulations, and without such notice to the City, he shall bear all costs arising there from.

The Contractor shall be responsible for complete adherence to the City of Fort Myers Digital As-Build Data Submittal Standards (DADSS) as well as all federal, national, state, or local standards governing their contracted work. The City recognizes the following standards entities:

- Florida Administrative Code, Chapter 61G17-6 Minimum Technical Standards.
- United States National CAD Standard (NCSv4.0)
- Federal Geographic Data Committee –STD's 001 – 014.7e

In some cases, the City's standards may be revised to include more stringent requirements. Updates and revisions, if any, will be provided to the awarded Contractors on a regular basis by Public Works Engineering Division. It will be the Contractor's responsibility to stay current with the standards. These are other related documents that may be provided:

- Florida Department of Transportation Standard Specifications
- City of Fort Myers Design Standards

Protection of Work and Property - The Contractor shall continuously maintain protection of all their work from damage and shall protect the City's property from injury or loss arising in connection with the contract. He shall make good on any such damage, injury or loss, except such as may be directly due to errors in the Contract Documents or caused by agents or employees of the City. They shall adequately protect adjacent property as provided by law and the Contract Documents. He shall provide and maintain all passageways, guard fences, lights, and other facilities for protection required by public authority or local conditions.

In an emergency affecting the safety of life or of the work, or of adjoining property, the Contractor, without special instruction or authorization from the City, is hereby permitted to act, at their discretion, to prevent such threatened loss or injury, and he shall so act, without appeal, if so instructed or authorized. Any compensation claimed by the Contractor on account of emergency work shall be determined by agreement between the Contractor and the City.

The Contractor shall not occupy private land outside of any easements or rights of way unless a written authorization has been signed by the property owner. It shall be the Contractor's responsibility to provide these agreements prior to construction, if required. Prior to the use of private lands, the Contractor shall submit a copy of the agreement(s) to the City. In the event the Contractor uses private property for any purpose without first having obtained the necessary approvals from the property owner and provided the necessary agreements to the City, the City will direct the Contractor in writing to immediately cease using such property. Prior to application for final payment, the Contractor shall provide documentation from the owner of each piece of private property for which an agreement for use was provided, or for which the City has issued written notification to the Contractor, that each owner is satisfied with the manner in which the Contractor has restored the property. Final payment or reduction in retainage shall not be paid until such documentation is received by the City.

Changes in the Work - The City may order extra work or make changes by altering, adding to or deducting from the work, the contract sum being adjusted accordingly. Changes in the Scope of Work, contract Amount or other conditions of the project shall be accomplished by a Change Order. Change Orders shall describe all changes including contract amount and completion time, if affected, and shall be reviewed by the City's Project Manager. The City shall not be required to make payments to a Contractor for changes made to the Scope of Work without first obtaining approval from the Project Manager and an executed Change Order.

Delays and Extension of Time - If the Contractor should be delayed at any time in the progress of the work by any act of neglect of the City or of their employees, or by any other Contractor employed by the City, or by changes ordered in the work, or by such causes beyond the Contractor's control, or by delay authorized by the City, or by any cause which the City shall decide to justify the delay, then the time of completion shall be extended for such reasonable time as the City may decide. However, no time delay shall be allowed if judged by the City to be caused by the Contractor's negligence. No such extension shall be made for delay occurring more than seven (7) calendar days before claim therefore is made in writing to the City. In the case of a continuing cause of delay only one (1) claim is necessary. This article does not exclude the recovery of damages for delay by either party under other provisions in the Contract Documents.

Correction of Work Before Final Payment - All work, all materials, whether incorporated in the work or not, all processes of manufacturer, and all methods of construction shall be at all times and places subject to the inspection of the City who shall be the final judge of the quality and suitability of the work, materials,

processes of manufacture, and methods of construction for the purposes for which they are used. Should they fail to meet City approval; they shall be forthwith reconstructed, made good, replaced, and/or corrected, as the case may be, by the Contractor at their own expense. Rejected material shall be immediately removed from the site. If, in the opinion of the City, it is undesirable to replace any defective or damaged materials or to reconstruct or correct any portion of the work injured or not performed in accordance with the Contract Documents, the compensation to be paid to the Contractor hereunder shall be reduced by such amount as in the judgment of the City shall be equitable.

Responsibility Regarding Existing Utilities and Structures: The Contractor shall be responsible for getting utility locates, sequencing their work to minimize conflicts with the utilities and making necessary field adjustments to accommodate the utilities. The existence and location of underground utilities indicated on the plans are not guaranteed and shall be investigated and verified in the field by the Contractor before submitting a bid. Excavation in the vicinity of existing structures and utilities shall be done by hand. The Contractor shall be responsible for any damage to, and for maintenance and protection of and existing utilities and structures.

The Contractor shall make their own deductions of the surface and/or subsurface conditions that may affect the methods or cost of construction of the work requested, and agrees to make no claims for damages or compensations, except as are provided under the contract. Should conditions be found during the progress of the work different from those calculated and/or anticipated, Contractor may perform, at their option, but subject to the Engineer's approval, additional borings, diving, or other exploratory operations at no additional cost to the City. No Change Order will be authorized due to existing site conditions.

The Contractor shall be responsible during the course of construction to immediately notify the City, or their representative, of any environmentally unacceptable materials within the confines of the project. These materials may be, but not limited to, contaminated soils from petroleum products, chemicals of unknown origin, asbestos, etc. Any questionable materials shall remain in place until tests, as directed by the City, have been completed. Removal and disposal procedures, depending on the actual material found, and test results, will be as directed by the City or the regulatory agency having jurisdiction.

It shall be the Contractor's responsibility to not disturb any questionable materials found on this project. In the event the Contractor does disturb any hazardous materials on the project they must immediately stop work and contact the Project Manager overseeing the project. It shall be the responsibility of the Contractor to assume any cost associated with cleaning up a disturbance that is caused by the contractor and/or the Contractor's subcontractor(s) work.

Warranty & Guarantee:

The Contractor shall guarantee all materials and equipment furnished and Work performed for a period of one (1) year from the date of acceptance. The Contractor warrants and guarantees for a period of one (1) year from the date of acceptance, that the completed system or installed product is free from all defects due to faulty materials or workmanship, and the Contractor shall promptly make such corrections as may be necessary by reason of such defects, including the repairs of any damage to other parts of the system or work resulting from such defects. The City shall give notice of observed defects with reasonable promptness.

Should any equipment, material, and/or workmanship be repaired or replaced during the one (1) year period after date of acceptance by the City, the Contractor will restart the one (1) year guarantee period for that particular item of equipment, material, or workmanship on the date of its repair or replacement.

In the event that the Contractor should fail to make such repairs, adjustments, or the Work that may be made necessary by such defects, the City may do so and charge the Contractor the cost thereby incurred.

SPECIFICATIONS

Prior to the start of any demolition, the Contractor and the City shall hold a pre-construction meeting on-site to discuss BMPs, utility disconnects, and what shall be removed from the property, including but not limited to trees, fences, and possible underground storage tanks.

The Contractor shall notify Animal Control, 337-1997, immediately prior to demolition to visit the site and remove any stray animals.

The Contractor shall be responsible for the proper care and protection of all work performed and adequately protects all workers and property against any damage or injury due to his act or neglect until completion and final acceptance from the Code Enforcement Inspector.

The Contractor shall apply and pay for all required permits and licenses and shall comply with all state and city laws, codes and ordinances regarding demolition.

The Contractor shall also comply with City codes and ordinances to insure the proper disconnection of utilities.

Disconnections of underground utility services are required to be made on public thoroughfares; the contractor shall comply with all local requirements and regulations respecting the barricading of street, the removal and restoration of pavement, and other permanent matters.

Contractor to be responsible for all traffic control, if needed, while on the project.

The City of Fort Myers assumes no responsibility for the conditions of the buildings, structures and other property in the area of the demolition or for their continuance in the condition existing at the time of issuance of the invitation for quote or thereafter. No adjustment of contract, price or allowance for any change in conditions which may occur after the invitation for bids has been issued will be made.

The failure or omission of the contractor to receive or examine any instruction of document or any part of the specifications or to visit the site and acquaint himself/herself as to the nature and location of the work, the general and local conditions and all matters which may in any way affect performance, shall not relieve the contractor of any obligation to perform as specified herein. Contractor understands the intent and purpose thereof and their obligations thereunder and they will not make any claim for, or have any right to, damages resulting from any misunderstanding or misinterpretation of this agreement, or because of any lack of information.

Upon execution of the contract for the work of demolition and site clearance on all or any part of the demolition area, all rights, titles and interest of the City of Fort Myers in and to the buildings, structures and other property to be demolished and removed by the contractor shall be deemed to be vested in the contractor, subject to the provisions of the contract and the following:

No right, title, property or interest of any kind whatsoever in or to the land or premises upon which such building or structures stand, is created, assigned, conveyed, granted or transferred to the contractor, or any other person(s), except only the license and right to entry to remove such buildings and structures in strict accordance with the contract.

All salvage becomes the property of the contractor but storage of such materials and equipment on the project site will not be permitted except for the duration of the contract and such storage shall at no time interfere with activities of the City of Fort Myers or of other contractors.

No structure shall be removed from the premises as a whole, or in a substantially whole condition, but all such buildings shall be demolished on the premises.

The City of Fort Myers is in no way responsible for any risk involved with the successful bidder's equipment due to theft, vandalism, etc.

The contractor shall not assign, transfer or subcontract any portion of the contract unless permission is given by the Owner or Owner's designee.

Contractor shall be responsible for the proper care and protection of all work performed and adequately protects the work and property against any damage or injury due to his act or neglect until completion and final acceptance from the City. The Contractor shall remove all debris from and about the premises and dispose of properly in accordance with applicable regulations. Relevant areas must be left clean. It is the responsibility of the Contractor to repair any damages that are caused to the premises by the Contractor's forces, at no cost to the City.

The Contractor shall apply and pay for all required permits and licenses, and shall comply with all Federal, State, County and City laws, ordinances, rules and regulations. Lack of knowledge by the submitting contractor will in no way be a cause for relief from responsibility.

The failure or omission of the Contractor to receive or examine any instruction of document or any part of the specifications or to visit the site and acquaint himself/herself as to the nature and location of the work, the general and local conditions, and all matters which may in any way affect performance, shall not relieve the Contractor of any obligation to perform as specified herein. Contractor understands the intent and purpose thereof and their obligations thereunder and they will not make any claim for, or have any right to, damages resulting from any misunderstanding or misinterpretation of this agreement, or because of any lack of information.

Employees of the Contractor must be neat/clean experienced workers. All employees of the Contractor shall be considered to be at all times the sole employees of the Contractor under his sole direction and not an employee or agent of the City of Fort Myers. Workmanship shall be of the highest quality and all employees shall be competent and physically capable to perform the services required. The Contractor shall at all times enforce strict discipline and good order among their employees. The City of Fort Myers reserves the right to request that a Contractor immediately remove any employee it deems careless, incompetent, insubordinate or otherwise objectionable and whose continued site service involvement is not in the best interest of the City of Fort Myers.

The City of Fort Myers is in no way responsible for any risk involved with the successful Contractor's equipment due to theft, vandalism, etc.

Until the acceptance of the work by the City, it shall be under the charge and care of the Contractor, and he/she shall take every necessary precaution against injury or damage to any part thereof by action of the elements, or from any other cause whatsoever, arising from the execution or non-execution of the work. The Contractor shall rebuild, repair and make good, at Contractor's expense, all injuries or damages to any portion of the work occasioned by any cause before its completion and acceptance by the City.

The Contractor shall confine equipment, apparatus, and the operation of workmen to the limits indicated by law, ordinances, permits or direction of the Project Manager, and shall not unreasonably encumber the premises with materials. The Contractor shall take all measures necessary to protect their own materials.

All areas to be maintained free of waste materials daily and disposed of properly in accordance with applicable regulations.

A competent person, as required by the laws and regulations governing property, which may potentially contain asbestos-containing materials (ACMs), must be on site at each structure that may potentially contain asbestos, during removal of asbestos and/or demolition of a structure containing asbestos-containing materials (ACMs).

The USEPA NESHAP Standard 40 CFR 61.145 (b) requires that “each owner or operator of a demolition or renovation activity...shall provide...written notice of intention to demolish or renovate.” This notification is ten working days prior to commencement of the demolition or renovation activity and is submitted to the Florida Department of Environmental Protection.

Asbestos removal, if required, must meet all Federal, State, City and Florida Department of Environmental Protection (DEP) regulations and codes. **It is the responsibility of the Contractor to complete and send DEP Form 62.257.900(1), even if the asbestos survey shows no asbestos present. When no asbestos is found prior to a renovation, a courtesy notice to the FDEP is the minimum compliance requirement. This notice must be filed at least ten (10) working days prior to commencement of the demolition or renovation activity and is submitted to the Florida Department of Environmental Protection.**

NOTE: The City will require asbestos-containing materials (ACMs) removal manifests from the prime contractor. It is the prime contractor’s responsibility to obtain these documents from sub-contractors who perform asbestos abatement on City owned property.

The Contractor shall be responsible for the supervision and direction of the work performed by their employees.

The Contractor shall be responsible for instructing their employees in all safety measures. All equipment used by the Contractor shall always be maintained in safe operating conditions, free from defects or wear, which may in any way constitute hazard to any person or persons on the property. All electrical equipment will be properly grounded. All employees will wear property personal protective equipment (PPE) when required.

The Contractor must fully adhere to the Federal Occupational Safety and Health Act (OSHA). The Contractor shall be responsible for performing the work necessary to meet City standards in a safe, neat and good workmanlike manner, using only generally accepted methods in carrying out the work.

TECHNICAL REQUIREMENTS

Demolition and removal of identified unsafe structures, located at various addresses throughout the City of Fort Myers.

The Contractor shall remove the structure and driveway aprons from the property. The Contractor shall grade and level the described property to the grade of the surrounding area. **All trees and shrubbery around structures that are to be demolished shall be removed at ground level. Any trees less than 4" in diameter within the lot shall be graded over up to the perimeters to provide for an easily maintainable lot. The intent is to leave a lot which is free of obstructions and provide for visibility to inhibit crime and transient activity.** (Clearing is to consist of any structures, improvements, vehicles, boats, tires, drums, etc.) The site shall be free and clear on, in, under or about the project site, cleared of all improvements previously located thereon down to grade level. Foundations, which may extend to below grade, shall also be removed. All material, rubbish and debris will be removed from the property and legally disposed of by the Contractor. The public right-of-way will be kept clear at all times.

The sewer will be capped off at the street by the City. The Contractor is responsible for removing piping from the sewer clean-out to the structure. The clean-out is visible at the property line. **THERE IS A \$200 SEWER DISCONNECT FEE.**

Fort Myers Code, Section 90-281: Construction sites, operations and activities. (a) Construction sites and operations shall be required to maintain, during and after all construction, development, excavation, and/or alteration operations, structural and nonstructural best management practices, with the intent to reduce pollutants and sediment in stormwater runoff.

Best Management Practices (BMPs) must be in place prior to construction or demolition. The Contractor must stabilize the area of construction/demolition, within seven (7) days of completion of demolition. See Fort Myers Code 90.281 or cityftmyers.com for full details. **It is the Contractor's responsibility to familiarize themselves with the City of Fort Myers codes and ordinances.** If a site is found to be non-compliant with codes or ordinances, then the Contractor will be subject to notices of violation (see Sec. 90-295). Paragraph (b) states that, "If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that should the violator fail to remediate or restore within the established deadline, the work will be done by the City of a Contractor designated by the Stormwater Utility Director, and the expense thereof, shall be charged to the violator, pursuant to Section 90-296." (See Section 90-296)

Stabilization consists of sod, hydroseed, or seed with mulch. Right-of-ways (ROWs) must be restored to meet or exceed existing conditions. Stabilization along sidewalks must consist at a minimum of one row of sod.

Sidewalks: Sidewalks are not to be removed. The Contractor shall be responsible for any damage to public sidewalks abutting or adjacent to the demolition properties resulting from the execution of the demolition work. The cost of repair or replacement shall be considered incidental to the work and the concrete walks shall be replaced if broken during construction. Contractor shall obtain all permits and pay any fees. It is in the Contractor's best interest to inspect any existing sidewalks for damage prior to commencing work on the site. If damage is determined, take photos and contact Jeff Tufano, Lead Engineering Inspection, at 239-849-3081, to document the damage.

Driveways: The Contractor shall be responsible for the removal of old driveway culvert pipes in the right of way, if needed.

Redevelopment of Existing Property: When an existing drive will not be used after redevelopment of a property, the unused apron shall be removed during redevelopment, and any drop curb section

along the street at an abandoned driveway shall be replaced with a new curb and sidewalk (Ord. No. 3417, SS 1, 9-4-2007).

Fencing: Fencing which restricts the entrance to a demolition site may be removed only at the front entrance of the property abutting the street. Removal must be from corner post to corner post and replacement of this fencing will not be required by the City. The remaining side and back fencing are to remain intact, unless that fence is in dilapidated state and is a hazard to the property as determined by the Code Enforcement Department, or in the event the fencing is specifically stipulated to be removed.

Disposal: All construction and demolition debris must be taken to the appropriate landfills.

Payment: A copy of all landfill receipts must be turned into the City of Fort Myers Procurement Services division before payment will be issued. If the Contractor utilizes legal and authorized alternate sites for clean debris that does not provide for dump receipts, the Contractor must log and document these loads (i.e. location, estimated size of load, number of loads, etc.). Such documentation shall be accumulated and submitted by the prime contractor. All documentation must be orderly and legible.

Information regarding recycling shall be found in the City of Fort Myers Codes of Ordinances, Chapter 70, Solid Waste. See Chapter 70, Solid Waste on the Municode website:

https://library.municode.com/fl/fort_myers/codes/code_of_ordinances

Payment Schedule: All invoices and payments shall be governed by Section 218.74(2) Florida State Statutes, the Florida Prompt Payment Act.

- **CODE ENFORCEMENT WILL HAVE FLORIDA POWER & LIGHT (FP&L) REMOVE THE METER FROM THE MASTHEAD, HOWEVER; IT WILL BE THE CONTRACTOR'S RESPONSIBILITY TO CONTACT FP&L FOR THE ACTUAL REMOVAL OF THE SERVICE FROM THE POWER POLE, AFTER APPLYING FOR THE DEMOLITION PERMIT. PLEASE ADVISE FP&L OF CITY PERMIT NUMBER WHEN MAKING THESE REQUESTS**
- **FOR COMMERCIAL PROJECTS CONTAINING DEMOLITION WORK, THE FOLLOWING PERMITS ARE TO BE ACQUIRED FROM THE FIRE PREVENTION BUREAU, 2033 JACKSON STREET, FORT MYERS, FL 33901:**
 - REMOVAL OF FIRE ALARM SYSTEM
 - REMOVAL OF FIRE SPRINKLER SYSTEM
 - REMOVAL OF FIRE STANDPIPES
 - REMOVAL OF FIRE SUPPRESSION SYSTEM
- **ANY QUESTIONS? PLEASE CONTACT FIRE PREVENTION BUREAU OFFICE AT 239-321-7311**

Construction Document and Forms

- Construction Payment Bond
- Performance Bond
- Notice of Commencement
- Payment Application
- Construction Change Order
- Warranty
- Certification of Sublet Work

CONSTRUCTION PAYMENT BOND

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

SURETY (Name and Principal Place of Business):

OWNER: **CITY OF FORT MYERS, FLORIDA**

CONSTRUCTION CONTRACT

Date: _____
(to be entered by City Clerk)

Amount:

Description:

BOND

Date: _____
(to be entered by City Clerk)

Amount:

Modifications to this Bond Form:

CONTRACTOR AS PRINCIPAL
Company: _____ (Corp. Seal)

SURETY
Company: _____ (Corp. Seal)

Signature: _____
Name and Title:

Signature: _____
Name and Title:

CONTRACTOR AS PRINCIPAL
Company: _____ (Corp. Seal)

SURETY
Company: _____ (Corp. Seal)

Signature: _____
Name and Title:

Signature: _____
Name and Title:

1. The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the City to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference.
2. With respect to the City, this obligation shall be null and void if the Contractor:
 - 2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and
 - 2.2 Defends, indemnifies and holds harmless the City from all claims, demands, liens or suits by any person or entity who furnished labor, materials or equipment for use in the performance of the Construction Contract, provided the City has promptly notified the Contractor and the Surety (at the address described in Paragraph 12) of any claims, liens or suits and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety, and provided there is no City Default.
3. With respect to Claimants, this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due.
4. The Surety shall have no obligation to Claimants under this Bond until:
 - 4.1 Claimants who are employed by, or have a direct contract with the Contractor, have given notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the City, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.
 - 4.2 Claimants who do not have a direct contract with the Contractor:
 1. Have furnished written notice to the Contractor and sent a copy, or notice thereof, to the City, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplies or for whom the labor was done or performed; and
 2. Have either received a rejection in whole or in part from the Contractor, or not received within 30 days of furnishing the above notice any communication from the Contractor by which the Contractor has indicated the claim will be paid directly or indirectly; and
 3. Not having been paid within the above 30 days, have sent a written notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the City, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor.
5. If a notice required by Paragraph 4 is given by the City to the Contractor or to the Surety that is sufficient compliance.
6. When the Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly, and at the Surety's expense, take the following actions:
 - 6.1 Send an answer to the Claimant, with a copy to the City, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.
 - 6.2 Pay or arrange for payment of any undisputed amounts.
7. The Surety's total obligation shall not exceed the amount of this bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
8. Amounts owed by the City to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any Construction Performance Bond. By the Contractor furnishing, and the City accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the

Contractor and the Surety under this Bond, subject to the City's priority to use the funds for the completion of the work.

9. The Surety shall not be liable to the City, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The City shall not be liable for payment of any costs, or expenses of any Claimant, under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.
10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.
11. No suit or action shall be commenced by a Claimant under this Bond, other than in a court of competent jurisdiction in the location in which the work or part of the work is located, or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Subparagraph 4.1 or Clause 4.2 (iii), or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
12. Notice to the Surety, the City or the Contractor shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, the City or the Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.
13. When this Bond has been furnished to comply with a statutory or other legal requirements in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom, and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is, that this Bond shall be construed as a statutory bond and not as a common law bond.
14. Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.
15. DEFINITIONS
 - 15.1 Claimant: An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include, without limitation in the terms, "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor, and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.
 - 15.2 Construction Contract: The agreement between the City and the Contractor identified on the signature page, including all Contract Documents and changes thereto.
 - 15.3 City Default: Failure of the City, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

**PERFORMANCE BOND
(Florida Public Works Projects)**

WHEREAS, the City Council of the City of Fort Myers, Florida, by consent passed on the _____ day of _____ has awarded to _____. (hereinafter designated as the "Principal") a contract dated _____, 20____
for the construction of: _____ (hereinafter the "Contract") and;

WHEREAS, said Principal is required under the terms of said contract to furnish a bond for the faithful performance of said contract, said contract being made a part of this bond by reference, at the times and in the manner prescribed in the contract, in accordance with Florida Statutes, Section 255.05(1).

NOW, THEREFORE, we the Principal and _____

as Surety, are held firmly bound unto the City of Fort Myers, Florida, (hereinafter called the "Obligee") in the penal sum of _____ Dollars (\$_____) lawful money of the United States of America for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, assigns, and successors, jointly and severally and firmly by these presents.

THE CONDITION OF THIS BOND is that if Principal shall be, and is, declared by Owner to be in default under the Contract, the Owner having performed the Owner's obligations thereunder, the Surety may promptly remedy the default, or shall promptly:

- 1) Complete the Contract in accordance with the terms and conditions; or
- 2) Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by the Owner and the Surety jointly of the lowest responsible bidder, arrange for a contract between such bidder and Owner, and make available as Work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) the amount set forth in the bond herein; and
- 3) Make payments to all claimants, as defined in Section 255.05(1) and pursuant to Section 255.05(2) Florida Statutes 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
- 4) Pay Owner all losses, damages, including consequential delay damages, expenses, costs and attorney's fees caused by the contractors default, including appellate proceedings, that Owner sustains because of a default by Principal under the contract; and
- 5) Perform the guarantee of all the work and materials furnished under the contract for the time specified in the contract.

If the Surety does not proceed with reasonable promptness, the Surety shall be deemed to be in default on this bond fifteen (15) days after receipt of a written notice from the Owner to the Surety demanding that the Surety perform its obligations under this bond.

Any changes in or under the contract documents, and compliance or noncompliance with any formalities connected with the contract or the changes, does not affect Surety's obligation under this bond.

IN WITNESS WHEREOF, four identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety above named, on the _____ day of _____, 20_____.

APPROVED AS TO FORM:

Attorney for Owner:

Principal

By: _____

SURETY COMPANY:

By: _____

Title:

(Corporate Seal)

PAYMENT APPLICATION AND CERTIFICATE

DATE: _____
SHEET _____ OF _____
APPLICATION NO.: _____
PERIOD FROM: _____ TO _____, 20____
PROJECT: _____
CONTRACT NO. _____
CONTRACTOR: _____

1. ORIGINAL CONTRACT SUM..... \$ _____
2. CONTRACT MODIFICATIONS APPROVED IN PREVIOUS APPLICATIONS:
ADDITIONS \$ _____ DEDUCTIONS \$ _____
3. CONTRACT MODIFICATIONS APPROVED THIS PERIOD (LIST MODIFICATIONS – Owner Direct Purchase Contingency Usage, WDC 01, 02, 03R, 04, 05 and Final Adjustments/Return of Unused Funds)
ADDITIONS \$ _____ DEDUCTIONS \$ _____
4. NET CHANGE BY CONTRACT MODIFICATIONS (*Sum of Lines 2 & 3*)..... \$ _____
5. REVISED CONTRACT AMOUNT (*Sum of Lines 1 & 4*)..... \$ _____
6. TOTAL VALUE OF WORK TO DATE (*Attached Payment Breakdown*)..... \$ _____
7. PERCENT PROJECT COMPLETE: (*Line 6 ÷ 5 x 100*)..... %
8. AMOUNT INVOICED THIS PERIOD \$ _____
9. MATERIALS ON HAND (*Listing Attached*)..... \$ _____
10. UNDELIVERED EQUIPMENT THIS PERIOD (*Listing Attached*)..... \$ _____
11. SUBTOTAL BILLRF YO FSyr (*Sum of Lines 8 + 9 + 10*)..... \$ _____
12. PREVIOUS RETAINAGE BALANCE \$ _____
13. RETAINAGE HELD (OR RELEASED THIS PERIOD)..... \$ _____
14. TOTAL RETAINAGE BALANCE (Line 12 + Line 13)..... \$ _____
15. SUBTOTAL PAID TO DATE (*Line 11 – Line 14*)..... \$ _____
16. LESS PREVIOUS PAYMENTS TO VENDOR (Previous Pay App)..... \$ _____
17. **CURRENT PAYMENT DUE:** (*Lines 11 & 13*)..... \$ _____
18. Total Amount Paid to MBE's to date (incl. in items above)
(Attach a spreadsheet showing full schedule of MBE's to date) \$ _____

Certificate of Pay (Page 2)

CONTRACTOR'S Certification:

The undersigned CONTRACTOR certifies that (1) all previous progress payments received from CITY, on account of Work done under the Contract referred to above, have been applied to discharge in full all obligations of CONTRACTOR incurred in connection with Work covered by prior Applications for Payment numbered 1 through _____ inclusive; and (2) title to all materials and equipment incorporated in said Work, or otherwise listed in or covered by this Application for Payment, will pass to CITY at time of payment free and clear of all liens, claims, security interests and encumbrances (except such as covered by Bond acceptable to CITY).

Dated _____, 20____

CONTRACTOR

By _____

COUNTY OF _____
STATE OF _____

Before me this _____ day of _____, 20____, personally appeared _____, known to me, who being duly sworn, deposes and says that he/she is the _____ of the Contractor above mentioned; that he/she executed the above Application for Payment and statement on behalf of said Contractor; and that all of the statements contained herein are true, correct and complete.

Notary Public

My Commission Expires

Engineer's Recommendation

In accordance with the above contract, the undersigned payment to the Contractor is the Amount Due as shown above.

By _____

(Title)

Date: _____

CHANGE ORDER INSTRUCTIONS

A. GENERAL INFORMATION

This document was developed to provide a uniform format for handling contract changes that affect Contract Price or Contract Time. Changes that have been initiated by a Work Directive Change must be incorporated into a subsequent Change Order if they affect Price or Time.

Changes that affect Contract Price or Contract Time should be promptly covered by a Change Order. The practice of accumulating change order items to reduce the administrative burden may lead to unnecessary disputes.

For supplemental instructions and minor changes not involving a change in the Contract Price or Contract Time, a Field Order may be used.

B. COMPLETING THE CHANGE ORDER FORM

Engineer initiates the form, including a description of the changes involved and attachments based upon documents and proposals submitted by Contractor, or requests from Owner, or both.

Once Engineer has completed and signed the form, all copies should be sent to Contractor for approval. After approval by Contractor, all copies should be sent to Owner for approval. Engineer should make distribution of executed copies after approval by Owner.

If a change only applies to price or to time, cross out the part of the tabulation that does not apply.



CITY OF FORT MYERS CONSTRUCTION CONTRACT CHANGE ORDER

CHANGE ORDER NO. ____

PROJECT: _____

OWNER: City of Fort Myers, Florida

DATE OF ISSUANCE: _____

CONTRACTOR: _____

OWNER'S Project No. _____

CONTRACT FOR: _____

You are directed to make the following changes in the Contract Documents.

Description:

Purpose of Change Order:

Attachments: *(list documents supporting change)*

CHANGE IN CONTRACT PRICE:	CHANGE IN CONTRACT TIME:
Original Contract Price	Original Contract Time Starting Date: Completion Date:
\$	Days:
Previous Change Order No. ____ to No. ____	Net change from previous Change Orders
\$	Days: 0
Contract Price prior to this Change Order	Contract Time prior to this Change Order
\$	Days:
Net Increase (Decrease) of this Change Order	Net Increase (Decrease) of this Change Order
\$	Days:
Contract Price with all approved Change Orders	Contract Time with all approved Change Orders
\$	Days: Completion Date:

RECOMMENDED:

APPROVED:
THE CITY OF FORT MYERS

ATTEST:

By: _____
Project Manager/Consultant

By: _____
Kevin Anderson, Mayor

By: _____
Gwen Carlisle, MMC, City Clerk

APPROVED:

By: _____
Contractor

By: _____
Richard Moulton, PW Director

By: _____
Phyliss Calloway, Interim City Manager

WARRANTY OF TITLE, LIEN RELEASE

KNOW ALL MEN BY THESE PRESENTS, that _____
whose address is _____

for and in consideration of _____ dollars and other good and valuable
considerations, lawful money of the United States of America, to me in hand paid, the receipt whereof is hereby
acknowledged, does hereby waive, release, remiss and relinquish any and all right to claim any lien or liens for work
done or material furnished, or any kind or class of lien whatsoever on the following described
property: _____

Dated this _____ day of _____, 20_____

CONTRACTOR

By: _____

Signed, sealed and delivered in the presence of:

Sworn to and subscribed before me this _____ day of _____, 20_____.

NOTARY PUBLIC

Certification of Sublet Work

Project No.: _____ Bid No.: _____ Contract No: _____

Contract/Project Name(s): _____

This is a formal certification that the below list of Sub-Contractor(s) and amount(s) were utilized on the above project. **Minority Business Enterprise** Subcontractors are designated.

<u>MBE/DBE SUB- CONTRACTOR(Yes or No)</u>	<u>SUB-CONTRACTOR AMT</u>	<u>% Percentage to Contract</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Signed: _____
Contractor

Date: _____

cc: Project Manager
Procurement Services

NOTICE OF AWARD

Dated July 23, 2021

TO: Southwest Builders, Inc.
(Contractor)

ADDRESS:

11997 Princess Grace Ct.
Cape Coral, FL 33991

PROJECT: Continuing Contract for City-Generated Demolitions

CONTRACT: RFQ #0006-21

You are notified that your submittal dated February 5, 2021 for the above referenced project has been approved. You have been awarded a contract for Continuing Contract for City-Generated Demolitions, as approved on July 19, 2021, by the City of Fort Myers City Council.

You must comply with the following conditions precedent within ten (10) days of the date of this Notice of Award that is by **August 2, 2021**.

1. Insurance requirement as listed in instructions.
2. Certification of Sublet work for **all subcontract agreements**, as attached (if applicable)
3. Must also provide a signed contract with the designated MBE as provided in this agreement (if applicable)

Failure to comply with these conditions within the time specified will entitle CITY to consider your Bid abandoned, to annul this Notice of Award. After you comply with those conditions, CITY will return to you one fully signed counterpart of the Agreement with the Contract Documents attached.

CITY OF FORT MYERS

By _____
Sara Homerding
Procurement Services Division



SOUTBUI-03

SE01HCOX

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

7/27/2021

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

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

PRODUCER License # L077730 AssuredPartners of Florida, Cape Coral 3501 Del Prado Blvd. S Suite #204 Cape Coral, FL 33904	CONTACT NAME: Heather Cox PHONE (A/C, No, Ext): (239) 205-1537 FAX (A/C, No): (239) 542-5527 E-MAIL ADDRESS: heather.cox@assuredpartners.com
INSURED Southwest Builders, Inc. 11997 Princess Grace Court Cape Coral, FL 33991	INSURER(S) AFFORDING COVERAGE INSURER A : James River Insurance Company 12203 INSURER B : The Burlington Insurance Company 23620 INSURER C : West American Insurance Co. 44393 INSURER D : INSURER E : INSURER F :

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PROJECT ☒ LOC OTHER:	X		00113472-0	2/28/2021	2/28/2022	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
	AUTOMOBILE LIABILITY ☐ ANY AUTO OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
B	☒ UMBRELLA LIAB ☒ OCCUR ☒ EXCESS LIAB ☐ CLAIMS-MADE DED ☒ RETENTION \$ 10,000			640BE01271-01	2/28/2021	2/28/2022	EACH OCCURRENCE \$ 3,000,000 AGGREGATE \$ 3,000,000
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) ☐ Y / N If yes, describe under DESCRIPTION OF OPERATIONS below		N / A				PER STATUTE ☐ OTH-ER ☐ E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
C	Pollution Liability			G71473284003	2/28/2021	2/28/2022	Each Occurrence 2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Job RFQ #0006-21

Continuing Contract for City-Generated Demolitions

City of Fort Myers, Florida is an additional insured in respect to General Liability as required by written contract or agreement.

CERTIFICATE HOLDER

CANCELLATION

City of Fort Myers Community Development Dept 1825 Hendry Street Fort Myers, FL 33901	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
---	---



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

7/26/2021

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

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

PRODUCER Five County Insurance Agency Inc 14120 Metropolis Ave Fort Myers FL 33912	CONTACT NAME: Certificate Department PHONE (A/C, No, Ext): 239-939-1400 E-MAIL ADDRESS: certs@fivecountyinsurance.com FAX (A/C, No): 239-939-3813
INSURED Southwest Builders Inc 11997 Princess Grace Ct Cape Coral FL 33991	INSURER(S) AFFORDING COVERAGE INSURER A : Old Dominion Insurance INSURER B : Bridgefield Casualty Insurance INSURER C : INSURER D : INSURER E : INSURER F : NAIC # 40231 10335

COVERAGES

CERTIFICATE NUMBER: 1656703430

REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☐ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ☐ LOC OTHER:						EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG \$ \$ \$ \$ \$ \$
A	AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY			B1T9230V	2/28/2021	2/28/2022	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident) \$ \$ \$ \$
	UMBRELLA LIAB ☐ OCCUR EXCESS LIAB ☐ CLAIMS-MADE DED ☐ RETENTION \$						EACH OCCURRENCE AGGREGATE \$ \$ \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below Y/N ☐ Y ☒ N		N/A	19648300	3/20/2021	3/20/2022	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT \$ \$1,000,000 \$1,000,000 \$1,000,000

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

CERTIFICATE HOLDER**CANCELLATION**CITY OF FORT MYERS
1825 HENDRY ST #101
FORT MYERS FL 33901

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

© 1988-2015 ACORD CORPORATION. All rights reserved.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PRIMARY AND NON CONTRIBUTORY ENDORSEMENT

This endorsement modifies insurance provided under the following: 00113472-0

ALL COVERAGE PARTS

Name Of Additional Insured Person(s) Or Organization(s):
Where required by written contract or written agreement
If no entry appears above, this endorsement applies to all Additional Insureds covered under this policy.

Any coverage provided to an Additional Insured under this policy shall be excess over any other valid and collectible insurance available to such Additional Insured whether primary, excess, contingent or on any other basis unless a written contract or written agreement specifically requires that this insurance apply on a primary and noncontributory basis.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):	Location And Description Of Completed Operations
Where required by written contract or written agreement - Covered Operations - All operations of the Insured	
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – OWNERS, LESSEES OR
CONTRACTORS – SCHEDULED PERSON OR
ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):	Location(s) Of Covered Operations
Where required by written contract or written agreement - Covered Operations - All operations of the Insured	
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COMMERCIAL AUTOMOBILE ELITE PLUS ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

1. BROAD FORM INSURED

A. Subsidiaries and Newly Acquired or Formed Organizations

The Named Insured shown in the Declarations is amended to include:

- (1) Any legally incorporated subsidiary in which you own more than 50% of the voting stock on the effective date of the Coverage Form. However, the Named Insured does not include any subsidiary:
 - (a) That is an "insured" under any other automobile policy or
 - (b) That would be an "insured" under such a policy but for (i) its termination or (ii) the exhaustion of its Limit of Insurance.
- (2) Any organization that is acquired or formed by you and over which you maintain majority ownership. However, the Named Insured does not include any newly formed or acquired organization:
 - (a) That is a partnership, joint venture or limited liability company,
 - (b) That is an "insured" under any other policy,
 - (c) That has exhausted its Limit of Insurance under any other policy, or
 - (d) 180 days or more after its acquisition or formation by you, unless you have given us notice of the acquisition or formation.

Coverage does not apply to "bodily injury" or "property damage" that results from an "accident" that occurred before you formed or acquired the organization.

B. Employees as Insureds

Paragraph A.1 - **WHO IS AN INSURED OF SECTION II - LIABILITY COVERAGE** is amended to add:

Any "employee" of yours while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

C. Lessors as Insureds

Paragraph A.1 - **WHO IS AN INSURED OF SECTION II - LIABILITY COVERAGE** is amended to add:

- e. The lessor of a covered "auto" while the "auto" is leased to you under a written agreement if:
 - (1) The agreement requires you to provide direct primary insurance for the lessor and
 - (2) The "auto" is leased without a driver. Such a leased "auto" will be considered a covered "auto" you own and not a covered "auto" you hire.

2. ADDITIONAL INSURED BY CONTRACT, PERMIT OR AGREEMENT

The following is added to A.1 **WHO IS AN INSURED OF SECTION II - LIABILITY COVERAGE**:

Any person or organization for whom you are required to name as an additional insured in a written contract or agreement that is executed or signed by you prior to a "bodily injury" or "property damage" occurrence is an "insured" for liability coverage, but only to the extent that person or organization qualifies as an "insured" under the **Who Is An Insured** provision contained in **Section II** of the coverage form.

If specifically required by the written contract or agreement referenced in the paragraph above, any coverage provided by this endorsement to an additional insured shall be primary and any other valid and collectible insurance available to

the additional insured shall be non-contributory with this insurance. If the written contract does not require this coverage to be primary and the additional insured's coverage to be non-contributory, then this insurance will be excess over any other valid and collectible insurance available to the additional insured.

3. AUTOS RENTED BY EMPLOYEES

Any "auto" hired or rented by your "employee" on your behalf and at your direction will be considered an "auto" you hire.

The **OTHER INSURANCE** Condition is amended by adding the following:

If an "employee's" personal insurance also applies on an excess basis to a covered "auto" hired or rented by your "employee" on your behalf and at your direction, this insurance will be primary to the "employee's" personal insurance.

4. HIRED AUTO PHYSICAL DAMAGE COVERAGE

If hired "autos" are covered "autos" for Liability Coverage and if Comprehensive, Specified Causes of Loss, or Collision coverages are provided under this Coverage Form for any "auto" you own, then the Physical Damage coverages provided are extended to "autos" you hire or borrow, subject to the following limit. The most we will pay for "loss" to any hired "auto" is:

- (1) \$50,000;
- (2) The actual cash value of the damaged or stolen property at the time of the "loss"; or
- (3) The cost of repairing or replacing the damaged or stolen property,

whichever is smallest, minus a deductible. The deductible will be equal to the largest deductible applicable to any owned "auto" for that coverage. No deductible applies to "loss" caused by fire or lightning. Hired Auto Physical Damage coverage is excess over any other collectible insurance. Subject to the above limit, deductible and excess provisions, we will provide coverage equal to the broadest coverage applicable to any covered "auto" you own.

We will also cover loss of use of the hired "auto" if it results from an "accident", you are legally liable and the lessor incurs an actual financial loss, subject to a maximum of \$1,000 per "accident".

This extension of coverage does not apply to any "auto" you hire or borrow from any of your "employees", partners (if you are a partnership), members (if you are a limited liability company), or members of their households.

5. PHYSICAL DAMAGE – ADDITIONAL TEMPORARY TRANSPORTATION EXPENSE COVERAGE

Paragraph A.4.a. OF SECTION III – PHYSICAL DAMAGE COVERAGE is amended to provide a limit of \$75 per day and a maximum limit of \$2,250.

6. EXTRA EXPENSE – BROADENED COVERAGE

Under paragraph A. OF SECTION III – PHYSICAL DAMAGE COVERAGE, the following Coverage is added:

We will pay for the expense of returning a stolen covered "auto" to you subject to Paragraph C. Limit of Insurance.

7. LOAN/LEASE GAP COVERAGE

Under SECTION III - PHYSICAL DAMAGE COVERAGE, if a long-term leased or financed "auto" is a covered "auto", we will pay in the event of a total "loss" your additional legal obligation to the lessor or loss payee for any difference between the actual cash value of the "auto" at the time of the "loss" and the "outstanding balance" of the lease.

"Outstanding balance" means the amount you owe on the lease at the time of "loss" less any amounts representing taxes; overdue payments; penalties, interest or charges resulting from overdue payments; additional mileage charges; excess wear and tear charges; lease termination fees.

8. AIRBAG COVERAGE

Under Paragraph B. Exclusions of SECTION III - PHYSICAL DAMAGE COVERAGE, the following is added:

The exclusion relating to mechanical breakdown does not apply to the accidental discharge of an air bag.

9. AMENDED DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT, OR LOSS

The requirement in **LOSS CONDITIONS 2.a – DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT, OR LOSS – of SECTION IV – BUSINESS AUTO CONDITIONS** that you must notify us of an “accident” applies only when the “accident” is known to:

- (1) You, if you are an individual
- (2) A partner, if you are a partnership; or
- (3) A member, if you are a limited liability company; or
- (4) An executive officer or insurance manager, if you are a corporation.

10. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS

If you unintentionally fail to disclose any hazards existing at the inception date of your policy, we will not deny coverage under this Coverage Form because of such failure.

11. WAIVER OF SUBROGATION

Transfer Of Rights Of Recovery Against Others To Us of SECTION IV – BUSINESS AUTO CONDITIONS is amended by adding the following:

We waive any right of recovery we may have against any person or organization to or for whom we make payment and with whom you have a written contract that requires such waiver because of payments we make for damages under this Coverage Form.

12. RESULTANT MENTAL ANGUISH COVERAGE

The definition of “bodily injury” in **SECTION V – DEFINITIONS** is replaced by the following:

“Bodily injury” means bodily injury, sickness, or disease sustained by any person, including mental anguish or death resulting from any of these.

13. NOTICE OF CANCELLATION TO THIRD PARTY

The following is added to **A.2., Cancellation of COMMON POLICY CONDITIONS**

If we initiate a cancellation or non-renewal for any reason, other than non-payment of premium, we will mail notice of cancellation to the person or organization scheduled on the policy as an additional insured 30 days before the effective date of cancellation. We will mail such notice to the address of the Additional Insured scheduled on the policy and in at least 30 days before the effective date of the cancellation or non-renewal.

If the Insured initiates the cancellation or in case of non-payment of premium, we will not mail advance notice but, a final cancellation notice will be sent to the person or organization scheduled on the policy as an additional insured. We will mail such notice to the additional insured address upon final cancellation of the policy.

14. VEHICLE WRAP COVERAGE

Paragraph **A. Coverage of Section III – PHYSICAL DAMAGE COVERAGE** is amended to include the following additional paragraph:

Vehicle Wrap

In the event of a “loss” to a covered “auto”, we will provide the following coverage if such “loss” is caused by:

- a. Other than collision only if the Declarations indicates that comprehensive Coverage is provided for the covered “auto”;
- b. Specified Causes of Loss only if the Declarations indicates that Specified Causes Of Loss Coverage is provided for the covered “auto”; or
- c. Collision only if the Declarations indicates that Collision Coverage is provided for the covered “auto”.

We will pay for “loss” to a “vehicle wrap” that is installed on the covered “auto”. The most we will pay for “loss” is \$5,000 per policy period.

We will not pay for “loss” due to and confined to wear and tear; or damage to paint or the vehicle caused by faulty installation of a “vehicle wrap”.

The “vehicle wrap” is subject to the Comprehensive deductible for the covered “auto”, except in the event of a “loss” to a covered “auto” for which such vehicle is involved in a collision and there is both:

- (1) Collision damage to the vehicle; and
- (2) Damage to the “vehicle wrap”

Then the collision deductible will apply.

If the “vehicle wrap” is damaged in a collision the lesser of replacement cost or original purchase cost of the “vehicle wrap” will apply.

SECTION V. DEFINITIONS is amended to include the following additional definition.

"Vehicle Wrap" means self-adhesive vinyl decals or sheets applied to the exterior body or window of a covered "auto". Signs or other graphics painted or magnetically affixed to the vehicle are not considered vehicle wraps.

15. GARAGEKEEPERS

The most current version of endorsement CA 99 37 that is approved in your state is added to the policy on an Excess insurance basis with a maximum limit of \$10,000 and a \$500 deductible for each Customer's Auto for all perils. The limit is applicable on a blanket basis to all Insured owned locations.

16. ORIGINAL EQUIPMENT MANUFACTURER REPLACEMENT PARTS

SECTION III – PHYSICAL DAMAGE COVERAGE, C. Limit of Insurance, Paragraph 1. Is amended to include:

However, if the covered "auto" has less than 36,000 miles on its odometer, then the following condition will apply:

We will pay the cost to replace the damaged parts (excluding glass and mechanical parts) with new Original Equipment Manufacturer replacement parts if the damaged parts cannot be repaired.

17. FIRE DEPARTMENT SERVICE CHARGE

Paragraph A.4. Coverage Extensions of **SECTION III – PHYSICAL DAMAGE COVERAGE** is amended by adding the following:

c. Fire Department Service Charge

When a fire department is called to save or protect a covered "auto", its equipment, its contents, or occupants from a covered cause of loss, we will pay up to \$1,500 for your liability for fire department service charges:

- (1) Assumed by contract or agreement prior to loss; or
 - (2) Required by local ordinance
- No deductible applies to this additional coverage.

18. LOSS OF USE TO RENTAL CAR

Paragraph A.4. Coverage Extensions of **SECTION III – PHYSICAL DAMAGE COVERAGE** is amended to add the following:

d. Rental Expense

We will pay the following expenses that you or any of your "employees" are legally obligated to pay because of a written contract or agreement entered into for use of a rental vehicle in the conduct of your business:

MAXIMUM WE WILL PAY FOR ANY ONE CONTRACT OR AGREEMENT:

1. \$1,000 for loss of income incurred by the rental agency during the period of time that vehicle is out of use because of actual damage to, or "loss" of, that vehicle, including income lost due to absence of that vehicle for use as a replacement;
2. \$500 for administrative expenses incurred by the rental agency, as stated in the contract or agreement

19. EXTENDED COVERAGE – BAIL BONDS

Paragraph A.2.a. (2) of **SECTION II – LIABILITY COVERAGE** is replaced by the following:

(2) Up to \$3,000 for cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds

20. EXTENDED COVERAGE – LOSS OF EARNINGS

Paragraph A.2.a. (4) of **SECTION II – LIABILITY COVERAGE** is replaced by the following:

(4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$500 a day because of time off from work.

21. LOCKOUT REIMBURSEMENT COVERAGE

We will reimburse up to \$75 per occurrence to cover your actual expenses incurred when a locksmith must be called:

- (1) To open a covered "auto" because the keys are locked inside the auto; or
- (2) To make a key for a covered "auto" because the key has been lost or stolen.

No deductible applies

22. NON-OWNED TRAILER – INCREASED LOAD CAPACITY

The following is added to C. of **SECTION I – COVERED AUTOS**:

Non-owned "trailers" with a load capacity of 5,000 pounds or less designed primarily for travel on public roads

23. EXTENDED COVERAGE – BUSINESS PERSONAL PROPERTY AND PERSONAL EFFECTS

Paragraph A.4 of **SECTION III - PHYSICAL DAMAGE COVERAGE** is amended by the following:

Physical Damage Coverage on a covered "auto" may be extended to "loss" to your "business personal property" or "personal effects", not otherwise covered in the policy or, if you are an individual, the personal property of a family member, that is in the covered "auto" at the time of "loss". The most we will pay for any one "loss" under this coverage extension is \$500.

SECTION V - DEFINITIONS is amended by adding the following:

"Business Personal Property" and "Personal Effects" means tangible property that is worn or carried by an "insured". It does not include tools, jewelry, money or securities.

24. RENTAL REIMBURSEMENT COVERAGE

SECTION III – PHYSICAL DAMAGE COVERAGE is amended by the addition of the following:

- (1) We will pay for rental reimbursement expenses incurred by you for the rental of an "auto" because of "loss" to a covered "auto." Payment applies in addition to the otherwise applicable amount of each coverage you have on a covered "auto." No deductibles apply to this coverage.
- (2) We will pay only for those expenses incurred during the policy period beginning 24 hours after the "loss" and ending, regardless of the policy's expiration, with the lesser of the following number of days:
 - (a) The number of days reasonably required to repair or replace the covered "auto." If "loss" is caused by theft, this number of days is added to the number of days it takes to locate the cov-

ered "auto" and return it to you; or

(b) 30 days.

(3) Our payment is limited to the lesser of the following amounts:

(a) Necessary and actual expenses incurred; or

(b) \$50 per day.

(c) The Maximum Payment is \$1,500

(4) This coverage does not apply while there are spare or reserve "autos" available to you for your operations.

(5) If "loss" results from the total theft of a covered "auto" of the private passenger type, we will pay under this coverage only that amount of your rental reimbursement expenses which is not already provided for under the **PHYSICAL DAMAGE COVERAGE Extension**.

If Rental Reimbursement Coverage is already on the policy at higher limits, then that coverage replaces, and is not added to, the coverage provided above.

25. TEMPORARY SUBSTITUTE PHYSICAL DAMAGE

Paragraph C. of **SECTION I – COVERED AUTOS** is amended by the addition of the following:

If Physical Damage Coverage is provided by this Coverage Form, the following type of vehicle is also a covered "auto" for Physical Damage Coverage:

Any "auto" you do not own while used with the permission of its owner as a temporary substitute for a covered "auto" you own that is out of service because of its:

- a. Breakdown
- b. Repair
- c. Servicing
- d. "Loss"; or
- e. Destruction

26. TOWING AND LABOR COVERAGE

Paragraph A.2. of **SECTION III – PHYSICAL DAMAGE COVERAGE** is replaced by the following:

We will pay up to \$200 for towing and labor costs incurred each time a covered "auto" of the private passenger type or a truck of less than

20,000 pounds gross vehicle weight is disabled. However, the labor must be performed at the place of disablement.

27. NEW AUTO REPLACEMENT

In the event of a total loss to your "new" "auto" of the private passenger type or a truck of less than 10,000 pounds gross vehicle weight to which this coverage applies, as show in the Declarations, we will pay at your option either:

1. The verifiable new "auto" purchase price of your damaged auto, not including any insurance or warranties purchased; or
2. The purchase price, as negotiated by us, of a new "auto" of the same or similar make, model and equipment, not including any furnishing, parts or equipment not installed by the manufacturer or manufacturer's dealership;

This coverage is provided without deduction for depreciation.

CONDITIONS

"New" means an "auto" in which you are the original owner and the "auto" has not been previously titled.

Coverage under this endorsement shall be applicable:

1. for no more than 365 days from the date of purchase of the "auto" to which it applies, plus the remainder of the policy term in which the 365th day from purchase ends, and;
2. When the "auto" has less than 15,000 miles

All other provisions of this policy apply.

28. DRIVE OTHER CAR FOR EXECUTIVE OFFICERS

A. Changes In Covered Autos Liability Coverage

Any "auto" you do not own, hire or borrow is a covered "auto" for Liability Coverage while being used by any of your "executive officers", except:

- a. Any "auto" owned by that "executive officer" or any "family member", or
- b. Any "auto" used by that "executive officer" while working in a business of selling, servicing, repairing or parking "autos".

B. Changes In Auto Medical Payments and Uninsured and Underinsured Motorists Coverage

The following is added to **Who Is An Insured**:

Any "executive officer" is "insured" while "occupying" or while a pedestrian when being struck by any "auto" you do not own except:

Any "auto" owned by that "executive" or by any "family member".

C. Changes In Physical Damage Coverage

Any private passenger type "auto" you do not own, hire or borrow is a covered "auto" while in the care, custody or control of any of your "executive officers" except:

- (1) Any "auto" owned by that "executive officer" or any "family member".
- (2) Any "auto" owned by that "executive officer" while working in a business of selling, servicing, repairing or parking "autos".

D. Additional Definitions:

As used in this endorsement:

"Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document, and that person's spouse, while a resident of the same household.

"Family member" means a person related to the "executive officer" by blood, marriage or adoption who is a resident of the "executive officer's" household including a ward or foster child.

E. The Insurance provided under this provision will be:

Equal to the broadest of those coverages afforded any covered "auto", and Excess over any other collectible insurance.

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Schedule

Blanket Waiver of Subrogation Applies

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

Date Prepared: January 7, 2021

Carrier: Bridgefield Casualty Insurance Company

Effective Date of Endorsement: March 20, 2021

Policy Number: 196-48300

Countersigned by:

A handwritten signature in black ink, appearing to be "S. J. [unclear]", written over a horizontal line.

Insured: Southwest Builders, Inc.

WC 00 03 13 (Ed. 4-84)

**AGREEMENT TO PIGGYBACK A CONTRACT FOR
DEMOLITION SERVICES COMPETITIVELY PROCURED BY
THE CITY OF FORT MYERS, FLORIDA**

THIS AGREEMENT is made and entered into this ____ day of _____, 2024, by and between the Town of Fort Myers Beach, Florida (the “Town”), a Florida municipal corporation whose principal place of business is 2525 Estero Blvd., Ft. Myers Beach, FL 33391 and Southwest Builders, Inc., a Florida corporation authorized to do business in the State of Florida, (“Contractor”) whose principal place of business is 11997 Princess Grace Ct, Cape Coral, Florida 33991 (“Agreement”). The Town and the Contractor may also be referred to collectively as the “Parties.”

WHEREAS, the City of Fort Myers, Florida competitively procured a contract for demolition services (“RFQ 0006-21 or RFP”) and thereafter awarded and executed the Agreement for Demolition Services to the City of Fort Myers (“Agreement”) to Contractor on July 10, 2021; and

WHEREAS, the Agreement has a term of 4 years with optional renewals; and

WHEREAS, the Town is in immediate need of demolition services to remove privately owned buildings and structures, which have been determined to be unsafe by the Fort Myers Beach Building Official pursuant to Division 3, of Article 1 of Chapter 6 “Maintenance Codes, Building Codes and Coastal Regulations,” due to a lack of repair or demolition following Hurricane Ian; and

WHEREAS, the Town desires Contractor provide needed demolition services, and under the Town Code, the purchase of services under a contract awarded by another governmental entity is authorized provided the finance department director makes a written determination that time and expense factors make it financially advantageous for the Town to do so; and

WHEREAS, the finance department director has made such a written determination and the Contractor is willing to provide demolition services to the Town, subject to the terms and conditions of the Agreement, with the specific modifications set forth herein; and

WHEREAS, approval of this Agreement is in the best interest of the health, safety and welfare of the residents of the Town.

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

1. **INCORPORATION OF THE CITY OF FORT MYERS.** This Agreement incorporates by reference, the Agreement, a true and accurate copy of which is attached hereto as Exhibit “A.”
2. **SCOPE OF SERVICES.** During the Term of this Agreement, the Contractor will provide demolition services as requested by the Town.

3. **PRICING.** The Town will pay Contractor for such services as provided in the Agreement. This sum will be the Contractor's sole compensation for the services provided by Contractor under this Agreement.
4. **DURATION OF THE AGREEMENT.** The Term of this Agreement shall begin on the last signed by a party and continue for the duration of the term, and any renewals, specified in the Agreement and agreed to by the parties.
5. **DESIGNATED REPRESENTATIVE.** The Town Manager, or designee, shall be the Town's Designated Representative in matters arising under this Agreement.

TOWN MANAGER
Town of Fort Myers Beach
2525 Estero Boulevard
Fort Myers Beach, FL 33931
andy@fmbgov.com

6. **MODIFICATIONS TO AGREEMENT.** Notwithstanding the incorporation of the Agreement into this Agreement as referenced, the Parties hereby agree to certain modifications to the Agreement, as follows:
 - a. All references in the Agreement to terms such as "City" will be deemed to refer to the Town. In addition, all references within the Agreement to specific officers/departments/divisions, or to specific locations (such as for delivery of goods/services, receipt of Contractor invoicing, etc.), if not specifically addressed in this Agreement, will be deemed to refer to the equivalent Town officers/departments/divisions, and Town locations, as hereafter designated by the Town's Designated Representative. The Town shall be added as an additional insured to Contractor's Certificate of Insurance.
 - b. The Town's performance and obligation to pay under the Agreement is contingent upon an annual appropriation by the Town Council.
 - c. The Contractor (and its subcontractors) have an obligation to utilize the U.S. Department of Homeland Security's (DHS) E-Verify system for all newly hired employees. By executing this Agreement, the Contractor certifies that it is registered with, and uses, the E-Verify system for all newly hired employees. The Contractor must obtain an affidavit from its subcontractors in accordance with paragraph (2)(b) of §448.095, Fla. Stat., and maintain a copy of such affidavit for the duration of the Agreement.
 - d. This section serves as notice to the Contractor regarding the requirements of §448.095, Fla. Stat., specifically sub-paragraph (2)(c), and the Town's obligation to terminate the Agreement if it has a good faith belief that the Contractor has knowingly violated §448.09(1), Fla. Stat. If terminated for such reason, the

Contractor will not be eligible for award of a public contract for at least one year after the date of such termination. The Town reserves the right to order the immediate termination of any contract between the Contractor and a subcontractor performing work on its behalf should the Town develop a good faith belief that the subcontractor has knowingly violated §448.095(1), Fla. Stat.

- e. By execution of this Agreement, in accordance with the requirements of §§287.135 and 215.473, Fla. Stat., the Contractor certifies that the Contractor is not participating in a boycott of Israel. The Contractor further certifies that the Contractor is not on the Scrutinized Companies that Boycott Israel list, not on the Scrutinized Companies with Activities in Sudan List, and not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has Contractor been engaged in business operations in Cuba or Syria. Subject to limited exceptions provided in state law, the Town will not contract for the provision of goods or services with any scrutinized company referred to above. Submitting a false certification shall be deemed a material breach of this Agreement. The Town shall provide notice, in writing, to the Contractor of the Town's determination concerning the false certification. The Contractor shall have five (5) days from receipt of notice to refute the false certification allegation. If such false certification is discovered during the active Agreement term, the Contractor shall have ninety (90) days following receipt of the notice to respond in writing and demonstrate that the determination of false certification was made in error. If the Contractor does not demonstrate that the Town's determination of false certification was made in error then the Town shall have the right to terminate the Agreement and seek civil remedies pursuant to §287.135, Fla. Stat., as amended from time to time.
- f. The following provisions are required by §119.0701, Fla. Stat., and may not be amended. The Contractor shall keep and maintain public records required by the Town to perform the services required under this Agreement. Upon request from Town's custodian of public records, the Contractor shall provide the Town with a copy of any requested public records or to allow the requested public records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law. The Contractor shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement's term and following completion of the Agreement if Contractor does not transfer the public records to the Town. Upon completion of the Agreement, the Contractor may transfer, at no cost, to the Town all public records in possession of the Contractor or keep and maintain public records required by the Town to perform the services required under the Agreement. If the Contractor transfers all public records to the Town upon completion of the Agreement, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Agreement, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to

the Town, upon request from the Town's custodian of public records, in a format that is compatible with the Town's information technology systems. Contractor's failure to comply with the provisions set forth in this Section shall constitute a Default and Breach of this Agreement, for which, the Town may terminate the Agreement.

IF A PARTY TO THIS AGREEMENT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE AGREEMENT, THAT PARTY MAY CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

**CUSTODIAN OF PUBLIC RECORDS
2525 ESTERO BOULEVARD
FORT MYERS BEACH, FLORIDA 33931
(239) 765-0202
FMBPUBLICRECORDS@FMBGOV.COM**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as below.

TOWN OF FORT MYERS BEACH:

CONTRACTOR:

Dan Allers, Fort Myers Beach Mayor

Print Name: _____
Print Title: _____

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

1. **Request:**

Meeting Date: May 6, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING AN AGREEMENT FOR DEMOLITION SERVICES WITH HONC DESTRUCTION BASED ON PRICING COMPETITIVELY PROCURED BY THE CITY OF BONITA SPRINGS; AUTHORIZING THE MAYOR OR TOWN MANAGER TO SIGN THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

Approval of the resolution is necessary to allow the Town to enter into a contract with Honc Destruction ("Contractor"), for demolition of unsafe structures as determined by the Building Official, which remain following Hurricane Ian. .

What the action accomplishes:

The proposed resolution allows the Town to expeditiously contract with the Contractor, by using the Agreement for demolition services with the City of Bonita Springs as a "piggyback" contract and avoiding any additional delay, which may result from competitive bidding.

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

4. **Submitter of Information:**

5. **Background:**

On February 3, 2022. the City of Bonita Springs, Florida, entered into a contract with the Contractor for demolition services, including but not limited to demolition of structures designated for removal. The contract had a 2 year term with a one-year additional renewal through February 2025. The Town's Building Official has identified several unsafe structures due to damage from Hurricane Ian, which have not been repaired and in some instances appear to be abandoned. Because of the hazardous condition these structures create, the Building Official is proceeding with condemning the structures and thereafter will need the services of a demolition contractor to remove and structure and debris. The Finance Director has confirmed funding is available for payment to the Contractor and that the Town will seek to recover the cost of demolition from the property owner by imposing a lien as provided in Division 3 of Article II of Chapter 6 "Maintenance Codes, Building Codes and Coastal Regulations" in the Town's Code of Ordinances. Use of a "piggyback" agreement, incorporating Lee County's contract with the Contractor, will allow the Town to have the needed resource available to complete the demolition once the unsafe structure proceedings have concluded.

Attachments:

1. Res. 24-94; Final Demolition Bonita Springs Piggyback 1
2. Draft Demolition Piggyback Contract - City of Bonita Springs ns 1
3. BSC-22-02-021v HONC Destruction, Voluntary Home Buyout - Demolition Contractor x

Financial Impact:

The Finance Director has indicated that adequate funding is available to proceed with contracting for demolition services and that piggybacking on the City Agreement is advantageous to the Town.

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

Jason Freeman, Legislative Liaison / Deputy Town Clerk
nancy stuparich, Town Attorney
Frankie Kropacek, Operations & Compliance Director
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 4/30/2024
Approved - 4/30/2024
Approved - 5/1/2024
Approved - 5/1/2024
Final Approval - 5/1/2024

RESOLUTION NUMBER 24-94

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING AN AGREEMENT FOR DEMOLITION SERVICES WITH HONC DESTRUCTION, BASED ON PRICING COMPETITIVELY PROCURED BY THE CITY OF BONITA SPRINGS, FLORIDA THROUGH AN AGREEMENT; AUTHORIZING THE MAYOR OR TOWN MANAGER TO SIGN THE AGREEMENT; 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 City of Bonita Springs and Honc Destruction (“Contractor”) entered into a contract for demolition services on or about February 2, 2022 (hereinafter the “Contract”); and

WHEREAS, pursuant to the Contract, the Contractor has agreed to provide the City of Bonita Springs with demolition services; 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, Section 2-480(f) of the Town’s Code of Ordinances provides that when it is in the best interest of the Town, it may cooperatively purchase goods or services from any other government agency, which has competitively bid and awarded a 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’s competitive bid policy; and

WHEREAS, the Town Council finds the City of Bonita Springs RFP-21-22 and the resulting Contract were competitively bid with procedural guarantees of fairness and competitiveness equivalent to those of the Town and the Contractor has agreed to allow the Town to “piggyback” on the competitive pricing provided to the City of Bonita Springs; and

WHEREAS, it is in the best interests of the residents of the Town of Fort Myers Beach to execute an agreement with the Contractor containing similar terms and conditions as contained in the Contract.

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 Agreement to Piggyback a Contract for Demolition Services Procured by the City of Bonita Springs, and authorizes the Mayor or Town Manager to execute the Agreement, which is attached hereto as Exhibit “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 ____ day of _____ 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, Town Attorney

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

**AGREEMENT TO PIGGYBACK A CONTRACT FOR
DEMOLITION SERVICES COMPETITIVELY PROCURED BY
THE CITY OF BONITA SPRINGS, FLORIDA**

THIS AGREEMENT is made and entered into this ____ day of _____, 2024, by and between the Town of Fort Myers Beach, Florida (the “Town”), a Florida municipal corporation whose principal place of business is 2525 Estero Blvd., Ft. Myers Beach, FL 33391 and Honc Destruction, a Florida corporation authorized to do business in the State of Florida, (“Contractor”) whose principal place of business is 7490 Mainline Parkway, Fort Myers, FL 33912 (“Agreement”). The Town and the Contractor may also be referred to collectively as the “Parties.”

WHEREAS, the City of Bonita Springs, Florida competitively procured a contract for demolition services (“RFB21-22 or RFP”) and thereafter awarded and executed the Agreement for Demolition Services to the City of Bonita Springs (“Agreement”) to Contractor on February 3, 2022; and

WHEREAS, the Agreement has a term of 2 year with optional renewal; and

WHEREAS, the Town is in immediate need of demolition services to remove privately owned buildings and structures, which have been determined to be unsafe by the Fort Myers Beach Building Official pursuant to Division 3, of Article 1 of Chapter 6 “Maintenance Codes, Building Codes and Coastal Regulations,” due to a lack of repair or demolition following Hurricane Ian; and

WHEREAS, the Town desires Contractor provide needed demolition services, and under the Town Code, the purchase of services under a contract awarded by another governmental entity is authorized provided the finance department director makes a written determination that time and expense factors make it financially advantageous for the Town to do so; and

WHEREAS, the finance department director has made such a written determination and the Contractor is willing to provide demolition services to the Town, subject to the terms and conditions of the Agreement, with the specific modifications set forth herein; and

WHEREAS, approval of this Agreement is in the best interest of the health, safety and welfare of the residents of the Town.

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

1. **INCORPORATION OF THE CITY OF BONITA SPRINGS.** This Agreement incorporates by reference, the Agreement, a true and accurate copy of which is attached hereto as Exhibit “A.”
2. **SCOPE OF SERVICES.** During the Term of this Agreement, the Contractor will provide demolition services as requested by the Town.

3. **PRICING.** The Town will pay Contractor for such services as provided in the Agreement. This sum will be the Contractor's sole compensation for the services provided by Contractor under this Agreement.
4. **DURATION OF THE AGREEMENT.** The Term of this Agreement shall begin on the last signed by a party and continue for the duration of the term, and any renewals, specified in the Agreement and agreed to by the parties.
5. **DESIGNATED REPRESENTATIVE.** The Town Manager, or designee, shall be the Town's Designated Representative in matters arising under this Agreement.

TOWN MANAGER
Town of Fort Myers Beach
2525 Estero Boulevard
Fort Myers Beach, FL 33931
andy@fmbgov.com

6. **MODIFICATIONS TO AGREEMENT.** Notwithstanding the incorporation of the Agreement into this Agreement as referenced, the Parties hereby agree to certain modifications to the Agreement, as follows:
 - a. All references in the Agreement to terms such as "City" will be deemed to refer to the Town. In addition, all references within the Agreement to specific officers/departments/divisions, or to specific locations (such as for delivery of goods/services, receipt of Contractor invoicing, etc.), if not specifically addressed in this Agreement, will be deemed to refer to the equivalent Town officers/departments/divisions, and Town locations, as hereafter designated by the Town's Designated Representative. The Town shall be added as an additional insured to Contractor's Certificate of Insurance.
 - b. The Town's performance and obligation to pay under the Agreement is contingent upon an annual appropriation by the Town Council.
 - c. The Contractor (and its subcontractors) have an obligation to utilize the U.S. Department of Homeland Security's (DHS) E-Verify system for all newly hired employees. By executing this Agreement, the Contractor certifies that it is registered with, and uses, the E-Verify system for all newly hired employees. The Contractor must obtain an affidavit from its subcontractors in accordance with paragraph (2)(b) of §448.095, Fla. Stat., and maintain a copy of such affidavit for the duration of the Agreement.
 - d. This section serves as notice to the Contractor regarding the requirements of §448.095, Fla. Stat., specifically sub-paragraph (2)(c), and the Town's obligation to terminate the Agreement if it has a good faith belief that the Contractor has knowingly violated §448.09(1), Fla. Stat. If terminated for such reason, the Contractor will not be eligible for award of a public contract for at least one year

after the date of such termination. The Town reserves the right to order the immediate termination of any contract between the Contractor and a subcontractor performing work on its behalf should the Town develop a good faith belief that the subcontractor has knowingly violated §448.095(1), Fla. Stat.

- e. By execution of this Agreement, in accordance with the requirements of §§287.135 and 215.473, Fla. Stat., the Contractor certifies that the Contractor is not participating in a boycott of Israel. The Contractor further certifies that the Contractor is not on the Scrutinized Companies that Boycott Israel list, not on the Scrutinized Companies with Activities in Sudan List, and not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has Contractor been engaged in business operations in Cuba or Syria. Subject to limited exceptions provided in state law, the Town will not contract for the provision of goods or services with any scrutinized company referred to above. Submitting a false certification shall be deemed a material breach of this Agreement. The Town shall provide notice, in writing, to the Contractor of the Town's determination concerning the false certification. The Contractor shall have five (5) days from receipt of notice to refute the false certification allegation. If such false certification is discovered during the active Agreement term, the Contractor shall have ninety (90) days following receipt of the notice to respond in writing and demonstrate that the determination of false certification was made in error. If the Contractor does not demonstrate that the Town's determination of false certification was made in error then the Town shall have the right to terminate the Agreement and seek civil remedies pursuant to §287.135, Fla. Stat., as amended from time to time.
- f. The following provisions are required by §119.0701, Fla. Stat., and may not be amended. The Contractor shall keep and maintain public records required by the Town to perform the services required under this Agreement. Upon request from Town's custodian of public records, the Contractor shall provide the Town with a copy of any requested public records or to allow the requested public records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law. The Contractor shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement's term and following completion of the Agreement if Contractor does not transfer the public records to the Town. Upon completion of the Agreement, the Contractor may transfer, at no cost, to the Town all public records in possession of the Contractor or keep and maintain public records required by the Town to perform the services required under the Agreement. If the Contractor transfers all public records to the Town upon completion of the Agreement, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Agreement, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Town, upon request from the Town's custodian of public records, in a format

that is compatible with the Town's information technology systems. Contractor's failure to comply with the provisions set forth in this Section shall constitute a Default and Breach of this Agreement, for which, the Town may terminate the Agreement.

IF A PARTY TO THIS AGREEMENT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE AGREEMENT, THAT PARTY MAY CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

**CUSTODIAN OF PUBLIC RECORDS
2525 ESTERO BOULEVARD
FORT MYERS BEACH, FLORIDA 33931
(239) 765-0202
FMBPUBLICRECORDS@FMBGOV.COM**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as below.

TOWN OF FORT MYERS BEACH:

CONTRACTOR:

Dan Allers, Fort Myers Beach Mayor

Print Name: _____
Print Title: _____

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

CITY OF BONITA SPRINGS CONSTRUCTION CONTRACT
VOLUNTARY HOME BUYOUT PROGRAM DEMOLITION CONTRACTOR
RFB# 21-22

Contract No.: _____
City Award Date: 01-19-2022

CONTRACT

Made as of the 3RD day of FEBRUARY in year of 2022.

BETWEEN the CITY OF BONITA SPRINGS (hereinafter referred to as "City") Lee County, Florida and the CONTRACTOR:

HONC DESTRUCTION
7940 Mainline Parkway
Fort Myers, FL 33912
(239) 849-2205

Check Appropriate Line:

____ Individual
____ Partnership
X LLC or Other
____ Incorporated in the State of Florida

in consideration of the mutual covenants herein set forth, agree as follows:

Contractor hereby agrees to provide and perform the services as set forth in this Contract.

ARTICLE 1. WORK

The Contractor shall perform all the work required by the Contract Documents for the VOLUNTARY HOME BUYOUT PROGRAM DEMOLITION CONTRACTOR in full accordance with the drawings and as elaborated in the specifications.

PROJECT NAME: VOLUNTARY HOME BUYOUT PROGRAM – DEMOLITION CONTRACTOR

LOCATION: City Limits

SCOPE OF WORK

The scope of work includes, but is not limited to asbestos and lead-based paint survey and abatement (as applicable), demolition of the structure and any outbuildings located on the property and removal and disposal of concrete pads, sidewalk and driveways, fencing, mailboxes, signs, poles, porches, trash, waste, rubbish, rocks, debris, etc. The finished surface shall be reasonably smooth compacted and free from irregular surface changes.

Demolition will include the cost of "final disposal" of debris in a manner that complies with all local, state, and federal guidelines, and codes. Concrete pads, slabs or driveways will be removed and disposed of properly.

In addition to the general requirements, the following conditions shall also be required:

The pricing will be based on the square footage of the structure. Should the structure be two (2) stories, the square footage will be the total of all floors.

The Contractor shall be responsible for the complete permit process and be responsible for all costs associated with the permit process which shall include federal, state, and local requirements. The City will reimburse the Contractor for permit cost only. A copy of the permit receipt must be attached to the invoice if seeking reimbursement.

The Contractor is responsible for demolishing the specific structures (wood frame or block) and removing the resulting debris, as well as any associated outbuildings on the properties. Where work is adjacent to the street, the Contractor shall conduct the work in a manner that will avoid the accumulation of debris from its operations on the traffic areas of the adjacent streets or roadways. Contractor shall continuously remove such accumulations and where necessary broom or wet down traffic areas to prevent dust.

All demolition debris shall become the property of the Contractor. It shall be the Contractor's responsibility to remove and dispose of, from the site, all materials in accordance with federal, state, and local guidelines, ordinances, and codes.

The Contractor is responsible for collecting and transporting debris. All truck hauling must comply with Florida State Department of Transportation regulations. After being loaded in the work area, trucks shall have their loads trimmed so that no debris extends horizontally beyond the bed in any direction.

Loading, transporting and disposal of all demolition, vegetative and other debris to a legal landfill or disposal site. The Contractor is responsible for timely removal, transportation and disposal of all debris including concrete slabs and appurtenances, as a result of the demolition services.

The Contractor shall remove all HVAC units following EPA guidelines for the proper disposal of refrigerants. Completely remove below-grade construction, including foundation walls, footings, driveways, and walkways. The Contractor will be responsible for filling and finish grading of the site to prevent standing water in the demolition area. Below-grade areas and voids resulting from demolition of the structure shall be filled with selected back-fill and restored to grade level. The lot shall be cleaned, smoothed, and seeded in a professional manner. Seed and straw all back-fill areas utilizing a mixture of Rye and Bahia or an appropriate seasonal mix of grass seed.

The Contractor shall contact an underground utilities locator, at its expense, prior to commencing any demolition services. Any existing or abandoned utilities (water and sewer lines) on the site shall be removed and capped to the limits of the site. These service lines shall be fully removed to the extent possible.

As applicable, remove all septic tanks and appurtenances from the site.

As applicable, all wells (irrigation, etc.) should be grouted and deemed unusable.

All relevant street side appurtenance including fire hydrants and street signs shall be left undamaged during demolition and debris removal. Damaged, disconnected and/or out-of-place street side appurtenance, such as fire hydrants, manhole covers and street signs shall not be collected, unless otherwise directed by the City. Locations of previously damaged appurtenance shall be reported to the City prior to beginning work.

Hazardous or toxic waste must be disposed of in accordance with federal and state laws and local ordinances. The Contractor must notify the City immediately of any situation which may cause a health or safety risk to the public. The use of burning at the project site for the disposal of refuse and debris will not be permitted. The use of explosives will not be permitted.

Limit hours of operation to Monday through Friday during the hours of 7:00AM to 6:00PM. Special hours of operation outside the normal hours must be approved by the City. The Contractor shall make every effort to minimize noise caused by the operations. Equipment shall be equipped with silencers or mufflers designed to operate with the least possible noise in compliance with County, State and Federal Regulations.

Tree clearance/removal is not a part of this project. If a tree or other large mature landscape materials must be removed in order for the Contractor to proceed or complete the demolition process, the Contractor must gain City's approval prior to cutting the tree. All costs associated with the tree removal will be the sole responsibility of the Contractor. Normal landscaping associated with the residential structure shall be removed with the structure.

During progress of the work, the convenience and protection of the public must be provided for, and interferences held to a minimum.

The Contractor shall, at all times, conduct the work in such a manner as to insure the least practicable obstruction to public travel. The convenience of the general public and of the residents along and adjacent to the area of the work shall be provided for in a satisfactory manner, consistent with the operation and local conditions. Roads and streets must be kept open at all times, or suitable detours provided. When necessary to close streets, "Streets Closed" signs shall be placed immediately adjacent to the work, at such locations as traffic demands, and the Contractor shall notify the City, law enforcement agencies, fire departments, and parties operating emergency vehicles before the street is closed and again as soon as it opened. Access to fire hydrants and other fire extinguishing equipment shall be provided and maintained at all times.

The Contractor shall be responsible for removing and disposing of any obstructions or obstacles at the site of the work or along the right-of-way to the satisfaction of the City. The Contractor is responsible for damages and repairs to private and public property. Minor obstructions shall be removed and properly disposed of.

Fences at the site or along the right-of-way shall be removed by the Contractor.

Particular attention must be given to traffic safety. While it is incumbent upon the Contractor to provide for safety of Contractor personnel and the general public, particular attention to safety, traffic flow, proper warning signs and direction shall be insisted upon throughout the duration of the work. Competent trained signal people shall be employed and utilized as required to allow safe vehicular traffic movement through the project area at any time there is a potential traffic hazard directly or indirectly from work operations. Although the nature of the project may require that traffic be halted for temporary periods, vehicular accessibility for the public shall be maintained at all times. The Contractor shall provide and be responsible for all barricades, warning light signs, signals, flagmen and all else required to allow safe vehicular movement in the vicinity of the demolition area.

No roadway or street will be permitted to have more than one (1) lane of traffic closed at any time.

The Contractor shall confine demolition operations to the immediate vicinity of the location and in no case shall Contractor encroach beyond the limits of the City's property or rights-of-way. Contractor shall place materials, equipment, supplies, etc., so as to cause the least possible damage to property and interference with traffic. Should the Contractor need to locate materials, equipment, etc. on private property, the Contractor shall provide a permission letter from the private property owner to the City prior to commencing work.

It will be the duty of the Contractor to locate the limits of the rights-of-way, or property lines, prior to beginning demolition. Contractor shall be solely responsible for damage of other property outside the boundaries of the rights-of-way and City owned property and shall make satisfactory settlement for any damage directly with the property owner involved.

The Contractor shall maintain safe conditions at all times. Should the City consider the operations unsafe, the operations shall be suspended until the Contractor has corrected all unsafe conditions to the satisfaction of the City.

The Contractor shall conduct operations to minimize damage by falling debris or other causes to adjacent buildings, structures, utilities, roadways, storm drainage and other facilities including persons, as approved by the City. The Contractor shall provide interior and exterior shoring, bracing, or support to prevent the movement, settlement, or collapse of structure to be demolished.

The Contractor shall provide protection from turbidity runoff at all times by utilizing hay bales, silt fences, and/or turbidity curtains, or any other approved method to control runoff. The City will monitor this activity closely and the Contractor shall be responsible for any violations.

The Contractor is responsible for repair/replacement of any damaged City's sidewalks caused by the Contractor's operations at their expense. The Contractor shall assume full responsibility for the protection of all buildings, structures, and utilities, private or public, including poles, signs, services to buildings, utilities in the street, gas pipes, water pipes, hydrants, sewers, storm drains, electric and telephone cables. The Contractor shall carefully support and protect all such structures and utilities from injury of any kind. The Contractor, at their expense, shall repair any damage resulting from the Contractor's operations.

The Contractor shall remove all excess material and shall clean up and restore the site. All damage, as a result of the work under this proposal, done to existing structures that are not part of the proposal, pavement, driveways, paved areas, curbs and gutters, sidewalks, shrubbery, grass, trees, utility poles, utility pipelines, conduits, drains, catch basins, flagstones, rocks, gravel or stable areas or driveways and including all obstructions not specifically name herein, shall be repaired.

ASBESTOS

In the event the Contractor encounters and/or disturbs any asbestos containing material at the project location, the Contractor must immediately stop work and contact the City to report the encounter and/or disturbance.

It shall be the responsibility of the Contractor to assume any costs associated with cleaning up a disturbance that is caused by the Contractor's work.

The Contractor or authorized agent shall hold harmless and defend the City and its agents and employees from all suits and actions, including attorney's fees and all costs of litigation and judgment of any name and description arising out of or incidental to the performance of the Contractor work performed thereunder. This provision shall also pertain to any claims brought against the City by any employee of the named Contractor, any subcontractor, or anyone directly or indirectly employed by any of them.

Immediately after completion of the work, or any substantial unit or portion of it, the Contractor shall remove all unused material, refuse, and dirt placed by him/her in the vicinity of the work and shall leave the premises in a neat and orderly condition, satisfactory to the City.

Where work is along streets or highways, and dirt has been placed on the pavement, the pavement shall be swept clean or all dirt after back-fill has been completed.

Site: The Contractor shall clean up behind the work as much as is reasonably possible as the work progresses. Upon completion of the work and before acceptance of the Final payment for each property by the City, the contractor shall remove all surplus and discarded materials and excavated material and rubbish from the roadways, sidewalks, parking areas, lawns and all adjacent property; shall restore, in an acceptable manner, all property, both public and private, which has been disturbed or damaged during the prosecution of the works; and shall leave the whole site in a neat and presentable condition.

ARTICLE 2. AMOUNT OF CONTRACT

The City shall pay the Contractor in current funds for the performance of the work, subject to additions and deductions by change order as provided in the Contract Documents, the not-to-exceed unit price of:

Item	Description	Unit of Measurement	Unit Price
1	Demolish Wood Frame Structure – As outlined in the Scope of Work in the RFB	Square Foot	\$ 2.25/SQ FT
2	Demolish Concrete Block Structure – As outlined in the Scope of Work in the RFB	Square Foot	\$ 2.65/SQ FT
3	Asbestos Survey	Lump Sum	\$ 1,000.00/LS
4	Asbestos Abatement	Square Foot	\$ 4.00/SQ FT
5	Installation of Silt Fence	Lineal Foot	\$ 2.00/LF
6	Concrete and/or Asphalt Flatwork (slabs, footers, foundations, driveway, walkways, etc.)	Cubic Yard	\$ 8.00CU/YD
7	Septic Tank and Appurtenances Removal	Lump Sum	\$ 600.00/LS
8	Wells on site – Grouted (unusable)	Lump Sum	\$ 1,500.00/LS
9	Loading, transporting, and disposing of demolition debris at an approved landfill (Tonnage based on individual weight tickets from disposal site)	Ton	\$ 75.00/Ton
		Cubic Yard	\$ 15.00/CU YD
10	Restoration of Natural Ground after removal of all debris, appurtenances, and foundation. Restoration shall include fill, grade, furnish and install Rye and Bahia or any seasonal mix	Square Foot	\$ 0.65/SQ FT

ARTICLE 3. PROGRESS PAYMENTS

Based upon applications for payment submitted to the City's Representative by the Contractor, and Certificates for Payment issued by the City's Representative, the City shall make progress payments on account of the contract price to the Contractor as provided in the Contract Documents as follows:

- 3.1 The City will process final payments for each structure demolished based on the square footage costs outlined in Article 2 above and in accordance with the schedule set forth in Florida Statutes §218.735, timely payment for purchase of construction services, in the Local Government Prompt Payment Act. The City shall make payment to the Contractor, unless the City shall have grounds, such as a good faith dispute with the Contractor, a claim brought against the Contractor, or otherwise the subject of a claim or demand between the City and the Contractor, for withholding the payment of retainage. The City shall pay the contractor utilizing Community Development Block Grant – Disaster Recovery Funds and considered to be Federal funds. This project is subject to Federal grantor laws and regulations or requirements that are contrary to any provision of the Local Government Prompt Payment Act.
- 3.2 Upon final completion of the work and acceptance of the project, a sum sufficient to increase the total payments to one hundred percent (100%) of the contract price, less such amounts as the City shall determine for all incomplete work, unsettled claims or unused units as provided in the Contract Documents.

ARTICLE 4. CONTRACT DOCUMENTS

This Contract entered into this date by the City of Bonita Springs, Florida and the Contractor. The parties hereto do mutually agree as follows:

The Contractor shall furnish all labor, equipment, and materials and perform the work above described for the amount stated above in strict accordance with the General Conditions, Supplemental Conditions, Plans and Specifications, as applicable, and other Contract Documents, all of which are made a part hereof and enumerated as follows:

CONSTRUCTION CONTRACT

- 4.1 City of Bonita Springs Construction Contract and Sample Documents
 - 4.1.1 Request for Bids
 - 4.1.2 Notice to Bidders
 - 4.1.3 Instruction to Bidders
 - 4.1.4 Contractor's Bid Proposal
- 4.2 Project and FDOT Technical Specifications
- 4.3 Certificate of Insurance
 - 4.3.1 The following which may be delivered or issued after the effective date of the Contract and are not attached hereto: All written amendments and other documents amending, modifying or supplementing the Contract Documents pursuant to the Supplemental Conditions of the RFB.

ARTICLE 5. TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

- 5.1 Work to be started on the date specified in the Official Notice to Proceed.
- 5.2 This Contract is effective as of the date both parties have fully executed the document and shall remain in effect a period of two (2) years with the option to renew for one (1) additional year, upon mutual agreement.

ARTICLE 6. MISCELLANEOUS PROVISIONS

- 6.1 Terms used in the Contract which are defined in the Supplemental Conditions of the RFB shall have the meaning designated in those conditions.
- 6.2 The City and Contractor each binds himself, his partners, successors, assigns and legal representatives to the other party hereto, his partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.
- 6.3 The Contractor shall not assign or transfer any of its rights, benefits, or obligations, except for transfer that result from transfer or consolidation with a third party, without the prior written approval of the City. The Contractor shall have the right to employ other persons and/or firms to serve as sub-contractors in connection with the requirements of the Contract Documents.

- 6.4 To the fullest extent permitted by Florida law, the Contractor shall be liable and agrees to be liable for and shall defend, indemnify and hold harmless the City, its officers and employees from any and all liabilities, damages, losses and costs, to person or property including, but not limited to, reasonable attorneys' fees arising out of or caused in whole or in part by any act omission, error or default by the Contractor, its subcontractors, materialmen, or agents of any tier or their employees arising out of this agreement or its performance. This indemnification obligation shall not be construed to negate, abridge or reduce any other rights or remedies which otherwise may be available to an indemnified party or person described in this paragraph. This section does not pertain to any incident arising from the sole negligence of the City.

The Contractor shall assume all risk and bear any loss or injury to property or persons occasioned by neglect or accident during the progress of work until the same shall have been completed and accepted. The Contractor agrees to repair, restore, or rebuild any damages caused to any property of the City. The Contractor shall also assume all blame or loss by reason of neglect or violation of any state or federal law or municipal rule, regulation, or order. The Contractor shall give to the proper authorities all required notices relating to the work, obtain all official permits and licenses and pay all proper fees. The Contractor shall repair any damage that may have occurred to any adjoining building, structure, utility or private property in the course of this work.

- 6.5 In any action or proceeding arising between the parties relating to the terms of this Contract, the prevailing party shall be entitled to recover its reasonable attorney fees, expenses, and all court costs, including fees and costs incurred through any appeal, from the non-prevailing party.

ARTICLE 7. COMPLIANCE WITH PUBLIC RECORDS LAW

Any contractor acting on behalf of the City of Bonita Springs must comply with Florida public records laws, specifically to:

- 7.1 Keep and maintain public records required by the City to perform the service.
- 7.2 Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Florida Statutes §119 or as otherwise provided by law.
- 7.3 Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the Contract if the Contractor does not transfer the records to the City.
- 7.4 Upon completion of the Contract, transfer, at no cost, to the City of Bonita Springs all public records in possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the Contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.
- 7.5 The City will consider it a breach of contract should the Contractor fail to comply with any public records request.
- 7.6 A Contractor who fails to provide the public records to the City within a reasonable time may be subject to penalties under Florida Statutes §119.10.
- 7.7 **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS (CITY CLERK) AT: 239-949-6262, CITY OF BONITA SPRINGS, 9101 BONITA BEACH ROAD, BONITA SPRINGS, FL 34135, debbie.filipek@cityofbonitasprings.org.**

- 7.8 If the Contractor is not providing the requested public records, the burden of proof is on the Contractor to show why they did not comply with the request.

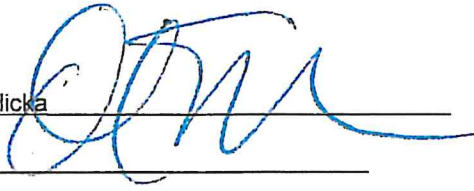
In witness whereof, City and Contractor have signed this Contract in quadruple. One counterpart has been retained by the City Clerk, one part has been delivered to the City **Public Works** Department and two parts have been delivered to the Contractor. All portions of the Contract Document have been signed or identified by City and Contractor on their behalf.

THIS SPACE INTENTIONALLY LEFT BLANK.

By (printed):

David Mulicka

By (signature):



Title:

President

HONC Destruction
Company Name

(CORPORATE SEAL)

STATE OF FLORIDA
COUNTY OF LEE

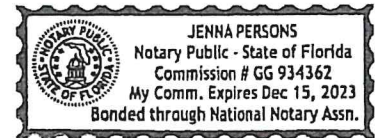
The foregoing instrument was acknowledged before me this 1 day of FEBRUARY, 2022 by

DAVID MULICKA
(Name of person acknowledged)

produced Personally Known as identification.
(Type of identification)

(Signature of Notary Public)

JENNA PERSONS
(Name typed, printed or stamped)



ATTEST:

By:

City Clerk

Date:

2/3/2022

CITY OF BONITA SPRINGS

By:

Mayor

APPROVED AS TO FORM

By:

City Attorney's Office

ATTACHMENT A

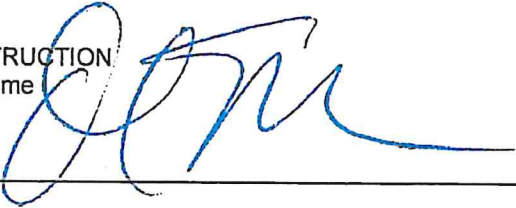
Certification Regarding Debarment, Suspension,
Ineligibility and Voluntary Exclusion

Vendor Covered Transactions

- (1) The prospective vendor certifies, by submission of this Annual Agreement, that neither it nor its principles are presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the vendor is unable to certify to the above statement, the prospective vendor shall attach an explanation to this form.

VENDOR

HONC DESTRUCTION
Company Name



Signature

DUNS Number 024309547

2/1/2022

Date

DAVID MULICKA, PRESIDENT
Print Name and Title

7940 MAINLINE PKWY

Street Address

FT MYERS FL 33912

City, State, Zip

For City of Bonita Springs use only

To access the debarment search: <https://www.sam.gov/SAM/> > Search Records tab > Enter DUNS number > Click Search

Company: ☐ is debarred ☐ is not debarred

Verified by: _____
Name

Date: _____

ATTACHMENT B

Scrutinized Companies Statement

SWORN STATEMENT UNDER SECTION 287.135(5), FLORIDA STATUTES: THIS FORM MUST BE SIGNED IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICER AUTHORIZED TO ADMINISTER OATHS.

1. This sworn statement is submitted with Bid, Proposal, Quote, or Contract Number **RFB# 21-22** for **VOLUNTARY HOME BUYOUT PROGRAM DEMOLITION CONTRACTOR**.

2. This sworn statement is submitted by HONC DESTRUCTION, whose business
[Name of entity submitting sworn statement]

address is 7940 MAINLINE PKWY FT MYERS FL 33912 and (if applicable) its Federal Employer Identification Number (FEIN) is 47-1027302. (If the entity has no FEIN, include the Social Security Number of the individual signing this sworn statement: _____).

3. My name is DAVID MULICKA _____ and my relationship to the above is PRESIDENT
[Please print name of individual signing]

4. I understand that "awarding body" as defined in section 287.135(1) (a), Florida Statutes, means, for purposes of state contracts, an agency or the department, and for purposes of local contracts, the governing body of the local governmental entity.
5. I understand that "Boycott of Israel" as defined in section 287.135(1) (b), Florida Statutes, has the same meaning as defined in s. 215.4725.
6. I understand that "business operations" as defined in section 287.135(1) (c), Florida Statutes, means, for purposes specifically related to Cuba or Syria, engaging in commerce in any form in Cuba or Syria, including, but not limited to, acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, military equipment, or any other apparatus of business or commerce.
7. I understand that "local governmental entity" as defined in section 287.135(1) (d) means a county, municipality, special district, or other political subdivision of the state.
8. Based on information and belief, the statement, which I have marked below, is true in relation to the entity submitting this sworn statement. [Please indicate which statements apply].

☒ **Scrutinized Companies that Boycott Israel List (bid, proposal or contract renewal for any amount)**

- ☒ [X] The entity submitting this sworn statement is not on the Scrutinized Companies that Boycott Israel List.
☐ [] The entity submitting this sworn statement is on the Scrutinized Companies that Boycott Israel List.

☒ **Scrutinized Companies with Activities in Sudan List (bid, proposal or contract renewal for \$1 Million or more)**

- ☒ [X] The entity submitting this sworn statement is not on the Scrutinized Companies with Activities in Sudan List.
☐ [] The entity submitting this sworn statement is on the Scrutinized Companies with Activities in Sudan List.

☒ **Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List (bid, proposal or contract renewal for \$1 Million or more)**

- ☒ [X] The entity submitting this sworn statement is not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.
☐ [] The entity submitting this sworn statement is on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.

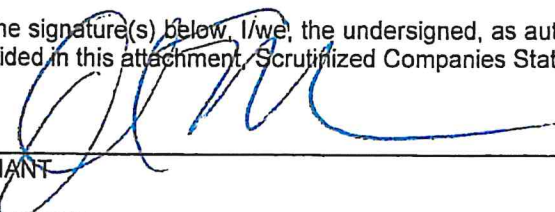
☒ **Business Operations in Cuba or Syria (bid, proposal or contract renewal for \$1 Million or more)**

- ☒ [X] The entity submitting this sworn statement does not have business operations in Cuba or Syria.
☐ [] The entity submitting this sworn statement does have business operations in Cuba or Syria.

The City will follow Florida Statute §287.135. If the City determines this Vendor has been placed on the Scrutinized

Companies that Boycott Israel List or is engaged in a boycott of Israel after the contract is executed, the contract may be terminated by the City by written notification. If the City determines this Vendor is found to have submitted a false certification, placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or been engaged in business operations with Cuba or Syria, the City shall notify the Vendor of its determination by written notification.

By the signature(s) below, I/we, the undersigned, as authorized signatory to commit the firm, certify that the information as provided in this attachment, Scrutinized Companies Statement, is truthful and correct at the time of submission.



AFFIANT

DAVID MULICKA

Typed Name of AFFIANT

PRESIDENT _____
Title

STATE OF FLORIDA

COUNTY OF LEE

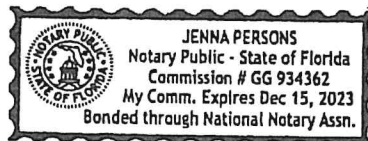
The foregoing instrument was executed before me this 1ST day of FEBRUARY, 2022,

by DAVID MULICKA _____ as
PRESIDENT _____ of

_____, who personally swore or affirmed that he/she is authorized to
execute this document and thereby bind the Corporation, and who is personally known to me OR has

produced _____ as identification.

(stamp)



NOTARY PUBLIC, State of _____

THIS SPACE INTENTIONALLY LEFT BLANK

For City of Bonita Springs use only

To access the lists: <http://www.sbafla.com/fsb/> > Funds We Manage tab > FRS Pension Plan - Global Governance Mandates > Global Governance Mandate Quarterly Reports > most current quarter

Scrutinized Companies that Boycott Israel List:

☐ entity is **NOT** on list ☐ entity is on list

Scrutinized Companies with Activities in Sudan List:

☐ entity is **NOT** on list ☐ entity is on list

Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List:

☐ entity is **NOT** on list ☐ entity is on list

Business Operations in Cuba or Syria:

☐ entity is **NOT** on list ☐ entity is on list

Verified by: _____
Print Name

Date: _____

1. **Request:**

Meeting Date: May 6, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING CHANGE ORDER #1 OF CONTRACT ITB-23-17-PW BETWEEN THE TOWN AND AMERICAN INFRASTRUCTURE SERVICES. TO INSTALL STREET SIGNS ON ESTERO ISLAND FOR AN ADDITIONAL COST OF \$11,952; AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

To approve a price increase due to additional signage

What the action accomplishes:

Approves a price increase due to additional signage.

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Mark Ashton, Public
Works/Utilities Director

5. **Background:**

The Town issued ITB-23-17-PW in 2023, and received Town Council approval for executing a contract with American Infrastructure Services not to exceed in the amount \$158,240. After the Town requested additional signage seeking island wide uniformity, adding 55 "No Outlet" panels. This addition added a total of \$ 11,952 to the total cost.

Attachments:

1. 24-91, ITB-23-17-PW Change Order 1 AIS
2. Change Order1 With summary

Financial Impact:

Additional \$11,952 for additional "No Outlet" panels.

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

Deborah Hite, Utilities & Public Works Coordinator
Mark Ashton, Public Works/Utilities Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 5/1/2024
Approved - 5/1/2024
Approved - 5/1/2024
Approved - 5/1/2024
Final Approval - 5/1/2024

RESOLUTION NUMBER 24-91

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING CHANGE ORDER #1 OF CONTRACT ITB-23-17-PW BETWEEN THE TOWN AND AMERICAN INFRASTRUCTURE SERVICES. TO INSTALL STREET SIGNS ON ESTERO ISLAND FOR AN ADDITIONAL COST OF \$11,952; AND PROVIDING FOR AN EFFECTIVE DATE.

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

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

WHEREAS, the Town of Fort Myers Beach recognizes the importance of the signage uniformity on Estero Island

WHEREAS, the Town Council approved Contract ITB-23-17-PW with American Infrastructure Services for \$158,240; and

WHEREAS, additional work to add 55 “No Outlet” panels has been identified; and

WHEREAS, cost for the additional work is in the amount of \$11,952; and

WHEREAS, it is in the best interest of the Town to approve the requested Change Order #1 of Contract ITB-23-17-PW

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 Change Order #1 of Contract ITB-23-17-PW between the Town and American Infrastructure Services for \$11,952. A copy of the Change Order #1 of Contract ITB-23-17-PW is attached hereto as Attachment “A”.

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

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

ADOPTED this 6th day of May, 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 6th day of May, 2024.

PART E
FMB:011 - CONSTRUCTION CONTRACT
CHANGE ORDER

No.: 1

(A Change Order requires approval by the Finance Director and Town Manager for expenditures under \$25,000, approval by the Town Council for expenditures over \$25,000).

CONTRACT/PROJECT NAME: Road Signs

CONTRACTOR: American Infrastructure Services (AIS) PROJECT NO.: _____

CONTRACT NO.: ITB-23-17-PW BID NO.: ITB-23-17-PW

CHANGE REQUESTED BY: Town of Fort Myers Beach DATE OF REQUEST: 1/5/2024

Upon the completion and execution of this Change Order by both parties to the Contract the Contractor is authorized to and shall proceed to make the following changes in the Contract Documents:

(If you need space other than what has been provided, please attach additional sheets.)

Description: The addition of 50 "NO OUTLET" sing panels for street signs. Per verbal discussion during field meeting on 01/05/2024 - 2:00pm at corner of Old San Carlos and Estero Blvd. This information was relayed to our Project Manager for preparation of CO-1. Due to an internal miscommunication, the CO was not generated and sent to the town for approval. As an act of good faith towards the verbal agreement, the work was completed. J. Arroyo-AIS)

Purpose of Change Order: The Town was seeking uniformity across all road signs on side streets for the entire 7-mile stretch of Estero Island. (During initial quoting period, efforts utilizing Google earth shown inconsistent signage, which led to the discrepancy in what was installed. J. Arroyo-AIS)

Attachments: (List documents supporting change) Summary on next page.

CHANGE IN CONTRACT PRICE:	CHANGE IN CONTRACT TIME:
Original Contract Price <u>\$158,240.00</u>	Original Contract Time Calendar Days
Previous Change Order No. <u>N/A</u> to No. <u>N/A</u> <u>\$0</u>	Net Change from previous Change Orders Calendar Days
Contract Price prior to this Change Order <u>\$158,240.00</u>	Contract Time prior to this Change Order Calendar Days
Net Increase (Decrease) of this Change Order <u>\$ 11,952.20</u>	Net Increase (Decrease) of this Change Order Calendar Days
Contract Price with all approved Change Orders <u>\$ 170,192.20</u>	Contract Time with all approved Change Orders Calendar Days

It is understood and agreed that the acceptance of this modification by the CONTRACTOR constitutes an accord and satisfaction, and represents payment in full (both time and money) for all costs arising out of, or incidental to, the above mentioned change.

RECOMMENDED:	ACCEPTED	TOWN APPROVAL:
By: _____	By: _____	By: _____
Consultant (if applicable) Date	Contractor	Finance Director (Under \$25,000)
By: _____	Date Accepted: _____	Date Approved: _____
Department Director Date		
Contracts Management	(CORPORATE SEAL)	By: _____
		Town Manager (Under \$25,000)
APPROVED:		Date Approved: _____
Town Attorney Date		By: _____
		Mayor, Town Council
		(Over \$25,000)
		Date Approved: _____

Summary

The total amount of \$11,952.20 above the original contract amount, can be represented by the following.

CO-1, in the amount of \$3,672.20

Pay item #5 19 units, in the amount of \$7,380.00 above the contract amount of 1 unit. **(See “NOTE ON ITEMS 5&6” below.)** *Note – AIS does not wish to modify this number any further to avoid complications.

Pay item #6 This is the number of removals that were submitted by installation crew. A total of 31 units removed, in the amount of \$900 above the contract amount if 1 unit. **(See “NOTE ON ITEMS 5&6” below.)** (There was clearly more than that quantity, but such time has passed, and there is no reason to pursue additional compensation.

NOTE ON ITEMS 5&6

In the original bid documents, both pay items 5&6 state “The quantity for this pay item is unknown at this point. Provide unit price for one assembly on as needed basis.” This needs to be acknowledged as the primary cause for the increase in the contract amount.

Should there be any need for further clarification, I can be reached via email at jarroyo@ainfraserv.com . We appreciate your consideration in closing out this project as quickly as possible, so that we may all proceed with our duties.

With Regards,

Jeff Arroyo
AIS Project Superintendent



1. **Request:**

Meeting Date: May 6, 2024

Accept CDBG-DR Planning Funding award in the amount of up to \$1,575,000.00

Why the action is necessary:

Acknowledges and accepts the funding obligation and subrecipient agreement associated with the Lee County CDBG-DR Planning program.

What the action accomplishes:

Acknowledges and accepts the funding obligation and subrecipient agreement associated with the Lee County CDBG-DR Planning program.

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

Jason Freeman, Legislative
Liaison / Deputy Town Clerk,
Joe Onzick, Finance Director

5. **Background:**

In January 2024, the Town Council authorized the application and administration of a project under the Recovery & Resiliency Planning Program through Resolution 24-36.

The Planning and Infrastructure Evaluation Committee met on April 3, 2024, to evaluate the applicants' proposals. The committee unanimously recommended funding all of the qualifying proposals. These projects were then brought before the Lee County Board of County Commissioners for approval on April 16th in which they were approved.

The Town is being awarded up to \$1,575,000.00 to utilize for tasks related to this project including areas such as long term recovery planning and comprehensive plan updates.

Attachments:

1. Award Letter_Town of Fort Myers Beach_300016
2. Lee County BoCC Agenda 4.16.24 CDBG-DR Planning Awards

Financial Impact:

Total Town Obligation: \$1,575,000.00

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

Jason Freeman, Legislative Liaison / Deputy Town Clerk
Frankie Kropacek, Operations & Compliance Director
Joe Onzick, Finance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 4/22/2024
Approved - 4/22/2024
Approved - 4/30/2024
Approved - 4/30/2024
Approved - 4/30/2024
Final Approval - 4/30/2024



Board of County Commissioners

4/16/2024

Kevin Ruane
District One

Cecil L. Pendergrass
District Two

Ray Sandelli
District Three

Brian Hamman
District Four

Mike Greenwell
District Five

Dave Harner, II
County Manager

Richard Wm. Wesch
County Attorney

Donna Marie Collins
County Hearing
Examiner

Town of Fort Myers Beach
2731 Oak Street
Fort Myers Beach, FL 33931

Re: CDBG-DR Planning Grant Award Notice

Good afternoon,

On April 16, 2024 the Lee County Board of County Commissioner's (BoCC) considered Community Development Block Grant – Disaster Recovery (CDBG-DR) Recovery & Resiliency Planning project applications. I am pleased to inform you that the BoCC has awarded up to \$1,575,000.00 for the Town of Fort Myers Beach Long Term Recovery Plan and Comprehensive Plan Updates.

Before proceeding with a subrecipient agreement, the following items are required:

- Detailed scope of work verifying that no ground disturbance will occur
 - The scope must specify whether construction or engineering services are necessary for completing the planning activity.
- Final Budget
 - Copy of ICE and any assembled/advertised procurement packages.
- Policy prohibiting the excessive use of force developed, updated and adopted since 2000 (Attachment 1-C, CDBG Management Handbook)

During the onboarding meeting held on April 17th, 2024 we reviewed some regulatory requirements for U.S. Department of Housing and Urban Development CDBG-DR funded projects, including 24 CFR 570 and 2 CFR 200. The procurement procedures for hiring consulting and planning services are detailed in 2 CFR 200 Subpart D and Lee County's Subrecipient Manual. Applicants should not have pre-existing contracts with any implementation vendors. If a contract is already in place, please contact your grant manager for guidance on obtaining concurrence for vendor procurement.

Planning grant subrecipients must have an active and unexpired UEI in the System for Award Management (SAM) to avoid delays in the disbursement of funds. Subrecipients are required to maintain an active SAM registration for the duration of their contract by re-activating their DUNS number annually at the following website: <https://www.sam.gov/SAM>

The anticipated start date for the project is May 15, 2024. This tentative start date is subject to the completion of necessary requirements and final signature of the written agreement.

Please review the enclosed draft Subrecipient Agreement and provide any factual corrections or minor Exhibit adjustments to your Grant Manager by April 29, 2024.



Board of County Commissioners

Costs to be covered by the grant cannot be incurred until the date all parties have signed the written agreement.

Should you have any additional questions regarding the award or attached documents, please do not hesitate to contact your grant manager.

Congratulations once again on this pending award, and we look forward to working with you.

Contacts:

Grant Manager

Ande Gazley

andrea.gazley@icf.com

(808) 490-9265

Lee County

Strategic Resources and Government Affairs (SRGA)

<https://cdbgdr.leegov.com>

Recovery@leegov.com

(239) 533-2315



AGENDA ITEM REPORT

DATE: April 16, 2024
DEPARTMENT: County Manager
REQUESTER: Glen Salyer
TITLE: Award CDBG-DR Planning Project Grants

I. MOTION REQUESTED

- A. Award planning grants to the twenty-two (22) proposals recommended for funding by the Planning & Infrastructure Evaluation Committee as referenced in the attached document.
- B. Authorize the Board Chair to execute subrecipient agreements for awarded CDBG-DR planning projects.
- C. Authorize the County Manager or designee to execute Memoranda of Agreement (MOAs) for CDBG-DR planning projects awarded to Lee County.
- D. Authorize the County Manager or designee to execute any amendments, change orders or other modifications associated with the CDBG-DR planning awards and agreements in accordance with CDBG-DR policies and procedures.

II. ITEM SUMMARY

Awards approximately \$13,628,551 for twenty-two (22) CDBG-DR Recovery & Resiliency Planning projects. The Planning and Infrastructure Evaluation Committee met on April 3, 2024, to review applications and unanimously recommended funding the proposals.

III. BACKGROUND AND IMPLICATIONS OF ACTION

A) Board Action and Other History

The U.S. Department of Housing and Urban Development (HUD) announced that Lee County will receive \$1,107,881,000 in funding to support long-term recovery efforts following Hurricane Ian (FEMA – 4673 – DR) through the Office of Disaster Recovery (ODR) within the Office of Community Planning and Development. Community Development Block Grant-Disaster Recovery (CDBG-DR) funding is designed to address needs that remain after all other assistance has been exhausted. Program rules are detailed in 88 FR 32046 (May 18, 2023) and other relevant federal statutes and regulations. In accordance with Federal Register Notice 88 FR 32046 and as approved by the Board of County Commissioners, Lee County submitted the Action Plan for Community Development Block Grant – Disaster Recovery (CDBG-DR) funds on September 19, 2023. HUD approved the Action Plan on November 7, 2023.

The BoCC authorized the launch of the Planning NOFA on December 5, 2023.

B) Policy Issues

C) BoCC Goals

D) Analysis

Lee County submitted its Action Plan for CDBG-DR funds to HUD on September 19, 2023, which HUD approved on November 7, 2023. The Action Plan identifies several programs to address unmet recovery needs resulting from Hurricane Ian.

Lee County has allocated \$25,000,000 in CDBG-DR funding for planning activities, with up to \$21,550,000 of that available through a competitive application process open to units of general local government, special districts, public utility providers, public housing authorities, and public-school districts.

The BoCC authorized the launch of the Planning NOFA on December 5, 2023. Eligible applicants submitted their applications prior to the deadline on February 23, 2024. Threshold reviews were completed to identify the applications that met the program requirements. The applications were then reviewed and scored according to the rubric included in the NOFA.

The Planning and Infrastructure Evaluation Committee met on April 3, 2024, to evaluate the applicants' proposals. The committee unanimously recommended funding all of the qualifying proposals.

Applicant	Plan Name	CDBG-DR Funding
City of Bonita Springs	Bonita Springs Mobility Plan	\$500,000.00
City of Bonita Springs	Bonita Springs Citywide Parks and Recreation Master Plan	\$500,000.00
City of Cape Coral	Coral Parkway: Corridor Resiliency Planning Study	\$565,983.13
City of Cape Coral	North Cape Coral Drainage Basin Alternative Restoration Plan	\$2,558,750.00
City of Cape Coral	Communications Plan	\$300,000.00
City of Cape Coral	City of Cape Coral Disaster Cost & Recovery Plan	\$400,000.00
City of Cape Coral	Business Community Resiliency Plan	\$300,000.00

City of Fort Myers	City of Fort Myers Stormwater Master Plan	\$772,824.00
City of Fort Myers	City of Fort Myers Comprehensive Plan	\$200,000.00
City of Fort Myers	City of Fort Myers THIRA	\$250,000.00
City of Sanibel	Sanibel Broadband Feasibility Study	\$252,000.00
City of Sanibel	Sanibel Transportation Master Plan	\$200,000.00
City of Sanibel	Sanibel Plan	\$250,000.00
Lee County BoCC	Sustainable Community Revitalization Funding Plan	\$100,000.00
Lee County BoCC	Captiva Island Stormwater	\$300,000.00
Lee County BoCC	Community Wildfire Protection Plan	\$250,000.00
Lee County BoCC - DCD	Strategic Growth	\$500,000.00
Lee County BoCC - LCU	Regional Alternative Source Water Supply Study	\$2,453,994.00
Lee County School District	Lee County School District Vulnerability Assessment	\$500,000.00
Town of Fort Myers Beach	Town of Fort Myers Beach Long Term Recovery Plan	\$1,575,000.00
Village of Estero	Village of Estero Comprehensive Vulnerability Assessment	\$450,000.00
Village of Estero	Estero Eco-Historic Planning Study	\$450,000.00
Total CDBG-DR Recovery & Resiliency Grant Funding		\$13,628,551.13

E) OptionsIV. **FINANCIAL INFORMATION**

A)	Current year dollar amount of item:	\$13,628,552
B)	Is this item approved in the current budget?	Yes
C)	Is this a revenue or expense item?	Expense
D)	Is this Discretionary or Mandatory?	Discretionary
E)	Will this item impact future budgets? If yes, please include reasons in III(D) above.	No
F)	Fund: Federal Grants through General Fund Program: Community Development Block Grant – Disaster Recovery Funds Project: CDBG-DR Account Strings: 11137113301	
G)	Fund Type?	Other: Community Development Block Grant- Disaster Recovery
H)	Comments: CDBG-DR Grant Funded	

V. **RECOMMENDATION**

Approve

VI. **TIMING/IMPLEMENTATION**

Written agreements will be executed by subrecipients and routed for BoCC signature as soon as possible. SRGA staff and contracted program implementation vendors will oversee funded projects throughout the agreement terms.

VII. **FOLLOW UP**

The Board Chair will need to sign sub-recipient agreements once prepared, and if necessary, approve any future amendments to the contracts, for this and previous fiscal years, in accordance with CDBG-DR policies and procedures.

ATTACHMENTS:

Description

Upload Date

Type

[Planning & Infrastructure Evaluation Committee Recommendations](#)

4/3/2024

Backup Material

REVIEWERS:

Department	Reviewer	Action	Date
County Manager	Salyer, Glen	Approved	4/4/2024 - 12:42 PM
Budget Services	Henkel, Anne	Approved	4/4/2024 - 12:54 PM
Budget Services	Winton, Peter	Approved	4/4/2024 - 2:26 PM
County Attorney	Swindle, Amanda	Approved	4/4/2024 - 3:22 PM
County Manager	Salyer, Glen	Approved	4/5/2024 - 1:47 PM

1. **Request:**

Meeting Date: May 6, 2024

AUTHORIZE THE MAYOR TO EXECUTE AN AMENDMENT TO THE PREVIOUS NON-EXCLUSIVE RIGHT OF WAY AGREEMENT WITH BANDES CONSTRUCTION COMPANY, INC. TO EXTEND THE AGREEMENT FOR TWO MONTHS LONGER UNDER THE SAME TERMS AND CONDITIONS

Why the action is necessary:

Allows the Licensee to continue to utilize Town right of way for proposed purposes within the agreement.

What the action accomplishes:

Authorizes the Mayor to execute an amendment to extend the previous Non-Exclusive Right of Way License Agreement with Bandes Construction Company.

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

4. **Submitter of Information:**

5. **Background:**

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

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

Attachments:

1. Bandes Construction Co-Non-Exclusive Right of Way License Agreement
2. First Amendment to Bandes Agreement April 24, 2024 MR NS (1)

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

Authorize the Mayor to execute

8. **Recommended Approval:**

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

Created/Initiated - 4/25/2024
Approved - 4/28/2024
Approved - 4/29/2024
Final Approval - 4/30/2024

For Recording Purposes Only

**THIS INSTRUMENT PREPARED BY
AND AFTER RECORDING RETURN TO:**

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

NON-EXCLUSIVE RIGHT OF WAY LICENSE AGREEMENT

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

RECITALS

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

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

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

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

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

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

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

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

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

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

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

To the Licensor:

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

To the Licensee:

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

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

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

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

WITNESSES:

Print Name: Lisa Miller

Print Name: Jeremy Brown

LICENSEE: Bandes Construction Company Inc.

Print Name: _____

Title: President

LICENSOR: TOWN OF FORT MYERS BEACH

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, Town Attorney



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

2/27/2024

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

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

PRODUCER Bowen, Miclette & Britt of Florida, LLC 850 Concourse Parkway S Suite #105 Maitland FL 32751	CONTACT NAME: Michelle Rushing PHONE (A/C, No, Ext): 407-647-1616 FAX (A/C, No): 407-628-1635 E-MAIL ADDRESS: mrrushing@bmbinc.com												
INSURED Bandes Construction Co., Inc. 1368 Spalding Rd Ste C Dunedin FL 34698	INSURER(S) AFFORDING COVERAGE <table><tr><td>INSURER A: North River Insurance Co.</td><td>NAIC # 21105</td></tr><tr><td>INSURER B: Insurance Co of the West</td><td>27847</td></tr><tr><td>INSURER C: National Fire Ins Co of Hartford</td><td>20478</td></tr><tr><td>INSURER D: Continental Casualty Co.</td><td>20443</td></tr><tr><td>INSURER E:</td><td></td></tr><tr><td>INSURER F:</td><td></td></tr></table>	INSURER A: North River Insurance Co.	NAIC # 21105	INSURER B: Insurance Co of the West	27847	INSURER C: National Fire Ins Co of Hartford	20478	INSURER D: Continental Casualty Co.	20443	INSURER E:		INSURER F:	
INSURER A: North River Insurance Co.	NAIC # 21105												
INSURER B: Insurance Co of the West	27847												
INSURER C: National Fire Ins Co of Hartford	20478												
INSURER D: Continental Casualty Co.	20443												
INSURER E:													
INSURER F:													

COVERAGES**CERTIFICATE NUMBER:** 2005481145**REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS														
C	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PROJECT ☐ LOC OTHER:	Y	Y	7015418560	8/29/2023	8/29/2024	<table><tr><td>EACH OCCURRENCE</td><td>\$ 1,000,000</td></tr><tr><td>DAMAGE TO RENTED PREMISES (Ea occurrence)</td><td>\$ 100,000</td></tr><tr><td>MED EXP (Any one person)</td><td>\$ 15,000</td></tr><tr><td>PERSONAL & ADV INJURY</td><td>\$ 1,000,000</td></tr><tr><td>GENERAL AGGREGATE</td><td>\$ 2,000,000</td></tr><tr><td>PRODUCTS - COM/OP AGG</td><td>\$ 2,000,000</td></tr><tr><td>Deductible</td><td>\$ 10,000</td></tr></table>	EACH OCCURRENCE	\$ 1,000,000	DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 100,000	MED EXP (Any one person)	\$ 15,000	PERSONAL & ADV INJURY	\$ 1,000,000	GENERAL AGGREGATE	\$ 2,000,000	PRODUCTS - COM/OP AGG	\$ 2,000,000	Deductible	\$ 10,000
EACH OCCURRENCE	\$ 1,000,000																				
DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 100,000																				
MED EXP (Any one person)	\$ 15,000																				
PERSONAL & ADV INJURY	\$ 1,000,000																				
GENERAL AGGREGATE	\$ 2,000,000																				
PRODUCTS - COM/OP AGG	\$ 2,000,000																				
Deductible	\$ 10,000																				
D	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☒ ALL OWNED AUTOS ☒ HIRED AUTOS ☐ SCHEDULED AUTOS ☒ NON-OWNED AUTOS	Y	Y	7015418557	8/29/2023	8/29/2024	<table><tr><td>COMBINED SINGLE LIMIT (Ea accident)</td><td>\$ 1,000,000</td></tr><tr><td>BODILY INJURY (Per person)</td><td>\$</td></tr><tr><td>BODILY INJURY (Per accident)</td><td>\$</td></tr><tr><td>PROPERTY DAMAGE (Per accident)</td><td>\$</td></tr><tr><td></td><td>\$</td></tr></table>	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000	BODILY INJURY (Per person)	\$	BODILY INJURY (Per accident)	\$	PROPERTY DAMAGE (Per accident)	\$		\$				
COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000																				
BODILY INJURY (Per person)	\$																				
BODILY INJURY (Per accident)	\$																				
PROPERTY DAMAGE (Per accident)	\$																				
	\$																				
A	☐ UMBRELLA LIAB ☒ OCCUR ☒ EXCESS LIAB ☐ CLAIMS-MADE DED ☒ RETENTION \$ 0	Y	Y	5821219107	8/29/2023	8/29/2024	<table><tr><td>EACH OCCURRENCE</td><td>\$ 5,000,000</td></tr><tr><td>AGGREGATE</td><td>\$ 10,000,000</td></tr><tr><td></td><td>\$</td></tr></table>	EACH OCCURRENCE	\$ 5,000,000	AGGREGATE	\$ 10,000,000		\$								
EACH OCCURRENCE	\$ 5,000,000																				
AGGREGATE	\$ 10,000,000																				
	\$																				
B	☒ WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	WFL506193402	8/29/2023	8/29/2024	<table><tr><td>☒ PER STATUTE</td><td>☐ OTH-ER</td></tr><tr><td>E.L. EACH ACCIDENT</td><td>\$ 1,000,000</td></tr><tr><td>E.L. DISEASE - EA EMPLOYEE</td><td>\$ 1,000,000</td></tr><tr><td>E.L. DISEASE - POLICY LIMIT</td><td>\$ 1,000,000</td></tr></table>	☒ PER STATUTE	☐ OTH-ER	E.L. EACH ACCIDENT	\$ 1,000,000	E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000	E.L. DISEASE - POLICY LIMIT	\$ 1,000,000						
☒ PER STATUTE	☐ OTH-ER																				
E.L. EACH ACCIDENT	\$ 1,000,000																				
E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000																				
E.L. DISEASE - POLICY LIMIT	\$ 1,000,000																				

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

The following policy provisions and/or endorsements form part of the policies of insurance represented by this certificate of insurance. The terms contained in the policies and/or endorsements supersede the representations made herein. Electronic copies of the policy provisions and/or endorsements listed below are available by emailing contact person shown above.

When required by written contract, those parties listed in said contract, including the certificate holder, are added as an additional insured with respect to the general liability, including on-going and completed operations, auto liability and umbrella liability as afforded by the policy and/or endorsements.

When required by written contract, waiver of subrogation, with respect to the general liability, auto liability, worker's compensation and umbrella is granted to See Attached...

CERTIFICATE HOLDER**CANCELLATION**

Town of Fort Myers Beach
2525 Estero Blvd.
Fort Myers Beach FL 33931

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

© 1988-2014 ACORD CORPORATION. All rights reserved.

AGENCY CUSTOMER ID: BANDESCONS

LOC #: _____



ADDITIONAL REMARKS SCHEDULE

Page 1 of 1

AGENCY Bowen, Midgette & Britt of Florida, LLC		NAMED INSURED Bandes Construction Co., Inc. 1368 Spalding Rd Ste C Dunedin FL 34698
POLICY NUMBER		
CARRIER	NAIC CODE	EFFECTIVE DATE:

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: 25 FORM TITLE: CERTIFICATE OF LIABILITY INSURANCE

those parties listed in said contract, including the certificate holder.

The general liability, auto liability, & umbrella liability certified herein are primary and non-contributory to other insurance available, but only to the extent required by written contract.

30-day notice of cancellation applies.

**CNA PARAMOUNT****Contractors' General Liability Extension Endorsement**

It is understood and agreed that this endorsement amends the **COMMERCIAL GENERAL LIABILITY COVERAGE PART** as follows. If any other endorsement attached to this policy amends any provision also amended by this endorsement, then that other endorsement controls with respect to such provision, and the changes made by this endorsement with respect to such provision do not apply.

TABLE OF CONTENTS

- | |
|---|
| 1. Additional Insureds |
| 2. Additional Insured - Primary And Non-Contributory To Additional Insured's Insurance |
| 3. Bodily Injury – Expanded Definition |
| 4. Broad Knowledge of Occurrence/ Notice of Occurrence |
| 5. Broad Named Insured |
| 6. Broadened Liability Coverage For Damage To Your Product And Your Work |
| 7. Contractual Liability - Railroads |
| 8. Electronic Data Liability |
| 9. Estates, Legal Representatives and Spouses |
| 10. Expected Or Intended Injury – Exception for Reasonable Force |
| 11. General Aggregate Limits of Insurance – Per Project |
| 12. In Rem Actions |
| 13. Incidental Health Care Malpractice Coverage |
| 14. Joint Ventures/Partnership/Limited Liability Companies |
| 15. Legal Liability – Damage To Premises / Alienated Premises / Property In The Named Insured's Care, Custody or Control |
| 16. Liquor Liability |
| 17. Medical Payments |
| 18. Non-owned Aircraft Coverage |
| 19. Non-owned Watercraft |
| 20. Personal And Advertising Injury – Discrimination or Humiliation |
| 21. Personal And Advertising Injury - Contractual Liability |
| 22. Property Damage - Elevators |
| 23. Supplementary Payments |
| 24. Unintentional Failure To Disclose Hazards |
| 25. Waiver of Subrogation – Blanket |
| 26. Wrap-Up Extension: OCIP CCIP, or Consolidated (Wrap-Up) Insurance Programs |

CNA74705XX (1-15)

Page 1 of 17

VALLEY FORGE INSURANCE COMPANY

Insured Name: BANDES CONSTRUCTION COMPANY, INC.

Policy No: 7015418560

Endorsement No:

Effective Date: 08/29/2023

Copyright CNA All Rights Reserved. Includes copyrighted material of Insurance Services Office, Inc., with its permission.

**Contractors' General Liability Extension Endorsement****1. ADDITIONAL INSURED**

- a. **WHO IS AN INSURED** is amended to include as an **Insured** any person or organization described in paragraphs A. through H. below whom a **Named Insured** is required to add as an additional insured on this **Coverage Part** under a written contract or written agreement, provided such contract or agreement:

(1) is currently in effect or becomes effective during the term of this **Coverage Part**; and

(2) was executed prior to:

(a) the **bodily injury** or **property damage**; or

(b) the offense that caused the **personal and advertising injury**,

for which such additional insured seeks coverage.

- b. However, subject always to the terms and conditions of this policy, including the limits of insurance, the Insurer will not provide such additional insured with:

(1) a higher limit of insurance than required by such contract or agreement; or

(2) coverage broader than required by such contract or agreement, and in no event broader than that described by the applicable paragraph A. through H. below.

Any coverage granted by this endorsement shall apply only to the extent permissible by law.

A. Controlling Interest

Any person or organization with a controlling interest in a **Named Insured**, but only with respect to such person or organization's liability for **bodily injury**, **property damage** or **personal and advertising injury** arising out of:

1. such person or organization's financial control of a **Named Insured**; or

2. premises such person or organization owns, maintains or controls while a **Named Insured** leases or occupies such premises;

provided that the coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

B. Co-owner of Insured Premises

A co-owner of a premises co-owned by a **Named Insured** and covered under this insurance but only with respect to such co-owner's liability for **bodily injury**, **property damage** or **personal and advertising injury** as co-owner of such premises.

C. Lessor of Equipment

Any person or organization from whom a **Named Insured** leases equipment, but only with respect to liability for **bodily injury**, **property damage** or **personal and advertising injury** caused, in whole or in part, by the **Named Insured's** maintenance, operation or use of such equipment, provided that the **occurrence** giving rise to such **bodily injury**, **property damage** or the offense giving rise to such **personal and advertising injury** takes place prior to the termination of such lease.

D. Lessor of Land

Any person or organization from whom a **Named Insured** leases land but only with respect to liability for **bodily injury**, **property damage** or **personal and advertising injury** arising out of the ownership, maintenance or use of such land, provided that the **occurrence** giving rise to such **bodily injury**, **property damage** or the offense giving rise to such **personal and advertising injury** takes place prior to the termination of such lease. The

**Contractors' General Liability Extension Endorsement**

coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

E. Lessor of Premises

An owner or lessor of premises leased to the **Named Insured**, or such owner or lessor's real estate manager, but only with respect to liability for **bodily injury, property damage or personal and advertising injury** arising out of the ownership, maintenance or use of such part of the premises leased to the **Named Insured**, and provided that the occurrence giving rise to such **bodily injury or property damage**, or the offense giving rise to such **personal and advertising injury**, takes place prior to the termination of such lease. The coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

F. Mortgagee, Assignee or Receiver

A mortgagee, assignee or receiver of premises but only with respect to such mortgagee, assignee or receiver's liability for **bodily injury, property damage or personal and advertising injury** arising out of the **Named Insured's** ownership, maintenance, or use of a premises by a **Named Insured**.

The coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

G. State or Governmental Agency or Subdivision or Political Subdivisions – Permits

A state or governmental agency or subdivision or political subdivision that has issued a permit or authorization but only with respect to such state or governmental agency or subdivision or political subdivision's liability for **bodily injury, property damage or personal and advertising injury** arising out of:

1. the following hazards in connection with premises a **Named Insured** owns, rents, or controls and to which this insurance applies:
 - a. the existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoistaway openings, sidewalk vaults, street banners, or decorations and similar exposures; or
 - b. the construction, erection, or removal of elevators; or
 - c. the ownership, maintenance or use of any elevators covered by this insurance; or
2. the permitted or authorized operations performed by a **Named Insured** or on a **Named Insured's** behalf.

The coverage granted by this paragraph does not apply to:

- a. **Bodily injury, property damage or personal and advertising injury** arising out of operations performed for the state or governmental agency or subdivision or political subdivision; or
- b. **Bodily injury or property damage** included within the **products-completed operations hazard**.

With respect to this provision's requirement that additional insured status must be requested under a written contract or agreement, the Insurer will treat as a written contract any governmental permit that requires the **Named Insured** to add the governmental entity as an additional insured.

H. Trade Show Event Lessor

1. With respect to a **Named Insured's** participation in a trade show event as an exhibitor, presenter or displayer, any person or organization whom the **Named Insured** is required to include as an additional insured, but only with respect to such person or organization's liability for **bodily injury, property damage or personal and advertising injury** caused by:

CNA74705XX (1-15)

Page 3 of 17

VALLEY FORGE INSURANCE COMPANY

Insured Name: BANDES CONSTRUCTION COMPANY, INC.

Policy No: 7015418560

Endorsement No: 8

Effective Date: 8/29/2023

Copyright CNA All Rights Reserved. Includes copyrighted material of Insurance Services Office, Inc., with its permission.

**Contractors' General Liability Extension Endorsement**

- a. the **Named Insured's** acts or omissions; or
 - b. the acts or omissions of those acting on the **Named Insured's** behalf,
in the performance of the **Named Insured's** ongoing operations at the trade show event premises during the trade show event.
2. The coverage granted by this paragraph does not apply to **bodily injury** or **property damage** included within the **products-completed operations hazard**.

2. ADDITIONAL INSURED - PRIMARY AND NON-CONTRIBUTORY TO ADDITIONAL INSURED'S INSURANCE

The **Other Insurance** Condition in the **COMMERCIAL GENERAL LIABILITY CONDITIONS** Section is amended to add the following paragraph:

If the **Named Insured** has agreed in writing in a contract or agreement that this insurance is primary and non-contributory relative to an additional insured's own insurance, then this insurance is primary, and the Insurer will not seek contribution from that other insurance. For the purpose of this Provision 2., the additional insured's own insurance means insurance on which the additional insured is a named insured. Otherwise, and notwithstanding anything to the contrary elsewhere in this Condition, the insurance provided to such person or organization is excess of any other insurance available to such person or organization.

3. BODILY INJURY – EXPANDED DEFINITION

Under **DEFINITIONS**, the definition of **bodily injury** is deleted and replaced by the following:

Bodily injury means physical injury, sickness or disease sustained by a person, including death, humiliation, shock, mental anguish or mental injury sustained by that person at any time which results as a consequence of the physical injury, sickness or disease.

4. BROAD KNOWLEDGE OF OCCURRENCE/ NOTICE OF OCCURRENCE

Under **CONDITIONS**, the condition entitled **Duties in The Event of Occurrence, Offense, Claim or Suit** is amended to add the following provisions:

A. BROAD KNOWLEDGE OF OCCURRENCE

The **Named Insured** must give the Insurer or the Insurer's authorized representative notice of an **occurrence**, offense or **claim** only when the **occurrence**, offense or **claim** is known to a natural person **Named Insured**, to a partner, executive officer, manager or member of a **Named Insured**, or an **employee** designated by any of the above to give such notice.

B. NOTICE OF OCCURRENCE

The **Named Insured's** rights under this **Coverage Part** will not be prejudiced if the **Named Insured** fails to give the Insurer notice of an **occurrence**, offense or **claim** and that failure is solely due to the **Named Insured's** reasonable belief that the **bodily injury** or **property damage** is not covered under this **Coverage Part**. However, the **Named Insured** shall give written notice of such **occurrence**, offense or **claim** to the Insurer as soon as the **Named Insured** is aware that this insurance may apply to such **occurrence**, offense or **claim**.

5. BROAD NAMED INSURED

WHO IS AN INSURED is amended to delete its Paragraph 3. in its entirety and replace it with the following:

3. Pursuant to the limitations described in Paragraph 4. below, any organization in which a **Named Insured** has management control:
 - a. on the effective date of this **Coverage Part**; or

**Contractors' General Liability Extension Endorsement**

- B. Solely for the purpose of the coverage provided by this **PROPERTY DAMAGE – ELEVATORS** Provision, the **Other Insurance** conditions is amended to add the following paragraph:

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis that is Property insurance covering property of others damaged from the use of elevators.

23. SUPPLEMENTARY PAYMENTS

The section entitled **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B** is amended as follows:

- A. Paragraph 1.b. is amended to delete the \$250 limit shown for the cost of bail bonds and replace it with a \$5,000. limit; and
- B. Paragraph 1.d. is amended to delete the limit of \$250 shown for daily loss of earnings and replace it with a \$1,000. limit.

24. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS

If the **Named Insured** unintentionally fails to disclose all existing hazards at the inception date of the **Named Insured's Coverage Part**, the Insurer will not deny coverage under this **Coverage Part** because of such failure.

25. WAIVER OF SUBROGATION - BLANKET

Under **CONDITIONS**, the condition entitled **Transfer Of Rights Of Recovery Against Others To Us** is amended to add the following:

The Insurer waives any right of recovery the Insurer may have against any person or organization because of payments the Insurer makes for injury or damage arising out of:

1. the **Named Insured's** ongoing operations; or
2. **your work** included in the **products-completed operations hazard**.

However, this waiver applies only when the **Named Insured** has agreed in writing to waive such rights of recovery in a written contract or written agreement, and only if such contract or agreement:

1. is in effect or becomes effective during the term of this **Coverage Part**; and
2. was executed prior to the **bodily injury, property damage or personal and advertising injury** giving rise to the claim.

26. WRAP-UP EXTENSION: OCIP, CCIP, OR CONSOLIDATED (WRAP-UP) INSURANCE PROGRAMS

Note: The following provision does not apply to any public construction project in the state of Oklahoma, nor to any construction project in the state of Alaska, that is not permitted to be insured under a **consolidated (wrap-up) Insurance program** by applicable state statute or regulation.

If the endorsement **EXCLUSION – CONSTRUCTION WRAP-UP** is attached to this policy, or another exclusionary endorsement pertaining to Owner Controlled Insurance Programs (O.C.I.P.) or Contractor Controlled Insurance Programs (C.C.I.P.) is attached, then the following changes apply:

- A. The following wording is added to the above-referenced endorsement:

With respect to a **consolidated (wrap-up) Insurance program** project in which the **Named Insured** is or was involved, this exclusion does not apply to those sums the **Named Insured** become legally obligated to pay as **damages** because of:

1. **Bodily injury, property damage, or personal or advertising injury** that occurs during the **Named Insured's** ongoing operations at the project, or during such operations of anyone acting on the **Named Insured's** behalf; nor



CONTRACTORS EXTENDED COVERAGE ENDORSEMENT - BUSINESS AUTO PLUS

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

I. LIABILITY COVERAGE

A. Who Is An Insured

The following is added to **Section II, Paragraph A.1., Who Is An Insured:**

1. a. Any incorporated entity of which the Named Insured owns a majority of the voting stock on the date of inception of this Coverage Form; provided that,
 - b. The insurance afforded by this provision **A.1.** does not apply to any such entity that is an **insured** under any other liability "policy" providing **auto** coverage.
2. Any organization you newly acquire or form, other than a limited liability company, partnership or joint venture, and over which you maintain majority ownership interest.

The insurance afforded by this provision **A.2.:**

- a. Is effective on the acquisition or formation date, and is afforded only until the end of the policy period of this Coverage Form, or the next anniversary of its inception date, whichever is earlier.
- b. Does not apply to:
 - (1) **Bodily injury or property damage** caused by an **accident** that occurred before you acquired or formed the organization; or
 - (2) Any such organization that is an **insured** under any other liability "policy" providing **auto** coverage.
3. Any person or organization that you are required by a written contract to name as an additional insured is an **insured** but only with respect to their legal liability for acts or omissions of a person, who qualifies as an **insured** under **SECTION II – WHO IS AN INSURED** and for whom Liability Coverage is afforded under this policy. If required by written contract, this insurance will be primary and non-contributory to insurance on which the additional insured is a Named Insured.
4. An **employee** of yours is an **insured** while operating an **auto** hired or rented under a contract or agreement in that **employee's** name, with your permission, while performing duties related to the conduct of your business.

"Policy", as used in this provision **A. Who Is An Insured**, includes those policies that were in force on the inception date of this Coverage Form but:

1. Which are no longer in force; or
2. Whose limits have been exhausted.

B. Bail Bonds and Loss of Earnings

Section II, Paragraphs A.2. (2) and A.2. (4) are revised as follows:

1. In **a.(2)**, the limit for the cost of bail bonds is changed from \$2,000 to \$5,000; and
2. In **a.(4)**, the limit for the loss of earnings is changed from \$250 to \$500 a day.

Form No: CNA63359XX (04-2012)

Endorsement Effective Date:

Endorsement Expiration Date:

Endorsement No: 12; Page: 1 of 4

Underwriting Company: Transportation Insurance Company, 151 N Franklin St, Chicago, IL 60606

Policy No: BUA 7015418557

Policy Effective Date: **8/29/23**

Policy Page: 71 of 94



C. Fellow Employee

Section II, Paragraph B.5 does not apply.

Such coverage as is afforded by this provision C. is excess over any other collectible insurance.

II. PHYSICAL DAMAGE COVERAGE

A. Glass Breakage – Hitting A Bird Or Animal – Falling Objects Or Missiles

The following is added to **Section III, Paragraph A.3.:**

With respect to any covered **auto**, any deductible shown in the Declarations will not apply to glass breakage if such glass is repaired, in a manner acceptable to us, rather than replaced.

B. Transportation Expenses

Section III, Paragraph A.4.a. is revised, with respect to transportation expense incurred by you, to provide:

- a. \$60 per day, in lieu of \$20; subject to
- b. \$1,800 maximum, in lieu of \$600.

C. Loss of Use Expenses

Section III, Paragraph A.4.b. is revised, with respect to loss of use expenses incurred by you, to provide:

- a. \$1,000 maximum, in lieu of \$600.

D. Hired "Autos"

The following is added to **Section III, Paragraph A.:**

5. Hired "Autos"

If Physical Damage coverage is provided under this policy, and such coverage does not extend to Hired Autos, then Physical Damage coverage is extended to:

- a. Any covered **auto** you lease, hire, rent or borrow without a driver; and
- b. Any covered **auto** hired or rented by your **employee** without a driver, under a contract in that individual **employee's** name, with your permission, while performing duties related to the conduct of your business.
- c. The most we will pay for any one **accident** or **loss** is the actual cash value, cost of repair, cost of replacement or \$75,000, whichever is less, minus a \$500 deductible for each covered **auto**. No deductible applies to **loss** caused by fire or lightning.
- d. The physical damage coverage as is provided by this provision is equal to the physical damage coverage(s) provided on your owned **autos**.
- e. Such physical damage coverage for hired **autos** will:
 - (1) Include loss of use, provided it is the consequence of an **accident** for which the Named Insured is legally liable, and as a result of which a monetary loss is sustained by the leasing or rental concern.
 - (2) Such coverage as is provided by this provision will be subject to a limit of \$750 per **accident**.

E. Airbag Coverage

The following is added to **Section III, Paragraph B.3.:**

The accidental discharge of an airbag shall not be considered mechanical breakdown.

Form No: CNA63359XX (04-2012)

Endorsement Effective Date:

Endorsement Expiration Date:

Endorsement No: 12; Page: 2 of 4

Underwriting Company: Transportation Insurance Company, 151 N Franklin St, Chicago, IL 60606

Policy No: BUA 7015418557

Policy Effective Date: 8/29/23

Policy Page: 72 of 94



F. Electronic Equipment

Section III, Paragraphs B.4.c and B.4.d. are deleted and replaced by the following:

- c. Physical Damage Coverage on a covered **auto** also applies to **loss** to any permanently installed electronic equipment including its antennas and other accessories
- d. A \$100 per occurrence deductible applies to the coverage provided by this provision.

G. Diminution In Value

The following is added to **Section III, Paragraph B.6.**:

Subject to the following, the **diminution in value** exclusion does not apply to:

- a. Any covered **auto** of the private passenger type you lease, hire, rent or borrow, without a driver for a period of 30 days or less, while performing duties related to the conduct of your business; and
- b. Any covered **auto** of the private passenger type hired or rented by your **employee** without a driver for a period of 30 days or less, under a contract in that individual **employee's** name, with your permission, while performing duties related to the conduct of your business.
- c. Such coverage as is provided by this provision is limited to a **diminution in value** loss arising directly out of accidental damage and not as a result of the failure to make repairs; faulty or incomplete maintenance or repairs; or the installation of substandard parts.
- d. The most we will pay for **loss** to a covered **auto** in any one accident is the lesser of:
 - (1) \$5,000; or
 - (2) 20% of the **auto's** actual cash value (ACV).

III. Drive Other Car Coverage – Executive Officers

The following is added to **Sections II and III**:

- 1. Any **auto** you don't own, hire or borrow is a covered **auto** for Liability Coverage while being used by, and for Physical Damage Coverage while in the care, custody or control of, any of your "executive officers", except:
 - a. An **auto** owned by that "executive officer" or a member of that person's household; or
 - b. An **auto** used by that "executive officer" while working in a business of selling, servicing, repairing or parking **autos**.

Such Liability and/or Physical Damage Coverage as is afforded by this provision.

- (1) Equal to the greatest of those coverages afforded any covered **auto**; and
- (2) Excess over any other collectible insurance.

- 2. For purposes of this provision, "executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document, and, while a resident of the same household, includes that person's spouse.

Such "executive officers" are **insureds** while using a covered **auto** described in this provision.

IV. BUSINESS AUTO CONDITIONS

A. Duties In The Event Of Accident, Claim, Suit Or Loss

The following is added to **Section IV, Paragraph A.2.a.**:

Form No: CNA63359XX (04-2012)

Endorsement Effective Date:

Endorsement Expiration Date:

Endorsement No: 12; Page: 3 of 4

Underwriting Company: Transportation Insurance Company, 151 N Franklin St, Chicago, IL 60606

Policy No: BUA 7015418557

Policy Effective Date: 8/29/23

Policy Page: 73 of 94



- (4) Your **employees** may know of an **accident** or **loss**. This will not mean that you have such knowledge, unless such **accident** or **loss** is known to you or if you are not an individual, to any of your executive officers or partners or your insurance manager.

The following is added to **Section IV, Paragraph A.2.b.**:

- (6) Your **employees** may know of documents received concerning a claim or **suit**. This will not mean that you have such knowledge, unless receipt of such documents is known to you or if you are not an individual, to any of your executive officers or partners or your insurance manager.

B. Transfer Of Rights Of Recovery Against Others To Us

The following is added to **Section IV, Paragraph A.5. Transfer Of Rights Of Recovery Against Others To Us**:

We waive any right of recovery we may have, because of payments we make for injury or damage, against any person or organization for whom or which you are required by written contract or agreement to obtain this waiver from us.

This injury or damage must arise out of your activities under a contract with that person or organization.

You must agree to that requirement prior to an **accident** or **loss**.

C. Concealment, Misrepresentation or Fraud

The following is added to **Section IV, Paragraph B.2.**:

Your failure to disclose all hazards existing on the date of inception of this Coverage Form shall not prejudice you with respect to the coverage afforded provided such failure or omission is not intentional.

D. Other Insurance

The following is added to **Section IV, Paragraph B.5.**:

Regardless of the provisions of Paragraphs **5.a.** and **5.d.** above, the coverage provided by this policy shall be on a primary non-contributory basis. This provision is applicable only when required by a written contract.

That written contract must have been entered into prior to **Accident** or **Loss**.

E. Policy Period, Coverage Territory

Section IV, Paragraph B. 7.(5).(a). is revised to provide:

- a. 45 days of coverage in lieu of 30 days.

V. DEFINITIONS

Section V. paragraph C. is deleted and replaced by the following:

Bodily injury means bodily injury, sickness or disease sustained by a person, including mental anguish, mental injury or death resulting from any of these.

Form No: CNA63359XX (04-2012)

Endorsement Effective Date:

Endorsement Expiration Date:

Endorsement No: 12; Page: 4 of 4

Underwriting Company: Transportation Insurance Company, 151 N Franklin St, Chicago, IL 60606

Policy No: BUA 7015418557

Policy Effective Date: **8/29/23**

Policy Page: 74 of 94

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Schedule

**ANY PERSON OR ORGANIZATION FOR WHOM THE NAMED INSURED IS
REQUIRED UNDER WRITTEN CONTRACT TO FURNISH THIS WAIVER,
FOR FLORIDA OPERATIONS ONLY.**

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.
(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective **08/29/2023** Policy No. **WFL 5061934 02**
Insured **BANDES CONSTRUCTION CO INC**
Insurance Company **INSURANCE COMPANY OF THE WEST**

Endorsement No.
Premium \$ **INCL.**

Countersigned By _____



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

2/27/2024

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

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

PRODUCER Bowen, Miclette & Britt of Florida, LLC 850 Concourse Parkway S Suite #105 Maitland FL 32751	CONTACT NAME: Michelle Rushing PHONE (A/C, No, Ext): 407-647-1616 FAX (A/C, No): 407-628-1635 E-MAIL ADDRESS: mrushing@bmbinc.com
INSURED Bandes Construction Co., Inc. 1368 Spalding Rd Ste C Dunedin FL 34698	INSURER(S) AFFORDING COVERAGE INSURER A : North River Insurance Co. NAIC # 21105 INSURER B : Insurance Co of the West 27847 INSURER C : National Fire Ins Co of Hartford 20478 INSURER D : Continental Casualty Co. 20443 INSURER E : INSURER F :

COVERAGES**CERTIFICATE NUMBER: 2005481145****REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
C	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PROJECT ☐ LOC OTHER:	Y	Y	7015418560	8/29/2023	8/29/2024	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 15,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 Deductible \$ 10,000
D	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☒ ALL OWNED AUTOS ☒ HIRED AUTOS ☐ SCHEDULED AUTOS ☒ NON-OWNED AUTOS	Y	Y	7015418557	8/29/2023	8/29/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	☐ UMBRELLA LIAB ☒ OCCUR ☒ EXCESS LIAB ☐ CLAIMS-MADE DED ☒ RETENTION \$ 0	Y	Y	5821219107	8/29/2023	8/29/2024	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 10,000,000 \$
B	☒ WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below Y/N ☒ N N/A		Y	WFL508193402	8/29/2023	8/29/2024	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

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

The following policy provisions and/or endorsements form part of the policies of insurance represented by this certificate of insurance. The terms contained in the policies and/or endorsements supersede the representations made herein. Electronic copies of the policy provisions and/or endorsements listed below are available by emailing contact person shown above.

When required by written contract, those parties listed in said contract, including the certificate holder, are added as an additional insured with respect to the general liability, including on-going and completed operations, auto liability and umbrella liability as afforded by the policy and/or endorsements.

When required by written contract, waiver of subrogation, with respect to the general liability, auto liability, worker's compensation and umbrella is granted to See Attached...

CERTIFICATE HOLDER**CANCELLATION**

Town of Fort Myers Beach
2525 Estero Blvd.
Fort Myers Beach FL 33931

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

© 1988-2014 ACORD CORPORATION. All rights reserved.



ADDITIONAL REMARKS SCHEDULE

AGENCY Bowen, Miclette & Britt of Florida, LLC		NAMED INSURED Bandes Construction Co., Inc. 1368 Spalding Rd Ste C Dunedin FL 34698
POLICY NUMBER		
CARRIER	NAIC CODE	EFFECTIVE DATE:

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
 FORM NUMBER: 25 FORM TITLE: CERTIFICATE OF LIABILITY INSURANCE

those parties listed in said contract, including the certificate holder.

The general liability, auto liability, & umbrella liability certified herein are primary and non-contributory to other insurance available, but only to the extent required by written contract.

30-day notice of cancellation applies.

**CNA PARAMOUNT****Contractors' General Liability Extension Endorsement**

It is understood and agreed that this endorsement amends the **COMMERCIAL GENERAL LIABILITY COVERAGE PART** as follows. If any other endorsement attached to this policy amends any provision also amended by this endorsement, then that other endorsement controls with respect to such provision, and the changes made by this endorsement with respect to such provision do not apply.

TABLE OF CONTENTS

- | |
|---|
| 1. Additional Insureds |
| 2. Additional Insured - Primary And Non-Contributory To Additional Insured's Insurance |
| 3. Bodily Injury – Expanded Definition |
| 4. Broad Knowledge of Occurrence/ Notice of Occurrence |
| 5. Broad Named Insured |
| 6. Broadened Liability Coverage For Damage To Your Product And Your Work |
| 7. Contractual Liability - Railroads |
| 8. Electronic Data Liability |
| 9. Estates, Legal Representatives and Spouses |
| 10. Expected Or Intended Injury – Exception for Reasonable Force |
| 11. General Aggregate Limits of Insurance – Per Project |
| 12. In Rem Actions |
| 13. Incidental Health Care Malpractice Coverage |
| 14. Joint Ventures/Partnership/Limited Liability Companies |
| 15. Legal Liability – Damage To Premises / Alienated Premises / Property In The Named Insured's Care, Custody or Control |
| 16. Liquor Liability |
| 17. Medical Payments |
| 18. Non-owned Aircraft Coverage |
| 19. Non-owned Watercraft |
| 20. Personal And Advertising Injury – Discrimination or Humiliation |
| 21. Personal And Advertising Injury - Contractual Liability |
| 22. Property Damage - Elevators |
| 23. Supplementary Payments |
| 24. Unintentional Failure To Disclose Hazards |
| 25. Waiver of Subrogation – Blanket |
| 26. Wrap-Up Extension: OCIP CCIP, or Consolidated (Wrap-Up) Insurance Programs |

CNA74705XX (1-15)

Page 1 of 17

VALLEY FORGE INSURANCE COMPANY

Insured Name: BANDES CONSTRUCTION COMPANY, INC.

Policy No: 7015418560

Endorsement No:

Effective Date: 08/29/2023

Copyright CNA All Rights Reserved. Includes copyrighted material of Insurance Services Office, Inc., with its permission.

**Contractors' General Liability Extension Endorsement****1. ADDITIONAL INSUREDS**

- a. **WHO IS AN INSURED** is amended to include as an **Insured** any person or organization described in paragraphs A. through H. below whom a **Named Insured** is required to add as an additional insured on this **Coverage Part** under a written contract or written agreement, provided such contract or agreement:

(1) is currently in effect or becomes effective during the term of this **Coverage Part**; and

(2) was executed prior to:

(a) the **bodily injury** or **property damage**; or

(b) the offense that caused the **personal and advertising injury**,

for which such additional insured seeks coverage.

- b. However, subject always to the terms and conditions of this policy, including the limits of insurance, the Insurer will not provide such additional insured with:

(1) a higher limit of insurance than required by such contract or agreement; or

(2) coverage broader than required by such contract or agreement, and in no event broader than that described by the applicable paragraph A. through H. below.

Any coverage granted by this endorsement shall apply only to the extent permissible by law.

A. Controlling Interest

Any person or organization with a controlling interest in a **Named Insured**, but only with respect to such person or organization's liability for **bodily injury**, **property damage** or **personal and advertising injury** arising out of:

1. such person or organization's financial control of a **Named Insured**; or

2. premises such person or organization owns, maintains or controls while a **Named Insured** leases or occupies such premises;

provided that the coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

B. Co-owner of Insured Premises

A co-owner of a premises co-owned by a **Named Insured** and covered under this insurance but only with respect to such co-owner's liability for **bodily injury**, **property damage** or **personal and advertising injury** as co-owner of such premises.

C. Lessor of Equipment

Any person or organization from whom a **Named Insured** leases equipment, but only with respect to liability for **bodily injury**, **property damage** or **personal and advertising injury** caused, in whole or in part, by the **Named Insured's** maintenance, operation or use of such equipment, provided that the **occurrence** giving rise to such **bodily injury**, **property damage** or the offense giving rise to such **personal and advertising injury** takes place prior to the termination of such lease.

D. Lessor of Land

Any person or organization from whom a **Named Insured** leases land but only with respect to liability for **bodily injury**, **property damage** or **personal and advertising injury** arising out of the ownership, maintenance or use of such land, provided that the **occurrence** giving rise to such **bodily injury**, **property damage** or the offense giving rise to such **personal and advertising injury** takes place prior to the termination of such lease. The

**Contractors' General Liability Extension Endorsement**

coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

E. Lessor of Premises

An owner or lessor of premises leased to the **Named Insured**, or such owner or lessor's real estate manager, but only with respect to liability for **bodily injury, property damage or personal and advertising injury** arising out of the ownership, maintenance or use of such part of the premises leased to the **Named Insured**, and provided that the occurrence giving rise to such **bodily injury or property damage**, or the offense giving rise to such **personal and advertising injury**, takes place prior to the termination of such lease. The coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

F. Mortgagee, Assignee or Receiver

A mortgagee, assignee or receiver of premises but only with respect to such mortgagee, assignee or receiver's liability for **bodily injury, property damage or personal and advertising injury** arising out of the **Named Insured's** ownership, maintenance, or use of a premises by a **Named Insured**.

The coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

G. State or Governmental Agency or Subdivision or Political Subdivisions – Permits

A state or governmental agency or subdivision or political subdivision that has issued a permit or authorization but only with respect to such state or governmental agency or subdivision or political subdivision's liability for **bodily injury, property damage or personal and advertising injury** arising out of:

1. the following hazards in connection with premises a **Named Insured** owns, rents, or controls and to which this insurance applies:
 - a. the existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoistaway openings, sidewalk vaults, street banners, or decorations and similar exposures; or
 - b. the construction, erection, or removal of elevators; or
 - c. the ownership, maintenance or use of any elevators covered by this insurance; or
2. the permitted or authorized operations performed by a **Named Insured** or on a **Named Insured's** behalf.

The coverage granted by this paragraph does not apply to:

- a. **Bodily injury, property damage or personal and advertising injury** arising out of operations performed for the state or governmental agency or subdivision or political subdivision; or
- b. **Bodily injury or property damage** included within the **products-completed operations hazard**.

With respect to this provision's requirement that additional insured status must be requested under a written contract or agreement, the Insurer will treat as a written contract any governmental permit that requires the **Named Insured** to add the governmental entity as an additional insured.

H. Trade Show Event Lessor

1. With respect to a **Named Insured's** participation in a trade show event as an exhibitor, presenter or displayer, any person or organization whom the **Named Insured** is required to include as an additional insured, but only with respect to such person or organization's liability for **bodily injury, property damage or personal and advertising injury** caused by:

0002006070154185609045



**Contractors' General Liability Extension Endorsement**

- a. the **Named Insured's** acts or omissions; or
 - b. the acts or omissions of those acting on the **Named Insured's** behalf,
- in the performance of the **Named Insured's** ongoing operations at the trade show event premises during the trade show event.
2. The coverage granted by this paragraph does not apply to **bodily injury** or **property damage** included within the **products-completed operations hazard**.

2. ADDITIONAL INSURED - PRIMARY AND NON-CONTRIBUTORY TO ADDITIONAL INSURED'S INSURANCE

The **Other Insurance** Condition in the **COMMERCIAL GENERAL LIABILITY CONDITIONS** Section is amended to add the following paragraph:

If the **Named Insured** has agreed in writing in a contract or agreement that this insurance is primary and non-contributory relative to an additional insured's own insurance, then this insurance is primary, and the Insurer will not seek contribution from that other insurance. For the purpose of this Provision 2., the additional insured's own insurance means insurance on which the additional insured is a named insured. Otherwise, and notwithstanding anything to the contrary elsewhere in this Condition, the insurance provided to such person or organization is excess of any other insurance available to such person or organization.

3. BODILY INJURY – EXPANDED DEFINITION

Under **DEFINITIONS**, the definition of **bodily injury** is deleted and replaced by the following:

Bodily injury means physical injury, sickness or disease sustained by a person, including death, humiliation, shock, mental anguish or mental injury sustained by that person at any time which results as a consequence of the physical injury, sickness or disease.

4. BROAD KNOWLEDGE OF OCCURRENCE/ NOTICE OF OCCURRENCE

Under **CONDITIONS**, the condition entitled **Duties In The Event of Occurrence, Offense, Claim or Suit** is amended to add the following provisions:

A. BROAD KNOWLEDGE OF OCCURRENCE

The **Named Insured** must give the Insurer or the Insurer's authorized representative notice of an **occurrence**, offense or **claim** only when the **occurrence**, offense or **claim** is known to a natural person **Named Insured**, to a partner, executive officer, manager or member of a **Named Insured**, or an **employee** designated by any of the above to give such notice.

B. NOTICE OF OCCURRENCE

The **Named Insured's** rights under this **Coverage Part** will not be prejudiced if the **Named Insured** fails to give the Insurer notice of an **occurrence**, offense or **claim** and that failure is solely due to the **Named Insured's** reasonable belief that the **bodily injury** or **property damage** is not covered under this **Coverage Part**. However, the **Named Insured** shall give written notice of such **occurrence**, offense or **claim** to the Insurer as soon as the **Named Insured** is aware that this insurance may apply to such **occurrence**, offense or **claim**.

5. BROAD NAMED INSURED

WHO IS AN INSURED is amended to delete its Paragraph 3. in its entirety and replace it with the following:

3. Pursuant to the limitations described in Paragraph 4. below, any organization in which a **Named Insured** has management control:
- a. on the effective date of this **Coverage Part**; or

**Contractors' General Liability Extension Endorsement**

- B. Solely for the purpose of the coverage provided by this **PROPERTY DAMAGE – ELEVATORS** Provision, the **Other Insurance** conditions is amended to add the following paragraph:

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis that is Property insurance covering property of others damaged from the use of elevators.

23. SUPPLEMENTARY PAYMENTS

The section entitled **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B** is amended as follows:

- A. Paragraph 1.b. is amended to delete the \$250 limit shown for the cost of bail bonds and replace it with a \$5,000. limit; and
- B. Paragraph 1.d. is amended to delete the limit of \$250 shown for daily loss of earnings and replace it with a \$1,000. limit.

24. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS

If the **Named Insured** unintentionally fails to disclose all existing hazards at the inception date of the **Named Insured's Coverage Part**, the Insurer will not deny coverage under this **Coverage Part** because of such failure.

25. WAIVER OF SUBROGATION - BLANKET

Under **CONDITIONS**, the condition entitled **Transfer Of Rights Of Recovery Against Others To Us** is amended to add the following:

The Insurer waives any right of recovery the Insurer may have against any person or organization because of payments the Insurer makes for injury or damage arising out of:

1. the **Named Insured's** ongoing operations; or
2. **your work** included in the **products-completed operations hazard**.

However, this waiver applies only when the **Named Insured** has agreed in writing to waive such rights of recovery in a written contract or written agreement, and only if such contract or agreement:

1. is in effect or becomes effective during the term of this **Coverage Part**; and
2. was executed prior to the **bodily injury, property damage or personal and advertising injury** giving rise to the claim.

26. WRAP-UP EXTENSION: OCIP, CCIP, OR CONSOLIDATED (WRAP-UP) INSURANCE PROGRAMS

Note: The following provision does not apply to any public construction project in the state of Oklahoma, nor to any construction project in the state of Alaska, that is not permitted to be insured under a **consolidated (wrap-up) insurance program** by applicable state statute or regulation.

If the endorsement **EXCLUSION – CONSTRUCTION WRAP-UP** is attached to this policy, or another exclusionary endorsement pertaining to Owner Controlled Insurance Programs (O.C.I.P.) or Contractor Controlled Insurance Programs (C.C.I.P.) is attached, then the following changes apply:

- A. The following wording is added to the above-referenced endorsement:

With respect to a **consolidated (wrap-up) insurance program** project in which the **Named Insured** is or was involved, this exclusion does not apply to those sums the **Named Insured** become legally obligated to pay as **damages** because of:

1. **Bodily injury, property damage, or personal or advertising injury** that occurs during the **Named Insured's** ongoing operations at the project, or during such operations of anyone acting on the **Named Insured's** behalf; nor



CONTRACTORS EXTENDED COVERAGE ENDORSEMENT - BUSINESS AUTO PLUS

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

I. LIABILITY COVERAGE

A. Who Is An Insured

The following is added to **Section II, Paragraph A.1., Who Is An Insured:**

1. a. Any incorporated entity of which the Named Insured owns a majority of the voting stock on the date of inception of this Coverage Form; provided that,
 - b. The insurance afforded by this provision **A.1.** does not apply to any such entity that is an **insured** under any other liability "policy" providing **auto** coverage.
2. Any organization you newly acquire or form, other than a limited liability company, partnership or joint venture, and over which you maintain majority ownership interest.

The insurance afforded by this provision **A.2.:**

- a. Is effective on the acquisition or formation date, and is afforded only until the end of the policy period of this Coverage Form, or the next anniversary of its inception date, whichever is earlier.
- b. Does not apply to:
 - (1) **Bodily injury or property damage** caused by an **accident** that occurred before you acquired or formed the organization; or
 - (2) Any such organization that is an **insured** under any other liability "policy" providing **auto** coverage.
3. Any person or organization that you are required by a written contract to name as an additional insured is an **insured** but only with respect to their legal liability for acts or omissions of a person, who qualifies as an **insured** under **SECTION II – WHO IS AN INSURED** and for whom Liability Coverage is afforded under this policy. If required by written contract, this insurance will be primary and non-contributory to insurance on which the additional insured is a Named Insured.
4. An **employee** of yours is an **insured** while operating an **auto** hired or rented under a contract or agreement in that **employee's** name, with your permission, while performing duties related to the conduct of your business.

"Policy", as used in this provision **A. Who Is An Insured**, includes those policies that were in force on the inception date of this Coverage Form but:

1. Which are no longer in force; or
2. Whose limits have been exhausted.

B. Bail Bonds and Loss of Earnings

Section II, Paragraphs A.2. (2) and A.2. (4) are revised as follows:

1. In **a.(2)**, the limit for the cost of bail bonds is changed from \$2,000 to \$5,000; and
2. In **a.(4)**, the limit for the loss of earnings is changed from \$250 to \$500 a day.

Form No: CNA63359XX (04-2012)

Endorsement Effective Date:

Endorsement Expiration Date:

Endorsement No: 12; Page: 1 of 4

Underwriting Company: Transportation Insurance Company, 151 N Franklin St, Chicago, IL 60606

Policy No: BUA 7015418557

Policy Effective Date: 8/29/23

Policy Page: 71 of 94



C. Fellow Employee

Section II, Paragraph B.5 does not apply.

Such coverage as is afforded by this provision C. is excess over any other collectible insurance.

II. PHYSICAL DAMAGE COVERAGE

A. Glass Breakage – Hitting A Bird Or Animal – Falling Objects Or Missiles

The following is added to **Section III, Paragraph A.3.:**

With respect to any covered **auto**, any deductible shown in the Declarations will not apply to glass breakage if such glass is repaired, in a manner acceptable to us, rather than replaced.

B. Transportation Expenses

Section III, Paragraph A.4.a. is revised, with respect to transportation expense incurred by you, to provide:

- a. \$60 per day, in lieu of \$20; subject to
- b. \$1,800 maximum, in lieu of \$600.

C. Loss of Use Expenses

Section III, Paragraph A.4.b. is revised, with respect to loss of use expenses incurred by you, to provide:

- a. \$1,000 maximum, in lieu of \$600.

D. Hired "Autos"

The following is added to **Section III, Paragraph A.:**

5. Hired "Autos"

If Physical Damage coverage is provided under this policy, and such coverage does not extend to Hired Autos, then Physical Damage coverage is extended to:

- a. Any covered **auto** you lease, hire, rent or borrow without a driver; and
- b. Any covered **auto** hired or rented by your **employee** without a driver, under a contract in that individual **employee's** name, with your permission, while performing duties related to the conduct of your business.
- c. The most we will pay for any one **accident** or **loss** is the actual cash value, cost of repair, cost of replacement or \$75,000, whichever is less, minus a \$500 deductible for each covered **auto**. No deductible applies to **loss** caused by fire or lightning.
- d. The physical damage coverage as is provided by this provision is equal to the physical damage coverage(s) provided on your owned **autos**.
- e. Such physical damage coverage for hired **autos** will:
 - (1) Include loss of use, provided it is the consequence of an **accident** for which the Named Insured is legally liable, and as a result of which a monetary loss is sustained by the leasing or rental concern.
 - (2) Such coverage as is provided by this provision will be subject to a limit of \$750 per **accident**.

E. Airbag Coverage

The following is added to **Section III, Paragraph B.3.:**

The accidental discharge of an airbag shall not be considered mechanical breakdown.

Form No: CNA63359XX (04-2012)

Endorsement Effective Date:

Endorsement Expiration Date:

Endorsement No: 12; Page: 2 of 4

Underwriting Company: Transportation Insurance Company, 151 N Franklin St, Chicago, IL 60606

Policy No: BUA 7015418557

Policy Effective Date: 8/29/23 ?

Policy Page: 72 of 94



F. Electronic Equipment

Section III, Paragraphs B.4.c and B.4.d. are deleted and replaced by the following:

- c. Physical Damage Coverage on a covered **auto** also applies to **loss** to any permanently installed electronic equipment including its antennas and other accessories
- d. A \$100 per occurrence deductible applies to the coverage provided by this provision.

G. Diminution In Value

The following is added to **Section III, Paragraph B.6.:**

Subject to the following, the **diminution in value** exclusion does not apply to:

- a. Any covered **auto** of the private passenger type you lease, hire, rent or borrow, without a driver for a period of 30 days or less, while performing duties related to the conduct of your business; and
- b. Any covered **auto** of the private passenger type hired or rented by your **employee** without a driver for a period of 30 days or less, under a contract in that individual **employee's** name, with your permission, while performing duties related to the conduct of your business.
- c. Such coverage as is provided by this provision is limited to a **diminution in value** loss arising directly out of accidental damage and not as a result of the failure to make repairs; faulty or incomplete maintenance or repairs; or the installation of substandard parts.
- d. The most we will pay for **loss** to a covered **auto** in any one accident is the lesser of:
 - (1) \$5,000; or
 - (2) 20% of the **auto's** actual cash value (ACV).

III. Drive Other Car Coverage – Executive Officers

The following is added to **Sections II and III:**

- 1. Any **auto** you don't own, hire or borrow is a covered **auto** for Liability Coverage while being used by, and for Physical Damage Coverage while in the care, custody or control of, any of your "executive officers", except:
 - a. An **auto** owned by that "executive officer" or a member of that person's household; or
 - b. An **auto** used by that "executive officer" while working in a business of selling, servicing, repairing or parking **autos**.

Such Liability and/or Physical Damage Coverage as is afforded by this provision.

- (1) Equal to the greatest of those coverages afforded any covered **auto**; and
- (2) Excess over any other collectible insurance.

- 2. For purposes of this provision, "executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document, and, while a resident of the same household, includes that person's spouse.

Such "executive officers" are **insureds** while using a covered **auto** described in this provision.

IV. BUSINESS AUTO CONDITIONS

A. Duties In The Event Of Accident, Claim, Suit Or Loss

The following is added to **Section IV, Paragraph A.2.a.:**

Form No: CNA63359XX (04-2012)

Endorsement Effective Date:

Endorsement Expiration Date:

Endorsement No: 12; Page: 3 of 4

Underwriting Company: Transportation Insurance Company, 151 N Franklin St, Chicago, IL 60606

Policy No: BUA 7015418557

Policy Effective Date: 8/29/23

Policy Page: 73 of 94



- (4) Your **employees** may know of an **accident** or **loss**. This will not mean that you have such knowledge, unless such **accident** or **loss** is known to you or if you are not an individual, to any of your executive officers or partners or your insurance manager.

The following is added to **Section IV, Paragraph A.2.b.:**

- (6) Your **employees** may know of documents received concerning a claim or **suit**. This will not mean that you have such knowledge, unless receipt of such documents is known to you or if you are not an individual, to any of your executive officers or partners or your insurance manager.

B. Transfer Of Rights Of Recovery Against Others To Us

The following is added to **Section IV, Paragraph A.5. Transfer Of Rights Of Recovery Against Others To Us:**

We waive any right of recovery we may have, because of payments we make for injury or damage, against any person or organization for whom or which you are required by written contract or agreement to obtain this waiver from us.

This injury or damage must arise out of your activities under a contract with that person or organization.

You must agree to that requirement prior to an **accident** or **loss**.

C. Concealment, Misrepresentation or Fraud

The following is added to **Section IV, Paragraph B.2.:**

Your failure to disclose all hazards existing on the date of inception of this Coverage Form shall not prejudice you with respect to the coverage afforded provided such failure or omission is not intentional.

D. Other Insurance

The following is added to **Section IV, Paragraph B.5.:**

Regardless of the provisions of Paragraphs 5.a. and 5.d. above, the coverage provided by this policy shall be on a primary non-contributory basis. This provision is applicable only when required by a written contract.

That written contract must have been entered into prior to **Accident** or **Loss**.

E. Policy Period, Coverage Territory

Section IV, Paragraph B. 7.(5).(a). is revised to provide:

- a. 45 days of coverage in lieu of 30 days.

V. DEFINITIONS

Section V. paragraph C. is deleted and replaced by the following:

Bodily injury means bodily injury, sickness or disease sustained by a person, including mental anguish, mental injury or death resulting from any of these.

Form No: CNA63359XX (04-2012)

Endorsement Effective Date:

Endorsement Expiration Date:

Endorsement No: 12; Page: 4 of 4

Underwriting Company: Transportation Insurance Company, 151 N Franklin St, Chicago, IL 60606

Policy No: BUA 7015418557

Policy Effective Date: 8/29/23

Policy Page: 74 of 94

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Schedule

**ANY PERSON OR ORGANIZATION FOR WHOM THE NAMED INSURED IS
REQUIRED UNDER WRITTEN CONTRACT TO FURNISH THIS WAIVER,
FOR FLORIDA OPERATIONS ONLY.**

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.
(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective **08/29/2023** Policy No. **WFL 5061934 02**
Insured **BANDES CONSTRUCTION CO INC**
Insurance Company **INSURANCE COMPANY OF THE WEST**

Endorsement No.
Premium \$ **INCL.**

Countersigned By _____



CRUM & FORSTER®
A FAIRFAX COMPANY

Policy #5821219107
Effective Dates: 08/29/2023-08/29/2024

EXCESS LIABILITY COVERAGE FORM

Various provisions in this Policy restrict coverage. Read the entire Policy carefully to determine rights, duties and what is and is not covered.

Throughout this Policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this Policy. The words "we", "us" and "our" refer to the company providing this insurance. The word "insured" means any person or organization qualifying as such under the "controlling underlying insurance".

Other words and phrases that appear in quotation marks in this Policy have special meaning. Refer to **SECTION IV – DEFINITIONS**. Other words and phrases that are not defined under this Policy but defined in the "controlling underlying insurance" will have the meaning described in the policy of "controlling underlying insurance".

SECTION I – COVERAGES

1. Insuring Agreement

- a. We will pay on behalf of the insured the "ultimate net loss" in excess of the "retained limit" because of "injury or damage" to which this insurance applies.

We will have the right and duty to defend the insured against any "suit" seeking damages for such "injury or damage" when the "retained limit" has been paid in full. When we have no duty to defend, we will have the right to defend, or to associate in the defense of, the insured against any "suit" seeking damages for "injury or damage".

However, we will have no duty to defend the insured against any "suit" seeking damages for which insurance under this Policy does not apply.

At our discretion, we may investigate any "event" that may involve this insurance and settle any resultant claim or "suit".

But:

- (1) The amount we will pay for "ultimate net loss" is limited as described in **SECTION II – LIMITS OF INSURANCE**; and
- (2) Our right and duty to defend ends when we have paid the applicable limit of insurance in the payment of judgments or settlements under this Policy. However, if the policy of "controlling underlying insurance" specifies that limits are reduced by defense expenses, our right and duty to defend ends when we have paid the applicable limit of insurance in the payment of defense expenses, judgments, or settlements under this Policy.
- b. The insurance under this Policy will follow the same provisions, exclusions, conditions and limitations that are contained in the applicable "controlling underlying insurance", unless otherwise directed by this Policy. To the extent such provisions differ or conflict, the provisions of this Policy will apply. However, the coverage under this Policy will not be broader than that provided by any "underlying insurance".
- If any applicable "underlying insurance" does not pay for "ultimate net loss" for any reason other than the exhaustion of its applicable limit of insurance by payment of claims or "suits", then this Policy will not cover such "ultimate net loss".
- c. There may be more than one "controlling underlying insurance" listed in the Schedule of Underlying Insurance, and there may be terms and provisions in those respective policies that are in conflict and which are not superseded by the provisions of this Policy. In such a case, the provisions, exclusions and

limitations of the "controlling underlying insurance" applicable to the particular "event" for which a claim is made or "suit" is brought will apply.

- d. If any other limit, such as a sublimit, is specified in the "underlying insurance", this insurance does not apply to "injury or damage" arising out of that exposure unless that limit is specified in the Schedule of Underlying Insurance.
- e. Any person or entity qualifying as an additional insured under the "controlling underlying insurance" will be an additional insured under this Policy. If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the minimum amount of insurance required by the contract or agreement less any amounts payable by "underlying insurance" and all other insurance available to the additional insured. Under no circumstances will we pay on behalf of the additional insured an amount exceeding the available Limit of Insurance applicable under this Policy.

Additional insured coverage, as provided by this Policy, will not be broader than coverage provided by any "underlying insurance".

2. Exclusions

Insurance provided under this Policy does not apply to:

a. Asbestos

"Injury or damage", loss, cost or expense directly or indirectly caused by, resulting from, in consequence of, or in any way involving asbestos or any materials containing asbestos in whatever form or quantity.

This exclusion applies regardless of any other contributing or aggravating cause or "event" that contributes concurrently or in any sequence to the "injury or damage", loss, cost or expense.

b. Auto

"Injury or damage", loss, cost or expense payable under or resulting from any of the following auto coverages:

- (1) First-party physical damage coverage;
- (2) No-fault coverage;
- (3) Personal injury protection or auto medical payments coverage; or
- (4) Uninsured or underinsured motorists' coverage.

c. Pollution

(1) "Injury or damage" which would not have occurred in whole or part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release, or escape of "pollutants" at any time.

(2) Any loss, cost or expense arising out of any:

- (a) Request, demand, order, or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify, neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
- (b) Claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, or in any way responding to, or assessing the effects of "pollutants".

This exclusion applies whether or not such "pollutants" have any function in your business, operations, premises, site, or location.

d. Workers' Compensation and Similar Laws

Any obligation of any insured under a workers' compensation, disability benefits, unemployment compensation law, or any similar law.

SECTION II – LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
 - a. Insureds;
 - b. Claims made or "suits" brought or number of vehicles involved;
 - c. Persons or organizations making claims or bringing "suits"; or
 - d. Limits available under any "underlying insurance".
2. The Limits of Insurance as shown in the Declarations will apply as follows:
 - a. This insurance only applies in excess of the "retained limit".
 - b. The Total Policy Aggregate Limit, if stated in the Declarations, is the most we will pay for the sum of all "ultimate net loss" for all "injury or damage" covered under this Policy other than any claims for damages arising out of the ownership, maintenance, or use of a covered auto. The Total Policy Aggregate Limit applies regardless of the sums indicated in the Declarations for any General Aggregate Limit or Products-Completed Operations Aggregate Limit, and applies collectively, rather than separately, to all locations or projects.
 - c. Subject to 2.b. above, the General Aggregate Limit, if stated in the Declarations, is the most we will pay for the sum of all "ultimate net loss" for all "injury or damage" covered under this Policy other than any claims for damages falling within the products-completed operations hazard or arising out of the ownership, maintenance or use of a covered auto.

Subject to 2.b. above, the Products-Completed Operations Aggregate Limit, if stated in the Declarations, is the most we will pay for the sum of all "ultimate net loss" for all "injury or damage" included within the products-completed operations hazard.

However, if any "underlying insurance" does not provide separate aggregate limits for "ultimate net loss" within the products-completed operations hazard, the General Aggregate set forth above is the most we will pay for all "ultimate net loss", including "ultimate net loss" within the products-completed operations hazard. Under such circumstances, any limit appearing in the Declarations for a Products-Completed Operations Aggregate Limit does not apply.
 - d. Subject to Paragraph 2.b. and 2.c. above, the Each Occurrence Limit is the most we will pay for the sum of all "ultimate net loss" under this Policy because of all "injury or damage" arising out of any one "event".
 - e. If the Limits of Insurance of the "controlling underlying insurance" are reduced by defense expenses by the terms of that policy, any payments for defense expenses we make will reduce our applicable Limits of Insurance in the same manner.
3. The Aggregate Limits of "underlying insurance", where applicable, shall be unimpaired at the attachment date of this Policy, and for the purpose of this insurance, only "events" to which this insurance applies, taking place during the Policy Period of this Policy, shall be considered in determining the extent of any exhaustion of the Aggregate Limits of "underlying insurance", where applicable.
4. If this Policy and any other policy issued by us, or by any other affiliated insurance company within the Crum & Forster group of companies, applies to the same incident, "event," act, offense, claim, "suit," or occurrence for which any insured under this Policy is legally liable, then the maximum limit of insurance payable for all "injury or damage" covered under the policies will not exceed the highest applicable Each Occurrence limit of insurance available under any one policy for the incident, "event," act, offense, claim, "suit," or occurrence. However, this does not apply to any other insurance issued to you by us, or by any affiliated insurance company within the Crum & Forster group of companies, which is specifically written to be either primary or in excess of this Policy.

The General Aggregate Limit, the Products-Completed Operations Aggregate Limit, and the Total Policy Aggregate Limit of this Policy apply separately to each consecutive annual period of this Policy and to any remaining period of this Policy of less than 12 months, starting with the beginning of the Policy Period shown in

the Declarations, unless the Policy Period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

SECTION III – CONDITIONS

The following conditions apply:

1. Appeals

If any "underlying insurer" or insured elects not to appeal a judgment in excess of the amount of the "retained limit", we may do so at our own expense. We also will pay for taxable court costs, pre and post judgment interest and disbursements associated with such appeal. In no event will this provision increase our liability beyond the applicable Limits of Insurance described in **SECTION II – LIMITS OF INSURANCE**.

2. Bankruptcy

a. Bankruptcy or Insolvency of Insured

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Policy.

b. Bankruptcy of Underlying Insurer

Bankruptcy or insolvency of any "underlying insurer" will not relieve us of our obligations under this Policy. However, insurance provided under this Policy will not replace any "underlying insurance" in the event of bankruptcy or insolvency of the "underlying insurer". The insurance provided under this Policy will apply as if the "underlying insurance" were in full effect and recoverable.

3. Cancellation

a. The first Named Insured shown in the Declarations may cancel this Policy by mailing or delivering to us advance written notice of cancellation.

b. We may cancel this Policy by mailing or delivering to the first Named Insured written notice of cancellation at least:

(1) 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or

(2) 30 days before the effective date of cancellation if we cancel for any other reason.

c. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.

d. Notice of cancellation will state the effective date of cancellation. The Policy Period will end on that date.

e. If this Policy is cancelled, subject to any audit, we will send the first Named Insured any premium refund due. If we cancel, any refund will be pro rata. If the first Named Insured cancels, any refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.

f. If notice is mailed, proof of mailing will be sufficient proof of notice.

4. Changes

This Policy contains all the agreements between you and us concerning the insurance afforded. The first Named Insured is authorized by all other insureds to make changes in the terms and conditions of this Policy, with our consent, provided, however, that this Policy's terms and conditions can be amended or waived only by written endorsement issued by us and made a part of this Policy.

5. Duties in the Event of a Claim, Event, or Suit

a. You must see to it that we are notified as soon as practicable of an "event", regardless of the amount, which may result in a claim under this Policy. To the extent possible, notice should include:

(1) How, when and where the "event" took place;

- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any "injury or damage" arising out of the "event".
- b. If a claim is made or "suit" is brought against any insured, you must:
 - (1) Immediately record the specifics of the claim or "suit" and the date received; and
 - (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.
- c. You and any other insured involved must:
 - (1) Immediately send us copies of any demands, notices, summonses, or legal papers received in connection with the claim or "suit";
 - (2) Authorize us to obtain records and other information;
 - (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
 - (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of "injury or damage" to which this insurance may also apply.
- d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

6. Examination of Your Books and Records

We may examine and audit your books and records as they relate to this Policy at any time during the Policy Period and up to three years afterward.

7. First Named Insured Duties

The first Named Insured is the person or organization first named in the Declarations and is responsible for the payment of all premiums. The first Named Insured will act on behalf of all other insureds for giving and receiving of notice of cancellation or the receipt of any return premium that may become payable.

The first Named Insured will furnish us, as soon as practicable, with a complete copy of any "underlying insurance" and any subsequently issued endorsements or policies which may in any way affect the insurance provided under this Policy.

8. Legal Action Against Us

No person or organization has a right under this Policy to join us as a party or otherwise bring us into a "suit" asking for damages from an insured or to sue us on this Policy unless all of its terms have been fully complied with. A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured, but we will not be liable for damages that are not payable under the terms of this Policy or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured, "underlying insurer" and the claimant or the claimant's legal representative.

9. Loss Payable

Liability under this Policy does not apply to a given claim unless and until the insured or insured's "underlying insurer" has become obligated to pay the "retained limit", and the obligation of the insured to pay the "ultimate net loss" in excess of the "retained limit" has been determined by a final settlement or judgment or written agreement among the insured, claimant, "underlying insurer" (or a representative of one or more of these) and us.

10. Maintenance of/Changes to Underlying Insurance

Any "underlying insurance" must be maintained in full effect during the Policy Period of this Policy, without change of coverage or reduction of limits except for the reduction of aggregate limits in accordance with the provisions of such "underlying insurance" that results from "injury or damage" to which this insurance applies. Such exhaustion or reduction of limits is not a failure to maintain "underlying insurance".

Failure to maintain "underlying insurance" will not invalidate insurance provided under this Policy, but insurance provided under this Policy will apply as if the "underlying insurance" were in full effect.

The first Named Insured must notify us in writing, as soon as practicable, if any "underlying insurance" is cancelled, not renewed, replaced, otherwise terminated, or if the limits or scope of coverage of any "underlying insurance" is changed.

11. Other Insurance

- a. If other insurance that is not "underlying insurance" applies to any claim or "suit" that is also covered under this Policy, then this Policy shall apply in excess of and shall not contribute with such other insurance.
- b. When a person or organization that is an additional insured under all "underlying insurance" requires in a written contract with you that this insurance be non-contributory, then we shall not seek contribution from other insurers that provide coverage to the additional insured as a Named Insured for "ultimate net loss" sustained by such additional insured after all underlying limits have been exhausted. If an additional insured has coverage under any other policy[ies] as an additional insured, this Policy applies excess of all such insurance, and this Policy will not contribute to any "ultimate net loss". This provision does not apply to any policy in which the additional insured is a Named Insured on such other policy and where this Policy is required by written contract or written agreement to provide coverage to the additional insured on a primary and non-contributory basis.

The provisions of this Other Insurance condition will not apply if such other insurance is specifically written to be excess of this Policy. If no other insurer defends, we may undertake to do so in accordance with the defense provisions set forth elsewhere in this Policy, but we will be entitled to the insured's rights against all those other insurers.

12. Premium

The premium, as stated in the Declarations of this Policy, is a flat premium, unless there is a rate per an exposure base shown on this Policy, and an endorsement stating such is attached to this Policy. In that case, the premium is subject to adjustment in accordance with the terms of that endorsement.

The premium, as stated in the Declarations of this Policy, may be adjusted if an additional premium charge is made to the "underlying insurance" or if there is an increase in the risk assumed by us during the Policy Period of this Policy.

13. Transfer of Defense

a. Defense Transferred to Us

When the "retained limit" has been paid in full, we will cooperate in the transfer of control to us of any outstanding claims or "suits" seeking damages to which this insurance applies and which would have been covered by the "underlying insurance" had the applicable "retained limit" not been exhausted.

Where the settlement of any "suit" defended by any "underlying insurer" results, or will result, in the exhaustion of the "retained limit" and also will require the payment of a portion of the Limits of Insurance under this Policy in order to effectuate the settlement, we will have the right, but not the duty, to assume the transfer of the defense of the insured with respect to that "suit", but we will be under no obligation to have the defense transferred to us unless and until the "retained limit" has been paid in full.

Where the satisfaction of any judgment entered against the insured in a "suit" defended by any "underlying insurer" results, or will result, in the exhaustion of the "retained limit" and also will require the payment of a portion of the Limits of Insurance under this Policy in order to effectuate the satisfaction of that judgment, we will have the right, but not the duty, to defend the insured with respect to that "suit", but we will be under no obligation to have the defense transferred to us.

b. Defense Transferred by Us

When our limits of insurance have been exhausted, our duty to provide a defense will cease. We will cooperate in the transfer of control of defense to any insurer specifically written as excess over this Policy of any outstanding claims or "suits" seeking damages to which this insurance applies and which would have been covered had the applicable limit not been exhausted.

In the event that there is no insurance written as excess over this Policy, we will cooperate in the transfer of control to the insured and its designated representative.

14. Transfer of Rights of Recovery Against Others to Us

If you have rights to recover all or part of any payment we have made under this Policy, those rights are transferred to us. You must do nothing after loss to impair them. At our request, you will bring "suit" or transfer those rights to us and help us enforce them.

If you and any insurer providing "underlying insurance", prior to the time of an "event", waive in writing any right of recovery against a specific person or organization for any liability, we also will waive any rights we may have against such person or organization to the same extent waived by you and any insurer providing "underlying insurance".

The amount recovered shall be apportioned in the inverse order of payment of the "ultimate net loss" to the extent of the actual payment. The expenses of all such recovery proceedings shall be apportioned in the ratio of respective recoveries.

SECTION IV – DEFINITIONS

As used in this Policy:

1. **"Controlling underlying insurance"** means a policy of insurance listed in the Schedule of Underlying Insurance and identified as "controlling underlying insurance".
2. **"Event"** means an occurrence, offense, accident, act, or other event to which the applicable "controlling underlying insurance" applies.
3. **"Injury or damage"** means any injury or damage covered in the applicable "controlling underlying insurance" arising from an "event".
4. **"Pollutants"** mean any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned, or reclaimed.
5. **"Retained limit"** means the sum of all applicable "underlying insurance" shown in the Schedule of Underlying Insurance and any other insurance or self-insurance applicable to the claim or "suit", except insurance specifically written to apply in excess of this Policy.
6. **"Suit"** means a civil proceeding in which damages because of "injury or damage" to which this insurance applies are alleged. "Suit" includes:
 - a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
 - b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent or the "underlying insurer's" consent.
7. **"Ultimate net loss"** means the total sum, after reduction for recoveries or salvages collectible, that the insured becomes legally obligated to pay as damages by reason of:
 - a. Settlements, judgments, binding arbitration; or
 - b. Other binding alternate dispute resolution proceeding entered into with our consent.

"Ultimate net loss" includes defense expenses if the "controlling underlying insurance" specifies that limits are reduced by defense expenses.
8. **"Underlying insurance"** means the policy or policies (including any renewal or replacement of such policies) of insurance listed in the Schedule of Underlying Insurance including the "controlling underlying insurance" and any self-insured retentions.
9. **"Underlying insurer"** means any insurer that provides a policy of insurance listed in the Schedule of Underlying Insurance.

**FIRST AMENDMENT TO NON-EXCLUSIVE RIGHT OF WAY
LICENSE AGREEMENT**

THIS FIRST AMENDMENT TO NON-EXCLUSIVE RIGHT OF WAY LICENSE AGREEMENT, is made and entered into this ____ day of _____, 2024, (“Amendment”), and is by and between the **TOWN OF FORT MYERS BEACH**, a political subdivision of the State of Florida, (hereinafter, the “Town” or “Licensor”), and **BANDES CONSTRUCTION COMPANY, INC.**, a Florida Corporation, their successors and assigns, (collectively hereinafter, “Bandes” or “Licensee”), and amends that certain **NON-EXCLUSIVE RIGHT OF WAY LICENSE AGREEMENT** entered into on the 14th day of February, 2024 (“Agreement”); and

WHEREAS, the Town and Bandes entered into the Agreement to allow Bandes to use the Town’s property located at the corner of Old San Carlos Blvd. & Estero Blvd., Fort Myers Beach, situating eleven (11) metered parking spaces, which is more explicitly identified and reflected in Exhibit “A” of the Agreement, (the “Property”), for the location of construction equipment and dumpsters, which will remain on the Property, subject to the terms of the Agreement; and

WHEREAS, the Agreement expired on March 15, 2024; and

WHEREAS, the Town and Bandes mutually desire to extend the duration of the Agreement retroactively from March 15, 2024, through July 1, 2024; and

WHEREAS, the extension is in the best interests of the Town and is consistent with promotion of the health, safety, and welfare of its residents.

NOW, THEREFORE, in consideration of the covenants to be kept and performed by each of the parties hereto, and other good and valuable consideration paid by Bandes to the Town, receipt and sufficiency of which is hereby acknowledged, it is agreed as follows:

1. **DURATION.** Paragraph 7 of the Agreement is hereby amended to grant unto Bandes the continued non-exclusive right of way license to use the Property, retroactively from March 15, 2024, through July 1, 2024.

2. **REMAINING TERMS.** Other than the duration of the Agreement, which duration shall be extended retroactively from March 15, 2024, through July 1, 2024, all other terms and conditions of the Agreement shall remain in force and effect.

IN WITNESS WHEREOF, the Town and Bandes have executed this Amendment to the Agreement as of the date and year first above written.

[Signatures and Attestation on the Following Page]

WITNESSES:

LICENSEE: Bandes Construction Company,
Inc.

1st Witness Signature

Print Name: _____

1st Witness Print Name

Print Title

2nd Witness Signature

2nd Witness Print Name

LICENSOR: Town of Fort Myers Beach

Dan Allers, Mayor of Fort Myers Beach

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

1. **Request:**

Meeting Date: May 6, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING VARIANCE VAR20240050, REQUESTING TWO VARIANCES FROM LDC TABLE 34-3 A VARIANCE OF 16-FEET FROM THE REQUIRED 25-FOOT STREET SETBACK, AND A VARIANCE OF 5-FEET FROM THE REQUIRED 20-FOOT REAR SETBACK LOCATED AT 590 CARLOS CIR; PROVIDING FOR CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

Construction of a new single family residence is encroaching into the street and rear setback, so a variance approval is required.

What the action accomplishes:

Approval of this variance would allow construction of a new home with reduced front and rear setbacks.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Jason Smalley, Senior Planner

5. **Background:**

The applicant for 590 Carlos Cir, is requesting a variance from the Town's Land Development Code (LDC) Table 34-3 which requires a single-family home in the RC zoning district to provide a minimum street setback of 25 feet from the front property line, and 20 feet from the rear property line. The applicant is requesting a variance of 16 feet from the street setback for a front setback of 9 feet, and another variance of 5 feet from the rear setback for a rear setback of 15 feet to build a new single-family structure.

Attachments:

1. 24-89, VAR20240050 590 Carlos Cir (1) ns 4292024
2. 590 Carlos Cir- staff report (TC)
3. Exhibit A site plan
4. Exhibit B_LPA AND TC postcard 590 Carlos Cir
5. Exhibit C_ Application

Financial Impact:

N/A

6. **Alternative Action**

Deny

7. **Management Recommendations:**

Approval with Conditions

8. **Recommended Approval:**

Eli Lee, Planner

Created/Initiated - 4/29/2024

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

Approved - 4/29/2024
Approved - 4/30/2024
Final Approval - 4/30/2024

RESOLUTION NUMBER 24-89

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING VARIANCE VAR20240050, REQUESTING TWO VARIANCES FROM LDC TABLE 34-3 A VARIANCE OF 16-FEET FROM THE REQUIRED 25-FOOT STREET SETBACK, AND A VARIANCE OF 5-FEET FROM THE REQUIRED 20-FOOT REAR SETBACK LOCATED AT 590 CARLOS CIR; PROVIDING FOR CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS 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, Lake Cottage LLC, owner of the property located at 590 Carlos Circle is requesting a variance from LDC Table 34-3, which requires a single-family home in RC zoning district to provide a minimum 25-foot street setback and a 20-foot rear setback; and

WHEREAS, the STRAP number for the subject property is 24-46-23-W1-0070E.002A; and

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

WHEREAS, a public hearing on this matter was legally noticed and held before the Local Planning Agency (LPA) on April 9, 2024, and at said hearing the LPA gave full and complete consideration to the request of Applicant, recommendations of staff, the documents in the file, and the testimony of all interested persons, as required by Section 34-87 of the LDC. The LPA found that the request is consistent with the comprehensive plan and the requirements of the LDC and voted 6-0 with one member absent to recommend approval with conditions of the variance; and

WHEREAS, on May 6, 2024, the Town Council held a duly noticed public hearing to fully consider the request of the Applicant, the recommendations of Town staff and the LPA, the documents in the record, and testimony of all interested persons as required by 34-87 of the LDC; and

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

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

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

Section 2. The Town Council determines the Applicant did/ did not meet its burden of proof that the requested Variance does/ does not meet the requirements of the Town Comprehensive Plan and LDC and approving/ approving with conditions/ denying the Variance is in the best interest of the Town. Therefore, based upon the recommendations, testimony, and evidence presented by the Applicant, Town staff, interested parties and public, the Town Council APPROVES/ APPROVES WITH CONDITIONS/ DENIES a request for variance from LDC Table 34-3, which requires a new home to have a street setback of 25 feet and a rear setback of 20 feet.

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

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

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

- A. Approval of this variance does not give the Applicant an undeniable right to permit approval. Development or redevelopment of the Property must comply with all applicable requirements of the Fort Myers Beach Comprehensive Plan and LDC in effect at the time of permit approval, except as specifically modified herein.
- B. The first floor shall not be enclosed. It should be made available as a private car park for the residents and their guests. All parked vehicles must be contained on the site and not encroach on the Town's Right of Way.

- C. The provided site plan indicates a driveway width of 10 feet. The driveway will be required to meet the Town of Fort Myers Beach Residential driveway requirements.

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

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

ADOPTED this ____ day of May 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, Town Attorney

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



Town of Fort Myers Beach
COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT

TYPE OF CASE: Variance

CASE NUMBER: VAR20240050

CASE NAME: 590 Carlos Cir; requesting a variance from LDC Section 34-638 Table 34-3 Dimensional Regulations in Conventional Zoning Districts for the street and rear setbacks in the RC zoning district.

TOWN COUNCIL HEARING DATE: May 6, 2024, at 9 AM

LPA HEARING DATE: April 9, 2024, at 9 AM

STAFF RECOMMENDATION: Approval w/conditions

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

I. APPLICATION SUMMARY

Applicant/Owner: Fred Drovdlc/Ellestad Florida Properties LL Lake Cottage LLC

Request: The applicant is requesting a variance of 16 feet from the street setback for a front setback of 9 feet, and a variance of 5 feet from the rear setback for a rear setback of 15 feet to build a new single-family structure.

Subject property: See attached site plan

Physical Address: 590 Carlos Cir

STRAP #: 24-46-23-W1-0070E.002A

FLU: Mixed Residential

Zoning: Residential Conservation (RC)

Adjacent zoning and land uses:

North:	RESIDENTIAL CONSERVATION (RC) Single-Family Residence/Two-Family
South:	RESIDENTIAL MULTI-FAMILY (RM) Single-Family Residence/ Two-Family
East:	RESIDENTIAL CONSERVATION (RC) Single-Family Residence/Two-Family
West:	RESIDENTIAL CONSERVATION (RC) Single-Family Residence/Two-Family

II. BACKGROUND AND ANALYSIS

Background:

Fred Drovdlc, the applicant for 590 Carlos Cir, is requesting a variance from the Town's Land Development Code (LDC) Table 34-3 which requires a single-family home in the RC zoning district to provide a minimum street setback of 25 feet from the front property line, and 20 feet from the rear property line. The applicant is requesting a variance of 16 feet from the street setback for a front setback of 9 feet, and another variance of 5 feet from the rear setback for a rear setback of 15 feet to build a new single-family structure.

Analysis:

The property is zoned RC which recognizes certain older neighborhoods with a mix of housing types and lot sizes. The subject property is an interior lot that is irregularly shaped that fronts on Carlos Cir. The lot varies in width from approximately 51 feet to 52 feet. The lot depth varies from approximately 44 feet to 64 feet. The property previously had a single-family home, which was destroyed by Hurricane Ian.

The Applicant is requesting two variances for the construction of a single-family structure. The requests include a variance of 16 feet from the street setback for a front setback of 9 feet, another variance of 5 feet from the rear setback for a rear setback of 15 feet.

Neighborhood Compatibility:

This scenario is unique in nature due to the size and shape of the lot. There are not similar properties on Carlos Circle. The neighborhood primarily supported single-family residences prior to Hurricane Ian.

The reduced front yard may result in guest parking extending to the public ROW. Staff has provided a proposed condition for keeping the first floor open for all personal and

guest parking to discourage parking within the Town's right of way if the variance request is granted. Staff additionally notes that the driveway will need to be approved through the Town's review process.

Findings and Conclusions:

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

- a. *That there **are**/are not exceptional or extraordinary conditions or circumstances that are inherent to the property in question, or that the request **is**/is not for a de minimis variance under circumstances or conditions where rigid compliance is not essential to protect public policy.*

The lot is nonconforming for size and is oddly shaped, it is 51 feet to 52 feet wide, with lot depth that varying from approximately 44 feet to 64 feet. The irregular shaped lot would require a variance for the construction of any home.

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

The conditions justifying the variance are not the result of the actions of the Applicant. The lot was originally part of a larger parcel that was subdivided in the 1970's creating this irregularly shaped lot.

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

Under current zoning codes the actual design of the home would be substantially smaller in design due the dimensions of the lot.

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

The reduced front yard could result in guest parking extending to the public ROW. Therefore, if approved, Town's staff recommends a condition to keep the first floor open for all personal and guest parking. It does not appear that the request will be injurious to neighbors, as long as parking concerns are addressed.

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

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

III. RECOMMENDATION

Staff has reviewed the request for a variance *from LDC Table 34-3 which requires that a lot in the RC zoning district have minimum 25-foot street setback, and 20-foot rear setback* and found that the variance request does meet the requirements set forth in sec. 34-87.

Therefore, staff recommends **approval with conditions** of VAR20240050, a request for variances of 16 feet from the street setback, 5 feet from the rear setback for a front setback of 9 feet and a rear setback of 15 feet.

At the April 9th LPA hearing the LPA unanimously recommended approval of the request with conditions.

IV. CONDITIONS FOR APPROVAL

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

- 1) The first floor shall not be enclosed. It should be made available as a private car park for the residents and their guests. All parked vehicles must be contained on the site and not encroach on the Town's Right of Way.
- 2) Approval of these variances does not give the Applicant an undeniable right to permit approval. Development or redevelopment of the Property must comply with all applicable requirements of the Fort Myers Beach Comprehensive Plan and LDC in effect at the time of permit approval, except as specifically modified herein.
- 3) The provided site plan indicates a driveway width of 10 feet. The driveway will be required to meet the Town of Fort Myers Beach Residential driveway requirements.

V. EXHIBITS

- A. Proposed site plan
- B. Postcards
- C. Complete application





Town of Fort Myers Beach
Community Development Services - Planning Division
2525 Estero Blvd,
Fort Myers Beach, FL 33931

NOTICE TO PROPERTY OWNERS WITHIN 500 FEET

Notice is hereby given that the Local Planning Agency/ Town Council of the Town of Fort Myers Beach will be conducting a public hearing at the Town Hall Council Chambers located at 2731 Oak St, Fort Myers Beach, Florida, 33931.

TIME: 9 AM

DATE: LPA April 9, 2024, and Town Council May 6, 2024

CASE: VAR20240050

ADDRESS: 590 Carlos Cir

APPLICANT: Fred Drovdlc

REQUEST: The applicant is requesting a variance of 16 feet from the street setback for a front setback of 9 feet, and another variance of 5 feet from the rear setback for a rear setback of 15 feet to build a new single-family structure.

TOWN CONTACT: SARAH PROPST SARAH.PROPST@FMBGOV.COM

You may appear in person, through counsel, or through an authorized agent and provide testimony, legal argument, or other evidence. At this hearing, the **Local Planning Agency/ Town Council** will review the application materials and hear testimony to make a **recommendation/decision**. Complete records or transcripts of the proceedings are not provided by the Town.

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



Town of Fort Myers Beach
Community Development Services - Planning Division
2525 Estero Blvd,
Fort Myers Beach, FL 33931

NOTICE TO PROPERTY OWNERS WITHIN 500 FEET

Notice is hereby given that the Local Planning Agency/ Town Council of the Town of Fort Myers Beach will be conducting a public hearing at the Town Hall Council Chambers located at 2731 Oak St, Fort Myers Beach, Florida, 33931.

TIME: 9 AM

DATE: LPA April 9, 2024, and Town Council May 6, 2024

CASE: VAR20240050

ADDRESS: 590 Carlos Cir

APPLICANT: Fred Drovdlc

REQUEST: The applicant is requesting a variance of 16 feet from the street setback for a front setback of 9 feet, and another variance of 5 feet from the rear setback for a rear setback of 15 feet to build a new single-family structure.

TOWN CONTACT: SARAH PROPST SARAH.PROPST@FMBGOV.COM

You may appear in person, through counsel, or through an authorized agent and provide testimony, legal argument, or other evidence. At this hearing, the **Local Planning Agency/ Town Council** will review the application materials and hear testimony to make a **recommendation/decision**. Complete records or transcripts of the proceedings are not provided by the Town.

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



Town of Fort Myers Beach
Community Development Services - Planning Division
2525 Estero Blvd,
Fort Myers Beach, FL 33931

NOTICE TO PROPERTY OWNERS WITHIN 500 FEET

Notice is hereby given that the Local Planning Agency/ Town Council of the Town of Fort Myers Beach will be conducting a public hearing at the Town Hall Council Chambers located at 2731 Oak St, Fort Myers Beach, Florida, 33931.

TIME: 9 AM

DATE: LPA April 9, 2024, and Town Council May 6, 2024

CASE: VAR20240050

ADDRESS: 590 Carlos Cir

APPLICANT: Fred Drovdlc

REQUEST: The applicant is requesting a variance of 16 feet from the street setback for a front setback of 9 feet, and another variance of 5 feet from the rear setback for a rear setback of 15 feet to build a new single-family structure.

TOWN CONTACT: SARAH PROPST SARAH.PROPST@FMBGOV.COM

You may appear in person, through counsel, or through an authorized agent and provide testimony, legal argument, or other evidence. At this hearing, the **Local Planning Agency/ Town Council** will review the application materials and hear testimony to make a **recommendation/decision**. Complete records or transcripts of the proceedings are not provided by the Town.

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



Town of Fort Myers Beach
Community Development Services - Planning Division
2525 Estero Blvd,
Fort Myers Beach, FL 33931

NOTICE TO PROPERTY OWNERS WITHIN 500 FEET

Notice is hereby given that the Local Planning Agency/ Town Council of the Town of Fort Myers Beach will be conducting a public hearing at the Town Hall Council Chambers located at 2731 Oak St, Fort Myers Beach, Florida, 33931.

TIME: 9 AM

DATE: LPA April 9, 2024, and Town Council May 6, 2024

CASE: VAR20240050

ADDRESS: 590 Carlos Cir

APPLICANT: Fred Drovdlc

REQUEST: The applicant is requesting a variance of 16 feet from the street setback for a front setback of 9 feet, and another variance of 5 feet from the rear setback for a rear setback of 15 feet to build a new single-family structure.

TOWN CONTACT: SARAH PROPST SARAH.PROPST@FMBGOV.COM

You may appear in person, through counsel, or through an authorized agent and provide testimony, legal argument, or other evidence. At this hearing, the **Local Planning Agency/ Town Council** will review the application materials and hear testimony to make a **recommendation/decision**. Complete records or transcripts of the proceedings are not provided by the Town.

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

Town of Fort Myers Beach
2525 Estero Blvd,
Fort Myers Beach, FL 33931

Town of Fort Myers Beach
2525 Estero Blvd,
Fort Myers Beach, FL 33931

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»«Next Record»

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»«Next Record»

Town of Fort Myers Beach
2525 Estero Blvd,
Fort Myers Beach, FL 33931

Town of Fort Myers Beach
2525 Estero Blvd,
Fort Myers Beach, FL 33931

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»«Next Record»

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»

PROJECT NUMBER:

DATE:



Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

APPLICATION for PUBLIC HEARING

This is a two part application. Please be sure to fill out this form, which requires general information, as well as the Supplemental Form application specific to action requested for the subject property. Please submit *one ORIGINAL paper copy, fourteen (14) copies* of all required applications, supplemental information, exhibits and documents. Please do not print and copy the instructions at the end of the application. In addition to application fees, the applicant is required to pay for (2) sets of mailings to neighboring property owners within 500', and all advertising fees.

Site Address: 590 Carlos Circle, Fort Myers Beach, FL 33931

STRAP Number: 24-46-23-W1-0070E.002A

Applicant: Lake Cottage LLC

Phone: 320 267 6373

Contact Name: Matt Wieber

Phone: _____

Email: mwieber@agencynorthre.com

Fax: _____

Current Zoning District: Residential Conservation (RC)

Future Land Use Map (FLUM) Category: Mixed Residential (MR)

FLUM Density Range: 6 du/acre

Platted Overlay: ☐ YES ☒ NO

ACTION REQUESTED

☐ Special Exception

☒ Variance

☐ Conventional Rezoning

☐ Planned Development ☐ Commercial ☐ Residential

☐ Master Concept Plan Extension

☐ Appeal of Administrative Action

☐ Vacation of Platted Right-of-way and Easement

☐ Other – cite LDC Section: _____

SUPPLEMENTAL FORM REQUIRED

PH-A

PH-B

PH-C

PH-D

PH-E

PH-F

PH-G

attach on separate sheet

PROJECT NUMBER:

DATE:

PART I – General Information

A. Applicant*: Lake Cottage LLC Phone: 320 267 6373

**Applicant must submit a statement under oath that he/she is the authorized representative of the property owner. Please see PART III to complete the appropriate Affidavit form for the type of applicant.*

Applicant Mailing Address: 2395 Troop Drive #102, Sartell, MN 56377

Email: mwieber@agencynorthre.com Fax: _____

Contact Name: Matt Wieber Phone: 320 267 6373

B. Relationship of Applicant to subject property:

- | | | |
|---|---|--|
| ☐ Owner* | ☐ Land Trust* | ☒ Partnership* |
| ☐ Corporation* | ☐ Association* | ☐ Condominium* |
| ☐ Subdivision* | ☐ Timeshare Condo* | ☐ Contract Purchaser* |
| ☐ Authorized Representative* | ☐ Other* (please indicate) _____ | |

**Applicant must submit a statement under oath that he/she is the authorized representative of the property owner. Please see PART III to complete the appropriate Affidavit form for the type of applicant.*

C. Authorized Agent(s). Please list the name of Agent authorized to receive correspondence Agents

Name: Fred Drovdlc, AICP Phone: 239-318-6707

Address: RVI Planning, 1514 Broadway #201, Fort Myers, FL 34195

Email: fdrovdlc@rviplanning.com Fax: 239-4989-3370

D. Other Agent(s). Please list the names of all Authorized Agents (attach extra sheets if necessary)

Name: Conrad Ellestad Phone: 612-607-9714

Address: 35494 County Rd 3, Crosslake, MN 56442

Email: ellestadproperties@gmail.com Fax: _____

Name: _____ Phone: _____

Address: _____

Email: _____ Fax: _____

PROJECT NUMBER:

DATE:

Name: _____

Phone: _____

Address: _____

Email: _____

Fax: _____

PART II – Nature of Request

Requested Action (each request requires a separate application)

☐ Special Exception

☒ Variance from LDC Section Table 34-3 - Street and Rear setback for non-conforming lot (RC District)

☐ Conventional Rezoning from _____ to _____

☐ Planned Development

☐ Rezoning from _____ to ☐ Commercial PD ☐ Residential PD

☐ Amendment. List the project number: _____

☐ Extension/reinstatement of Master Concept Plan. List project number: _____

☐ Appeal of Administrative Action

☐ Vacation ☐ Right-of-Way ☐ Easement

☐ Other. Please Explain: _____

PART III – Waivers N/A

Please indicate any specific submittal items that have been waived by the Director for the request.
Attach a copy of the signed approval as Exhibit 3-1. (Use additional sheets if necessary)

Code Section: _____

Description: _____

Code Section: _____

Description: _____

Code Section: _____

PROJECT NUMBER:

DATE:

Description: Table 34-3— Dimensional Regulations in Conventional Zoning Districts - requires a 25-foot street and 20-foot rear setback.

PART IV – Property Ownership

☐ Single Owner (individual or husband and wife)

Name: _____

Phone: _____

Mailing Address: _____

Email _____

Fax: _____

☒ Multiple Owners (including corporation, partnership, trust, association, condominium, timeshare, or subdivision)

☒ Complete Disclosure of Interest Form (see below)

☐ Attach list of property owners as Exhibit 4-1

☐ Attach map showing property owners interests as Exhibit 4-2 (for multiple parcels)

☐ For condominiums and timeshares see Explanatory Notes Part IV (Page 11)

DISCLOSURE OF OWNERSHIP INTEREST

STRAP: 24-46-23-W1-0070E.002A

If the property is owned in fee simple by an INDIVIDUAL, tenancy by the entirety, tenancy in common, or joint tenancy, list all parties with an ownership interest as well as the percentage of such interest.

Name and Address

Percentage Ownership

If the property is owned by a CORPORATION, list the officers and stockholders and the percentage of stock owned by each.

PROJECT NUMBER:

DATE:

Name, Address and Office

Percentage of Stock

If the property is in the name of a TRUSTEE, list the beneficiaries of the trust with percentage of interest.

Name and Address

Percentage of Interest

If the property is in the name of a GENERAL PARTNERSHIP OR LIMITED PARTNERSHIP, list the names of the general and limited partners.

Name and Address

Percentage of Ownership

Lake Cottage LLC (Matt Wieber)

2395 Troop Drive #102, Sartell, MN 56377

Ellestad Florida Properties LLC (Conrad Ellestad)

35494 County Rd 3, Crosslake, MN 56442

50%

50%

PROJECT NUMBER:

DATE:

If there is a CONTRACT FOR PURCHASE, whether contingent on this application or not, and whether a Corporation, Trustee, or Partnership, list the names of the contract purchasers below, including the officers, stockholders, beneficiaries, or partners.

Name, Address and Office

Percentage of Stock

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Date of Contract:

If any contingency clause or contract terms involve additional parties, list all individuals or officers, if a corporation, partnership, or trust.

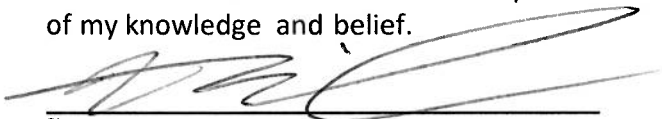
Name

Address

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

For any changes of ownership or changes in contracts for purchase subsequent to the date of the application, but prior to the date of final certificate of compliance, a supplemental disclosure of interest must be filed.

The above is a full disclosure of all parties of interest in this application, to the best of my knowledge and belief.


Signature

Matt Wieber

Printed Name

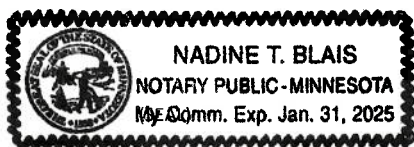
SIGN HERE

PROJECT NUMBER:

DATE:

STATE OF FLORIDA)
COUNTY OF LEE)

Subscribed and sworn to (or affirmed) before me this 29th day of January,
20 24, by Matt Wieber.



Nadine T. Blais
Notary Public Signature

Nadine T. Blais
Notary Printed Name

Personally Known _____ or Produced Identification X

Type of Identification Produced: Drivers License My Commission Expires: 1-31-2025

PART V - Property Information

A. Legal Description:

STRAP: 24-46-23-W1-0070E.002A

Property Address: 509 Carlos Circle, Fort Myers, FL 33931

Is the subject property within a platted subdivision recorded in the official Plat Books of Lee County? ☐ No. Attach a legible copy of the legal description as Exhibit 5-1.

☒ Yes. Property identified in subdivision: ISLAND SHORES UNIT 4 BLK E LOT 2

Book: 9 Page: 37 Unit: _____ Block: _____ Lot(s): _____

B. Boundary Survey:

☒ Attach a Boundary Survey of the property meeting the minimum standards of Chapter 61G17-6 of the Florida Administrative Code. A Boundary Survey must bear the raised seal and original signature of a Professional Surveyor and Mapper licensed to practice Surveying and Mapping by the State of Florida. Attach and label as Exhibit 5-2.

C. Property Dimensions:

Width (please provide an average width if irregular in shape) 52.0+/- feet

PROJECT NUMBER:

DATE:

Depth (please provide an average width if irregular in shape) 61.7+/- feet

Frontage on street: 51.4' Carlos feet. Frontage on waterbody: _____ feet

Total land area: 2,711+/- ☐ acres ☒ square feet

D. General Location of Subject Property (from Sky Bridge or Big Carlos Pass Bridge):

The Property is generally located 1/2 mile north/west of Times Square

1 block north of Estero Blvd on Carlos Circle

☒ Attach Area Location Map as Exhibit 5-3

E. Property Restrictions (check applicable):

☒ There are no deed restrictions and/or covenants on the subject property.

☐ A list of deed restrictions and/or covenants affecting the subject property is attached as Exhibit 5-4.

☐ A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 5-5.

F. Surrounding Property Owners (these items can be obtained from the Lee County Property Appraiser):

☒ Attach a list of surrounding property owners within 500 feet as Exhibit 5-6.

☒ Attach a map showing the surrounding property owners as Exhibit 5-7.

☒ Provide Staff with two (2) sets of surrounding property owner mailing labels.

G. Future Land Use Category (see Future Land Use Map):

☐ Low Density

☐ Marina

☒ Mixed Residential

☐ Recreation

☐ Boulevard

☐ Wetlands

☐ Pedestrian Commercial

☐ Platted Overlay

H. Zoning (see official Zoning Map):

☐ RS (Residential Single-family)

☐ CF (Community Facilities)

☒ RC (Residential Conservation)

☐ IN (Institutional)

PROJECT NUMBER:

DATE:

- | | |
|--|--|
| ☐ RM (Residential Multifamily) | ☐ BB (Bay Beach) |
| ☐ RPD (Residential Planned Development) | ☐ EC (Environmentally Critical) |
| ☐ CM (Commercial Marina) | ☐ DOWNTOWN |
| ☐ CO (Commercial Office) | ☐ SANTOS |
| ☐ CB (Commercial Boulevard) | ☐ VILLAGE |
| ☐ CR (Commercial Resort) | ☐ SANTINI |
| ☐ CPD (Commercial Planned Development) | |

PART VI SEE ATTACHED.

AFFIDAVIT

APPLICATION IS SIGNED BY AN INDIVIDUAL OWNER OR APPLICANT

I, Matt Wieber swear or affirm under oath, that I am the owner or the authorized representative of the owner(s) of the property and that:

I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the Town of Fort Myers Beach in accordance with this application and the Land Development Code;

All answers to the questions in this application and any sketches, data or other supplementary matter attached hereto and made a part of this application are honest and true;

PROJECT NUMBER:

DATE:

I have authorized the staff of the Town of Fort Myers Beach Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made thru this application; and that

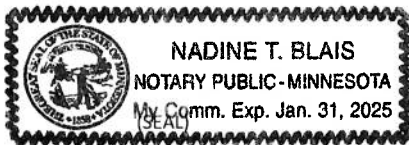
The property will not be transferred, conveyed, sold or subdivided unencumbered by the conditions and restrictions imposed by the approved action.

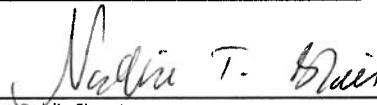

Signature of owner or authorized agent

1/29/24
Date

STATE OF FLORIDA)
COUNTY OF LEE)

Subscribed and sworn to (or affirmed) before me this 29th day of January,
20 24, by Matt Wieber.




Notary Public Signature

Nadine T. Blais
Notary Printed Name

Personally Known _____ or Produced Identification X

Type of Identification Produced: Drivers License My Commission Expires: 1-31-2025



Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

Supplement PH-B

Additional Required Information for a Variance Application

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

Case Number: To be provided by Staff
Project Name: 590 Carlos Circle Variances
Authorized Applicant: Fred Drovdic, RVi Planning + Landscape Architecture
LeePA STRAP Number: 24-46-23-W1-0070E.002A

Current Property Status: Vacant Residential (former unit destroyed by Ian)
Current Zoning: Residential Singlefamily (RC)
Future Land Use Map (FLUM) Category: Mixed Residential (MR)
Comp Plan Density: 6 du/ac Platted Overlay? ☐ Yes ☒ No

Variance is requested from:

LDC Section Number

Title of Section or Subsection

1 block north of Estero Blvd on Carlos Circle

Complete the narrative statements below for EACH variance requested.

PART I Narrative Statements

Request for variance from Table 34-3 _____ (LDC Section number)

Explain the specific regulation contained in this section from which relief is sought:
1. LDC Table 34-3 - Street Setback for RC District
2. LDC Table 34-3 - Rear Setback for RC District
SEE LETTER OF INTENT FOR NARRATIVE DETAILS

Reasons for request

Explain why the variance is needed:
Please refer to the attached LETTER OF INTENT, which outlines the variance requests in detail.
Because of the odd shape and substandard size of the lot the required street and rear setbacks would not allow a livable home to be constructed.

Explain the possible effect the variance, if granted, would have on surrounding properties:
Please refer to the attached LETTER OF INTENT, which outlines the variance request in detail.
This variance would not have any impact on surrounding properties.
The requested street setback is equal to the setback of the destroyed unit.
The actual distance from the leading edge of the building to edge of pavement of Carlos Circle is more than 25 feet.
The requested rear setback improves the setback of the destroyed unit.
The rear setback of the former building was approximately 7.5 feet.
The new building is to have a 15-foot setback.

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

Please refer to the attached LETTER OF INTENT, which outlines the variance request in detail.
In short, the lot is an odd shape that was platted prior to the modern codes.
It is smaller than the minimum lot area and depth of the RC District.
It is a legally non-conforming lot that wished to rebuild post-hurricane.
Because of the odd shape and substandard size the required street and rear setbacks would not allow a livable home to be constructed.

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

Please refer to the attached LETTER OF INTENT, which outlines the variance request in detail.

PART 2 Submittal Requirements

All applications for a variance must submit fourteen (14) copies of this application form and all applicable exhibits.

Required Items

- Public Hearing Request Form
- Supplemental form PH-B
- Site Plan (to scale) including the current use of all existing structures on the site, and those on adjacent properties within 100 feet of the perimeter; and a clear illustration of the proposed variance

Guide to filing PH-B Additional Required Information for a Variance Application

Cover page

Case Number will be inserted by Community Development staff.

Project Name must be the same as the name used on the Request for Public Hearing form.

Applicant must be the same as on the Request for Public Hearing form.

STRAP numbers must be the same as on the Request for Public Hearing form.

Current status of property must be the same as on the Request for Public Hearing form.

“Variance is requested from...” Provide the section number and title of each section of the Fort Myers Beach Land Development Code from which a variance is being sought.

Narrative statements

If the application is for multiple variances, complete all of the narrative statements for each variance that is requested.

Site plan

The site plan must show all existing structures on the site; all existing structures within 100 feet of the perimeter boundary of the site; and a clear illustration of the proposed variance.

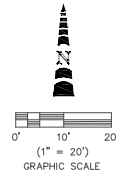
LDC Section 34-87

The guidelines for decision-making regarding a request for a variance are as follows:

1. Whether there are exceptional or extraordinary conditions or circumstances that are inherent to the property in question, or whether the request is for a *de minimis* variance under circumstances or conditions where rigid compliance is not necessary to protect public policy;
2. Whether the exceptional or extraordinary conditions justifying the variance are or are not the result of actions of the applicant taken after the adoption of the regulation in question;
3. Whether the requested variance is the minimum variance to relieve the applicant of an unreasonable burden caused by the application of the regulation in question;
4. Whether granting the variance would be injurious to the neighborhood or otherwise detrimental to the public welfare;
5. Whether the conditions or circumstances of the specific piece of property or the intended use of the property for which the variance is sought are of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.

SURVEY PLAT

OF A PORTION OF SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST, LEE COUNTY, FLORIDA



NOTES:

SURVEY BASED ON THE PLAT OF ISLAND SHORES UNIT No. 4 ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 9 AT PAGE 37, DEEDS ON FILE IN THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA AND EXISTING MONUMENTATION.

BEARINGS BASED ON THE RIGHT OF WAY OF ESTERO BLVD AS BEING S.42°08'33"E.

THE ELEVATIONS SHOWN HEREON ARE NORTH AMERICAN VERTICAL DATUM OF 1988 (N.A.V.D. 88) IN FEET AND DECIMALS THEREOF AND BASED UPON CONTINUOUSLY OPERATING FLORIDA PERMANENT REFERENCE NETWORK (FPRN) STATIONS MAINTAINED BY THE FLORIDA DEPARTMENT OF TRANSPORTATION AND CHECKED TO LOCAL CONSTRUCTION BENCHMARKS.

PARCEL IS LOCATED WITHIN FLOOD ZONE VE, (HAVING A BASE FLOOD ELEVATION OF 13.0') PER FLOOD INSURANCE RATE MAP 120673 0554 G, HAVING AN EFFECTIVE DATE OF NOVEMBER 17, 2022.

THE F.E.M.A. FLOOD ZONE INFORMATION INDICATED HEREON IS BASED ON MAPS SUPPLIED BY THE FEDERAL GOVERNMENT. THIS FLOOD INFORMATION MUST BE VERIFIED WITH ALL PERMITTING REGULATORY ENTITIES PRIOR TO COMMENCING ANY WORK OR APPLICATION DEPENDENT ON SAID FLOOD INFORMATION.

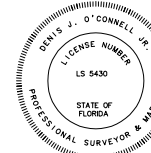
ABOVE GROUND OR UNDERGROUND IMPROVEMENTS, UTILITIES AND/OR FOUNDATIONS WERE NOT LOCATED UNLESS OTHERWISE NOTED.

THIS PLAT PREPARED AS A BOUNDARY AND TOPOGRAPHIC SURVEY AND IS NOT INTENDED TO DELINEATE THE JURISDICTION OR JURISDICTIONAL AREAS OF ANY FEDERAL, STATE, REGIONAL OR LOCAL AGENCY, BOARD, COMMISSION OR OTHER ENTITY.

SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHT-OF-WAY (RECORDED AND UNRECORDED, WRITTEN AND UNWRITTEN).

PARCEL CONTAINS 2,711 SQUARE FEET OR 0.062 ACRES, MORE OR LESS.

DATE OF LAST FIELD WORK: 3-14-23



Denis O'Connell
Digitally signed by Denis O'Connell
Date: 2023.03.17 09:09:23 -04'00'

DENIS J. O'CONNELL, JR.
PROFESSIONAL SURVEYOR AND MAPPER
FLORIDA CERTIFICATE NO. LSF# 5838

NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

THIS SURVEY IS ONLY FOR THE LANDS AS DESCRIBED. IT IS NOT A CERTIFICATE OF TITLE, ZONING, EASEMENTS OR FREEDOM OF ENCUMBRANCES.

THIS SURVEY WAS PREPARED WITHOUT BENEFIT OF A TITLE OPINION. ALL MATTERS OF TITLE SHOULD BE REFERRED TO AN ATTORNEY AT LAW.

TITLE: BOUNDARY AND TOPOGRAPHIC SURVEY



METRON
SURVEYING & MAPPING, LLC
LAND SURVEYORS-PLANNERS
LBM 7071

10970 S. CLEVELAND AVENUE
SUITE #205
FORT MYERS, FLORIDA 33907
PHONE: (239) 275-8575
FAX: (239) 275-8457
www.metronfi.com

FILE NAME:	15394SR.DWG	FIELD BOOK/PAGE:	SEE FILE	PROJECT NO.:	15394	SHEET:	1 OF 1
SURVEY DATE:	3/15/23	DRAWN BY:	BUD	SCALE:	1" = 20'	CHECKED BY:	DJO
						FILE NO. (S-T-R)	24-46-23

LEGEND:

- = IRON ROD (ID AS SHOWN)
- = CONCRETE MONUMENT
- P.O.B. = POINT OF BEGINNING
- SIR = SET IRON ROD (LB #7071)
- FIR = FOUND IRON ROD (ID AS SHOWN)
- FCM = FOUND CONCRETE MONUMENT
- O.R. = OFFICIAL RECORDS BOOK
- P.S. = PLAT BOOK
- PG = PAGE
- EOP = EDGE OF PAVEMENT
- COND = CONCRETE
- ELEV = ELEVATION
- FND = FOUND
- TYP = TYPICAL
- NAVD 88 = NORTH AMERICAN VERTICAL DATUM 1988
- R/W = RIGHT-OF-WAY
- FEMA = FEDERAL EMERGENCY MANAGEMENT AGENCY
- (D) = PER DEED
- (M) = FIELD MEASURED
- Ⓢ = WATER METER
- Ⓣ = TELEPHONE SERVICE BOX
- +3.7' = SPOT ELEVATION

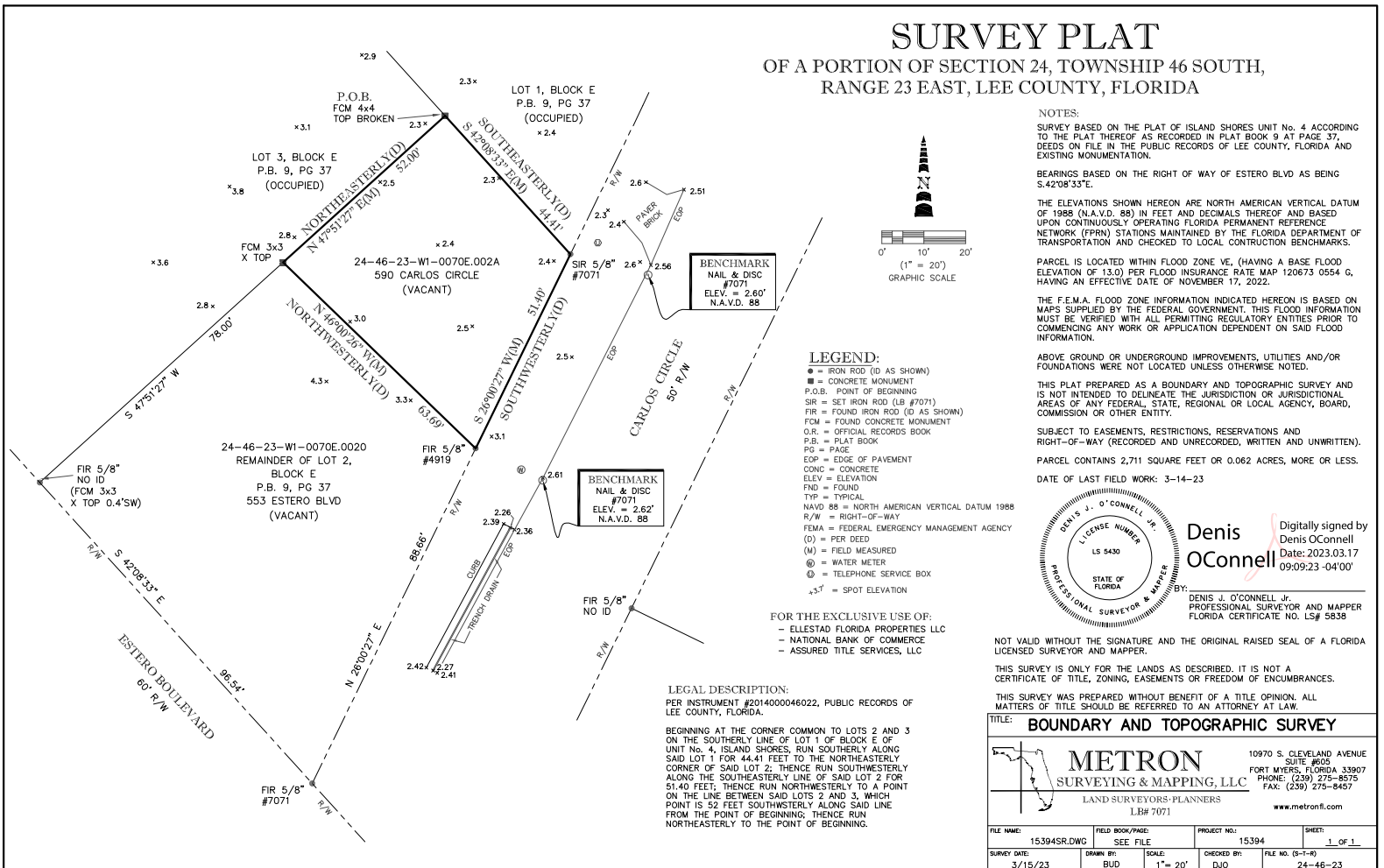
FOR THE EXCLUSIVE USE OF:

- ELLESTAD FLORIDA PROPERTIES LLC
- NATIONAL BANK OF COMMERCE
- ASSURED TITLE SERVICES, LLC

LEGAL DESCRIPTION:

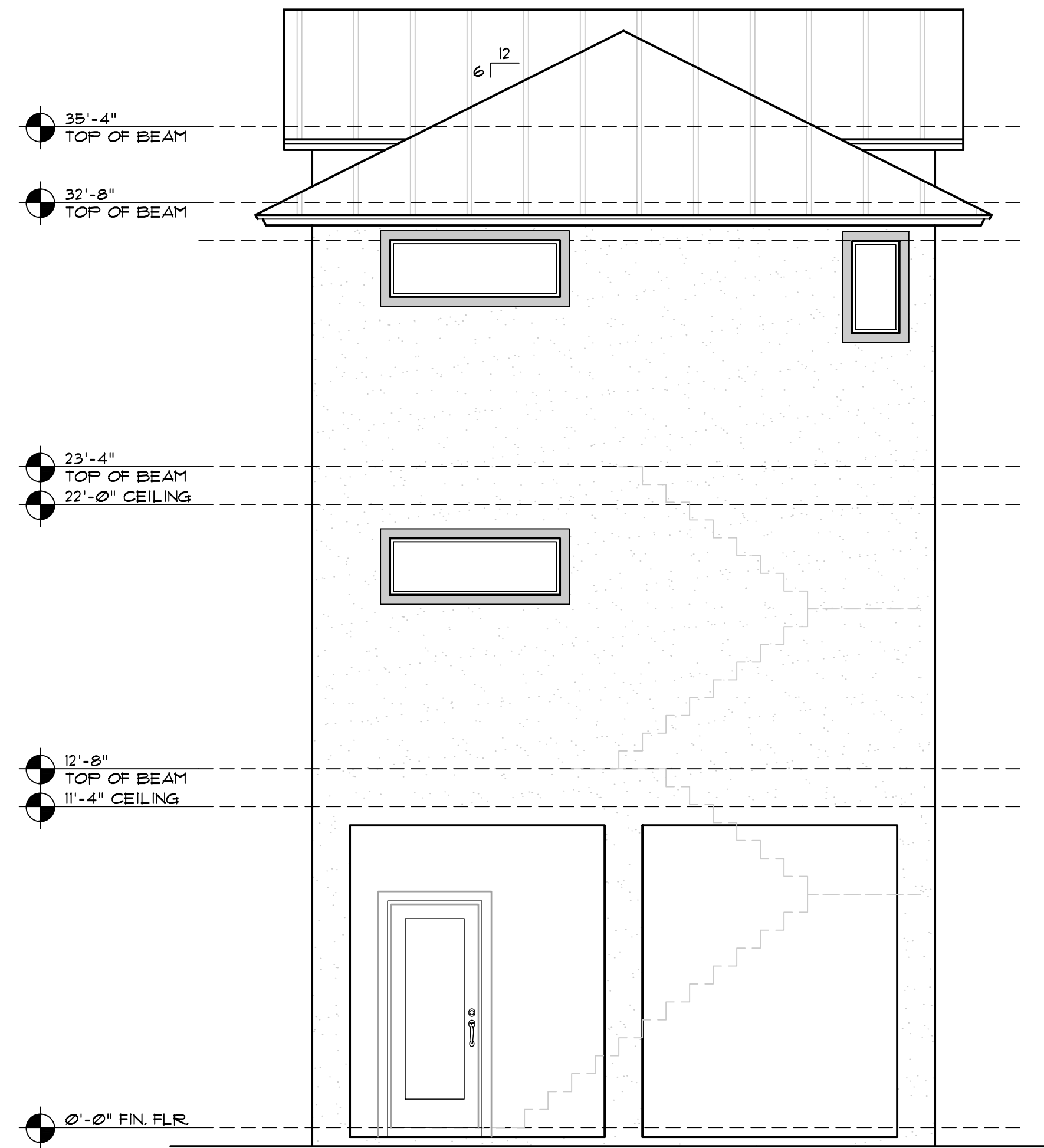
PER INSTRUMENT #2014000046022, PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

BEGINNING AT THE CORNER COMMON TO LOTS 2 AND 3 ON THE SOUTHERLY LINE OF LOT 1 OF BLOCK E OF UNIT No. 4, ISLAND SHORES, RUN SOUTHERLY ALONG SAID LOT 1 FOR 44.41 FEET TO THE NORTHEASTLY CORNER OF SAID LOT 2; THENCE RUN SOUTHWESTERLY ALONG THE SOUTHEASTLY LINE OF SAID LOT 2 FOR 51.40 FEET; THENCE RUN NORTHWESTERLY TO A POINT ON THE LINE BETWEEN SAID LOTS 2 AND 3, WHICH POINT IS 52 FEET SOUTHWESTERLY ALONG SAID LINE FROM THE POINT OF BEGINNING; THENCE RUN NORTHEASTERLY TO THE POINT OF BEGINNING.





FRONT ELEVATION



RIGHT-SIDE ELEVATION

ELLESTAD23-02

SCALE:
1/4" = 1'-0"

DATE:
JANUARY 23, 2024

SHEET
A1

CONRAD ELLESTAD
590 CARLOS CIR., FORT MYERS BEACH, FL 33931

EXTERIOR ELEVATIONS



LLIS ENGINEERING, LLC
SW Florida: 2140 Palm Beach Blvd, Suite 11, 33509
Central FL: 272 N. WINDY TOWER, Fort Meade, FL 33708
www.LLIS.com
PH: 336-695-9244
FAX: 336-695-9242

RESIDENTIAL & COMMERCIAL
ENGINEERING & DESIGN SERVICES

CA NO.: 68653
CA NO.: 29005

APPROVED

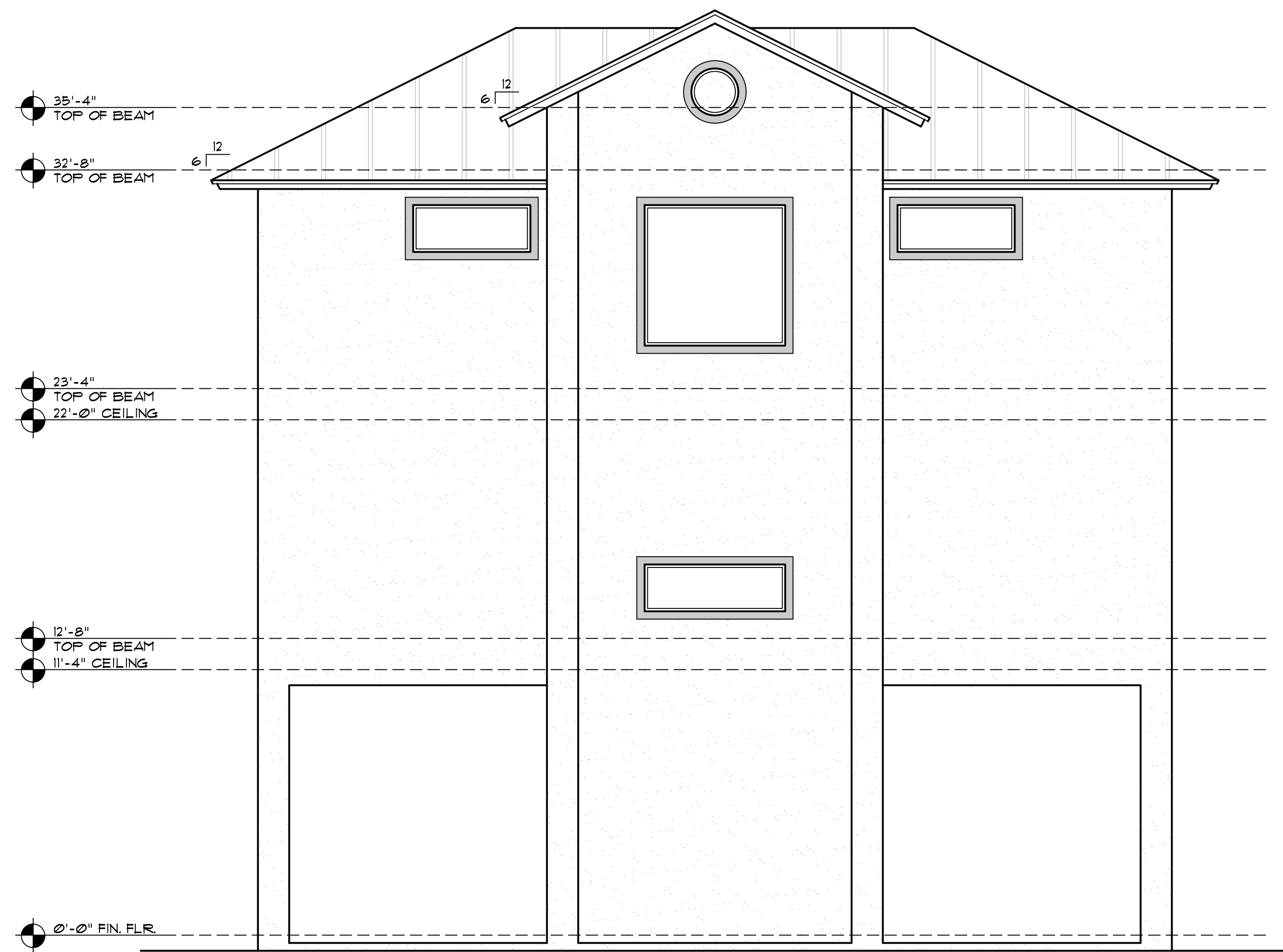
ROBERT W. CASE
FLORIDA P.E. #44643
VALID ONLY WITH SEAL

REVISION:

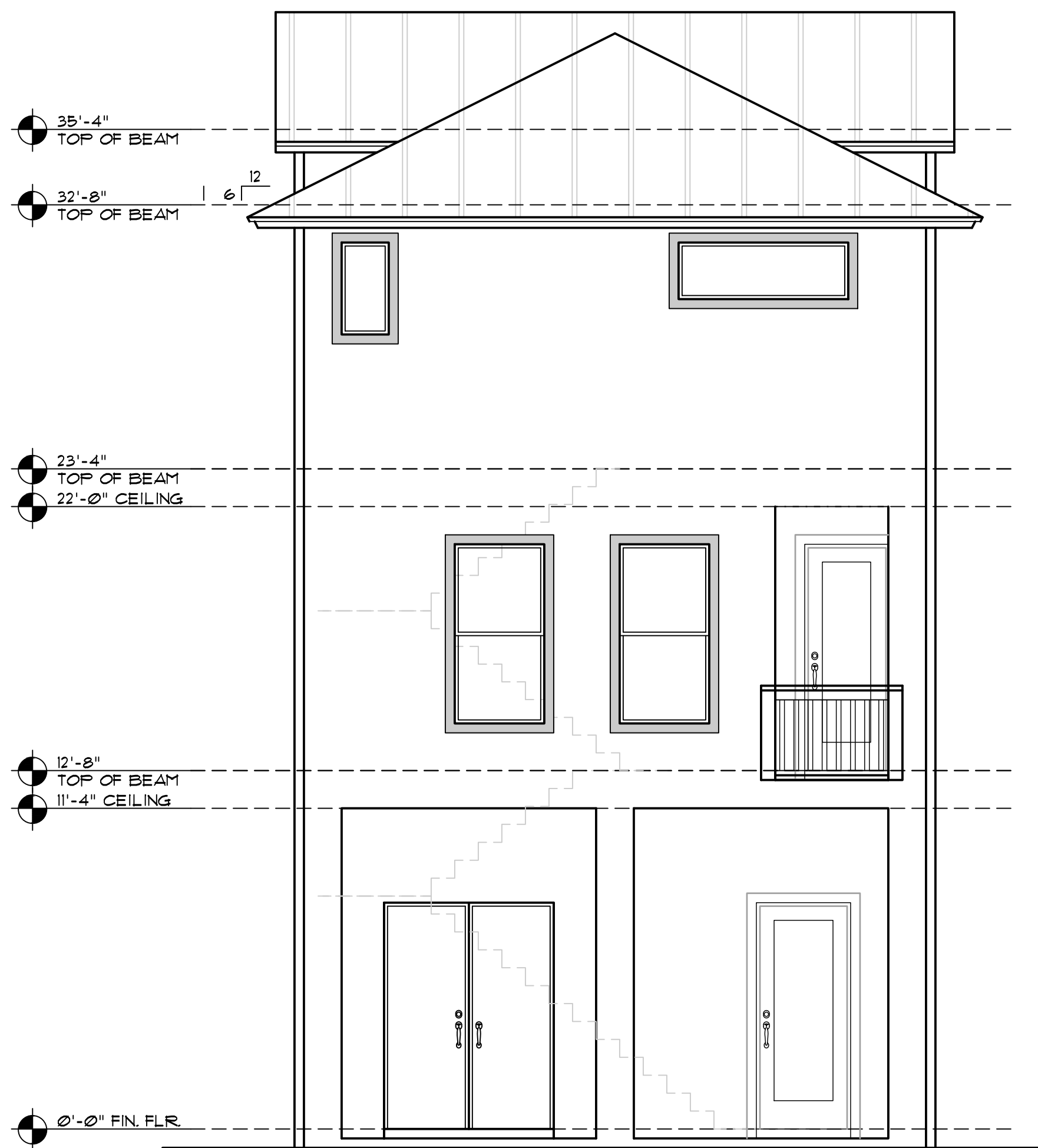
DATE:

NO.:

IF ANY ERRORS OR OMISSIONS EXIST IN THESE DRAWINGS, THE ENGINEER SHALL BE RESPONSIBLE FOR CORRECTING THEM. THE ENGINEER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES. THE ENGINEER SHALL BE RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION PROVIDED TO HIM BY THE CLIENT. THE ENGINEER SHALL BE RESPONSIBLE FOR THE COMPLETION OF THE DRAWINGS AND FOR THE RESULTS THEREOF. THE ENGINEER SHALL BE RESPONSIBLE FOR THE PROTECTION OF THE DRAWINGS AND FOR THE RESULTS THEREOF. THE ENGINEER SHALL BE RESPONSIBLE FOR THE PROTECTION OF THE DRAWINGS AND FOR THE RESULTS THEREOF. THE ENGINEER SHALL BE RESPONSIBLE FOR THE PROTECTION OF THE DRAWINGS AND FOR THE RESULTS THEREOF.



REAR ELEVATION



LEFT-SIDE ELEVATION

CONRAD ELLESTAD

590 CARLOS CIR., FORT MYERS BEACH, FL 33931

EXTERIOR ELEVATIONS



LIS
ENGINEERING, LLC

CA NO.: 6853
CA NO.: 29005

**RESIDENTIAL & COMMERCIAL
ENGINEERING & DESIGN SERVICES**

www.LIS-FL.com
www.LINARCHITECT.com

Ph: 239-669-9244
Ph: 321-244-9242
Ph: 321-244-9216

SCALE: 1/4" = 1'-0"

DATE: JANUARY 22, 2024

SHEET

A 2

1. **Request:**

Meeting Date: May 6, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING / APPROVING WITH CONDITIONS / DENYING SPECIAL EXCEPTION SEZ20240024 TO ALLOW RECONSTRUCTION OF A WOODEN LANDSCAPE WALL IN THE ENVIRONMENTALLY CRITICAL (EC) ZONING DISTRICT, WITH CONDITIONS, FOR THE PROPERTY LOCATED AT 6614 ESTERO BOULEVARD; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, AND AN EFFECTIVE DATE.

Why the action is necessary:

The TC hears special exception requests and makes decision

What the action accomplishes:

The Town Council will consider the recommendation of the LPA.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Jason Smalley, Senior Planner

5. **Background:**

The applicant is proposing the replacement of a 245-foot wooden landscaping wall fully within the Environmentally Critical (EC) zoning district. This feature is part of the common element for the Island Winds Condominium and was in existence in the proposed locations, prior to Hurricane Ian.

Attachments:

1. 24-90, SEZ20240024, 6614 Estero Blvd (1) NS 4302024
2. Staff Report
3. Exhibit B: Boundary Survey
4. Exhibit C1: Application
5. Exhibit C2: Application Supplemental

Financial Impact:

unknown

6. **Alternative Action**

APPROVE WITH CONDITIONS

7. **Management Recommendations:**

Approval

8. **Recommended Approval:**

Kendra Rosa, Zoning Coordinator
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 4/30/2024
Approved - 4/30/2024
Approved - 5/1/2024
Final Approval - 5/1/2024

, RESOLUTION NUMBER 24-90

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING / APPROVING WITH CONDITIONS / DENYING SPECIAL EXCEPTION SEZ20240024 TO ALLOW RECONSTRUCTION OF A WOODEN LANDSCAPE WALL, A POOL DECK, AND WALKWAYS IN THE ENVIRONMENTALLY CRITICAL (EC) ZONING DISTRICT, WITH CONDITIONS, FOR THE PROPERTY LOCATED AT 6614 ESTERO BOULEVARD; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, AND AN EFFECTIVE DATE.

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

WHEREAS, Article X of the Town Charter of the Town of Fort Myers Beach 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, Island Winds Condominium Association is requesting a special exception for the reconstruction of major accessory structures that were destroyed during hurricane Ian, including a pool deck, walkways, and a fence on its property, which is located in the Environmentally Critical zoning district; and

WHEREAS, the STRAP number for the subject property is 34-46-24-W4-02100.00CE;

WHEREAS, the property is located in the “Recreation” category of the Future Land Use Map of the Comprehensive Plan and the “Environmentally Critical” zoning district of the Official Zoning Map of the Town of Fort Myers Beach, Florida; and

WHEREAS, a public hearing on this matter was legally noticed and held before the Local Planning Agency (LPA) on April 9, 2024, and at said hearing the LPA gave full and complete consideration to the request of Applicant, recommendations of staff, the documents in the file, and the testimony of all interested persons, as required by Section 34-88 of the LDC. The LPA found that the request is consistent with the comprehensive plan and the requirements of the LDC and voted 6-0 with one member not present to recommend approval with conditions of the special exception; and

WHEREAS, on May 6, 2024 the Town Council held a duly noticed public hearing to fully consider the request of the Applicant, the recommendations of Town staff and the LPA, the documents in the record, and testimony of all interested persons as required by Section 34-88 of the LDC; and

WHEREAS, the Town Council determined it is/is not in the best interest of the Town to approve/approve with conditions/deny the request.

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

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

Section 2. The Town Council determines the Applicant **did/did not** meet its burden of proof that the requested Special Exception **does/does not** meet the requirements of the Town Comprehensive Plan and LDC, and approving the Special Exception **is/is not** in the best interest of the Town to approve. Based upon the recommendations, testimony, and evidence presented by the Applicant, Town staff, and interested parties and public, the Town Council **approves/approves with conditions/denies** the Special Exception for the reconstruction of a pool deck, walkways and a fence in the Environmentally Critical zoning district.

Section 3. In approving the Special Exception, the Town Council makes the following findings and conclusions in accordance with the requirements of Section 34-88 of the LDC:

- A. Changed or changing conditions which make approval of the request appropriate.
- B. The request is consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan.
- C. The request meets all performance and locational standards for the proposed use.
- D. The request will protect, conserve, or preserve environmentally critical areas and natural resources.
- E. The request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
- F. The requested use will be in compliance with the applicable general zoning provisions and supplemental regulations set forth in Chapter 34 of the Land Development Code; and

In accordance with the additional regulations and considerations found in Section 6-366 of the LDC:

- A. Any repairs must comply with all relevant local and state floodplain regulations.
- B. Repairs may not damage existing dunes or dune vegetation.
- C. Repairs, other than those limited to emergency repairs to enclose a damaged structure, may not be completed during sea turtle nesting season.
- D. A new special exception must be applied for each time the structure is repaired.

Section 4. If the Town Council approves/approves with conditions/denies the requested Special Exception and the following conditions of approval are imposed on the Applicant and the Property:

- A. Additional repairs to major structures in the EC zoning district will require a new special exception.

- B. Approval of this Special Exception does not give the Applicant an undeniable right to permit approval. Development or redevelopment of the Property must comply with all applicable requirements of the Fort Myers Beach Comprehensive Plan and LDC in effect at the time of permit approval, except as specifically modified herein.
- C. The applicant must apply for and receive all state and local permits required for the reconstruction of all proposed structures.
- D. Any violation of the conditions of approval shall render the special exception null and void.

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

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

ADOPTED this ____ day of _____, 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, Town Attorney

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



Town of Fort Myers Beach
COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT

TYPE OF CASE: Special Exception

CASE NUMBER: SEZ20240024

CASE NAME: Special Exception for the replacement/repair of a wood retaining wall fully or partially in the EC zoning.

LPA

HEARING DATE: April 9, 2024 at 9:00 AM

STAFF

RECOMMENDATION: Approve With Conditions

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

I. APPLICATION SUMMARY

Applicant/Owner: Island Winds Condominium Association

Requests: To return the wood retaining wall to pre-Ian condition

Physical Address: 6614 Estero Blvd

STRAP #: 34-46-24-W4-02100.00CE

FLU: Recreation

Zoning: Environmentally Critical

Adjacent zoning and land uses:

North:	Environmentally Critical Common Element of Seawatch on the Beach Resort
South:	Environmentally Critical (EC) Common Element of Gullwing Beach Resort
East:	Residential Multifamily (RM) Common Element of Island Winds Condominium
West:	Environmentally Critical (EC) Beach

II. BACKGROUND AND ANALYSIS

Background:

The applicant is proposing the replacement of a wood retaining wall partially or fully within the Environmentally Critical (EC) zoning district. The retaining wall is part of the common element for the Island Winds Condominium and was in existence in the proposed location, prior to Hurricane Ian.

This structure is considered major accessory structure and can be replaced in the EC zoning district with approval of a special exception, per Section 34-652 (e) of the land development code. The EC zoning district starts at the 1978 Coastal Construction Control Line (CCCL) and extends seaward to the water. The attached siteplan shows the CCCL as the solid blue line running through the back portion of the condominium property and running generally parallel to the retaining wall, with a maximum separation between the wall and CCCL of approximately 12-feet towards the south-southwest corner of the property.

Analysis:

Per the applicant's submittal, the building and common areas were developed in 1972 and 1974, while the application doesn't address when the wooden retaining wall was constructed staff can confirm through Lee Property Appraiser's aerials that the wall existed in 1998, the first year available with high-resolution photography.

The condominium has met the application criteria of providing notice to the condominium ownership of this special exception application and staff has received signed letters of acknowledgement from more than the code required 75% of owners.

The LDC was recently updated to allow major primary and accessory structures to be repaired in the EC zoning district with the approval of a special exception. Prior to the code change, only single-family residences could be repaired in the EC zoning district.

Neighborhood Compatibility:

A review of the aerials up and down the beach indicate that there are a number of primary and accessory structure that extend over the 1978 CCCL. The aerials are not precise but staff has fielded questions from condos and homeowners about the process of obtaining Special Exceptions for existing structures, indicating that there is a non-insignificant number of lots which may be affected. These residents may request to repair the primary and accessory structure in the same location or may choose to move the structures landward of the CCCL.

Findings and Conclusions:

Section 6-366(b)(3) Regulations and Considerations

LDC Section 6-366 includes additional regulations and considerations for special exception approval of repairs in the EC zoning district:

- a. Any repairs must comply with all relevant local and state floodplain regulations.*

The applicant has been coordinating with staff, and their own contractors to ensure compliance with all floodplain regulations related to rebuild of the retaining wall, and the eventual placement of a fence on the landward side of the 1978 CCCL.

- b. Repairs may not damage existing dunes or dune vegetation.*

The repairs are proposed in conjunctions with Environmental review to ensure that no dunes or native vegetation will be impacted.

- c. Repairs, other than those limited to emergency repairs to enclose a damaged structure may not be completed during sea turtle nesting season.*

Sea turtle nesting season will begin May 1st, and will end on October 31st. Staff will ensure that the applicant is aware that even if provided approval to replace the retaining wall that it must be done outside of turtle nesting season.

The condo has stated they are aware of this limitation in their application.

- d. A new special exception must be applied for each time the structure is repaired.*

This will be a condition of the special exception approval.

Special Exception Findings

LDC Sec. 34-88(b) sets forth the required findings and conclusions for the approval of a special exception:

- 1) *Whether there exist changed or changing conditions which make approval of the request appropriate.*

The retaining wall in the EC was severely damaged during Ian. While construction seaward of the CCCL should be limited, this request is to rebuild an existing structure that will only minimally contribute to future flooding, and which existed with few problems before the storm.

- 2) *Whether the request is consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan.*

Policy 5-D-1 states: Development (other than minor structures) shall not be allowed seaward of the 1978 Coastal Construction Control Line. Development seaward of the 1991 Coastal Construction Control Line may be permitted provided it complies with this comprehensive plan and all state and local permitting requirements.

This proposed redevelopment does not create any new development or change the location from what previously existed on the site. Therefore staff believes that this proposed request does not fall within the definition of development in the Town's code of ordinance:

- The LDC defines *Development* as (1) A subdivision, as defined in this chapter; or (2) Any improvement to land, as defined in this chapter.
- The LDC defines *Improvement* to land as any change to land or to any structure on the land, and shall include any movement or grading of land, except grading which is incidental to the removal of exotic vegetation and which is not prohibited by ch. 22 of this LDC; clearing of indigenous plant communities; and the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any structure; provided, however, that any change to a building which does not involve a change in the building floor area shall not be deemed an improvement to land.

- 3) *Whether the request meets or exceeds all performance and locational standards for the proposed use.*

The request will comply with local, state, and federal air, noise and water pollution standards. It will not adversely affect water quality and it will not create a nuisance to adjacent properties.

- 4) *Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.*

The request will maintain what was previously constructed on this property. It will not have an additional negative impact.

- 5) *Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.*

There is no anticipated negative impact or injury to surrounding properties.

- 6) *Whether a requested use will be in compliance with the applicable general zoning provisions and supplemental regulations set forth in Chapter 34 of the Land Development Code.*

The EC zoning district allows only passive, movable structures, no new major structures of any kind are allowed, other than dune walkovers through a special exception. Prior to the recent code change, only repairs to primary structures were permitted through a special exception. The recent code amendment allows replacement of major accessory structures also.

III. RECOMMENDATION

Staff finds that the special exception for reconstruction of existing structures in the EC zoning district is in compliance with item Sec. 34-88(b)(1). Therefore, staff recommends **APPROVAL WITH CONDITIONS** of SEZ20240024 for the reconstruction of a retaining wall.

At the April 9th LPA meeting the Special Exception was recommended for approval with conditions by a 6-0 vote, with one member not present.

IV. CONDITIONS OF APPROVAL

- 1) Should the retaining wall be demolished, the approved Special Exception will become null and void and the new structure will be expected to be build to meet the codes at the time of review, landward of the CCCL
- 2) All other LDC requirements shall be met.

Staff Report Exhibits:

A – Resolution 24-XXX

B – Survey/ Site Plan

C1 & C2 – SEZ Application Packet

J:\2017\171206 - ISLAND WINDS\DRAWING\171206-BNDRY 5-10-18 DWG 5/15/2018 9:01 AM

NOTES

1. THE CERTIFICATE OF AUTHORIZATION NUMBER OF CARDNO, INC. IS LB-7975.
2. NO ABSTRACT OF TITLE OR TITLE INSURANCE COMMITMENT WAS REVIEWED AS PART OF THIS SURVEY.
3. THIS SURVEY IS SUBJECT TO ANY FACTS THAT MAY BE DISCLOSED BY A FULL AND ACCURATE TITLE SEARCH.
4. IMPROVEMENTS ON OR ADJACENT TO THE SUBJECT PARCEL HAVE NOT BEEN LOCATED EXCEPT AS SHOWN. NO SUB-SURFACE FOUNDATIONS HAVE BEEN LOCATED AS PART OF THIS SURVEY.
5. THERE ARE NO VISIBLE ENCROACHMENTS OTHER THAN ANY SHOWN.
6. THIS SURVEY DOES NOT MAKE ANY REPRESENTATIONS AS TO ZONING OR DEVELOPMENT RESTRICTIONS ON THE SUBJECT PARCEL.
7. THIS SURVEY DOES NOT REFLECT CHEMICAL CHARACTERISTICS OF THE SURVEYED PARCEL.
8. ALL NOTED RECORDING REFERENCES ARE FROM THE PUBLIC RECORDS OF LEE COUNTY.
9. BEARINGS SHOWN ON THIS SURVEY MAP ARE STATE PLANE COORDINATE FOR THE FLORIDA WEST ZONE, NAD '83/90 ADJUSTMENT BASED ON TIES TO THE NGS HIGH PRECISION CONTROL POINT "BOOB 2", PID # AD1364. THE BASIS OF BEARING IS N 50°39'58" E AS BEING THE SOUTHEASTERLY LINE OF BLOCK "I", UNIT NO. 2, MCPHIE PARK.
10. THE ON-SITE HORIZONTAL CONTROL AND TIES TO CONTROL MONUMENTS SHOWN WERE ESTABLISHED BY RTK (REAL TIME KINEMATIC) GPS METHODS USING A TRIMBLE MODEL R8 UNIT.
11. ALL DISTANCES ARE IN FEET AND DECIMALS THEREOF UNLESS OTHERWISE NOTED.
12. COORDINATES, ELEVATIONS, BEARINGS AND DISTANCES SHOWN ARE MEASURED OR CALCULATED FROM FIELD TIES UNLESS OTHERWISE NOTED.
13. DATE OF LAST FIELD WORK: 5-9-18; FIELD BOOK 499, PAGES 47-48.
14. THIS SURVEY OR THE COPIES THEREOF ARE NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER. OTHERWISE THIS MAP IS FOR INFORMATIONAL PURPOSES ONLY.
15. ADDITIONS OR DELETIONS TO SURVEY MAPS OR REPORTS BY OTHER THAN THE SIGNING PARTY OR PARTIES IS PROHIBITED WITHOUT THE WRITTEN CONSENT OF THE SIGNING PARTY OR PARTIES.
16. NO ENVIRONMENTAL AUDIT OR JURISDICTIONAL DELINEATION WAS MADE AS PART OF THIS SURVEY.
17. ANY ADJOINING DEED CITES ARE FOR "INFORMATIONAL PURPOSES ONLY"; NO SURVEY WAS MADE OF ADJOINING LANDS.
18. THIS MAP IS INTENDED TO BE DISPLAYED AT A SCALE OF 1" = 60' OR SMALLER.
19. BACKGROUND AERIAL IMAGE SHOWN IN THIS BOUNDARY SURVEY MAP WAS OBTAINED FROM THE LEE COUNTY GOVERNMENT GIS WEB SITE, DATED 2017, RELATIVE POSITIONAL ACCURACY OF AERIAL IMAGERY WAS NOT FIELD VERIFIED. IMAGE IS FOR INFORMATIONAL PURPOSES ONLY.
20. THE PURPOSE OF THIS SURVEY IS TO PERFORM A BOUNDARY SURVEY OF PARCELS "A" AND "B" DESCRIBED IN OFFICIAL RECORDS BOOK 1051, PAGE 2002, LEE COUNTY RECORDS AND SHOW SEVERAL POTENTIAL CLAIMS WITHIN THE ACCRETED BEACH ALONG THE SOUTH LINE OF ISLAND WINDS CONDOMINIUM PROPERTY.
21. RIPARIAN LINE PERPENDICULAR TO CURRENT MEAN HIGH WATER LINE HAS NOT BEEN SHOWN.
22. ELEVATIONS SHOWN HEREON ARE BASED ON NAVD 88 AND TIES TO NGS BENCHMARK "BOOB 2" (PID # AD1364) ELEVATION = 5.03".

BOUNDARY SURVEY
A PARCEL LYING IN GOVERNMENT LOT 4
SECTION 33, TOWNSHIP 46 SOUTH, RANGE 24 EAST
AND A PARCEL LYING IN GOVERNMENT LOT 1
SECTION 34, TOWNSHIP 46 SOUTH, RANGE 24 EAST
TOWN OF FORT MYERS BEACH
LEE COUNTY, FLORIDA



LOCATION MAP
N.T.S.

ABBREVIATIONS:

AC. = ACRE	MH = MANHOLE
A.C. = AIR CONDITIONER	MHWL = MEAN HIGH WATER LINE
A.K.A. = ALSO KNOWN AS	MISC. = MISCELLANEOUS
ALUM. = ALUMINUM	MON = MONUMENT
APPR. = APPROXIMATE	NAD = NORTH AMERICAN DATUM
AVE. = AVENUE	N.A.V.D. = NORTH AMERICAN VERTICAL DATUM
BLDG. = BUILDING	NGS = NATIONAL GEODETIC SURVEY
BLVD. = BOULEVARD	N.G.V.D. = NATIONAL GEODETIC VERTICAL DATUM (1929)
BM = BENCHMARK	No. = NUMBER
BOC = BACK OF CURB	N.T.S. = NOT TO SCALE
BOW = BACK OF WALK	N.T.T. = NAIL & TIN TAB
BRG. = BEARING	O/H = OVERHANG
BSM = BUREAU OF SURVEYING AND MAPPING	O.H.W.L. = ORDINARY HIGH WATER LINE
(C) = CALCULATED	O.H.W.M. = ORDINARY HIGH WATER MARK
CATV = CABLE TELEVISION	O.R. = OFFICIAL RECORD BOOK / PAGE
CB = CATCH BASIN	(P) = PLAT
CBS = CONCRETE BLOCK STRUCTURE	PB = PLAT BOOK
C.C.R. = CERTIFIED CORNER RECORD	P.C. = POINT OF CURVATURE
CDB. = CHORD BEARING	PCP = PERMANENT CONTROL POINT
CH. = CHORD	PG (S) . = PAGE(S)
CLF = CHAIN LINK FENCE	P.I. = POINT OF INTERSECTION
CM = CONCRETE MONUMENT	PKN&D = PARKER-KALON NAIL & DISK
CMP = CORRUGATED METAL PIPE	PKWY. = PARKWAY
C.O. = CLEANOUT	PL = PROPERTY LINE
CONC. = CONCRETE	PLS = PROFESSIONAL LAND SURVEYOR
CONT. = CONTROL	P.O.B. = POINT OF BEGINNING
COR. = CORNER	P.O.C. = POINT OF COMMENCEMENT
CORP. = CORPORATION	P.O.T. = POINT OF TERMINUS
C.P. = CONTROL POINT	PP = POWER POLE
C.R. = COUNTY ROAD	P.R.M. = PERMANENT REFERENCE MONUMENT
CT. = COURT	PROP. = PROPERTY
C.U.E. = COUNTY UTILITY EASEMENT	PSM = PROFESSIONAL SURVEYOR AND MAPPER
(D) = DEED	PT. = POINT
D.E. = DRAINAGE EASEMENT	P.T. = POINT OF TANGENCY
(DESC.) = DESCRIPTION	P.U.E. = PUBLIC UTILITY EASEMENT
DH = DRILL HOLE	PVC = POLY VINYL CHLORIDE
DIA. = DIAMETER	R = RADIUS OR RIGHT
DR. = DRIVE	(R) = RECORD
DWG. = DRAWING	RCP = REINFORCED CONCRETE PIPE
EL. = ELEVATION	RGE = RANGE
ELEC. = ELECTRIC	RLS = REGISTERED LAND SURVEYOR
EOP = EDGE OF PAVEMENT	R.R. = RAILROAD
EOW = EDGE OF WATER	RT = RIGHT
ESMT. = EASEMENT	RTA = RIGHT ANGLE
EXIST. = EXISTING	R/W = RIGHT-OF-WAY
(F) = FIELD	SEC. = SECTION
FDEP = FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION	S.F. = SQUARE FEET
FDOT = FLORIDA DEPARTMENT OF TRANSPORTATION	SWFMD = SOUTH FLORIDA WATER MANAGEMENT DISTRICT
FEMA = FEDERAL EMERGENCY MANAGEMENT AGENCY	SHT. = SHEET
F.F. = FINISHED FLOOR	S.R. = STATE ROAD
FND = FOUND	S.S. = SANITARY SEWER
FPL OR FP&L = FLORIDA POWER & LIGHT	STA. = STATION
F.S. = FLORIDA STATUTES	ST. = STREET
FT. = FOOT / FEET	SWFMD = SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT
GLO = GENERAL LAND OFFICE	T = TANGENT
GPS = GLOBAL POSITIONING SYSTEM	TEL = TELEPHONE
I.D. = IDENTIFICATION	TIIF = TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA
I.D.D. = IONA DRAINAGE DISTRICT	TIITF = BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND OF THE STATE OF FLORIDA
I.N. = INSTRUMENT NUMBER	TOB = TOP OF BANK
INC. = INCORPORATED	TOE = TOE OF SLOPE
INV. = INVERT	T.P. = TRAVERSE POINT
I.P. = IRON PIPE	TRANS. = TRANSITION
IR = IRON ROD (5/8" DIA. U.O.N.)	TWP = TOWNSHIP
IRC OR IR&C = IRON ROD & CAP	TYP = TYPICAL
IRR. = IRRIGATION	U.E. = UTILITY EASEMENT
L = LENGTH	U.O.N. = UNLESS OTHERWISE NOTED
LABINS = LAND BOUNDARY INFORMATION SYSTEM (STATE OF FLORIDA)	USGS = UNITED STATES GEOLOGICAL SURVEY
LAT = LATITUDE	w/ = WITH
LB = LICENSED BUSINESS	Y.D. = YARD DRAIN
LN. = LANE	Δ = DELTA ANGLE
LONG = LONGITUDE	± = MORE OR LESS
LS = LICENSED SURVEYOR	# = NUMBER
LT = LEFT	** = STAMPING OF CAP OR DISK
(M) = MEASURED	
MAG = MAGNETIC	
ME = MITERED END	

DESCRIPTION OF LANDS SURVEYED (AS FURNISHED):

PARCEL "A"

A PARCEL OF LAND LYING IN GOVERNMENT LOT 4, OF SECTION 33, AND GOVERNMENT LOT 1, OF SECTION 34, TOWNSHIP 46 SOUTH, RANGE 24 EAST ON ESTERO ISLAND, WHICH PARCEL IS DESCRIBED AS FOLLOWS:

BEGIN AT A POINT MARKED BY A CONCRETE MONUMENT ON THE SOUTHWESTERLY LINE OF THE COUNTY ROAD R/W CONVEYED BY DEED RECORDED IN DEED BOOK 189, AT PAGE 161 OF THE PUBLIC RECORDS OF LEE COUNTY, WHICH POINT IS 1,755 FEET MEASURED ALONG A PERPENDICULAR SOUTHEASTERLY FROM THE SOUTHEASTERLY LINE OF BLOCK "I", UNIT NO. 2, MCPHIE PARK, ACCORDING TO A MAP OR PLAT THEREOF RECORDED IN PLAT BOOK 8, AT PAGE 59, OF THE PUBLIC RECORDS OF LEE COUNTY; THENCE RUN SOUTHEASTERLY ALONG SAID ROAD R/W LINE FOR 151.65 FEET, MORE OR LESS, TO A CONCRETE MONUMENT AND AN INTERSECTION WITH A LINE PARALLEL TO SAID SOUTHEASTERLY LINE OF BLOCK "I" AND 150.0 FEET SOUTHEASTERLY, MEASURED ALONG A PERPENDICULAR TO SAID LINE OF BLOCK "I" FROM THE POINT OF BEGINNING; THENCE RUN SOUTHWESTERLY ALONG A LINE PARALLEL TO SAID SOUTHEASTERLY LINE OF BLOCK "I" FOR 500 FEET, MORE OR LESS, TO THE WATERS OF THE GULF OF MEXICO; THENCE RUN NORTHWESTERLY ALONG SAID WATERS FOR 150.0 FEET, MORE OR LESS, TO AN INTERSECTION WITH A LINE THROUGH THE POINT OF BEGINNING PARALLEL TO THE AFORESAID SOUTHEASTERLY LINE OF BLOCK "I"; THENCE RUN NORTHEASTERLY ALONG SAID LINE FOR 494.0 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

PARCEL "B"

FROM A POINT ON THE WESTERLY SIDE OF ESTERO BOULEVARD AS DESCRIBED IN DEED BOOK 189, PAGE 161 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, WHICH POINT IS 1,452.16 FEET SOUTHEASTERLY AS MEASURED AT RIGHT ANGLES, FROM THE SOUTHEASTERLY LINE OF BLOCK "I", UNIT 2, MCPHIE PARK, ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN PLAT BOOK 8 AT PAGE 59, OF SAID PUBLIC RECORDS; THENCE RUN SOUTHWESTERLY PARALLEL TO SAID SOUTHEASTERLY LINE OF BLOCK "I" 490.0 FEET, MORE OR LESS, TO THE WATERS OF THE GULF OF MEXICO; THENCE RUN SOUTHEASTERLY ALONG THE MEANDERS OF THE WATERS OF THE GULF OF MEXICO TO AN INTERSECTION WITH A LINE 1,755 FEET SOUTHEASTERLY, AS MEASURED AT RIGHT ANGLES, FROM THE SAID SOUTHEASTERLY LINE OF BLOCK "I"; THENCE RUN NORTHEASTERLY, PARALLEL TO SAID SOUTHEASTERLY LINE OF BLOCK "I", 477.0 FEET, MORE OR LESS, TO THE WESTERLY SIDE OF ESTERO BOULEVARD; THENCE RUN NORTHWESTERLY ALONG SAID WESTERLY SIDE OF ESTERO BOULEVARD FOR 306.11 FEET TO THE POINT OF BEGINNING, LYING AND BEING IN SECTION 33 AND 34, TOWNSHIP 46 SOUTH, RANGE 24 EAST; EXCEPT THE FOLLOWING DESCRIBED PART OR PORTION OF THE IMMEDIATELY HEREINABOVE DESCRIBED PROPERTY.

FROM A POINT ON THE WESTERLY SIDE OF ESTERO BOULEVARD, AS SAID BOULEVARD IS DESCRIBED IN DEED BOOK 189, PAGE 161, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, WHICH POINT IS 1,452.16 FEET SOUTHEASTERLY AS MEASURED AT RIGHT ANGLES FROM THE SOUTHEASTERLY LINE OF BLOCK "I", UNIT 2, MCPHIE PARK, PER PLAT THEREOF RECORDED IN PLAT BOOK 8, PAGE 59, OF LEE COUNTY PUBLIC RECORDS; THENCE RUN SOUTHWESTERLY PARALLEL TO SAID SOUTHEASTERLY LINE OF SAID BLOCK "I" A DISTANCE OF 490.0 FEET, MORE OR LESS, TO THE WATERS OF THE GULF OF MEXICO; THENCE RUN SOUTHEASTERLY ALONG THE MEANDERS OF THE WATERS OF THE GULF OF MEXICO TO AN INTERSECTION WITH A LINE 150.0 FEET SOUTHEASTERLY AS MEASURED AT RIGHT ANGLES FROM THE LAST MENTIONED COURSE; THENCE RUN NORTHEASTERLY PARALLEL TO SAID SOUTHEASTERLY LINE OF BLOCK "I" 490.0 FEET, MORE OR LESS, TO THE WESTERLY SIDE OF ESTERO BOULEVARD; THENCE RUN NORTHWESTERLY ALONG SAID WESTERLY SIDE OF ESTERO BOULEVARD TO THE POINT OF BEGINNING.

LEGEND:

	AIR RELEASE VALVE		FLAG POLE		FOUND CONCRETE MONUMENT
	BACKFLOW PREVENTER		FORCE MAIN		FOUND DRILL HOLE
	BENCH MARK		FORCE MAIN AIR RELEASE VALVE		FOUND IRON ROD
	BOLLARD		GAS PIPELINE MARKER		FOUND IRON ROD & CAP
	CABLE RISER		GUARD RAIL		FOUND NAIL
	CABLE TV BOX		GUY POLE		FOUND NAIL & DISK
	CATCH BASIN		GUY WIRE		FOUND PARKER KALON NAIL
	CENTERLINE		HANDI-CAP PARKING		FOUND PARKER KALON NAIL & DISK
	CLEANOUT		HOSE BIB		SET CONCRETE MONUMENT
	COORDINATE NUMBER		IRRIGATION BOX		SET DRILL HOLE
	CONCRETE POWER POLE		IRRIGATION VALVE		SET 5/8" IRON ROD & CAP "CARDNO LB 7975" U.O.N.
	COMMUNICATION BOX		LIGHT POLE		SET MAG NAIL & DISK "CARDNO LB 7975" U.O.N.
	DRAINAGE MANHOLE		MAIL BOX		UNDERGROUND UTILITIES
	ELECTRICAL BOX		MITERED END		WATER MAIN
	ELECTRIC OUTLET		WELL		WATER LINE FLAG
	ELECTRIC METER		OVERHEAD POWER LINE		WATER METER
	ELECTRIC LINE		OVERHEAD TELEPHONE LINE		WATER VALVE
	ELECTRIC FLAG		POWER POLE		WOOD SUPPORT POLE
	EXISTING ELEVATION		POWER POLE w/RISER		YARD DRAIN
	FENCE - BARBED WIRE		RECLAIM WATER LINE FLAG		CROSS WALK SIGNAL POLE
	FENCE - CHAIN LINK		SEWER LINE FLAG		CROSS WALK BUTTON POLE
	FENCE - WOOD		SANITARY SEWER LINE		BUSH
	FIBER OPTIC MARKER / POST		SEWER MANHOLE		CABBAGE PALM
	FIBER OPTIC BOX		SEWER VALVE		OAK TREE
	FIRE HYDRANT		SECURITY SENSOR		PALM TREE
	FIRE VALVE		SIGN SINGLE POST		SHADE TREE (VARIOUS TYPE)
			SIGN DOUBLE POST		

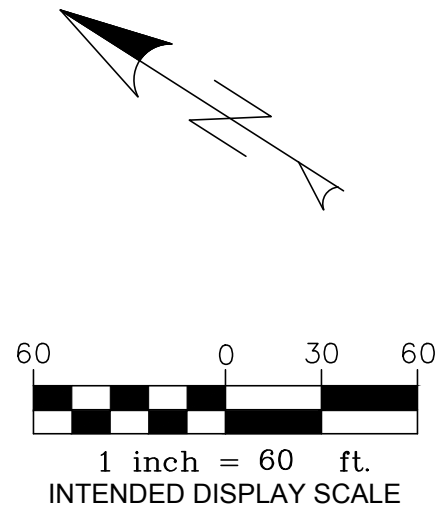
JEFFREY C. COONER
PROFESSIONAL SURVEYOR AND MAPPER
FLORIDA CERTIFICATE NO. 4052
(FOR THE FIRM - LB 7975)
SIGNED THIS ____ DAY OF _____, 2018



5670 Zip Drive
Fort Myers, FL 33905
Tel: 239.277.0722
Fax: 239.277.7179

BOUNDARY SURVEY

A PARCEL LYING IN GOVERNMENT LOT 4
SECTION 33, TOWNSHIP 46 SOUTH, RANGE 24 EAST
AND A PARCEL LYING IN GOVERNMENT LOT 1
SECTION 34, TOWNSHIP 46 SOUTH, RANGE 24 EAST
TOWN OF FORT MYERS BEACH
LEE COUNTY, FLORIDA



60 0 30 60

1 inch = 60 ft.

INTENDED DISPLAY SCALE

 = BEACH AREA MAINTAINED FOR ISLAND WINDS CONDOMINIUM SINCE 1998 PER NOTARIZED LETTER BY ANTHONY LUBIG, DATED APRIL 27, 2018.

 = BASED ON LEGAL OPINION BY CHRISTOPHER L. COLEMAN IN LETTER DATED APRIL 20, 2018, LANDS DESCRIBED IN REFERENCED INSTRUMENT HAS NO STANDING AS TO GULLWING PROPERTY.

DETAIL "D"
SCALE 1" = 5'

FOR:
ISLAND WINDS BATH AND RACQUET CLUB ASSOCIATION, INC.

DATE	5-15-18
------	---------

[illegible]

REVISION

ADD BENCHMARKS & NOTE

4-9-18
2-5-18

OWG. DATE:

SURVEY DATE:

LEE
34-46-24

33

--	--	--	--

NTY:

CO	SE
----	----

4
24 EAST

SURVEY

BOUNDARY
LYING GOV
WNSHIP 46

A PARCELO
TION 33, T

S

2 of

--	--

Page 382 of 858



5670 Zip Drive
Fort Myers, FL 33905
Tel: 239.277.0722
Fax: 239.277.7179

2 of 2



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

This is a first part of a two-part application. Please be sure to fill out this form, which requires general information, as well as the Supplemental Form application specific to action requested for the subject property. Please submit a complete Public Hearing application with required, supplemental information, exhibits and documents to zoningpermits@fmbgov.com. Please do not submit the instructions at the end of the application.

Site Address: 6610 Estero Blvd Fort Myers Beach, FL 33931
STRAP Number: 34-46-24-W24-02100.00 CE
Applicant: Island Winds Condominium Association Phone: 239-410-7120
Contact Name: Dave Nusbaum-President Phone: 262-442-8907
Email: manager@islandwindsflorida.com Fax: N/A
Current Zoning District: Multifamily Residential
Future Land Use Map (FLUM) Category: Mixed Residential/Recreational
FLUM Density Range: _____ Platted Overlay: ☒ YES ☐ NO

ACTION REQUESTED

- ☒ Special Exception
☐ Variance
☐ Conventional Rezoning
☐ Planned Development ☐ Commercial ☐ Residential
☐ Master Concept Plan Extension
☐ Appeal of Administrative Action
☐ Vacation of Platted Right-of-way and Easement
☐ Other – cite LDC Section: _____

SUPPLEMENTAL FORM REQUIRED

PH-A
PH-B
PH-C
PH-D
PH-E
PH-F
PH-G
attach on separate sheet

PART I – General Information

A. Applicant*: Island Winds Condominium Phone: 239-410-7120
**Applicant must submit a statement under oath that he/she is the authorized representative of the property owner. Please see PART III to complete the appropriate Affidavit form for the type of applicant.*
Applicant Mailing Address: 6610 Estero Blvd. Fort Myers Beach FL 33931
Email: manager@islandwindsflorida.com Fax: N/A
Contact Name: Dave Nusbaum-President Phone: 262-442-8907



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

B. Relationship of Applicant to subject property:

- | | | |
|---|---|--|
| ☐ Owner* | ☐ Land Trust* | ☐ Partnership* |
| ☐ Corporation* | ☐ Association* | ☒ Condominium* |
| ☐ Subdivision* | ☐ Timeshare Condo* | ☐ Contract Purchaser* |
| ☐ Authorized Representative* | ☐ Other* (please indicate) _____ | |

**Applicant must submit a statement under oath that he/she is the authorized representative of the property owner.
Please see PART III to complete the appropriate Affidavit form for the type of applicant.*

C. Authorized Agent(s). Please list the name of Agent authorized to receive correspondence Agents

Name: Lisa Price-Property Manager Phone: 239-410-7120
Address: 6610 Estero Blvd., Fort Myers Beach, FL 33931
Email: manager@islandwindsflorida.com Fax: _____

D. Other Agent(s). Please list the names of all Authorized Agents (attach extra sheets if necessary)

Name: Dave Nusbaum-President Phone: 262-442-8907
Address: 6610 Estero Blvd, Unit 523, Fort Myers Beach FL 33931
Email: acheesehd@gmail.com Fax: _____

Name: _____ Phone: _____
Address: _____
Email: _____ Fax: _____

PART II – Nature of Request

Requested Action (each request requires a separate application)

- ☒ Special Exception
- ☐ Variance from LDC Section _____ - _____
- ☐ Conventional Rezoning from _____ to _____
- ☐ Planned Development
- ☐ Rezoning from _____ to ☐ Commercial PD ☐ Residential PD
- ☐ Amendment. List the project number: _____
- ☐ Extension/reinstatement of Master Concept Plan. List project number: _____



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

☐ Appeal of Administrative Action

☐ Vacation

☐ Right-of-Way

☐ Easement

☐ Other. Please Explain: _____

PART III - Waivers

Please indicate any specific submittal items that have been waived by the Director for the request. Attach a copy of the signed approval as Exhibit 3-1. (Use additional sheets if necessary)

Code Section: _____ Description: _____

Code Section: _____ Description: _____

Code Section: _____ Description: _____

PART IV - Property Ownership (Single Owner)

☐ Single Owner (individual or husband and wife)

Name: _____ Phone: _____

Mailing Address: _____

Email: _____ Fax: _____

AFFIDAVIT

APPLICATION IS SIGNED BY AN INDIVIDUAL OWNER OR APPLICANT

I, _____ swear or affirm under oath, that I am the owner or the authorized representative of the owner(s) of the property and that:

I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the Town of Fort Myers Beach in accordance with this application and the Land Development Code;

All answers to the questions in this application and any sketches, data or other supplementary matter attached hereto and made a part of this application are honest and true;



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

I have authorized the staff of the Town of Fort Myers Beach Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made thru this application; and that

The property will not be transferred, conveyed, sold or subdivided unencumbered by the conditions and restrictions imposed by the approved action.

Signature

Printed Name

STATE OF _____ COUNTY OF _____

The foregoing instrument was certified and subscribed before me by means of ____ physical presence OR ____ online notarization, this ____ day of _____, 20____, by

_____, ☐ who is personally known to me OR ☐ who has produced

_____ as identification.

Notary Public Signature

PART V

Property Ownership (Multiple Owners)

☒ Multiple Owners (including corporation, partnership, trust, association, condominium, timeshare, or subdivision)

- ☒ Complete Disclosure of Interest Form (see below)
- ☒ Attach list of property owners as Exhibit 5-1
- ☐ Attach map showing property owners interests as Exhibit 5-2 (for multiple parcels)
- ☒ For condominiums and timeshares see Explanatory Notes Part V - Exhibit 5-3
- ☐ Letter of Opinion - Exhibit 5-4

DISCLOSURE OF OWNERSHIP INTEREST

If the property is owned in fee simple by an INDIVIDUAL, tenancy by the entirety, tenancy in common, or joint tenancy, list all parties with an ownership interest as well as the percentage of such interest.

Name and Address

Percentage Ownership



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

If the property is owned by a CORPORATION, list the officers and stockholders and the percentage of stock owned by each.

Name, Address and Office

Percentage of Stock

_____	_____
_____	_____
_____	_____
_____	_____

If the property is in the name of a TRUSTEE, list the beneficiaries of the trust with percentage of interest.

Name and Address

Percentage of Interest

_____	_____
_____	_____
_____	_____
_____	_____

If the property is in the name of a GENERAL PARTNERSHIP OR LIMITED PARTNERSHIP, list the names of the general and limited partners.

Name and Address

Percentage of Ownership

_____	_____
_____	_____
_____	_____
_____	_____

If there is a CONTRACT FOR PURCHASE, whether contingent on this application or not, and whether a Corporation, Trustee, or Partnership, list the names of the contract purchasers below, including the officers, stockholders, beneficiaries, or partners.

Name, Address and Office

Percentage of Stock

_____	_____
_____	_____
_____	_____
_____	_____



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

Date of Contract: _____

If any contingency clause or contract terms involve additional parties, list all individuals or officers, if a corporation, partnership, or trust.

Name	Address
_____	_____
_____	_____
_____	_____
_____	_____

For any changes of ownership or changes in contracts for purchase subsequent to the date of the application, but prior to the date of final certificate of compliance, a supplemental disclosure of interest must be filed.

The above is a full disclosure of all parties of interest in this application, to the best of my knowledge and belief.

_____	_____
Signature	Printed Name

AFFIDAVIT

APPLICATION IS SIGNED BY A CORPORATION, LIMITED LIABILITY COMPANY (L.L.C.), LIMITED COMPANY (L.C.), PARTNERSHIP, LIMITED PARTNERSHIP, OR TRUSTEE

I, DAVID NUSBAUM (name), as PRESIDENT (title) of ISLAND WINDS CONDOMINIUM (company), swear or affirm under oath, that I am the owner or the authorized representative of the owner(s) of the property and that:

1. I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the Town of Fort Myers Beach in accordance with this application and the Land Development Code;
2. All answers to the questions in this application and any sketches, data or other supplementary matter attached hereto and made a part of this application are honest and true;
3. I have authorized the staff of Fort Myers Beach Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made thru this application; and that
4. The property will not be transferred, conveyed, sold or subdivided unencumbered by the conditions and restrictions imposed by the approved action.



COMMUNITY DEVELOPMENT DEPARTMENT

APPLICATION for PUBLIC HEARING

ISLAND WINDS CONDOMINIUM ASSOCIATION

Name of Entity (corporation, partnership, LLP, LLC, etc)

David Nusbaum
Signature

DAVID NUSBAUM

Typed or Printed Name

PRESIDENT

Title

1/23/2024
Date

STATE OF Florida COUNTY OF Lee

The foregoing instrument was certified and subscribed before me by means of ☒ physical presence OR ☐ online notarization, this 25 day of January, 2024, by David Nusbaum ☒ who is personally known to me OR ☐ who has produced _____ as identification.



Lisa Marie Rittenhouse
Notary Public Signature

PART VI- Property Information

A. Legal Description:

STRAP: 34-46-24-W24-02100.00CE

Property Address: 6610/6612 Estero Blvd Common area uses above STRAP #

Is the subject property within a platted subdivision recorded in the official Plat Books of Lee County? ☐ No. Attach a legible copy of the legal description as Exhibit 6-1.

☒ Yes. Property identified in subdivision: MCPHIE PARK

Book: 8 Page: 59 Unit: 2 Block: 1 Lot(s): 4

B. Boundary Survey:

☒ Attach a Boundary Survey of the property meeting the minimum standards of Chapter 61G17-6 of the Florida Administrative Code. A Boundary Survey must bear the raised seal and original signature of a Professional Surveyor and Mapper licensed to practice Surveying and Mapping by the State of Florida. Attach and label as Exhibit 6-2.



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

C. Property Dimensions:

Width (please provide an average width if irregular in shape) 300 feet
Depth (please provide an average width if irregular in shape) 500 feet
Frontage on street: 300 feet. Frontage on waterbody: 306 feet
Total land area: 150,000 ☐ acres ☒ square feet

D. General Location of Subject Property (from Sky Bridge or Big Carlos Pass Bridge):

APPROXIMATELY 1.3 MILES NORTH OF BIG CARLOS PASS BRIDGE LOCATED
AT 6610 ESTERO BLVD. IMMEDIATELY NORTH OF GULLWING RESORT

☒ Attach Area Location Map as Exhibit 6-3

E. Property Restrictions (check applicable):

- ☐ There are no deed restrictions and/or covenants on the subject property.
☐ A list of deed restrictions and/or covenants affecting the subject property is attached as Exhibit 6-4.
☒ A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 6-5.

F. Surrounding Property Owners (these items can be obtained from the Lee County Property Appraiser):

- ☒ Attach a list of surrounding property owners within 500 feet as Exhibit 6-6.
☒ Attach a map showing the surrounding property owners as Exhibit 6-7.
☐ Provide Staff with two (2) sets of surrounding property owner mailing labels.

G. Future Land Use Category (see Future Land Use Map):

- | | |
|---|--|
| ☐ Low Density | ☐ Marina |
| ☒ Mixed Residential | ☐ Recreation |
| ☐ Boulevard | ☐ Wetlands |
| ☐ Pedestrian Commercial | ☐ Platted Overlay |



Case# _____

Date Received: _____

Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

Supplement PH-A

Additional Required Information for a Special Exception Application

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

Project Name: Island Winds Wooden Landscape Border
Authorized Applicant: Dave Nusbaim-President-Island Winds Condominium Assoc
LEEPA STRAP Number(s): 34-46-24-W24-02100.00CE
Island Winds Condominium Association 6610 6612 6614 Estero Blvd

Current Property Status: Condominium-Unoccupied
Current Zoning: Multi Family Residential
Future Land Use Map (FLUM) Category: Mixed Residential
Platted Overlay? ☐ yes ☒ no FLUM Density Range:

Requested Action:

☒	Use of premises in the EC (Environmentally Critical) zoning district for:
	emolition and reconstruction of 245' long wooden landscape border damaged by l
☒	Use of premises in the multi family residential zoning district for:
	emolition and reconstruction of 245' long wooden landscape border damaged by l



Case# _____

Date Received: _____

PART I
Narrative Statements

A. Request for: (indicate the proposed use that requires a special exception)

Demolition and reconstruction of 245' long wooden landscape border damaged by
The landscape wall is considered a minor structure and can be repaired or
replaced by the Town granting a special exemption per Ordinance 23-13

B. Reasons for request: (state how the property qualifies for a special exception and what impact granting the request could have on surrounding properties. Direct these statements toward the guidelines in LDC Section 34-88)

The property qualifies for a Special Exception because:
Island Winds was constructed in 1972 and 74 prior to the establishment of the
1978 Coastal Construction Line. The landscape border wall generally follows
the 1978 CCL but is slightly seaward on the south end. FDEP allows armoring
of beach property using wooden walls and has issued a construction
Field Permit pursuant to Section 161.053 or 161.052 Florida Statutes.
Moving the existing wall behind the 1978 CCC will involve removing tons of
dirt which was protecting building foundations. The landscape border wall
is 300 yards from the existing Mean High Water Line of the Gulf of Mexico
and represents no impact on existing wildlife or turtle nesting season.
Construction will be completed before bird nesting season.
The existing damaged landscape border wall prevented erosion of soil on the
beach and provided protection of building foundations from flood surges.



Case# _____

Date Received: _____

Granting the requested Special Exception could impact surrounding properties as follows:

No Impact

PART 2

Submittal Requirements

All applications for a special exception must submit fourteen (14) copies of this application form and all applicable exhibits.

Required Items

- Public Hearing Request Form
- Supplemental form PH-A
- Site Plan (to scale) including the current use of all existing structures on the site, and those on adjacent properties within 100 feet of the perimeter; all proposed structures and uses for the site; and any proposed fencing and screening.
- Fee in the amount of \$3800.00/\$3300.00 for an amendment

For New Communication Towers:

- a. Lee County Application for Communication Tower
- b. Shared-Use Plan Agreement

1. **Request:**

Meeting Date: May 6, 2024

First Reading and Public Hearing on proposed ordinance 24-09 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING/ DENYING A COMPREHENSIVE PLAN FUTURE LAND USE MAP AMENDMENT FOR PROPERTIES LOCATED AT 450 HARBOR COURT, 445 HARBOR COURT, 441 HARBOR COURT, 436 HARBOR COURT, 435 BONITA STREET, AND 438 BONITA STREET FORT MYERS BEACH FROM MARINA (3.53 ACRES) AND MIXED RESIDENTIAL (1.00 ACRE) TO PEDESTRIAN COMMERCIAL; CONTAINING 4.53 ACRES GENERALLY IDENTIFIED AS STRAP NUMBERS 24-46-23-W3-00027.0000, 24-46-23-W3-00026.0020, 24-46-23-W3-0030B.0200, 24-46-23-W3-0030B.0190, 24-46-23-W3-0030C.0060, 24-46-23-W3-0030C.0040, 24-46-23-W3-0030A.0110, PORTIONS OF HARBOR COURT AND BONITA STREET RIGHT-OF-WAY; PROVIDING FOR SCRIVENER'S ERRORS AND AN EFFECTIVE DATE. Open the public hearing and schedule for second reading and final adoption on June 3, 2024 at 9:00 AM.

Why the action is necessary:

The Town Council decides Comprehensive Plan Future Land Use Map amendments.

What the action accomplishes:

Approval of the request will amend the future land use map from Marina and Mixed Residential to Pedestrian Commercial.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Ordinance

4. **Submitter of Information:**

Sarah Propst, Community
Development, Planning
Manager

5. **Background:**

Freeland FL Holdings LLC, owner of the subject property, and Jim Ink, PE, applicant for the owner, are requesting a Comprehensive Plan Future Land Use Map Amendment. The amendment requests a change of 3.53 acres of Marina Future Land Use (FLU), known as Moss Marina, and 1 acre of Mixed Residential FLU, to Pedestrian Commercial. There are no proposed text amendments to the Comprehensive Plan. The applicant has also applied for a Commercial Planned Development that encompasses three additional properties that are already mapped as Pedestrian Commercial and do not need to be amended.

Attachments:

1. 24-09, CPA Ordinance Moss Marine ns edits 4-29-2024
2. Staff Report CPA
3. 24-09, business-impact-estimate-24-09
4. Exhibit A Map of CPA Area
5. Exhibit B FAR Visualization
6. Exhibit C CPA Application
7. CFC to Town of Fort Myers Beach Regarding Arches of Bayfront Future Land Use Change
8. Exhibit D Letters of Objection
9. Exhibit E LPA AND TC postcard
10. Exhibit F Ad for LPA hearing

Financial Impact:

Unknown

6. **Alternative Action**

approve

7. **Management Recommendations:**

Denial.

8. **Recommended Approval:**

Sarah Propst, Community Development, Planning Manager
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 4/30/2024
Approved - 4/30/2024
Approved - 4/30/2024
Final Approval - 4/30/2024

ORDINANCE 24-09

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING THE TOWN OF FORT MYERS BEACH ADOPTED FUTURE LAND USE MAP DATED JANUARY 1, 1999, FOR PROPERTIES LOCATED AT 450, 445, 441 & 436 HARBOR COURT, 435 & 438 BONITA STREET ALSO RESPECTIVELY IDENTIFIED AS STRAP NUMBERS 24-46-23-W3-00027.0000 & 24-46-23-W3-00026.0020, 24-46-23-W3-0030B.0200, 24-46-23-W3-0030B.0190, 24-46-23-W3-0030C.0060, 24-46-23-W3-0030C.0040 & 24-46-23-W3-0030A.0110, FORT MYERS BEACH; PROVIDING FOR CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS 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, James Inc ("Applicant"), on behalf of Freeland FL Holdings, LLC, owners of the property generally located at 450, 445, 441 & 436 Harbor Court, 435 & 438 Bonita Street also respectively identified as strap numbers 24-46-23-W3-00027.0000 & 24-46-23-W3-00026.0020, 24-46-23-W3-0030B.0200, 24-46-23-W3-0030B.0190, 24-46-23-W3-0030C.0060, 24-46-23-W3-0030C.0040 & 24-46-23-W3-0030A.0110, Fort Myers Beach ("Property"), filed an application for a small scale future land use map amendment to change the future land use of the property from Marina and Mixed Residential to Pedestrian Commercial; and

WHEREAS, the Property is in the Marina and Mixed Residential Future Land Use Category of the Comprehensive Plan of the Town of Fort Myers Beach, and is under common control of the owners as listed in the public records of Lee County Property Appraiser; and

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on April 9, 2024, at which the LPA gave full and complete consideration of the request, recommendations by staff, the documents in the record, and the testimony of all interested persons, and the LPA voted 5 to 2 to recommend denial of the small scale map amendment request, and

WHEREAS, on May 6, 2024, the Town Council held a first reading of the proposed Ordinance and gave full and complete consideration to the request of the Applicant, the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons, as required by Section 34-85 of the Fort Myers Beach Land Development Code ("LDC"); and

WHEREAS, the Town Council scheduled a second reading of the proposed Ordinance and a public hearing on this matter to be legally advertised and held before the Town Council on June 3,

2024; at which time the Town Council gave full and complete consideration to the request of the Applicant, the recommendation of the LPA, the recommendation of staff, including the consideration and findings in the staff report, the documents in the record, and the testimony of all interested persons, as required by Section 34-92 of the LDC and Policy 4-C-10 of the 1999 Comprehensive Plan (1999); and

WHEREAS, the Town Council finds the proposed small-scale map amendment request is **consistent/not consistent** with the Town of Fort Myers Beach Comprehensive Plan and LDC and voted to **approve/ deny** the Application.

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, correct, incorporated herein by this reference, and adopted as the legislative and administrative findings of the Town Council.

Section 2. The Town Council determines the Applicant **did/did not** meet its burden of proof that the requested small scale map amendment request **does/does not** meet the requirements of the Town Comprehensive Plan and LDC and approving the request for a small-scale Future Land Use Map Amendment from Marina and Mixed Residential to Pedestrian Commercial **is/is not** in the best interest of the Town. Therefore, based upon the recommendations, testimony, and evidence presented by the Applicant, Town staff, and interested parties and Section 34-92 of the Land Development Code, the Town Council **APPROVES/DENIES** the requested small scale future land use map amendment of the Property.

Section 3. Whenever the requirements or provisions of this Ordinance conflict with the requirements or provisions of any other lawfully adopted LDC or Town Code provision, ordinance, or statute, the most restrictive 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. The proposed action does not result in a more restrictive or burdensome amendment to the Town's Comprehensive Plan or Land Development Code.

Section 7. Issuance of a development permit by the Town does not create any right to obtain a permit from a State or Federal agency and does not create any liability on the part of the Town for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a State or Federal agency or undertakes actions that result in a violation of State or Federal law.

Section 8. The effective date of this plan amendment shall be the earliest date permitted under

Section 163. 3187, Florida Statutes.

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

Exhibits

Exhibit A Existing Future Land Use Map

Exhibit B Proposed Future Land Use Map



Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

STAFF REPORT

TYPE OF CASE: Comprehensive Plan Amendment

CASE NUMBER: CPA20230152

CASE NAME: Arches Bayfront Comprehensive Plan Future Land Use Map Amendment (450 Harbor Court, 445 Harbor Court, 441 Harbor Court, 436 Harbor Court, 435 Bonita Street, 438 Bonita Street)

TOWN COUNCIL HEARING DATE: May 6, 2024

LPA HEARING DATE: April 9, 2024

STAFF RECOMMENDATION: DENIAL

**PREPARED/
SUBMITTED BY:** Sarah Propst, AICP, PMP / Jason Green, AICP, CFM

I. APPLICATION SUMMARY

Applicant/Owner: Freeland FL Holdings, LLC/Ink Engineering, Inc

Request: Comprehensive plan future land use map amendment to change 3.53 acres of Future Land Use Marina and 1.0 acre of Future Land Use Mixed Residential to Future Land Use Pedestrian Commercial

Subject property: See attached plan

Physical Address: 450 Harbor Court, 445 Harbor Court, 441 Harbor Court, 436 Harbor Court, 435 Bonita Street & 438 Bonita Street

STRAP #s: 24-46-23-W3-00027.0000, 24-46-23-W3-00026.0020, 24-46-23-W3-0030B.0200, 24-46-23-W3-0030B.0190, 24-46-23-W3-0030C.0060, 24-46-23-W3-0030C.0040, 24-46-23-W3-0030A.0110

FLU: Marina & Mixed Residential (Platted Overlay)

Zoning: Commercial Marina (CM) & Residential Conservation (RC)

Adjacent zoning and land uses:

North: Tidal Waters, Matanzas Pass

South: RESIDENTIAL CONSERVATION (RC)
Mixed Residential (Platted Overlay)

East: DOWNTOWN (D)
Pedestrian Commercial

West: Tidal Waters, Canal

II. BACKGROUND AND ANALYSIS

Background:

Freeland FL Holdings LLC, owner of the subject property, and Jim Ink, PE, applicant for the owner, are requesting a Comprehensive Plan Future Land Use Map Amendment. The amendment requests a change of 3.53 acres of Marina Future Land Use (FLU), known as Moss Marina, and 1 acre of Mixed Residential FLU, to Pedestrian Commercial. There are no proposed text amendments to the Comprehensive Plan.

The applicant has also applied for a Commercial Planned Development that encompasses three additional properties that are already mapped as Pedestrian Commercial and do not need to be amended. Those properties are shown on the attached area map (Exhibit A), outlined but not in color, they are 935 & 939 Third Street and 401 Old San Carlos Blvd.

Moss Marina was established in 1969. Matanzas View subdivision was platted in 1952, the first homes appear to have been built in the early 1950s. This neighborhood appears to have been primarily single family and two-family homes prior to hurricane Ian. More than half of the pre-Ian homes are still standing, however staff does not know what portion of the homes are currently habitable.

Analysis:

The **Marina FLU** is defined as “*designed for prime sites that can provide access to the valuable waters around Fort Myers Beach. This category provides services for recreational boating, including related accessory uses provide that they don’t displace recreational marina services. Cruise ships and similar uses that draw large amounts of vehicular traffic are not permitted in this category. Specific regulations will be places in the Land Development Code.*” And Marina Uses are described by the Comprehensive Plan as “*involving the use of prime waterfront sites to support recreational boating,*

such as wet or dry boat storage, sales/rentals of boats and supplies, and boat repair.” Marina FLU allows a maximum floor area ratio (FAR) of 1.5 and no density is listed in the Comprehensive Plan for the Marina FLU.

The **Mixed Residential FLU** is defined as *“designed for older subdivisions with mixed housing types on smaller lots, newer high-rise buildings, and mobile homes and RV parks. This category will ensure that Fort Myers Beach retains a variety of neighborhoods and housing types. For new development, the maximum density is 6 dwelling units per acre (except where the Future Land Use Map’s “platted overlay” indicates a maximum density of 10 units per acre for legally existing dwelling units. Commercial activities are limited to lower-impact uses such as offices, motels, churches, and public uses, and must be sensitive to nearby residential uses, complement any adjoining commercial uses, contribute to the public realm as described in this comprehensive plan, and meet the design concepts of this plan and the Land Development Code. The qualities and overall consistency with this comprehensive plan shall be evaluated by the town through the planned development rezoning process. Non-residential uses (including motels and churches) now comprises 7.9% of the land in this category, and this percentage shall not exceed 12%.”* The Mixed Residential FLU allows a maximum floor area ratio (FAR) of 1.5 and typically allows a density of six dwelling units per acre. This neighborhood is in the platted overlay which allows up to 10 dwelling units per acre for legally existing dwelling units. The single acre that is currently FLU Mixed Residential, appears to have contained a mix of single family and two family dwelling units prior to Hurricane Ian.

The combined Marina and Mixed Residential parcels, could allow a total of 295,990 square feet of floor area, through a CPD. The current zoning districts allow a lower square footage. The proposed change to Pedestrian Commercial could allow a total of 493,317 square feet of floor area, through a CPD. This is an increase of almost 200,000 square feet of development potential.

Neighborhood Compatibility:

The current Comprehensive Plan refers to this area as the “north end” in one section and the “core area”, in another section. It describes that “north end” area as follows: *“The north end of the island retains its residential and resort identity. Its motel rooms, older cottages and high-rises all benefit from their proximity to Bowditch Point and the downtown “core area,” yet are comfortably removed from seasonal traffic congestion and outdoor entertainment activities that many residents find intrusive.”* The 1999 Comprehensive Plan does not provide a vision or plan for this part of the “core area”.

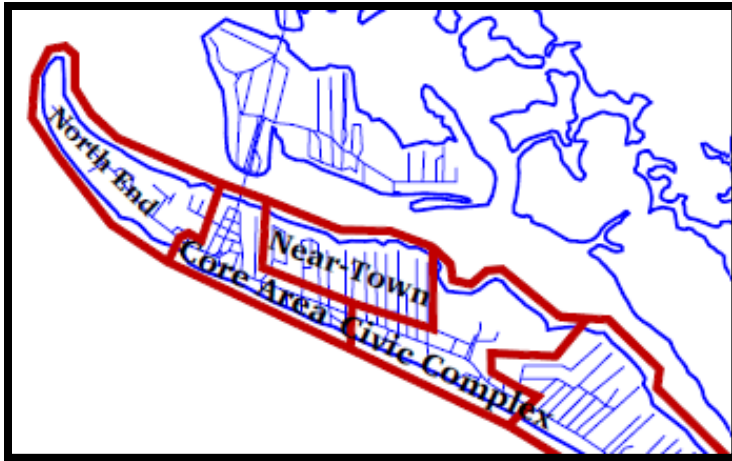


Figure from Page 2-2 of 1999 Town of Fort Myers Beach Comprehensive Plan

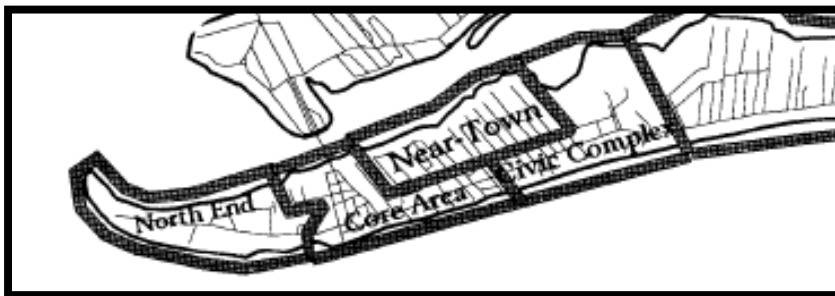
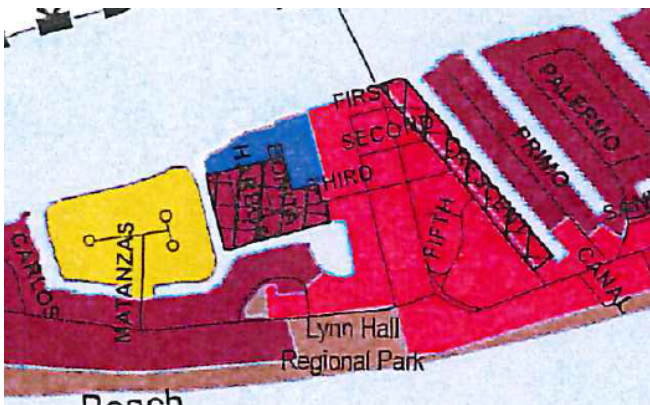


Figure from Page 3-4 of 1999 Town of Fort Myers Beach Comprehensive Plan

The 1999 Comprehensive Plan intended the North End to be quiet and downtown adjacent, whereas the Core Area was to be part of the action with a high level of commercial activity. Unfortunately, it is unclear whether the area of proposed future land use amendment was intended to be part of the North End or the Core Area. The addition of an intense commercial area which is accessible through the neighborhood will create additional traffic and noise impacts which would not be appropriate in a quiet neighborhood but would be acceptable in a downtown neighborhood.



1999 Comprehensive Plan Future Land Use Map

The pattern of Platted Overlay districts on both the east and west side of the Pedestrian Commercial District, creates a buffer between the higher impact downtown and the lower density residential districts. Elimination of that buffer between the intense commercial district and the neighborhoods could increase conflict. Uses that create additional noise in residential neighborhoods have been of particular concern to the Town of Fort Myers Beach in the past. Careful evaluation of outdoor music and activities will be necessary to ensure that nearby homes are not negatively impacted by proposed development on this site.

Infrastructure Impacts:

Evaluation of infrastructure impacts is important to ensure that the Town of Fort Myers Beach will be able to accommodate the additional development that will be allowed with the change from Marina and Mixed Residential to Pedestrian Commercial. The uses that are allowed in Pedestrian Commercial can have a much higher impact on traffic, water use and stormwater. While the applicant is proposing a rezoning to Commercial Planned Development (CPD), it would be possible for other developments to be proposed and approved in that area, therefore, we have to consider what impact other uses may have on the Town's infrastructure.

Traffic

The change from Marina and Residential to Pedestrian Commercial will increase density and intensity in the region and this could impact the surrounding streets. The applicant has not provided an analysis of the maximum development that could occur with the amendment of the Future Land Use Map.

The traffic impact statement for the proposed CPD application is still going through reviews. A final analysis of that traffic impact statement will be available when the review for the CPD is complete. The applicant's CPD is proposing the main entrance to the site from Old San Carlos Boulevard, through the existing Marina Village parking lot. However, it is important to note that Harbor Court and Bonita Street are public rights of way and traffic will be allowed through those streets. This will increase automobile and pedestrian traffic on Third Street, Harbor Court and Bonita Street which are not wide streets and do not have pedestrian and cyclist infrastructure.

Staff notes that if the proposed resort use were to be approved and developed on these parcels there may be a higher trip capture in the downtown area.

Water

The applicant provided a conceptual water and sewer usage that was accepted by Tetrattech, the Town's engineering reviewer. The usage is based primarily on resort hotel room and restaurant uses, which have a higher demand than most uses that could be developed in the Pedestrian Commercial FLU.

Tetrattech is in the process of completing a hydraulic model for the Town of Fort Myers Beach to determine future infrastructure needs. Per Tetrattech, "The (current) model shows that as long as Lee County Utilities (LCU) and/or the existing Moss

Marina Pump Station (PS) can provide enough supply at sufficient pressure, the FMB water distribution system has ample capacity to support the calculated peak hour water demand for the new development.”

The development may reduce additional demand on potable water by installing drought tolerant, native plants, cisterns and rain barrels and providing other water wise techniques to decrease their impacts on the Town’s water supply.

Stormwater

Stormwater is of high concern for development on a flood prone barrier island. All development will be required to meet the stormwater management requirements of the South Florida Water Management District and any local requirements. There may be exemptions based on the current development of the site. The applicant has not provided water quality or quantity data as part of this application.

Overall Impacts

Approval of the Comprehensive Plan Map Amendment will allow additional development on this 4.53 acres which will increase demand on infrastructure. There is currently insufficient infrastructure to serve bicycle and pedestrian needs which are appropriate for the Pedestrian Commercial FLU and potentially insufficient right-of-way width to provide the infrastructure. It is important for the Town of Fort Myers Beach to evaluate capacity and infrastructure availability for development at the time of the amendment to the comprehensive plan future land use map.

Findings and Conclusions:

LDC Sec. 34-92 states that: *Proposals to amend the Future Land Use Map must meet Comprehensive Plan Policy 4-C-10.*

Policy 4-C-10 Map Amendments: The intensity and density levels allowed by the Future Land Use Map may be increased through formal amendments to this plan if such increases are clearly in the public interest, not just in the private interest of a petitioning landowner. Petitions from landowners will be accepted annually. The Town Council may accept applications more frequently at its sole discretion.

Staff finds that the request to amend the Future Land Use Map to change 3.53 acres of Marina FLU and 1.0 acre of Mixed Residential FLU to Pedestrian Commercial FLU is not clearly in the public interest. Creating additional commercial land adjacent to the existing downtown does not necessarily provide a benefit to the Town and will result in traffic and noise impacts to nearby residential uses through elimination of the buffer between the intense commercial district and the neighborhood which could increase conflict. Additionally, the area lacks sufficient pedestrian and bicycle infrastructure to support the proposed amendment which will increase density and intensity.

III. RECOMMENDATION

At the April 9, 2024 LPA hearing the LPA recommended denial of the request by a vote of 5 to 2.

Staff has reviewed the request for a Comprehensive Plan Amendment and found that the Comprehensive Plan Amendment request does not meet the requirements set forth in sec. 34-92 and Comprehensive Plan Policy 4-C-10. Staff recommends **DENIAL** of CPA20230152, a request for a Comprehensive Plan Amendment to change 3.53 acres of Marina FLU and 1.0 acre of Mixed Residential FLU to Pedestrian Commercial FLU.

IV. EXHIBITS

Exhibit A: Area Map

Exhibit B: FAR Visualization

Exhibit C: Complete Application

Exhibit D: Letters of Objection

Exhibit E: Post Cards

Exhibit F: Advertisement



Business Impact Estimate

Proposed ordinance's title/reference:

Ordinance 24-09 AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING/ DENYING A COMPREHENSIVE PLAN FUTURE LAND USE MAP AMENDMENT FOR PROPERTIES LOCATED AT 450 HARBOR COURT, 445 HARBOR COURT, 441 HARBOR COURT, 436 HARBOR COURT, 435 BONITA STREET, AND 438 BONITA STREET FORT MYERS BEACH FROM MARINA (3.53 ACRES) AND MIXED RESIDENTIAL (1.00 ACRE) TO PEDESTRIAN COMMERCIAL; CONTAINING 4.53 ACRES GENERALLY IDENTIFIED AS STRAP NUMBERS 24-46-23-W3-00027.0000, 24-46-23-W3-00026.0020, 24-46-23-W3-0030B.0200, 24-46-23-W3-0030B.0190, 24-46-23-W3-0030C.0060, 24-46-23-W3-0030C.0040, 24-46-23-W3-0030A.0110, PORTIONS OF HARBOR COURT AND BONITA STREET RIGHT-OF-WAY; PROVIDING FOR SCRIVENER'S ERRORS AND AN EFFECTIVE DATE.

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.

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

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

1. Summary of the proposed ordinance:

The proposed ordinance amends the existing future land use map of the comprehensive plan. The purpose is to change the allowed land uses per a private property owner's request.

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 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 24-09.

Ordinance 24-09 does not impose any new charge or fee on businesses.

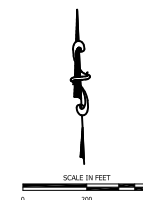
There are no new charges or fees that will be imposed on businesses by the ordinance.

The Town will not likely incur additional costs.

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

The Town estimates that one property owner would be impacted by the adoption of this ordinance that the property owner requested.

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



EXISTING LAND USE TABLE

PROJECT AREA:	4.98 AC	100%
PEDESTRIAN COMMERCIAL:	0.45 AC	9.0%
MIXED RESIDENTIAL:	1.00 AC	20.1%
MARINA:	3.53 AC	70.90%

PROPOSED LAND USE TABLE

PEDESTRIAN COMMERCIAL:	4.98 AC	100%
------------------------	---------	------

INK ENGINEERING, INC
2055 West First Street
Fort Myers, Florida 33901
E-mail: ink@inkengineeringinc.net

EXISTING COMPREHENSIVE PLAN MAP

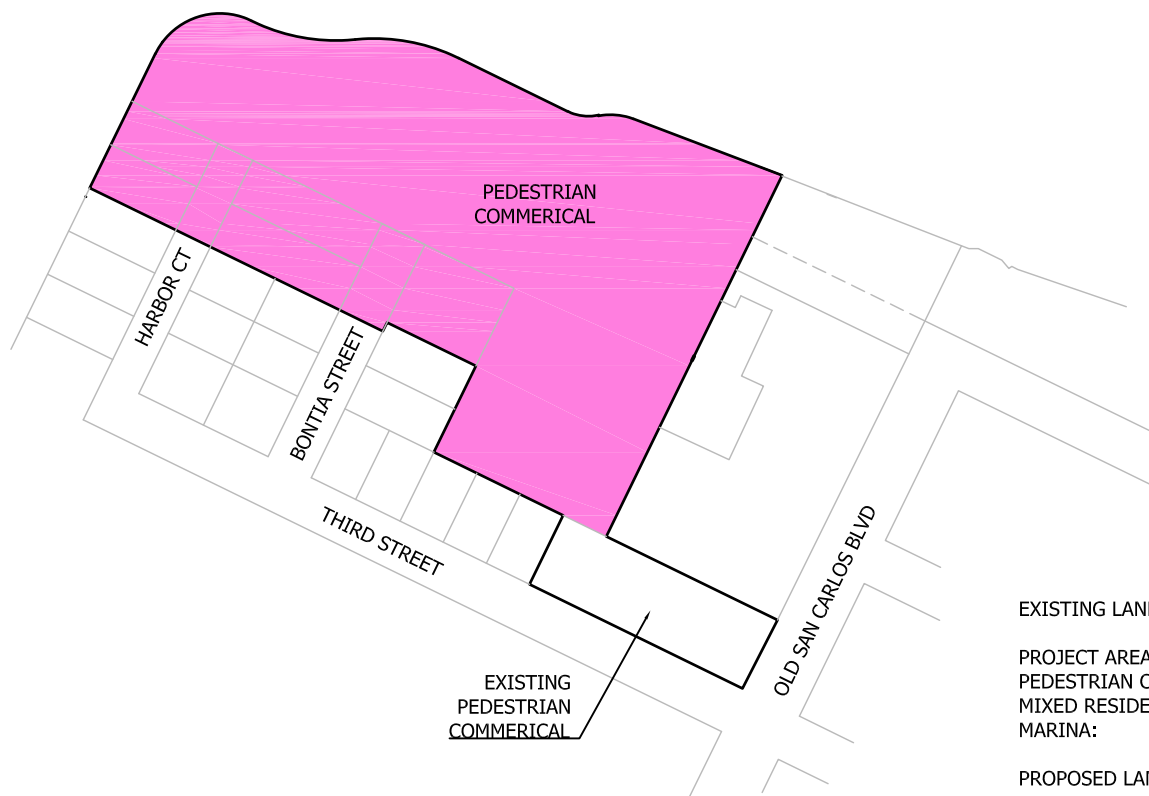
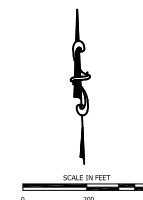
JOB #: 22037

ARCHES BAYSIDE CPA MAP AMENDMENT

DATE: 03.2024

450 HARBOR COURT, FT MYERS BEACH, FL

SHEET: 1 OF 2



EXISTING LAND USE TABLE

PROJECT AREA:	4.98 AC	100%
PEDESTRIAN COMMERCIAL:	0.45 AC	9.0%
MIXED RESIDENTIAL:	1.00 AC	20.1%
MARINA:	3.53 AC	70.90%

PROPOSED LAND USE TABLE

PEDESTRIAN COMMERCIAL:	4.98 AC	100%
------------------------	---------	------

INK ENGINEERING, INC
 2055 West First Street
 Fort Myers, Florida 33901
 E-mail: ink@inkengineeringinc.net

PROPOSED COMPREHENSIVE PLAN MAP

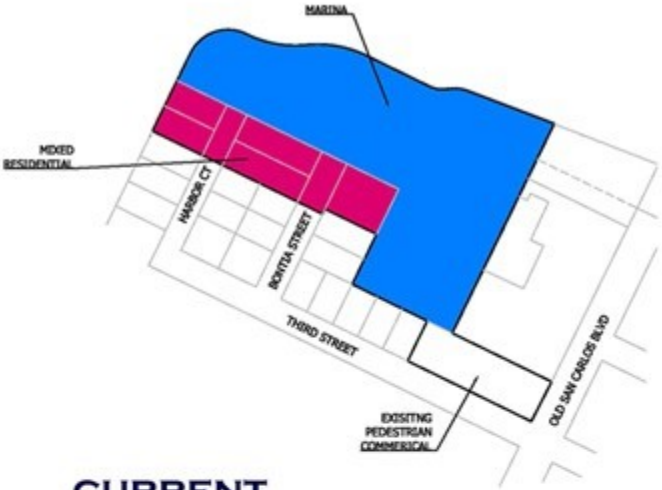
JOB #: 22037

ARCHES BAYSIDE CPA MAP AMENDMENT

DATE: 03.2024

450 HARBOR COURT, FT MYERS BEACH, FL

SHEET: 2 OF 2

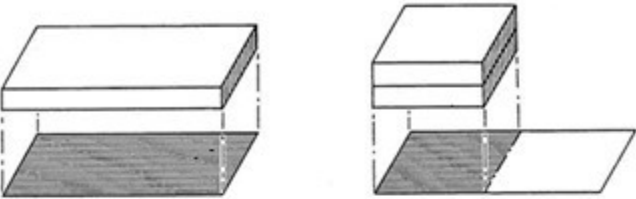


**CURRENT
FUTURE LAND USE**

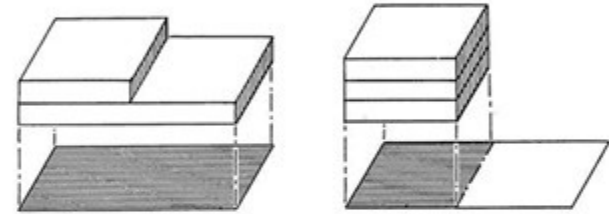


**PROPOSED
FUTURE LAND USE**

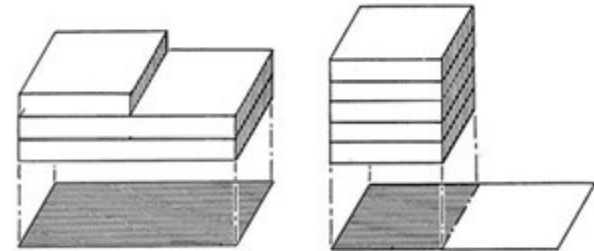
FLOOR AREA RATIO



**100 % LOT COVERED 50 % LOT COVERED
VISUAL REPRESENTATION OF F.A.R. = 1**



**100 % LOT COVERED (COMBINATION) 50 % LOT COVERED
PERMITTED F.A.R. IN MARINA AND MIXED RESIDENTIAL = 1.5**



**100 % LOT COVERED (COMBINATION) 50 % LOT COVERED
PERMITTED F.A.R. AFTER FLUM CHANGE TO PEDESTRIAN COMMERCIAL = 2.5**

NOTE: THIS VISUAL DOES NOT COUNT THE AREA BELOW THE BASE FLOOD ELEVATION TOWARDS THE F.A.R. CALULATIONS.



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

This is a first part of a two-part application. Please be sure to fill out this form, which requires general information, as well as the Supplemental Form application specific to action requested for the subject property. Please submit a complete Public Hearing application with required, supplemental information, exhibits and documents to zoningpermits@fmbgov.com. Please do not submit the instructions at the end of the application.

Site Address: 401 San Carlos Blvd
 STRAP Number: See attached parcel information narrative
 Applicant: Freeland FL Holdings, LLC Phone: 615-337-7671
 Contact Name: James Ink PE c/o Ink Engineering, Inc Phone: 239-940-2504
 Email: jink@inkeengineeringinc.net Fax: _____
 Current Zoning District: Downtown, Marina, Residential Conversation
 Future Land Use Map (FLUM) Category: Pedestrian Commerical, Marina, Mixed Residential
 FLUM Density Range: _____ Platted Overlay: ☒ YES ☐ NO

ACTION REQUESTED

- ☐ Special Exception
☐ Variance
☐ Conventional Rezoning
☐ Planned Development ☐ Commercial ☐ Residential
☐ Master Concept Plan Extension
☐ Appeal of Administrative Action
☐ Vacation of Platted Right-of-way and Easement
☒ Other – cite LDC Section: Comp Plan small scale map Amendment

SUPPLEMENTAL FORM REQUIRED

PH-A
 PH-B
 PH-C
 PH-D
 PH-E
 PH-F
 PH-G
 attach on separate sheet

PART I – General Information

A. Applicant*: Ben Freeland Phone: (615) 337-7671
**Applicant must submit a statement under oath that he/she is the authorized representative of the property owner.
 Please see PART III to complete the appropriate Affidavit form for the type of applicant.*
 Applicant Mailing Address: 5333 Hickory Hollow Parkway, Anitoch, TN 37013
 Email: Ben.Freeland@freelandauto.com Fax: _____
 Contact Name: Ben Freeland Phone: (615) 337-7671



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

B. Relationship of Applicant to subject property:

- | | | |
|---|---|--|
| ☐ Owner* | ☐ Land Trust* | ☐ Partnership* |
| ☒ Corporation* | ☐ Association* | ☐ Condominium* |
| ☐ Subdivision* | ☐ Timeshare Condo* | ☐ Contract Purchaser* |
| ☐ Authorized Representative* | ☐ Other* (please indicate) _____ | |

**Applicant must submit a statement under oath that he/she is the authorized representative of the property owner.
Please see PART III to complete the appropriate Affidavit form for the type of applicant.*

C. Authorized Agent(s). Please list the name of Agent authorized to receive correspondence Agents

Name: James Ink PE, c/o Ink Engineering, Inc Phone: (239) 940-2504
Address: 2055 West First Street, Fort Myers, FL 33901
Email: jink@inkengineeringinc.net Fax: _____

D. Other Agent(s). Please list the names of all Authorized Agents (attach extra sheets if necessary)

Name: Bruce Strayhorn Esq. Phone: (239) 334-1260
Address: 2125 1st Street, Fort Myers, FL 33901
Email: bruce@strayhornlaw.com Fax: _____

Name: _____ Phone: _____
Address: _____
Email: _____ Fax: _____

PART II – Nature of Request

Requested Action (each request requires a separate application)

- ☐ Special Exception
- ☐ Variance from LDC Section _____ - _____
- ☐ Conventional Rezoning from _____ to _____
- ☐ Planned Development
- ☐ Rezoning from _____ to ☐ Commercial PD ☐ Residential PD
- ☐ Amendment. List the project number: _____
- ☐ Extension/reinstatement of Master Concept Plan. List project number: _____



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

- ☐ Appeal of Administrative Action
- ☐ Vacation ☐ Right-of-Way ☐ Easement
- ☒ Other. Please Explain: Comprehensive Plan Map Change
- _____
- _____

PART III – Waivers

Please indicate any specific submittal items that have been waived by the Director for the request. Attach a copy of the signed approval as Exhibit 3-1. (Use additional sheets if necessary)

Code Section: 34-212(6) Description: _____
Temporary waiver of Traffic Impact Statement to allow methodology determination

Code Section: _____ Description: _____

Code Section: _____ Description: _____

PART IV – Property Ownership (Single Owner)

☐ Single Owner (individual or husband and wife)

Name: _____ Phone: _____

Mailing Address: _____

Email: _____ Fax: _____

AFFIDAVIT APPLICATION IS SIGNED BY AN INDIVIDUAL OWNER OR APPLICANT

I, _____ swear or affirm under oath, that I am the owner or the authorized representative of the owner(s) of the property and that:

I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the Town of Fort Myers Beach in accordance with this application and the Land Development Code;

All answers to the questions in this application and any sketches, data or other supplementary matter attached hereto and made a part of this application are honest and true;



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

I have authorized the staff of the Town of Fort Myers Beach Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made thru this application; and that

The property will not be transferred, conveyed, sold or subdivided unencumbered by the conditions and restrictions imposed by the approved action.

Signature

Printed Name

STATE OF _____ COUNTY OF _____

The foregoing instrument was certified and subscribed before me by means of ____ physical

presence OR ____ online notarization, this ____ day of _____, 20____, by

_____, ☐ who is personally known to me OR ☐ who has produced

_____ as identification.

(SEAL)

Notary Public Signature

PART V

Property Ownership (Multiple Owners)

☐ Multiple Owners (including corporation, partnership, trust, association, condominium, timeshare, or subdivision)

- ☐ Complete Disclosure of Interest Form (see below)
- ☐ Attach list of property owners as Exhibit 5-1
- ☐ Attach map showing property owners interests as Exhibit 5-2 (for multiple parcels)
- ☐ For condominiums and timeshares see Explanatory Notes Part V - Exhibit 5-3
- ☐ Letter of Opinion - Exhibit 5-4

DISCLOSURE OF OWNERSHIP INTEREST

If the property is owned in fee simple by an INDIVIDUAL, tenancy by the entirety, tenancy in common, or joint tenancy, list all parties with an ownership interest as well as the percentage of such interest.

Name and Address

Percentage Ownership



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

If the property is owned by a CORPORATION, list the officers and stockholders and the percentage of stock owned by each.

Name, Address and Office

Percentage of Stock

_____	_____
_____	_____
_____	_____
_____	_____

If the property is in the name of a TRUSTEE, list the beneficiaries of the trust with percentage of interest.

Name and Address

Percentage of Interest

_____	_____
_____	_____
_____	_____
_____	_____

If the property is in the name of a GENERAL PARTNERSHIP OR LIMITED PARTNERSHIP, list the names of the general and limited partners.

Name and Address

Percentage of Ownership

_____	_____
_____	_____
_____	_____
_____	_____

If there is a CONTRACT FOR PURCHASE, whether contingent on this application or not, and whether a Corporation, Trustee, or Partnership, list the names of the contract purchasers below, including the officers, stockholders, beneficiaries, or partners.

Name, Address and Office

Percentage of Stock

_____	_____
_____	_____
_____	_____
_____	_____



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

Date of Contract: _____

If any contingency clause or contract terms involve additional parties, list all individuals or officers, if a corporation, partnership, or trust.

Name	Address
_____	_____
_____	_____
_____	_____
_____	_____

For any changes of ownership or changes in contracts for purchase subsequent to the date of the application, but prior to the date of final certificate of compliance, a supplemental disclosure of interest must be filed.

The above is a full disclosure of all parties of interest in this application, to the best of my knowledge and belief.

_____	_____
Signature	Printed Name

AFFIDAVIT

APPLICATION IS SIGNED BY A CORPORATION, LIMITED LIABILITY COMPANY (L.L.C.), LIMITED COMPANY (L.C.), PARTNERSHIP, LIMITED PARTNERSHIP, OR TRUSTEE

I, Ben Freeland (name), as Managing Member (title)
of Freeland FL Holdings, LLC (company), swear or affirm under oath, that I am the owner or the authorized representative of the owner(s) of the property and that:

1. I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the Town of Fort Myers Beach in accordance with this application and the Land Development Code;
2. All answers to the questions in this application and any sketches, data or other supplementary matter attached hereto and made a part of this application are honest and true;
3. I have authorized the staff of Fort Myers Beach Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made thru this application; and that
4. The property will not be transferred, conveyed, sold or subdivided unencumbered by the conditions and restrictions imposed by the approved action.



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

Freeland FL Holdings, LLC

Name of Entity (corporation, partnership, LLP, LLC, etc)

Signature

Title

Typed or Printed Name

Date

STATE OF _____ COUNTY OF _____

The foregoing instrument was certified and subscribed before me by means of ____ physical presence OR ☐ online notarization, this ____ day of _____, 20____, by _____, ☐ who is personally known to me OR ☐ who has produced _____ as identification.

Seal

Notary Public Signature

PART VI- Property Information

A. Legal Description:

STRAP: See application narrative

Property Address: 401 San Carlos Blvd

Is the subject property within a platted subdivision recorded in the official Plat Books of Lee County? ☒ No. Attach a legible copy of the legal description as Exhibit 6-1.

☐ Yes. Property identified in subdivision: _____

Book: _____ Page: _____ Unit: _____ Block: _____ Lot(s): _____

B. Boundary Survey:

☒ Attach a Boundary Survey of the property meeting the minimum standards of Chapter 61G17-6 of the Florida Administrative Code. A Boundary Survey must bear the raised seal and original signature of a Professional Surveyor and Mapper licensed to practice Surveying and Mapping by the State of Florida. Attach and label as Exhibit 6-2.



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

C. Property Dimensions:

Width (please provide an average width if irregular in shape) 640 feet
Depth (please provide an average width if irregular in shape) 390 feet
Frontage on street: 430 feet. Frontage on waterbody: 660 feet
Total land area: 4.98 ☒ acres ☐ square feet

D. General Location of Subject Property (from Sky Bridge or Big Carlos Pass Bridge):

NW corner of Old San Carlos Blvd and Third street and extending NW along the
bayfront to the canal on the western property line.

☒ Attach Area Location Map as Exhibit 6-3

E. Property Restrictions (check applicable):

- ☒ There are no deed restrictions and/or covenants on the subject property.
☐ A list of deed restrictions and/or covenants affecting the subject property is attached as Exhibit 6-4.
☐ A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 6-5.

F. Surrounding Property Owners (these items can be obtained from the Lee County Property Appraiser):

- ☒ Attach a list of surrounding property owners within 500 feet as Exhibit 6-6.
☒ Attach a map showing the surrounding property owners as Exhibit 6-7.
☒ Provide Staff with two (2) sets of surrounding property owner mailing labels.

G. Future Land Use Category (see Future Land Use Map):

- | | |
|---|--|
| ☐ Low Density | ☒ Marina |
| ☒ Mixed Residential | ☐ Recreation |
| ☐ Boulevard | ☐ Wetlands |
| ☒ Pedestrian Commercial | ☐ Platted Overlay |

Ink Engineering, Inc.
Plan - Design - Engineer
2055 West First Street Fort Myers, FL 33901
jink@inkengineeringinc.net
(239) 940-2504

August 11, 2023

Andy Hoyt
Town Manager
Town of Fort Myers Beach
2525 Estero Blvd
Fort Myers Beach, FL 33931

Re: Arches Bayfront Public Hearing Application for Comp Plan Map change.

Dear Mr. Hoyt:

Our team is excited to start the formal entitlement process for the Arches Bayfront Marina Resort. Located on the current location of Moss Marina, Arches Bayfront is proposing an extraordinary Bayfront Marina Resort designed by the world-renowned urban planners DPZ CoDesign that developed the New Urbanism coastal village design concepts. Arches Bayfront was inspired by the 1924 Beach Rock arches that were at the arrival to Fort Myers beach. The project requests a map amendment to consolidate three different future land uses into one future land use consistent with the downtown district. The project will provide 860 linear feet of activated bay walk, elevated civic plazas, parking, a marina, and multiple hotel/restaurants/retail uses to the bayside of downtown district.

The following documents are provided as our application for consideration of approval by Town Council:

Comprehensive Plan Submittal Documents:

Public Hearing application with Affidavit
Boundary Survey
Comprehensive Plan request narrative
Sketch and Description
Surrounding owner list, labels, and map
XCP-2 TIS Waiver

XCP-3 Sanitary Sewer Availability
XCP-5 Fire EMS Letter of Availability
XCP-6 Solid Waste letter of Availability
XCP-7 Safety LCSO Letter of Availability
XCP-8 LeeTran Letter of Availability

If you have any questions, please feel free to call.

My good will and respect,



James M Ink PE

Arches Bayfront Comprehensive Plan Map Amendment

Freeland FL Holdings, LLC is seeking a public hearing for a Town of Fort Myers Beach Comprehensive Future Land Use map amendment.

Comprehensive Plan and Importance to Development in Florida:

Florida Statue 163.3177 – Required and optional elements of comprehensive plan; studies and surveys – paragraph (1) states:

The comprehensive plan shall provide the principles, guidelines, standards, and strategies for the orderly and balanced future economic, social, physical, environmental, and fiscal development of the area that reflects community commitments to implement the plan and its elements. These principles and strategies shall guide future decisions in a consistent manner and shall contain programs and activities to ensure comprehensive plans are implemented. The sections of the comprehensive plan containing the principles and strategies, generally provided as goals, objectives, and policies, shall describe how the local government's programs, activities, and land development regulations will be initiated, modified, or continued to implement the comprehensive plan in a consistent manner. It is not the intent of this part to require the inclusion of implementing regulations in the comprehensive plan but rather to require identification of those programs, activities, and land development regulations that will be part of the strategy for implementing the comprehensive plan and the principles that describe how the programs, activities, and land development regulations will be carried out. The plan shall establish meaningful and predictable standards for the use and development of land and provide meaningful guidelines for the content of more detailed land development and use regulations.

It is important to note in the statute that the comprehensive plan is a guide that provides the basis for the creation of the Land Development Code and “*is not the intent to require the inclusion of implementing regulations in the comprehensive plan but rather to require identification of those programs, activities, and land development regulations....*”

Paragraph (6)(a)(1) states:

Each future land use category must be defined in terms of uses included and must include standards to be followed in the control and distribution of population densities and building and structure intensities. The proposed distribution, location, and extent of the various categories of land use shall be shown on a land use map or map series which shall be supplemented by goals, policies, and measurable objectives.

Paragraph (6) is a list of requirements of the plan. The following are relevant sections to this application.

paragraph (6) 2. e states:

The need for redevelopment, including the renewal of blighted areas and the elimination of nonconforming uses which are inconsistent with the character of the community.

Paragraph (6) 2.i

The need for job creation, capital investment, and economic development that will strengthen and diversify the community's economy.

Paragraph (6) 8

Future land use map amendments shall be based upon the following analyses:

- a) An analysis of the availability of facilities and services.*
- b) An analysis of the suitability of the plan amendment for its proposed use considering the character of the development land, soils, topography, natural resources, and historic resources on site.*
- c) An analysis of the minimum amount of land needed to achieve the goals and requirements of this section.*

Summary of the statutes is that map amendments are allowed within the framework of an operating comprehensive plan subject to consistency with the Goals, Objectives, and Policies of the plan. The Land Development Code is the implementing regulatory code that must be adhered to during the zoning and site development process.

A comprehensive plan map not specify land uses on the property only a general description of categories (i.e. Residential, Commercial, Industrial). Currently the subject property has a Marina Future Land Use which is defined as:

POLICY 4-B-7 "MARINA": designed for prime sites that can provide access to the valuable waters around Fort Myers Beach. This category provides services for recreational boating, including related accessory uses provided that do not displace recreational marina services. Cruise ships and similar uses that draw large amounts of vehicular traffic are not permitted in this category. Specific regulations will be placed in the Land Development Code.

POLICY 4-B-12 LAND USE TYPES DEFINED (iii) Marina uses involve the use of prime waterfront sites to support recreational boating, such as wet or dry storage, sales/rentals of boats and supplies, and boat repair.

The current uses allowed under the Marina FLU is very restrictive and limits the potential use of the property in today's market. This is further supported by the Hurricane Ian damage in the town and loss of commercial property including retail, hotel/motel/ and other uses that are vital to the economic sustainability of the Town.

This application is designed to address the needs of the island and provide the subject property with a best use for the development.

The following is the information as required by the application for a map change.

Request Statement:

The request is to change eight (8) parcels of Land with a FLU of Marina and Mixed Residential to Pedestrian Commercial FLU and join two (2) existing parcels of Land with a FLU of Pedestrian Commercial. This will enlarge the Pedestrian Commercial FLU area by 4.98+/- acres in the downtown urban core of the Town of Fort Myers Beach.

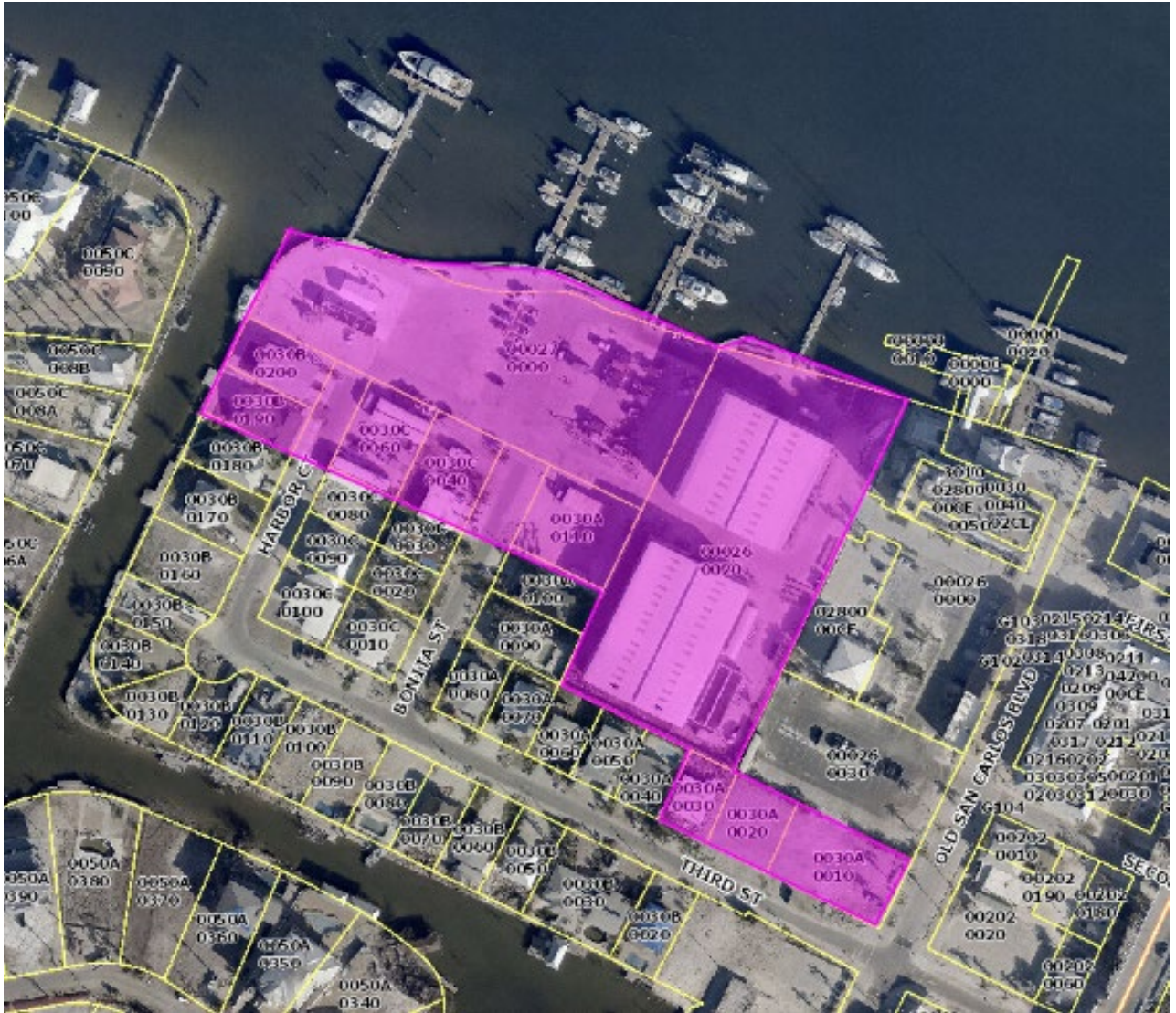
Applicant (Property Owner): Freeland FL Holdings, LLC
c/o Ben Freeland
53333 Hickory Hollow Parkway
Antioch, TN 37013
Ben@Freelandauto.com
(615) 696-4100

Agent (Planning): Ink Engineering, Inc
James Ink PE
2055 West First Street
Fort Myers, FL 33901
jink@inkengineeringinc.net
(239) 940-2504

Agent (Legal): Strayhorn, Persons-Mulicka & Fisher, P.I.
Bruce Strayhorn
2125 First Street
Fort Myers, FL 33901
Bruce@StrayhornLaw.com
(239) 334-1260

Property: The project application consists of ten (10) parcels of land. The following is the parcel listings with the current Future Land Use Classification:

Strap #	Address	Future Land Use
24-46-23-W3-00026.0020	450 Harbor Court	Marina
24-46-23-W3-00027.0020	450 Harbor Court	Marina
24-46-23-W3-0030B.0200	445 Harbor Court	Mixed Residential
24-46-23-W3-0030B.0190	441 Harbor Court	Mixed Residential
24-46-23-W3-0030C.0060	436 Harbor Court	Mixed Residential
24-46-23-W3-0030C.0040	435 Bonita Street	Mixed Residential
24-46-23-W3-0030A.0110	438 Bonita Street	Mixed Residential
24-46-23-W3-0030A.0030	935 Third Street	Mixed Residential
24-46-23-W3-0030A.0020	939 Third Street	Pedestrian Commercial
24-46-23-W3-0030A.0010	401 Old San Carlos	Pedestrian Commercial



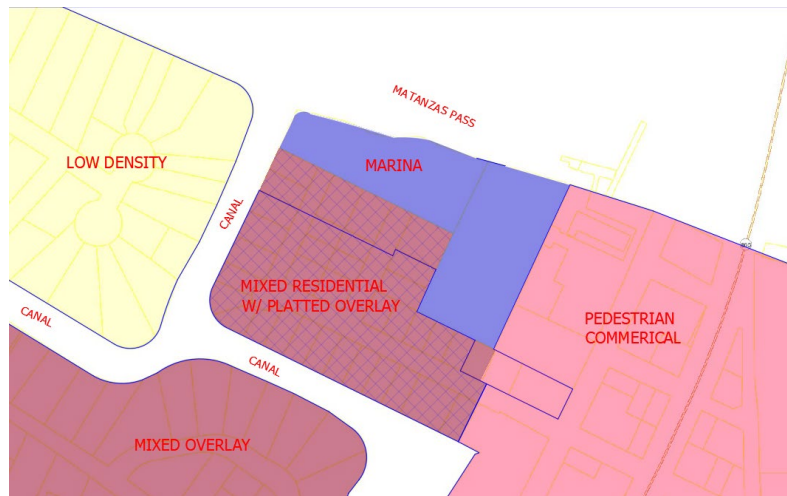
Project Location Map
(Exhibit 6-3)

Property Information:	<u>Total Acreage:</u>	4.98 ac	
	<u>Total Uplands:</u>	4.98 ac	
	<u>Total Wetlands:</u>	00 ac	
	<u>Current FLU:</u>	0.79 ac	Mixed Residential
		0.45 ac	Pedestrian Commercial
		3.74 ac	Marina
	<u>Proposed FLU:</u>	4.98 ac	Pedestrian Commercial

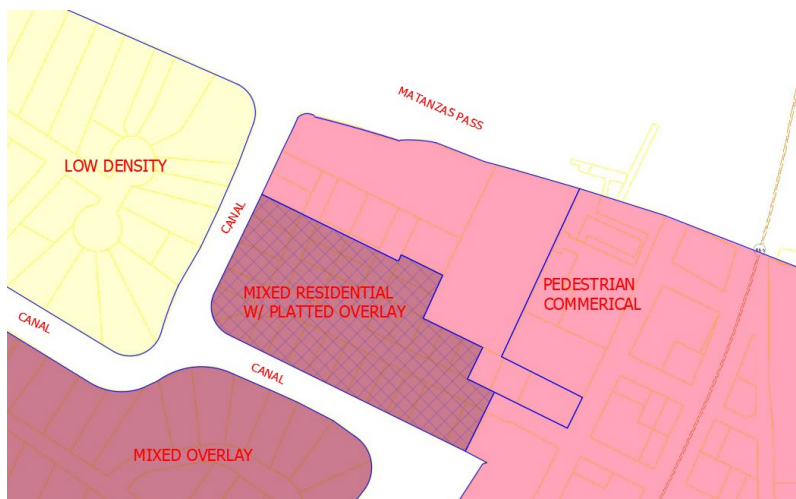
Comprehensive Plan – Map Change

The request is to change the existing Future Land Use from the existing one (1) parcel from Pedestrian Commercial FLU along Third Street, three (3) parcels on Harbor Ct from Mixed Residential with Platted overlay, two (2) parcels on Bonita St from Mixed Residential with Platted overlay, and two (2) parcels on Matanzas Pass from Marina to Pedestrian Commercial. This change will be joined to the two (2) existing parcels on Third St that are existing Pedestrian Commercial and create one (1) parcel with the Pedestrian Commercial Future Land Use consisting of 4.98+/- acres. There is a CPD application in process, however, the CPA is on an independent timeline and therefore this narrative is only for the CPA. There may be references to the CPD as providing some clarification, but the CPA must stand alone from a legal action standpoint.

The current and proposed FLU maps are:



Current Future Land Use Map



Proposed Future Land Use Map

Public Facilities Impacts:

<u>Traffic Circulation Analysis:</u>	A Traffic Impact Statement has been submitted. The town's traffic consultant provided comments January 3, 2024. A coordination meeting with town staff was held on January 17, 2024. Currently the TIS is being updated for the pending CPD application for resubmittal.
<u>Sanitary Sewer Analysis:</u>	Lee County Utilities will provide Sanitary Sewer. There is existing infrastructure that services the site uses. An attached letter (Exhibit XCP-3) from Lee County Utilities states that services are available.
<u>Potable Water:</u>	Town of Fort Myers Beach will provide Potable water. There is existing infrastructure that services the site uses. An attached letter (Exhibit XCP-4) from the Town of Fort Myers Beach states services is available.
<u>Surface Water:</u>	The parcels are of sufficient historical age that a stormwater management system does not exist. Redevelopment of the property will require issuance of an Environmental Resource Permit from SFWMD/FDEP for water quality and quantity.
<u>Parks:</u>	There are no impacts to the existing Town Park system. A rezoning that may provide for residential uses will have to be evaluated at time of zoning for any park impacts that may need to be mitigated.
<u>Recreation:</u>	There are no impacts to the recreation of the town. Rezoning to uses may provide increased recreational opportunities and public benefits that will be available for public use.
<u>Open Space:</u>	Any proposed uses will comply with the Town's Open Space requirements as set forth in the Land Development Code.
<u>Fire Protection:</u>	Fire Protection response is from the Fort Myers Beach Fire and Rescue district. A service availability letter (Exhibit XCP-5) is attached demonstrating adequate service is available.
<u>Solid Waste:</u>	The Lee County Solid Waste Department can provide solid waste collection for the project. A service availability letter is attached as Exhibit XCP-6.

<u>Safety:</u>	The Lee County Sheriff's Office has jurisdiction in the Town for Public Safety. A service availability letter (Exhibit XCP-7) is attached demonstrating adequate service is available.
<u>Mass Transit:</u>	LeeTran has jurisdiction in the Town for Mass Transportation Services. A service availability letter (Exhibit XCP-8) is attached demonstrating adequate service is available.
<u>Environmental Impact:</u>	The project parcels do not have any jurisdictional wetlands. There are no upland environmental impacts. Currently the adjacent state lands are operating as a marina with wet slip dockage. The facility has operational authorization from FDEP and ACOE with conditions to address current environmental impacts. Any change in development will be required to be consistent with the comprehensive plan, land development code, FDEP, and ACOE rules, regulations, and requirements.
<u>Historical Resources:</u>	The site has been developed for a significant period. There are no known Historic Resources on the site.

Internal Consistency:

Goal 1-3 Community Design

The following narrative is analysis of the Fort Myers Beach Comprehensive Plan and Goals, Objectives that are in support of the requested map change.

Goal 1: To continually improve the appearance and function of transportation corridors, commercial areas, and links to the natural and recreational areas.

The request is to change the FLU map to create a large expansion along the bay front of the Pedestrian Commercial Future Land Use. The shoreline is currently in the Marina FLU which has extremely limited uses to Marina activities only. Assigning the Pedestrian Commercial FLU does not remove the ability to have Marina activities but expands the options to other zoning use potential that provides public access to the waterfront. Currently, public access to the bayfront is limited to the 50' wide Bayfront Park at the end of Old San Carlos, a few restaurants in the downtown district and mid island, and Mound Key Park. Approval of this application will provide the potential increase the public's ability to access over 860' of waterfront. The requested change will also allow the ability through approved zoning to add hotel, retail, and commercial uses that will be at the bayfront end of the downtown corridor. Old San Carlos commercial would benefit from the increase in activity and use with a redevelopment project on the bay that would complement Margaritaville Resort on the Gulf. This creates two significant anchors and would provide a vibrant and sustainable downtown district.

Objective 3-D: TIME SQUARE – Stimulate the revitalization of the downtown core area (near Times Square) as the nucleus of commercial and tourist activities.

As supported in Goal 1 the ability to add uses to the Bayfront for public enjoyment is critical to the redevelopment of the Downtown district in the wake of Hurricane Ian. The ability to add commercial, hotel, retail, and restaurants with walkable opportunities will enhance the sense of place for residents and visitors experiencing the downtown district from the Gulf to the Bay. Fort Myers Beach downtown is only 300 yards wide between the Gulf and Bayfront making it a wonderful place on the human scale. The short distance along Old San Carlos is ideal to create a walkable community reducing the need for travel by car. Currently most hotel beds are along the Gulf at the east end of downtown and a few hotel beds on First Street near the bay. There exists a need for additional hotel beds with mixed use business that will create an incentive to travel the entire length of downtown by walking or bikes. This site has the significant potential to add a mixture of uses that enhances the downtown environment and provides a bayfront anchor for an active, vibrant, and sustainable downtown district.

Goal 4 Future Land Use Element

Goal 4: To keep Fort Myers Beach a healthy and vibrant "small town", while capitalizing on the vitality and amenities available in the beach-resort environment and minimizing the damage that a hurricane could inflict.

Unfortunately, on September 28, 2022, Hurricane Ian swept ashore with a large storm surge that caused catastrophic damage to the island. In one day, the beach buildings were significantly damaged or destroyed. The town suffered a damaging blow with a great loss of property. It is important that the "small town" known as Fort Myers Beach remains to protect the historical legacy of the island. However, replacing structures with current code, flood elevations and resiliency restraints comes at a significant cost. It is extremely difficult and impossible to replace what was lost in the same eclectic nature that took decades to build. Therefore, a new vision needs to be developed of how Fort Myers beach small town will be defined for redevelopment to a sustainable town. The use of new urbanism design principles creating walkable streets, housing, and shopping in proximity, and connected accessible public spaces. New urbanism focuses on human-scaled design not the typical suburbansim of the past. This is the intent of the request by expanding the allowable uses on a significant urban core property in the heart of the urban core of the town. Meeting this need cannot be accomplished under the current Marina FLU. This application requests changing eight parcels to Pedestrian Commercial FLU to with the two parcels already Pedestrian Commercial FLU to create a 5 acre tract in the urban core of the town. Pedestrian Commercial FLU is defined in the Comprehensive Plan as:

POLICY 4-B-6 "PEDESTRIAN COMMERCIAL": a primarily commercial district applied to the intense activity centers of Times Square (including Old San Carlos and nearby portions of Estero Boulevard) and the area around the Villa Santini Plaza. For new development, the maximum density is 6 dwelling units per acre

(except where the Future Land Use Map's "platted overly" indicates a maximum density of 10 units per acre for affordable units consistent with the adopted redevelopment plan). Commercial activities must contribute to the pedestrian-oriented public realm as described in this comprehensive plan and must meet the design concepts of this plan and the Land Development Code. Where commercial uses are permitted, residential uses are encouraged in upper floors. All "Marina" uses in Policy 4-B-7 are also allowed on parcels that were zoned for marinas prior to adoption of this plan. Non-residential uses (including motels and churches) now comprise 58.9% of the land in this category, and this percentage shall not exceed 90%.

The ability to have additional development parcels within the "Times Square" Pedestrian Commercial FLU through proper zoning and development regulations can be designed as a village designed for people, not cars and parking. The new urbanism design principles can create a zoning ordinance that defines how to create plazas, sidewalks, cafes, and a host of activities for human interaction within the framework of the mixed-use village commercial development. This adoption of this application expanding the existing Pedestrian Commercial FLU will create the ability to create an appropriate zoning ordinance for the new Fort Myers Beach healthy and vibrant "small town" that can be the model for the post Ian sustainable community redevelopment. The requested land use map change will not eliminate the historical marina waterfront uses as Pedestrian Commercial FLU as defined in Policy 4-B-6 allows all Marina Uses in Policy 4-B-7 the existing FLU designation. Therefore, the requested map change does not create an inconsistency with the Comprehensive Plan with the continued existing use of the parcels.

The Comprehensive Plan provides guidance on density, intensity, and height that are not relevant to the map change but are critical to a sustainable, resilient, and consistent redevelopment of the subject parcel through Rezoning as governed under Chapter 34 of the Land Development Code. These following Policies are presented as important contributory information of a rezoning process to be found consistent with the Comprehensive Plan.

***POLICY 4-C-6 MOTEL DENSITIES:** The Land Development Code shall specify equivalency factors between guest units (which include motel rooms) and full dwelling units. These factors may vary based on size of guest unit and on land-use categories on the Future Land Use Map. They may vary between a low of one guest unit and a high of three guest units for each dwelling unit. (These factors would apply only where guest units are already permitted.) In order to implement the 1999 Old San Carlos Boulevard/Crescent Street Master Plan that encourages mixed use buildings with second and third floors over shops on Old San Carlos, hotel rooms may be substituted for otherwise allowable office space in that situation and location without using the equivalency factors that apply everywhere else in the town. This alternate method for capping the number of hotel rooms applies only to properties between Fifth to First Streets that lie within 200 feet east and west of the centerline of Old San Carlos Boulevard. Hotel rooms built under this alternate method must have at least 250 square feet*

per rentable unit, and under no circumstances shall buildings they are located in exceed four stories (with the ground level counted as the first story).

It would appear to a brief read of this Policy that Hotel/Motels are a function of density with a room multiplier of one to three guest units for each allowable density unit. However, the correct read is in the following parentheses statement, "(These factors would apply only where guest units are already permitted.) New units would not fall under this factor requirement. This is reinforced and explained in the commentary of the Comprehensive Plan and Land Development Code regulations.

The commentary reads with emphasis added for clarification:

*A new motel (or hotel) that qualifies under the current zoning regulations can have substantially more rental units than would be allowed for multifamily housing. Under the current rules, a minimum of three "business hotel/motel units are guaranteed for each one regular dwelling that would otherwise be allowed (in zoning districts where motels are permitted); this ratio is two for one for "efficiency" motels. With a maximum number of new dwellings allowed under the comprehensive plan of 6 units per acre, 18 hotel or motel units can be built. **In addition, a landowner can request higher densities yet during a planned development rezoning (with no maximum cap) provided that the Town Council finds that the higher density would be "compatible with the surrounding area."** (Due to concerns over these density multipliers, they were suspended by ordinance in late 1997 pending the completion of this comprehensive plan.)*

The possibility of additional hotel/motel units that may be approved in a public hearing rezoning process of a property is detailed in Section 34-1803(2) – Allowable Intensity which states:

(2) Guest units exceeding these equivalency factors or exceeding 1,000 square feet each may be allowed under exceptional circumstances as described in the comprehensive plan if approved as a deviation through a planned development rezoning. Before approving such a deviation, the town council must find that:

- a. All other aspects of the development (height, traffic intensity of use, etc.) are compatible with the surrounding area.*
- b. The proposal clearly exceeds all standards of the Fort Myers Beach Comprehensive Plan; and*
- c. In no case can equivalency factor increase exceed the maximum intensities allowed by the Fort Myers Beach Comprehensive Plan.*

The conclusion on motel densities for new unpermitted rooms is that through the planned development process with providing "exceptional circumstances" and ensuring neighborhood compatibility Town Council can approve a deviation for the number of appropriate hotel units. This is a rezoning issue and not a Comprehensive Plan inconsistency. Any proposed motel/hotel uses will require a rezoning of the property

that is consistent with the Comprehensive Plan and Pedestrian Commercial FLU. The intensity of motel/hotel use on the property would be addressed in the rezoning of the property and through public hearings for consistency with the Comprehensive plan and Land Development Code.

Height is addressed in Policy 4-C-4 and like Motel Densities is not applicable to the map change request, but clarification should be illustrated for clarity. The Policy states:

POLICY 4-C-4 BUILDING HEIGHTS: The Land Development Code shall limit the height of new buildings under most conditions to two stories above flood elevation (exceptions may include the build back situations (See Policy 4-D-1 and 4-E-1), and different heights may be applied to officially designated redevelopment areas such as Times Square, Red Coconut/Gulf View Colony, and Villa Santini Plaza.) In those case where individual parcels of land are so surrounded by tall buildings on lots that contiguous (or directly across a street) that this two-story height limit would be unreasonable, landowners may seek relief through the planned development rezoning process, which requires a public hearing and notifications of adjacent property owners. The town will approve, modify, or deny such requests after evaluating the level of unfairness that would result from the specific circumstances and the degree the specific proposal conforms with all aspects of this comprehensive plan, including its land-use and design policies, pedestrian orientation, and natural resource criteria. Particular attention would be paid to any permanent view corridors to the Gulf or Bay waters that could be provided in exchange for allowing buildings to be taller than two stories. In each case, the town shall balance the public benefits of the height limit against other public benefits that would result from the specific proposal.

The height determination of a project would be addressed in a rezoning case and would provide the context and deviation from the Land Development Code for height in the downtown district. Comprehensive Plan Policy on height states that through the public hearing process additional height may be obtained due to non-conforming building heights on adjacent properties.

The current Marina uses are not in conflict with a map change to Pedestrian Commercial as marina uses are allowed in the Pedestrian Commercial future land use. The request is required for the Arches Bayfront Commercial Planned Development public hearing application that is submitted concurrent with this Map Change Amendment application.

Goal 5 Coastal Management

Goal 5 Coastal Management addresses shoreline management.

OBJECTIVE 5-C POST-DISASTER REDEVELOPMENT – Plan for post-disaster rebuilding that will reduce the exposure of human life and property to future disasters and improve the community in other ways during the rebuilding process.

Adding this larger parcel to Pedestrian Commercial FLU gives the flexibility to spread the significant costs of the required post storm foundation and elevation of structures. Creating the ability to have an integrated village concept that will minimize impacts to property in future disasters. This is consistent with Objective 5-C specifically in Policy 5-C-4(iii) in which the town investigates the feasibility of promoting pedestrian activity with raising sidewalks to reduce dry floodproofing requirements.

OBJECTIVE 5-E Increase the number of well-maintained accesses to beaches, bays, and navigable waters to serve the existing and future population and visitors.

The proposed map change in the FLU will give the opportunity to redevelop through the zoning process to create a place that significantly activates the bayfront with plazas, parks and walkability integrated into a vibrant and sustainable downtown district.

POLICY 5-E-7 This plan minimizes the potential for land use conflicts between waterfront uses and other land uses through the following priorities for development/redevelopment of the shoreline:

- i. Intense multi-family uses are limited to areas vested by previous regulations; to the rebuilding of existing sites following a natural disaster (See Policy 4-D-1): and to voluntary rebuilding of existing sites in accordance with the Future Land Use Element.*
- ii. Future development or redevelopment of shoreline land uses must ensure compatibility with surrounding lands and provide proper buffering where needed.*
- iii. In determining applicable land uses for a site, priority shall be given to water dependent land uses in the following order*
 - Conservation uses;*
 - Water-dependent uses such as marinas which are available for use by the general public;*
 - Recreational uses; and*
 - Other uses that are compatible with the surrounding neighborhood.*

Item (i) does is not relevant to the map change as there is an existing marina and no vested areas of multi-family that may need to be rebuilt after a natural disaster.

Item (ii) would be consistent with the proposed map change due to the neighborhood being comprised of commercial to the east and residential to the south. The existing

marina with dry storage operates typically with industrial use which would be the most intense impact to the surrounding neighborhood. Changing to Pedestrian Commercial would allow other uses that have a lower impact on the existing neighborhood. The change would not increase impacts and most likely will provide a decrease in impact on the surrounding neighborhood.

Item (iii) would remain consistent with the proposed map change due to the requirement that any use other than allowable under the current Marina zoning district would require rezoning. This public hearing process could ensure that the continued use as a marina in some form due to 900 linear feet of shoreline and existing wet slips it can be assumed that first come first served wet slip boat leasing would be available. As addressed in Item (i) commercial and residential are existing uses in the surrounding neighborhood and adding additional commercial and residential uses would remain a compatible neighbor.

Goal 6 is the conservation element. The proposed map change would be a betterment to the Goals, Objectives, and Policies as the introduction of any redevelopment of the site would require the installation of a stormwater management system providing an improvement of stormwater entering the bay. (Objective 6-H Water Quality).

Goal 7 Transportation

GOAL 7: To improve peak season mobility without reducing the permeability of Estero Boulevard to foot traffic or damaging the small-town character of Fort Myers Beach. The town seeks to reduce speeding, improve evacuations capabilities, and improve mobility through balanced transportation improvements such as a continuous system of sidewalks and bikeways, a network of trolleys and water taxis lined to off island systems, and parking options matched to road capacity.

Transportation is one of the main concerns of development in the town. Approval of this FLU map change does not grant any specific uses of a property. Currently, the existing marina zoning district provides the schedule of allowable uses on the property. These existing uses can continue consistent with the change to Pedestrian Commercial FLU. Any redevelopment proposal other than marina uses will require a public hearing for a change of zoning request. The zoning request will demonstrate redevelopment of the site will meet the requirements of the Land Development Code and Comprehensive Plan including Goal 7. The Comprehensive Plan sets forth the Goals, Objectives, and Policy to provide a vision of the town. The Land Development Code is the implementation document for the rules and regulations governing development in the town. There are specific parts of the comprehensive plan that must be met by development to remain consistent with the Plan. Specific parts of the plan that are relevant to any redevelopment of any parcel of land in the town must be found consistent with the Comprehensive Plan. These sections of the plan are most relevant to a significant development plan:

Objective 7-C EVACUATION ROUTE – Estero Boulevard’s critical function as the sole evacuation route for Fort Myers Beach shall be considered in all planning and development activities.

POLICY 7-D-1 ARRIVE WITHOUT A CAR: Fewer vehicles would be driving to Fort Myer Beach if scheduled airport shuttle service were available. The town shall encourage this service and the designation of a central drop-off point that could include a trolley stop and taxi stand.

POLICY 7-D-2 IMPROVE TROLLEY SERVICE: Trolley ridership increases when service is more frequent and when fares are low or free, yet no long-term funding or operational plan has been developed for providing higher service levels. (remaining of Policy is not relevant to map change request)

POLICY 7-D-3 ALTERNATE TRAVEL MODES: The town shall support alternatives to car travel to free up road capacity for trips that do require a car. (remaining of Policy is not relevant to map change request)

POLICY 7-D-4 ENCOURAGE WATER TAXIS: Fort Myers Beach has great potential for water transportation, with its canals, natural waterways, and high levels of tourism. To encourage the private sector to provide this service, the town shall ease regulations that require a water taxi to provide adequate parking spaces at every stop and shall encourage restaurants, motels, and marinas to provide dockage for water taxis. Where possible, water taxi drop-off sites should avoid areas of high manatee concentration, use protective measures such as propeller guards, jet propulsion, or electric motors.

POLICY 7-H-9 PROFESSIONAL ASSISTANCE: The town may wish to retain a creative traffic engineer to provide advice on these experiments on a continuing basis.

These Policies show the towns desire to promote and when presented provide serious evaluation of creative and alternative methods of travel on the island and reduce the need to utilize the automobile as the first mode of transportation. This philosophy is valid and wise as the potential solutions to developments. This Map Amendment change of its level cannot address the Policies on how to provide these items. The zoning and Development Order applications are the proper public and staff review process that would present modes of traffic mitigation for a specific development intensity and density. This CPA application is a map change that presents the potential for expanded uses on the subject property. This CPA application does not grant any specific uses or construction authorization. The requested map change amendment is consistent with the Comprehensive Plan for the Policies discussed.

OBJECTIVE 7-I LEVEL OF SERVICE STANDARD – Maintain minimum acceptable levels of service for the transportation system.

The Comprehensive Plan requires that a development maintain a specific level of service. The map change would only allow the potential of adding uses over and above the Marina. Based on Pedestrian Commercial FLU, the property size of 5 acres, maximum Floor area ratio (FAR) of 2.5 (Policy 4-C-2), and a maximum residential density of 10 units per acre with affordable units the following could be the traffic generation for varied uses:

Current Allowable FAR for Marina FLU @ 1 FAR	217,800 SF
Maximum Potential Allowable for Pedestrian Commercial at 2.5 FAR	544,500 SF
Maximum Potential Allowable for Pedestrian Residential Units @ 10 units per acre	50 units

Trip Generation based on ITE rates (AM/PM peak):

Marina at maximum buildout (600 slips) at 50% usage	42/125
Potential Maximum Residential 50 Units	20/25
Pending COD Resort Hotel 400 rooms	101/110
Equal Distribution of Commercial including Restaurants (Multiple Types), Fast Food, Pharmacy, Grocery, Convenience Store, and retails	3,211/4,129

This calculation clearly demonstrates that even though the Comprehensive plan has maximum levels there are other constraints that must be considered in the design of a development that will limit and reduce the allowable rates in the Plan. It should be obvious that almost 4,129 PM Peak hour trips that are theoretically possible these uses would not be allowed because of the constraints of Traffic Impact Statement requirements at the zoning and Development Order review level. The Comprehensive Plan provides guidance on these constraints within Objective 7-I Level of Service Standards.

OBJECTIVE 7-I LEVEL-OF-SERVICE STANDARD – Maintain minimum acceptable levels of service for the transportation system.

POLICY 7-I-1 Traffic congestion is a serious problem at Fort Myers Beach, caused by a combination of high tourism demand for its beaches and past over-building relative to road capacity. Neither factor is within the control of the Town of Fort Myers Beach, although its residents must tolerate congestion every winter. This comprehensive plan seeks to manage congestion levels and encourage alternative means of mobility including walking, bicycling and trolleys.

POLICY 7-I-2 The peak capacity of Estero Boulevard's congested segments is 1,300 vehicles per hour. The minimum acceptable level-of-service standard for Estero Boulevard shall be that average monthly traffic flows from 10:00 am to 5:00 pm during each month do not exceed that level for more than four calendar

months is in any continuous twelve-month period. Measurements from the permanent count station at Donara Boulevard shall be used for this standard.

Summary

The assignment of a Future Land Use is solely the function of whether the location is consistent with the overall plan and neighborhood compatibility. The details of the density intensity and uses are regulated by the Land Development Code Chapter 34 for zoning and Chapter 10 for a Development Order application.

This analysis has shown that the proposed map change in FLU is consistent with the comprehensive plan as follows:

- a) The subject parcels under unified control are a mixture of three Future Land Use of Marina, Mixed Residential and Pedestrian Commercial. Redevelopment of the parcels should be in one land use.
- b) Assigning Pedestrian Commercial to all the parcels in the application will not create any inconsistencies with existing use. All current uses of the parcels are allowable in Pedestrian Commercial.
- c) The existing facility sustained severe damage from Hurricane Ian. Buildings were destroyed and the remaining buildings are damaged and are near the end of their life cycle.
- d) The subject parcel is of sufficient area to allow a significant redevelopment with uses that have been significantly affected by Hurricane Ian. Reconstruction of new uses allowed in Pedestrian Commercial will provide services, uses, and sustainable and significant economic impact.
- e) Determining impacts to the town for density, intensity, height, and other compatibility factors are evaluated within Rezoning and Development Order requirements governed under the Land Development Code. Rezoning is a public hearing process allowing public input on the specifics of the project.

The change of the Future Land Use to Pedestrian Commercial does not entitle the property to any specific uses, heights, and intensities, only gives the opportunity to develop with an expanded mix of uses beyond what is allowable in the Marina FLU.

In my professional opinion detailed by this narrative, I believe that the proposed map change from Marina FLU to Pedestrian Commercial FLU is consistent with the Comprehensive Plan and provides an opportunity to provide residents and visitors more uses that will be beneficial to the sustainability of the Town of Fort Myers Beach.



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

June 16, 2023

Ink Engineering, Inc.
ATTN: James M. Ink, PE
2055 West First Street
Fort Myers, FL 33901
jink@inkengineeringinc.net

RE: Service Availability Request for Comp Plan Amendment
Arches Bayfront
450 Harbor Court
Fort Myers Beach, FL 33931

Mr. Ink:

Please let this letter serve as response to your request for a Letter of Service Availability for the proposed Comprehensive Plan Map amendment for the above referenced property. Based on a review of the information provided I have the following comments:

1. The proposed development will encompass some residential areas, specifically Third Street, Bonita Street and Harbor Court, which has the potential to create additional traffic and possible congestion. We feel this may have the ability to affect emergency response.

All other spaces are subject to the most current editions, at time of application, of the fire and life safety codes.

If there are any questions regarding this, please contact my office.

Thank You.

Jennifer Campbell, Fire Official
Life Safety Branch
Fort Myers Beach Fire District

Shaping Our Community Through Excellence

www.fmbfirefl.gov

Kevin Ruane
District One

June 13, 2023

Cecil L. Pendergrass
District Two

Arches Bayfront
450 Harbor Court
Fort Myers Beach, FL 33931

Ray Sandelli
District Three

Brian Hamman
District Four

**RE: Moss Marina Site on Fort Myers Beach
Letter of Service Availability Request**

Mike Greenwell
District Five

Mr. James M Ink,

Roger Desjarlais
County Manager

LeeTran has reviewed your request for service availability regarding a proposed Comprehensive Plan Amendment. After reviewing the site and comparing the location with our existing and planned route locations according to the 2020 Transit Development Plan (TDP), the following has been determined:

Richard Wesch
County Attorney

The proposed development is within one-quarter mile of a fixed-route corridor and the closest bus stop is Estero Blvd @ Lagoon St. Based on Lee County Transit LDC 10-442 (b)(1), if this becomes a DO or LDO type D, a bicycle storage rack is needed. However, the development is in Fort Myers Beach you are not required to make these improvements. Therefore, the developer will need to coordinate with the City of Fort Myers Beach on the required improvements based on their Transit LDC 10-442 (1).

Donna Marie Collins
County Hearing Examiner

If you have any questions or require further information, please do not hesitate to contact me at (239) 533-0340 or cmarinodiaz@leegov.com.

Sincerely,

Clarissa Marino Diaz

Clarissa Marino Diaz,

Transit Service Planner

Phone: (239) 533-0340

Carmine Marceno
Sheriff



State of Florida
County of Lee

"Proud to Serve"

May 30, 2023

James M. Ink
Ink Engineering, Inc.
2055 W. First St.
Fort Myers, FL 33901

Mr. Ink,

The Lee County Sheriff's Office has reviewed your Arches Bayfront Comprehensive Plan Amendment and Commercial Planned Development Rezoning Request Statement to rezone 4.98+- acres on Fort Myers Beach that includes the following parcels:

24-46-23-W3-00026.0020, 450 Harbor Court
24-46-23-W3-00027.0000, 450 Harbor Court
24-46-23-W3-0030B.0200, 445 Harbor Court
24-46-23-W3-0030B.0190, 441 Harbor Court
24-46-23-W3-0030C.0040, 435 Bonita Street
24-46-23-W3-0030A.0110, 438 Bonita Street
24-46-23-W3-0030A.0030 935, Third Street
24-46-23-W3-0030A.0020 939, Third Street
24-46-23-W3-0030A.0010, 401 San Carlos Blvd.

The proposed Comprehensive Plan Map Amendment would change the properties' Future Land Use designation from Marina to Pedestrian Commercial and expand the hotel matrix exemption to Bayfront properties with unique public benefits for civic space to activate the waterfront for public interaction. The zoning request would change the planned development's designation from Marina to CPD and allow for a maximum of 400 hotel motel units, a marina with a maximum of 75 wet boat slips, a maximum of 100,000 square feet of commercial retail/office space, a minimum 50,000 square feet of civic space and a maximum building height of 60 feet above design flood elevation (6 stories), with tiered setbacks.

This Agency evaluated your request solely on its ability to provide law enforcement service to the project. Based on that criterion, these proposed changes would not affect our ability to provide law enforcement services to the project and surrounding area.



"The Lee County Sheriff's Office is an Equal Opportunity Employer"
14750 Six Mile Cypress Parkway • Fort Myers, Florida 33912-4406 • (239) 477-1000

May 30, 2023

Page 2

Law enforcement services will be provided from our West District offices in Fort Myers. At the time of application for a development order or building permit, we request that the applicant provide a Crime Prevention Through Environmental Design (CPTED) report done by the applicant and given to the Lee County Sheriff's Office for review and comment. Please contact Community Response Unit Crime Prevention Practitioner Kim Swanson at (239) 477-1617 with any questions regarding the CPTED study.

Respectfully,



Chris Reeves
Major, Patrol Bureau



BOARD OF COUNTY COMMISSIONERS

Kevin Ruane
District One

June 2, 2023

Via E-Mail

Cecil L Pendergrass
District Two

Raymond Sandelli
District Three

Brian Hamman
District Four

Michael Greenwell
District Five

Roger Desjarlais
County Manager

Richard Wm Wesch
County Attorney

Donna Marie Collins
*County Chief
Hearing Examiner*

James Ink, P.E.
Ink Engineering, Inc.
2055 West First Street
Fort Myers, FL 33901

RE: **Wastewater Availability**
Arches Bayfront Resort – 450 Harbor Court
STRAP # 24-46-23-W3-00026.0020; 24-46-23-W3-00027.0000;
24-46-23-W3-0030B.0200; 24-46-23-W3-0030B.0190;
24-46-23-W3-0030C.0040; 24-46-23-W3-0030A.0110;
24-46-23-W3-0030A.0030; 24-46-23-W3-0030A.0020;
24-46-23-W3-0030A.0010

To whom this may concern:

The subject properties are located within Lee County Utilities Future Service Area as depicted on Map 4B of the Lee County Comprehensive Land Use Plan. Sanitary sewer lines are in operation adjacent to the property mentioned above. However, in order to provide service to the subject parcels, developer funded system enhancements such as line extensions may be required.

Your firm has indicated that this project will consist of four commercial units with an estimated flow demand of approximately 100,700 gallons per day. Lee County Utilities presently has sufficient capacity to provide sanitary sewer service as estimated above.

Sanitary sewer service will be provided by our Fort Myers Beach Water Reclamation Facility. The Lee County Utilities' Design Manual requires the project engineer to perform hydraulic computations to determine what impact this project will have on our existing system.

There are no reuse mains in the vicinity of these parcels.

Prior to beginning design work on this project, please meet with LCU Staff to determine the best point of connection and discuss requirements for construction.

This letter should not be construed as a commitment to serve, but only as to the availability of service. Lee County Utilities will commit to serve only upon receipt of all appropriate



P.O. Box 398, Fort Myers, Florida 33902-0398 (239) 533-2111

lee-county.com

AN EQUAL OPPORTUNITY AFFIRMATIVE ACTION EMPLOYER

connection fees, a signed request for service and/or an executed service agreement, and the approval of all State and local regulatory agencies.

Further, this letter of availability of sanitary sewer service is to be utilized for Zoning and Comprehensive Plan Amendment only. Individual letters of availability will be required for the purpose of obtaining building permits.

Sincerely,

LEE COUNTY UTILITIES

Ashanti Shahriyar

Ashanti Shahriyar

Plan Reviewer

239-533-8531

UTILITIES ENGINEERING



Board of County Commissioners

Kevin Ruane
District One

May 26, 2023

Cecil L Pendergrass
District Two

Ray Sandelli
District Three

Brian Hamman
District Four

Mike Greenwell
District Five

Roger Desjarlais
County Manager

Richard Wm. Wesch
County Attorney

Donna Marie Collins
County Hearing
Examiner

Ink Engineering, Inc.

Attn: James M. Ink
2055 West First street,
Fort Myers, FL 33901

RE: Letter of Service Availability – Moss Marina

Dear Mr. Ink:

The Lee County Solid Waste Department is capable of providing solid waste collection service for future changes to the Moss Marina Comprehensive Plan and rezoning project to modify the marina use adding commercial/hotel with ancillary uses through the franchised hauling contractors. Disposal of the solid waste from this development will be accomplished at the Lee County Resource Recovery Facility and the Lee-Hendry Regional Landfill. Plans have been made, allowing for growth, to maintain long-term disposal capacity at these facilities.

Please review Lee County Land Development Code, Chapter 10, Section 261, with requirements for on-site space for placement and servicing of solid waste containers. Please note that the property owner will be responsible for all future applicable solid waste assessments and fees.

If you have any questions, please call me at (239) 533-8007.

Sincerely,

Justin Lighthall

Justin Lighthall
Manager, Public Utilities
Lee County Solid Waste Department



Kathleen "Katie" O. Berkey, AICP
Shareholder and Certified Land Planner
Board Certified Attorney, City, County, and
Local Government Law
Phone: 239.628.4919 Fax: 239.433.5933
KBerkey@beckerlawyers.com



Becker & Poliakoff
Six Mile Corporate Park
12140 Carissa Commerce Court, Suite 200
Fort Myers, Florida 33966

Northern Trust Building
4001 Tamiami Trail North, Suite 270
Naples, Florida 34103

April 30, 2024

VIA E-MAIL ONLY: sarah.propst@fmbgov.com

Sarah Propst, AICP, PMP
Community Development, Planning Manager
Town of Fort Myers Beach

***RE: Magnum FMB 1 LLC Opposition to Case No. 20230152 for Arches Bayfront
Request to Change The Future Land Use For Eight (8) Parcels To Pedestrian
Commercial, Respectively, at Parcel No. 244623W30030A0010, 401 OLD SAN
CARLOS BLVD, FORT MYERS BEACH, 33931***

Dear Ms. Propst:

I am an attorney and certified land planner, certified in City, County, and Local Government Law by the Florida Bar. I represent Magnum FMB 1 LLC ("Magnum"), the owner of certain real property located at 725 Matanzas Court, Fort Myers Beach, Florida. Magnum is manager-managed by Mr. Dale Bonnema, who also resides at this address. Magnum's property is approximately 72-feet from the property subject to the proposed future land use change, which, if approved, will detrimentally affect Magnum and Mr. Bonnema. Accordingly, Magnum and Mr. Bonnema oppose the above-referenced application due to threatened harm and disproportionate impacts threatened by same.

Together with this letter and my CV, Magnum submits the following **enclosures** into the record for the above-referenced case and ask that same be included in the agenda packet for the Town Council hearing on May 6, 2024 at which this case will be heard.

1. Revised Expert Planning Report prepared by Max Forgey, AICP, Forgey Planning, dated April 29, 2024, and Mr. Forgey's CV; and
2. Expert Traffic Report prepared by Mohsen Salehi, AICP, ITE(F), of Corbel Design Consulting Services, and Charles Andrew ("Drew") Roark, P.E., CTL, of Alex Roark Engineering, PLLC, dated April 29, 2024, and Mr. Salehi and Mr. Roark's respective CVs.

Sarah Propst, AICP, PMP
April 30, 2024
Page 2

Magnum has established the adverse impacts posed by this proposed future land use change, at the greatest intensity permitted by the Comprehensive Plan, and that the proposal is incompatible with longstanding, surrounding uses. As a result, the proposal greatly diminishes the existing residents' quality of life. For all the above reasons and the reasons detailed in the revised Report which are supported by substantial competent evidence, the reasons detailed in your staff report, and the discussion before the LPA on April 9, 2024, we respectfully urge the Town Council to deny this application.

Thank you.

Very truly yours,



Kathleen O. Berkey
For the Firm

KOB/ma

Enclosures (as stated)

cc: Client
Max Forgey, AICP, Forgey Planning (via e-mail only w/encl: max@forgeyplanning.com)
Mohsen Salehi, AICP, ITE(F), Salehi Consulting Services (via e-mail only w/encl.: mohsen@corbeldesign.com)
Drew Roark, P.E., CTL, Alex Roark Engineering (via e-mail only w/encl.: drew@alexroarkeng.com)
Amy Baker, Town of Fort Myers Beach Clerk (amy@fmbgov.com)
Nancy Ann M. Stuparich, Esquire, Vose Law Firm LLP, Town Attorney (via e-mail only: nstuparich@voselaw.com)
Gretchen R. H. ("Becky") Vose, Esquire, Vose Law Firm LLP (via e-mail only: bvose@voselaw.com)

DARYL MAX FORGEY, AICP
LAND USE PLANNER & EXPERT WITNESS
max@forgeyplanning.com
239.560.5864

Town of Fort Myers Beach
Town Council
2731 Oak Street
Fort Myers Beach, FL 33931
239.765.0202

April 29, 2024¹

SUBJECT: JUSTIFICATION FOR DENIAL OF APPLICATION NO, 20230152, TO AMEND FUTURE LAND USE MAP SERIES (FLUM) OF THE TOWN OF FORT MYERS BEACH COMPREHENSIVE PLAN ON EIGHT (8) PARCELS OF LAND WITH A FLU DESIGNATION OF MARINA AND MIXED RESIDENTIAL TO PEDESTRIAN COMMERCIAL FLU AND JOIN TWO (2) EXISTING PARCELS OF LAND WITH A FLU OF PEDESTRIAN COMMERCIAL

1. PURPOSE OF REPORT & QUALIFICATIONS OF EXPERT

Purpose of this report. This report was prepared on behalf of client Magnum FMB 1 LLC (“Magnum”) who owns 725 Matanzas Ct, Fort Myers Beach, FL 33931-2119. Magnum is manager-managed by Dale Bonnema who also resides at this address and whose use and enjoyment of the property will be adversely affected by the proposed amendments to the Town of Fort Myers Beach Comprehensive Plan, if approved. Magnum’s property is only approximately 72-feet from the property subject to the proposed future land use change.

This report sets forth the justifications for denial of the FLUM amendment, which was the subject of a public hearing on April 9, 2024, by the Town’s Local Planning Agency (LPA). This report supplements testimony which will be provided in person by Mr. Bonnema as well as neighbors and residents of the immediate vicinity.

Companion Application No. 20230151. There is a companion rezoning application on the same subject property for a DCI - Planned Development rezoning. No date has been scheduled for the

¹ *Supersedes Prior Report dated April 3, 2024 and entered in the LPA Agenda Packet for April 9, 2024 (Pages 115-128)*

consideration of the rezoning application. This report will offer no testimony concerning that application.

Qualifications and professional experience. The undersigned is a land use planner and expert witness with a Master of Public Affairs (MPA) degree with a concentration in Urban and Regional Planning from the O'Neill School of Public and Environmental Affairs at Indiana University Bloomington; and has been a member in good standing of the American Institute of Certified Planners (AICP) since 1993. A copy of the resume of Daryl Max Forgey, detailing his professional qualifications and career experiences, is appended to this report.

2. LEGISLATIVE NATURE OF CASE No. 20230152

Case No. 20230152 is legislative in nature and was heard by the LP on April 9, 2024; the companion application 20230151, will be quasi-judicial. Comprehensive plans in Florida must be amended by legislative procedures. W. Thomas Hawkins, in *Land Use Law in Florida* [Routledge, 2021] posits that “[l]egislative actions create a general rule or policy which will be applicable to an open class of individuals, interests, or situations”, and cites four examples of legislative actions, including Comprehensive Plan adoption and amendments, adoption of land development code, and rezoning of many properties. [pg. 51]. The proposed action is legislative in nature because it would amend the Town of Fort Myers Beach Comprehensive Plan, imposing a dramatic change in scale and intensity of use on 4.53 acres of land.

The Comprehensive Plan enshrines the community’s vision of its future, one that provides guidance to property owners, local governments, and infrastructure and service providers, among others. A local government has every good reason to maintain its comprehensive plan and land development regulations in its existing state unless and until a better use reveals itself. The desires of one individual property owner for personal enrichment or aggrandizement should not justify replacing the property owner’s existing entitlement.

Hawkins summarized the judicial standard of review as follows: “Courts review legislative decisions using the fairly debatable standard. The standard has two parts. First, laws must bear a substantial relation to a legitimate police power purpose. Second, the connection between that rule and its purported purpose may not be clearly arbitrary and unreasonable.” [pg. 51]. In this case, there is no reason to doubt that the existing long-standing FLUM designations do not bear a substantial relation to a legitimate police power, and there is no reason to assume that denying an existing and long-standing FLUM designation could possibly be considered arbitrary or unreasonable.

The proposed use of the subject property is inconsistent on its face with the Town of Fort Myers Beach Comprehensive Plan; if it were consistent, it would not have been necessary for the applicant to apply for an amendment. The undersigned concludes that the existing land use designations on the subject property allow a reasonable use to the applicant. The Town Council,

as the Town’s governing body, has no obligation to transmit or adopt this amendment to its Comprehensive Plan, and should deny it outright.

3. THE FORT MYERS BEACH CULTURE OF GOOD PLANNING

Following a successful referendum, the Town of Fort Myers Beach was incorporated as a municipality effective December 31, 1995. Prior to that date, Estero Island was subject to the Comprehensive Plan and Land Development Regulations (LDRs) of Lee County. Residents desired to have their own comprehensive plan and LDRs and engaged the services of distinguished planning and design professionals to guide the community’s future. The Comprehensive Plan reflects those residents’ commitment to effective land use planning with such features as the “North End” FLUE designation and the “overbuilding” language of Policy 4-B-1. Any amendment to the Comprehensive Plan should consider the spirit, as well as the letter, of the Town’s original document.

4. INCOMPATIBILITY BETWEEN THE PROPOSED AND EXISTING USES

Florida Statutes define “compatibility” as follows: “(9) ‘Compatibility’ means a condition in which land uses or conditions can coexist in relative proximity to each other in a stable fashion over time such that no use or condition is unduly negatively impacted directly or indirectly by another use or condition.” [Ch. 163.3164(9)]. The proposed amendment to the Fort Myers Beach Comprehensive Plan would, if adopted, introduce a condition of incompatibility upon Mr. Bonnema by imposing a dense multi-story hotel on a less-than-five-acre property towering over his existing single family dwelling. The dramatic difference between the existing and the proposed uses—low versus high-rise; single family residential versus 400-unit hotel; quiet versus noisy—cannot coexist in extremely close proximity in a stable fashion over time without negatively impacting the use and enjoyment which is valued by Mr. Bonnema and his neighbors. The proposed use fails to meet the test established in Ch. 163.3164(9), and should be denied for that reason alone.

5. COMPREHENSIVE PLAN CONSISTENCY AND OTHER CONSIDERATIONS

A. Comprehensive Plan Consistency: Existing Land Uses. The Comprehensive Plan articulates a vision for the North End: “The north end of the island retains its **residential and resort identity**. Its motel rooms, older cottages and high-rises all benefit from their proximity to Bowditch Point and the downtown ‘core area,’ yet are **comfortably removed** from seasonal traffic congestion and outdoor entertainment activities that many residents find intrusive.” [“Envisioning Tomorrow’s Fort Myers Beach,” pg. 2-3; **emphasis added**].

The existing FLU designations of Marina and Mixed Residential provide land use entitlements with many options for land owners. “Marina,” which applies to only 6.9 acres island-wide, is defined as “water access services, primarily for pleasure boating, including related accessory uses provided they don’t displace marina services. Cruise ships and similar uses that draw large

amounts of vehicular traffic are not permitted in this category.” [Future Land Use Element, pg. 4-40]. The existing marina is a vital public benefit, providing service, repair, and dry storage to support recreational boating, and its loss would be sorely felt by the boating public.

“Mixed Residential” is a more common use applying to 590.9 acres throughout the island, and is defined as “applied to older subdivisions with mixed housing types on smaller lots, and to newer high-rise buildings. The **maximum density is 6 dwelling units per acre**, except where a Future Land Use Map overlay indicates a maximum density of 10 units per acre for legally existing dwelling units. Commercial activities are limited to lower impact uses such as offices and motels.” [Future Land Use Element, pg. 4-40]. Changing the Mixed Residential future land use to Pedestrian Commercial reflects a lost opportunity to retain a variety of housing types and neighborhoods which the Comprehensive Plan aims to preserve and brings the foreseeable adverse impacts further into the heart of an existing, long-established residential neighborhood.

The existing FLUM designations have been in place since the Island was incorporated, and Mr. Bonnema and his Matanzas neighbors have relied upon the representations of the Comprehensive Plan in good faith. The Applicant enjoys an entitlement far more than those across the canal, and any intensification of use would redound to the detriment of Mr. Bonnema and his neighbors. [Future Land Use Element, pg. 4-39].

B. Comprehensive Plan Consistency: Proposed Pedestrian Commercial FLUM Designation.

The proposed Pedestrian Commercial designation applies to 77.8 acres island-wide and is defined as “a primarily commercial district applied to the **intense activity centers of Times Square** (including Old San Carlos and nearby portions of Estero Boulevard) and the area around the Villa Santini Plaza. The maximum density of residential development is 6 dwelling units per acre, except where a Future Land Use Map overlay indicates a density of 10 units per acre for affordable units consistent with the adopted redevelopment plan.”

While the proposed amendment would not increase the maximum densities allowed on the subject property, it would make two changes which would impact the neighboring residential properties: (1) The historically residential property would be redesignated as “primarily commercial” within an “intense activity center” and (2) the property would lose the existing restriction by which “commercial activities are limited to lower-impact uses such as offices and motels” [Future Land Use Element, pg. 4-40].

There is an additional concern to this proposed redesignation, and that is the simple fact that the applicant does not propose sidewalks or trails, negating any realistic pedestrian use of this property.

C. Overbuilding: Inconsistency with Objective 4-B and Policy 4-B-1. This objective and policy are stated *verbatim*:

“OBJECTIVE 4-B FUTURE LAND USE MAP CATEGORIES. Reduce the potential for further overbuilding through a new Future Land Use Map that protects remaining natural and historic resources, preserves the small-town character of Fort Myers Beach, and protects residential neighborhoods against commercial intrusions.

“POLICY 4-B-1 OVERBUILDING: Judicious planning could have avoided the kind of overbuilding found at Fort Myers Beach by limiting construction to match road capacity and the physical environment. Since such planning came too late, the town must deal with today’s congestion plus the impacts of future development that has vested rights to proceed. These conditions have shaped the vision of this plan, as development rights once granted are not easily or lightly reversed; great care has been taken in this plan to balance important public and private rights.”

Reducing potential overbuilding and protecting the small-town character are core values of the Fort Myers Beach Comprehensive Plan. The proposed land use change would be inconsistent with Objective 4-B and Policy 4-B-1 and should be denied.

D. Community Value and Impact. The benefits of the proposed use are like those of any commercial development on the island—the use would create some jobs, although it is unclear how many of the persons employed would be Fort Myers Beach residents, and it would generate tax revenues. Conversely, the impacts on neighboring uses, such as Mr. Bonnema’s residence and that of his neighbors, are profound and pose a risk to community identity and sustainability. Additionally, there is a danger to public safety inherent in the **lack of sidewalks to this ostensibly pedestrian-oriented development** because there would be no separation between vehicular traffic and cyclists and pedestrians.

E. Public Engagement, Transparency, and Historical Resources. There appears to have been little, if any, public engagement between the developer and the residential neighbors which might have resulted in a less impactful project.

5. RECOMMENDED FINDINGS OF FACT JUSTIFYING DENIAL OF APPLICATION

The Fort Myers Beach Town Council should deny this proposed FLUM amendment based upon the following findings of fact:

Finding 1: The Fort Myers Beach Comprehensive Plan was adopted by ordinance and is applicable to all land uses incorporated Fort Myers Beach. The Comprehensive Plan articulates the core values which the Town has maintained since its incorporation in 1995, including the preservation of neighborhoods, e.g. the North End, and safeguarding against overbuilding, as stated in Objective 4-B and Policy 4-B-1.

Finding 2: The Comprehensive Plan, of which the Future Land Use Element (FLUE) and Future Land Use Map (FLUM) are constituent parts, has designated all portions of the subject property as either Marina or Mixed Residential.

Finding 3: The proposed amendment is a legislative action and the Town Council, as the Town’s governing body, is under no obligation to approve the application for FLUM amendment.

Finding 4: The owner of the subject property enjoys a bountiful entitlement that exceeds those enjoyed by neighboring residential properties, and would suffer no harm if the proposed application were denied.

Finding 5: The proposed uses are incompatible, as the term is defined in Florida Statutes Sec. 163.3164(9), in scale and use with neighboring properties, and the incompatibility cannot be ameliorated over time if approved as proposed. FLUM amendments should be based, in part, on an analysis of the suitability of the FLUM amendment for the proposed uses (Section 163.3177(6)(a)(8), Florida Statutes). The proposed FLUM amendment as to the subject property is not suitable for the reasons already identified herein.

Finding 6: The staff report for this application, dated April 9, 2024, recommended denial, based upon an analysis of the Comprehensive Plan and concluded that the increases in density and intensity proposed were “not clearly in the public interest,” [pg. 6]

Finding 7: The staff report further stated: “Creating additional commercial land adjacent to the existing downtown does not necessarily provide a benefit to the Town and will result in traffic and noise impacts to nearby residential uses through elimination of the buffer between the intense commercial district and the neighborhood which could increase conflict.” [pg. 6]

Finding 8: On April 9, 2024, the Town’s Local Planning Agency (LPA) conducted a complete and thorough hearing on the facts of the proposed amendment and recommended denial by a four to two vote.

Finding 9: The proposed redesignation of the property to Pedestrian Commercial would replace a predominantly residential district with a predominantly commercial district, which would have a profound impact on nearby residential uses in the form of traffic, noise, light, and 24-hour activities.

Finding 10: The proposed use should not be designated as a “pedestrian” use, because it was designed with no pedestrian component.

Finding 11: The proposed use is clearly inconsistent with Objective 4-B and Policy 4-B-1 of the Fort Myers Beach Comprehensive Plan because it would constitute overbuilding and would be contrary to the small-town character which has historically been a core value of the Plan.

Finding 12: As noted in the staff report, there are inadequate pedestrian and bike facilities to serve the proposed intensity under the FLUM amendment, and more traffic that may affect emergency

response times is anticipated. *See* letter from Fire Official at Page 106 of the April 9, 2024 LPA agenda packet. FLUM amendments are to be based, in part, on an analysis of availability of facilities and services (Section 163.3177(6)(a)(8), Florida Statutes). This analysis performed by staff and outside agencies revealed insufficient availability.

Based upon the above findings, and the testimony which will be presented by Mr. Bonnema and his neighbors, the undersigned recommends denial of this application.

Respectfully,

A handwritten signature in black ink that reads "Max Forgey". The signature is written in a cursive, flowing style.

Daryl Max Forgey, AICP #051,330
max@forgeyplanning.com

cc: Dale Bonnema
Katie Berkey, Esquire, AICP
Thomas Slaughter



Max Forgey is an experienced land use planner with more than three decades of professional experience and exceptional success in administration of local government comprehensive planning strategies, land development and regulatory controls, governmental relations, and public policy communications. Primary clients are governmental organizations and private property owners.

His professional knowledge encompasses creating and developing community and small-area plans, urban design and architectural standards, land development entitlements, project management, and expert witness testimony. Max has worked on more than 30 cases across 25 Florida counties and municipalities, appearing before local planning agencies, city and county elected bodies, hearing examiners, administrative law judges, and circuit court proceedings.

Max also actively participates in and leads speaking engagements at professional development conferences and symposia through the Promised Lands section of the American Planning Association Florida chapter, with the American Institute of Certified Planners, with 1000 Friends of Florida and other organizations.

Qualifications

- FORGEY PLANNING. Owner of an urban planning and land-use consulting practice.
- Master of Public Affairs (MPA) in Urban and Regional Planning, Indiana University.
- Member American Institute of Certified Planners (AICP).
- Qualified as an expert witness in Lee County Hearing Examiner proceedings.
- Former Planning and Community Development Director in Charlotte County.
- Former Planning Commissioner (LPA), City of Cape Coral, Florida.

Accomplishments

- Established FORGEY PLANNING, an urban planning and land use consulting practice.
- Developed a template for auditing the effectiveness of existing local governments comprehensive plans and zoning code for internal consistency of plan policy framework.
- Authored “The Platted Lands Challenge” report for the six-county area of Southwest Florida offering policy guidance for platted, scattered-lot properties.
- Development of implementation strategies which employ automation to create linked mixed media tools for restructuring and updating local government planning and zoning regulations.

Certification

AICP (American Institute of Certified Planners) Certification #051,330 Florida Chapter, APA Member in good standing since 1993. A national professional certification maintained by the American Planning Association. AICPs must first meet educational standards and then pass an examination covering all aspects of professional planning practice and are expected to maintain their membership through a self-directed program of study that is monitored by the national organization, which includes regular training in law and ethics.

Professional Experience

Forgey Planning

Cape Coral, FL

Owner. 2008-present. A solo planning practice concentrating comprehensive planning work for Lee and Sarasota Counties, the City of North Port, and the Captiva Community Panel. Developed a template for auditing the effectiveness of existing local governments comprehensive plans which has been applied in Sarasota County and the City of North Port. An expert witness since 2013, working on more than 30 cases in 25 Florida counties and municipalities, appearing before planning commissions, city councils, county commissions, hearing examiners, administrative law judges, and circuit court. Qualified as an expert witness in Lee County Hearing Examiner proceedings.

Zoning Technologies

Cape Coral, FL

President. 2011-2017. A start-up subsection 'S' corporation that specialized in restructuring and updating local government comprehensive plans and developing implementation strategies which employ automation to create linked tools (e.g. application forms, automated worksheets, case reports, and adopting resolutions). The Zoning Technologies expert system prototype products were marketed statewide and were demonstrated at the American Planning Association (APA) national conference in Atlanta in 2014.

Osceola County, Florida

Kissimmee, FL

Planning Coordinator. 2005-2008. Authored key elements of the Osceola County Comprehensive Plan and most of the County's 2008 Evaluation and Appraisal Report.

Clay County, Florida

Green Cove Springs, FL

Senior Planner. 2003-2005. Authored the county's Interlocal Service Delivery Agreement Report (ISDAR) mandated by the Florida legislature, identifying all service overlaps between and among all local governments within Clay County.

Lake County, Florida

Tavares, FL

Planning Director. 2001-2003. Staff liaison to the Environmental Lands Management Advisory Committee, a citizen organization created by the Board of County Commissioners to study the creation of an environmental land program. Recommended policies were ratified in November 2002, when Lake County voters approved a one-third mil assessment for the acquisition of environmental lands.

Southwest Florida Regional Planning Council

Fort Myers, FL

Planner. 1997-1998. Reviewed local government plan amendments throughout the six-county area and authored “The Platted Lands Challenge” report.

Charlotte County, Florida

Port Charlotte, FL

Community Development Director 1995-1997; Planning Director 1990-1995. Early in my tenure, Gulf Development Corporation (GDC), the County’s largest land subdivider, declared bankruptcy, shifting responsibility for completion of roads, bridges, drainage works, and utilities, to the public sector and forcing a host of development decisions upon the local government and public agencies. I had three memorable achievements during these seven years:

- Managed the research, preparation, and adoption of the County’s Evaluation and Appraisal Report (EAR) and Comprehensive Plan. Aggressively negotiated with the Florida Department of Community Affairs (DCA) to remove the Plan’s not-in-compliance finding.
- Led the staff team that rewrote the Charlotte County Comprehensive Plan and was the point person in the successful four-year effort to negotiate a stipulated settlement agreement between the Board of County Commissioners and the Florida Department of Community Affairs to find Charlotte County’s Comprehensive Plan in compliance with Florida’s Growth Management Act.
- Advocated against the rezoning of 42 parks (illustrated as such on GDC sales maps and the County’s Future Land Use Maps) to residential uses. The Company’s receivers eventually relented on their policy position and donated 41 parcels to the people of Charlotte County.

City of Cape Coral

Cape Coral, FL

Deputy Planning Director. 1985-1990. Authored and supervised preparation of key elements of the 1988 Comprehensive Plan (the City’s first plan under the 1985 Growth Management Act) and the City’s 1989 Land Development Code.

Education

Indiana University

Bloomington, IN

Master of Public Affairs (MPA) from the O’Neil School of Public and Environmental Affairs, 1982. Concentration in Urban and Regional Planning.

Bachelor of Arts (BA). 1976. Undergraduate degree in English Literature and History.

Important Cases, Continuing Education, Writing & Teaching

- Economic Development Plan for City of Cape Coral, Florida. A major evaluation of the

community's economy and resources with recommendations for improving the City's long-term outlook. Subcontractor with DCG Corplan LLC, Bruce M. Hoch, Managing Director, August 17th to present.

- Contract Planner & Expert Witness for Town of Kenneth City, a municipality of 5000 population in Pinellas County that has no professional planning staff. Preparing Evaluation and Appraisal Report and other products in collaboration with Town Manager Lacy LaFave and Town Attorney Ralf Brookes, August 16, 2023, to present.
- Attending and participating in American Planning Association, Florida Chapter State Conference in Jacksonville September 5th through 6th, 2023.
- Attending and participating in the 23rd Annual Florida Land Use Law Conference in Tampa on August 28th and 29th, 2023.
- Program chair for APA Florida/ FPZA *"The Perfect Storm Eight Months Out: A Symposium for Professional Planners, Design Professionals, Plan Commissioners & Regular People"* at the Charlotte County Event & Conference Center Punta Gorda May 12, 2023.
- Presenting a panel *"Incorporation, Annexation, and Disincorporation"* with Jim Studiale, AICP, and Luke Lirot, Esq. at APA Florida state conference on Orlando September 7, 2022.
- Co-presented a panel *"Legislative and Quasi-judicial: What Every Planner Needs to Know"* with Attorney Andrew Dickman, AICP, at annual conference of Florida Planning and Zoning Association on Captiva Island June 3, 2022.
- Program Chair for *"The Swamp Peddlers"*, an APA Florida/ Florida Planning & Zoning Association symposium conducted on August 6, 2021, in Punta Gorda. Keynote speaker Jason Vuic and other presenters explored the legacy of land sales scams in Southwest Florida on the twentieth anniversary of the General Development Corporation bankruptcy.
- Designed and co-presented *"Land Use 101"*, a seminar for planning commissioners, elected officials, and new planners, hosted by the City of Cape Coral on June 16 and July 14, 2021 with co-presenters Vince Cautero, AICP, the City's Community Development Director, and Attorney Ralf Brookes.
- Expert witness for client West Villagers for Responsible Government (WV4RG), a citizen organization which challenged the annexation of the 8730-acre non-contiguous West Villages subdivisions into the City of North Port. The City Commission rejected the Villagers' challenge by a unanimous vote, but following appeal presented by attorney Luke Lirot, the Twelfth District overturned the City's order denying petition for contraction in *West Villagers for Responsible Government v. City of North Port*.

- Moderated a panel for law credit at the September 9, 2020 Zoom-facilitated American Planning Association's Florida state conference. Co-presenters were attorneys Karen Consalo, Thomas Hawkins, and Andrew Dickman. *"The Rules are Very Different Here: How to Reform Florida's Land Use Decision-making Process"* surveyed the inconsistencies among local governments' handling of land use decision-making and proposed a new Environmental Land Management Study (ELMS) to improve those processes.
- Attended and participated in American Planning Association Florida chapter's 18th annual *Public Policy Workshop* at Florida State University, Tallahassee February 2020.
- Drafted update of Town of *Fort Myers Beach Sign Ordinance* to reflect SCOTUS *Reed v. Gilbert* opinion for Weiler Engineering Fall 2019-Winter 2020.
- Program chair for *"Planners in Peril: Law, Legislation, and Ethics for Design Professionals,"* an APA Florida Promised Lands section symposium December 6, 2019 at Bonita Springs City Hall.
- Program chair for *"How High is the Water, Ma?: Rising Sea Level on the Florida Gulf Coast and what we can do about it,"* sponsored by Friends of Boca Grande Community Center, March 22, 2019 at the Boca Grande Community Center Auditorium.
- Member, *Faith Presbyterian Affordable Housing Board*, a not-for-profit corporation which aspires to offer quality housing for low- and moderate-income persons in Cape Coral. Appointed 2018; appointment ended December 2020.
- Received 2018 American Planning Association Florida Chapter, Promised Lands section's first-ever *Wayne Daltry Award for Planning Programs* for developing professional education symposia.
- Prepared *policy audit of Town of Fort Myers Beach Comprehensive Plan* for Weiler Engineering, Summer 2018.
- Program chair for American Planning Association symposium *"Warped Tour '18: Land Use Law for Planners"* March 23, 2018, in Punta Gorda.
- Attended and participated in the hurricane-shortened APA Florida chapter annual conference in Daytona Beach September 4-6, 2017. Led panel with Greg Beliveau, AICP and Jane West Esq. entitled *"How to Build a Better Client."*
- Program chair for Captiva Community Panel/ Florida APA symposium *"Now in My Back Yard: Rising Sea Level on Florida's Gulf Coast and what can be done about it"* January 13, 2017, at South Seas Resort on Captiva Island.

- Co-authored article with Karen Consalo, Esq. *“Best Practices for Local Government Land Use Decision-making”* in Summer 2016 edition of *Florida Planning*.
- Speaker at American Planning Association Florida Chapter Annual Conference in Tampa, September 9, 2016. *“A Pre-tirement Guide for Perplexed Planners: Making the Transition to Solo Practitioner.”*
- Attended and participated in CLE International’s annual *Land Use Law symposium* in Tampa, August 18-19, 2016, and August 6-7, 2015.
- Speaker at University of Central Florida 2016 Public Administration Research Conference April 8, 2016. Topic: *“What’s the Big Idea: New Software that Aids Land Use Decisions.”*
- Attended and participated in *APA Florida chapter annual conference* in Hollywood, Florida September 10-13, 2015.
- Coordinator and presenter for daylong FAPA-sponsored symposium *“Everything You Ever Wanted to Know about Florida Land Use”* in Cape Coral May 16, 2014.

Jurisdictions - Expert Witness Work

Bonita Springs
 Bradenton
 Cape Coral (5)
 Charlotte County (2)
 Collier County (2)
 DeSoto County
 Fort Myers Beach (2)
 Hardee County
 Hendry County (C Court)
 Hernando County
 Highlands County
 Hillsborough County (3)
 Hillsboro Beach
 Kenneth City
 Lantana
 Lee County (8)

Miramar
 Monroe Co (ALJ)
 North Port
 Orange County
 Ormond Beach
 Pasco County (2)
 Palm Beach County (ALJ) Polk
 County (C court)
 Punta Gorda (2)
 St. Johns County (4)
 Sarasota County
 Sumter County
 Suwannee County
 Venice

Max Forgey



Max@ForgeyPlanning.com



239.560.5864



236 SE 45th Street
 Cape Coral, FL 33904



Mohsen Salehi, AICP, ITE(F)
Corbel Design Consulting Services
Fort Myers, FL
mohsen@corbeldesign.com
239.994.1320

Charles Andrew (“Drew”) Roark, P.E., CTL
Alex Roark Engineering, PLLC
Tallahassee, FL
drew@alexroarkeng.com
850.567.2044

Town of Fort Myers Beach
Town Council
2731 Oak Street
Fort Myers Beach, FL 33931
239.765.0202

April 29, 2024

SUBJECT: JUSTIFICATION FOR DENIAL OF APPLICATION NO, 20230152, TO AMEND FUTURE LAND USE MAP SERIES (FLUM) OF THE TOWN OF FORT MYERS BEACH COMPREHENSIVE PLAN ON EIGHT (8) PARCELS OF LAND WITH A FLU DESIGNATION OF MARINA AND MIXED RESIDENTIAL TO PEDESTRIAN COMMERCIAL FLU AND JOIN TWO (2) EXISTING PARCELS OF LAND WITH A FLU OF PEDESTRIAN COMMERCIAL

1. PURPOSE OF REPORT & QUALIFICATIONS OF EXPERTS

Purpose of this report. This report was prepared on behalf of client Magnum FMB 1 LLC (“Magnum”) who owns 725 Matanzas Ct, Fort Myers Beach, FL 33931-2119. Magnum is manager-managed by Dale Bonnema who also resides at this address and whose use and enjoyment of the property will be adversely affected by the proposed amendments to the Town of Fort Myers Beach Comprehensive Plan, if approved. Magnum’s property is only approximately 72-feet from the property subject to the proposed future land use change.

This report sets forth the justifications for denial of the FLUM amendment, which was the subject of a public hearing on April 9, 2024, by the Town’s Local Planning Agency (“LPA”). This report supplements testimony which will be provided in person by Mr. Bonnema as well as neighbors and residents of the immediate vicinity.

Qualifications and professional experience. The respective qualifications and professional experiences of the undersigned professionals can be summarized as follows and copies of their respective resumes are enclosed with this report.

- Mohsen Salehi, AICP,¹ ITE(F),² Corbel Design Consulting Services. Mr. Salehi holds a master's degree of City & Regional Planning (Urban Design/Infrastructure Major), from Clemson University and a bachelor's degree of Architectural Engineering (Design/Construction Major) from Southern Polytechnic State University (formerly a division of Georgia Institute of Technology). Mr. Salehi's career spans over 30 years of public- and private-sector experience with an extensive track record in transportation/infrastructure planning and urban design, low impact development and redevelopment projects, complete streets/context-sensitive design solutions, traffic calming/roadway safety audits, traffic and parking studies, development review services, and expert testimony for public agencies and community organizations. Mr. Salehi's public-sector work included assisting Spikowski Planning Associates in the preparation of the Fort Myers Beach Comprehensive Plan taking effect January 1, 1999.
- Charles Andrew ("Drew") Roark, P.E., CTL³ of Alex Roark Engineering, PLLC, has 28 years of experience in the transportation consulting industry. He has experience from traffic data collection to directing the Transportation Sector for the Southeast US for large engineering firms. Mr. Roark is experienced in preparation and review of transportation impact studies for numerous Developments of Regional Impact ("DRI") throughout the state of Florida. His experience has included preparation and supervision of data collection programs, coordination with local review agencies, preparation of traffic signal warrant reports, modeling of future traffic volumes using the FSUTMS model, calculations of projected impact fees including independent impact fee studies and preliminary roadway planning and design for maximizing safety and mobility.

2. JUSTIFICATIONS FOR DENIAL OF THE APPLICATION

The Fort Myers Beach Town Council should deny this proposed FLUM amendment based upon the following findings of fact:

1. ***The density proposed by the developer violates POLICY 4-B-1, POLICY 4-B-2, POLICY 4-C-6, and POLICY 4-C-10 of the Comprehensive Plan.***

¹ American Institute of Certified Planners ("AICP"). AICP is the only organization that provides independent verification of planners' qualifications across the United States. AICP certification is a sign of competence and integrity for planners, requiring knowledge of planning principles and practices, continuing education, and adherence to a strict code of ethics.

² Institute of Transportation Engineers Fellow ("ITE(F)"). ITE(F) have been members of ITE for at least five years; have at least 10 years of professional experience; have attained significant professional stature that may be demonstrated by having a license or certification based on education, examination, and experience, or by comparable evidence of professional statutes as determined by the ITE Board; have had responsible charge of important transportation engineering or transportation related work, including scientific, educational and managerial activities, for at least five years; have demonstrated active commitment and contribution to the work of ITE and the profession; and provided three professional references as part of the application.

³ Certification in Transportation and Logistics ("CTL"). The Certification in Transportation and Logistics (CTL) is an internationally recognized industry certification, since 1948, offered in partnership with the American Society for Transportation and Logistics ("ASTL").

- **POLICY 4-B-1 OVERBUILDING:** Judicious planning could have avoided the kind of overbuilding found at Fort Myers Beach by limiting construction to match **road capacity and the physical environment**. Since such planning came too late, **the [T]own must deal with today's congestion plus the impacts of future development that has vested rights to proceed. These conditions have shaped the vision of this plan, as development rights once granted are not easily or lightly reversed; great care has been taken in this plan to balance important public and private rights.**
- The density for the proposed development violates **Policy 4-B-1**, because this is precisely the kind of “OVERBUILDING” that ignores “road capacity and physical environment” limitations to accommodate TPI at this particular location which can least afford its operation adversely impacting the island’s exit route, contrary to the judicious planning required to avoid overbuilding. It further fails to adequately deal with “today’s congestion plus the impact of future development that have vested rights to proceed.”
- **Policy 4-B-2 MAP ADOPTION:** **The Town of Fort Myers Beach hereby adopts a Future Land Use Map (Figure 16) to govern further subdivision and development within its municipal boundary.** The entire [T]own is located within the coastal high-hazard area, as shown on Figure 17 which is part of the adopted Future Land Use Map series. This map advances the principles of this comprehensive plan by assigning one of eight categories to all land and water, based on its location, condition, and existing uses.
- The density proposed, is contrary to the intent of Future Land Use Map for the Town “to effectively govern development within its municipal boundary.” The proposed development is likely to encourage similar, incompatible developments in the future expecting a similar treatment.
- **Policy 4-C-6 MOTEL DENSITIES:** **The Land Development Code shall specify equivalency factors between guest units (which include motel rooms) and full dwelling units.** These factors may vary based on size of guest unit and on land-use categories on the Future Land Use Map. **They may vary between a low of one guest unit and a high of three guest units for each dwelling unit.** (These factors would apply only where guest units are already permitted.)
- In order to implement the 1999 Old San Carlos Boulevard / Crescent Street Master Plan that encourages mixed-use buildings with second and third floors over shops on Old San Carlos, hotel rooms may be substituted for otherwise allowable office space in that situation and location as amended 11-25-2009 only without using the equivalency factors that apply everywhere else in the town. This alternate method for capping the number of hotel rooms applies only to properties between Fifth to First Streets that lie within 200-feet east and west of the centerline of Old San Carlos Boulevard. Hotel rooms built under this alternate method must have at least 250 square feet per rentable

unit, and under no circumstances shall buildings they are located in exceed four stories (with the ground level counted as the first story).

- The density authorized under Ordinance 18-04 is contrary to the intent of the Master Plan which specifically provides high priority and density incentives for redevelopment along Old San Carlos within 200 feet east and west of its centerline between 1st and 5th Streets.
- **POLICY 4-C-10 MAP AMENDMENTS: The intensity and density levels allowed by the Future Land Use Map may be increased through formal amendments to this plan if such increases are clearly in the public interest, not just in the private interest of a petitioning landowner.** Petitions from landowners will be accepted annually. The Town Council may accept applications more frequently at its sole discretion. The proposed development intensity and density levels places the private interest of “a petitioning landowner” before the long-term “public interest” by bypassing the formal amendment process for FLUM.

2. The Town’s Comp Plan per Goal 7, views Estero Blvd peak season mobility as integral to the mobility of the entire Island.

- **GOAL 7: To improve peak-season mobility without reducing the permeability of Estero Boulevard to foot traffic or damaging the small-town character of Fort Myers Beach. The [T]own seeks to reduce speeding, improve evacuation capabilities, and improve mobility through balanced transportation improvements such as a continuous system of sidewalks and bikeways, a network of trolleys and water taxis linked to off-island systems, and parking options matched to road capacity.**

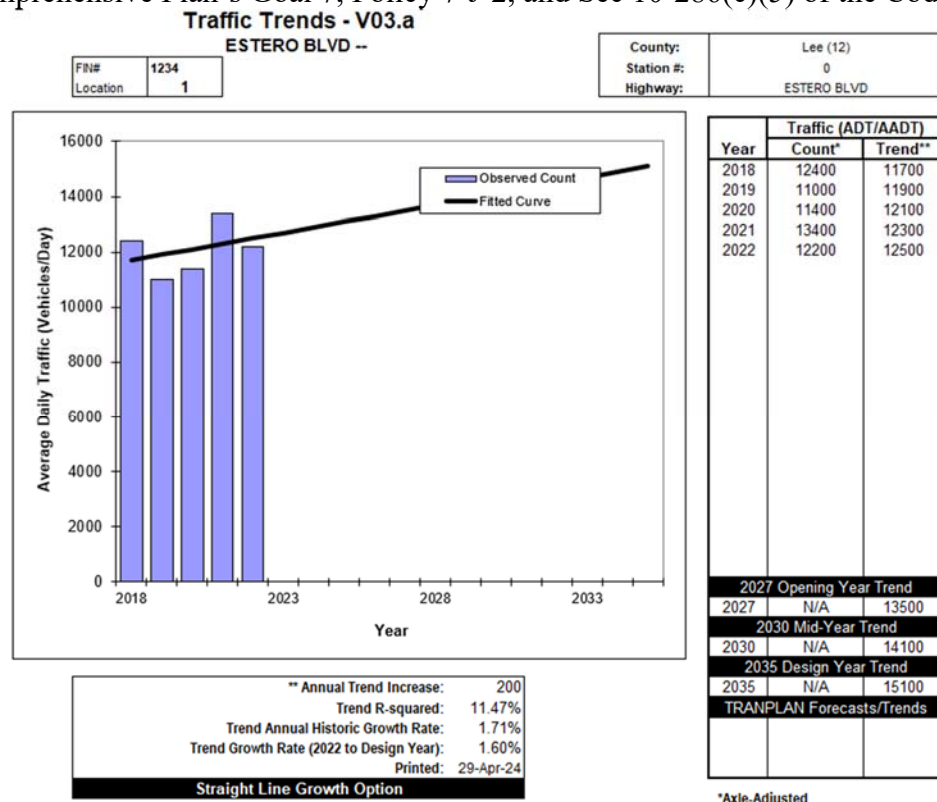
- The proposed development is not consistent with Goal 7 of the Comp Plan and adversely impacts and does not improve mobility or evacuation capabilities for the Town. The project will adversely impact mobility along Estero Blvd, by overcrowding Old San Carlos. and Fifth by traffic to and from the proposed development, impeding the viability of the two streets as the Island’s exit and adversely impact peak season mobility of Estero Blvd, which is inconsistent with Goal 7 of the Town Comprehensive Plan.

○ **Policy 7-J-2 Traffic Impact Analyses**

- There is no evidence that the proposed development has taken into account the impact of any concurrent and/or potential developments (e.g., Primarily, Margaritaville, and to a lesser extent Bay Harbour Marina in neighboring San Carlos Island) contrary to “Policy 7-J-2 on traffic impact analyses and potential bike/ped design improvements that could offset traffic impacts” (Also see **Section 10-287(1)(b)&(c)**). The traffic impact analyses submitted by the applicant do not adequately study and address cumulative impact of concurrent or potential developments impacts on Town’s roadways.

Applicant's Traffic Impact Statement Dated March 14, 2024 (Filed in Case Nos. 20230151 and 20230152)

- The proposed development's Traffic Impact Statement is inconsistent with **Sec 10-286(c)(5)** which requires: **The Traffic Impact Statement shall be submitted to the director for review of sources, methodology, technical accuracy, assumptions and findings and approval.** The TIS does not accurately forecast traffic on the existing and proposed development sites. The growth rate of 1% (TIS March 14, 2024, at Page 15) and projecting it to 1.03 for 2027 buildout year is unrealistic, using 12,400 AADT as 2018 base (the same as last recorded AADT in 2016, and FDOT Traffic Trends-V03.a, straight line growth, indicate a 1.71% (See **Figure "1"** below) annual growth rate resulting in the more reasonable 5% growth by the buildout year of 227 (See **Comments on Proposed Development's TIS** below, for more specifics) without a reasonable traffic growth rate, a comprehensive evaluation of the traffic impacts for the proposed site is an unrealistic academic exercise with forecasts appear high for existing development of the site, while low for the proposed development." It is not clear in the methodology meeting between the Town's consultants and the developer's consultants whether there was any agreement on the necessary data and analyses to gauge the full impact of the proposed development. The proposed development's consultants underestimated traffic projections and impacts on the Island. This in and of itself, is serious enough to warrant a denial due to inconsistency with the requirements of Comprehensive Plan's Goal 7, Policy 7-J-2, and Sec 10-286(c)(5) of the Code.



*Axis-Adjusted

Figure 1

- Considering the proposed development, it is essential to stress that, if it is approved, **not only will increase density to equivalent of 133 dwelling units (equivalent to 400 hotel rooms with a 3 multiplier) allowed under Sec. LDC 34-632, or 400 Resort Hotel Rooms plus ancillary uses.** The allowances for additional ancillary commercial uses will increase daily trip generation of the proposed land uses. The project has not properly accounted for this traffic. This is inconsistent with Comprehensive Plan Policy 7-J-2 and LDC Sec 10-286(c)(5) requirements.
- The process used to calculate the number of trips associated with the existing dry storage marina is flawed. There is an argument that data from a published article *Greater Charlotte Harbor, A Comparison of Boating Patterns by Season* published by Charles Sidman in 2006 should be used to estimate the number of trips generated by the existing dry storage that is proposed to be eliminated and discounted from the trip generation estimate for the proposed development. This argument also suggests that using the ITE trip generation rate for Marinas (ITE LUC 420) is inappropriate because it is not specific to dry storage boat slips. It is agreed that the data in ITE is limited to two studies and neither were in Florida, so the applicability of this land use code to this site could be questionable. However, the conclusions made by the applicant from the data in the *Greater Charlotte Harbor, A Comparison of Boating Patterns by Season* study are incorrect and actually demonstrate a much lower number of trips during the PM Peak Hour than would be reasonably estimated. [See detailed comments from data review of the *Greater Charlotte Harbor, A Comparison of Boating Patterns by Season* study below]. Specifically, 210 Dry storage slips would represent approximately 32 trips per day (weekday) and nearly all of them would occur prior to the PM Peak Hour (depart marina prior to 3pm). Therefore, a more reasonable estimate of PM Peak Hour weekday trips associated with the 210 dry storage slips would be approximately 5 trips. The analysis assumed 53 trips would occur during the weekday PM Peak Hour.
 - **Detailed Comments from Data Review of the *Greater Charlotte Harbor, A Comparison of Boating Patterns by Season* study** [all Tables and Figures cited to herein are from the *Greater Charlotte Harbor, A Comparison of Boating Patterns by Season* study and are reproduced at the end of this Report]:
 - Table 5-1: Appears to show a monthly average number of trips for dry storage at 4.11 (per month). The peak season (which appears to be March-June) appears to have an average monthly trip rate of 4.78.
 - Table 8-1: It appears to show Dry Storage has a mean number of trips of 12.35 (not 15 cited in the letter). 15 appears to be for all types of marinas including the ones the applicant did not want to use ITE for.
 - Figure 9-1: Peak season is shown as the Spring (as stated previously) and the 15 trips per season is verified for all marinas for peak season only. The overall mean for the whole year and all marinas is 13 per season. Season appears to include 3

months. So for all marinas peak season, the peak trips per month would be 5, but as shown in Table 5-1, for dry storage it would be 4.78.

- Table 11-1: Shows departure times are 9:09am. The analysis basically ignores the AM Peak Hour, so this is only an issue if the AM Peak Hour analysis is included in the study, which it is not.
 - Table 12-1: PM departure time are all earlier than 3pm. **This confirms that even these numbers are not occurring during the peak hour of the adjacent street.**
 - Table 13-1: shows the duration of the trips (in the boats) are approximately 4.5 hours for all seasons. This further confirms the conclusion from Table 12-1 that the vehicle trips are not occurring the PM peak hour of the adjacent street.
 - Table 15-1: Shows that over 35% of these Dry Storage trips are on the weekend, so they too would not apply to weekday pm peak hour as assumed in the analysis. So, even if you took the monthly number of 15 (actually less for dry storage) and divided it by 3 to get the average daily trips, the weekends are disproportionately represented (higher) so the weekday would be less. And again, the departures are not during the PM peak hour which is when they were deducted from in the analysis.
- There is an analysis within the study that suggests the peak hour for the proposed development will occur during the week and not on the weekend. There is a comparison of the daily trips of a related land use (LUC 310) for hotels between the weekday and Saturday. This analysis shows that the daily trip generation is higher (by 1%) on Saturday, but the applicant discounts it and still evaluates the weekday. Also, comparing the AM peak hour and PM peak hour of the generator on the weekdays to the peak hour of the generator on Saturday, the adjustments are 36% and 20% for the Saturday AM peak hour and PM peak hour, respectively. Therefore, the peak hour for this site is on Saturday and, therefore, the analysis performed should be for Saturday, not weekday.
 - Included with a long discussion about walkability in the area, there is a 35% reduction in the number of “in town” vehicle trips suggested by the applicant. The “in town” vehicle trips were assumed to be 40% of the project traffic, so in effect there was a 14% ($35\% \times 40\%$) reduction in vehicle trips from the site during the PM Peak Hour due to the walkability of the area. The staff report notes insufficient pedestrian facilities in this vicinity, not in keeping with the desired Pedestrian Commercial future land use designation. Even if this site were in a more walkable area, this reduction cannot be applied to a vehicle trip generation estimate that is based on similar sites unless it can be demonstrated that the other sites were less walkable. The sites used by ITE capture the walkability of those sites within their vehicle trip counts. Even if the walkability of the ITE sites were compared to this site, the reduction would only be the difference in walkability between the other sites and this site. Most resort hotels

are in walkable areas (like beaches); therefore, the difference, even if known, is likely negligible. This reduction in trip generation should be eliminated.

- The study concluded that there are no impacts on Estero Boulevard and that it operates well under its capacity even after this development is constructed. However, the Fort Myers Beach Policy 7-A-1 states "... CONGESTION: Every winter, Estero Boulevard can become so crowded that traffic backs up, sometimes for miles in both directions. Much of this congestion is caused by visitors, who will continue to frequent the beaches regardless of development levels on Estero Island..." How can both of these statements be accurate?

Traffic Mitigation Plan

- The proposal does not comply with the Town's requirement for a Traffic Mitigation Plan per **Sec 10-287 (1)(b)&(c)**, which states:
 - (1) The function of the Traffic Mitigation Plan is to:
 - ...
 - (b) Relate the various needed improvements to the occupancy and use of developed land, particularly regarding the relative timing of occupancy and availability of the road improvements; and
 - (c) Clearly identify the parties who will be responsible for the cost of the improvement
- No traffic mitigation plan has been devised to fully mitigate anticipated future traffic or encourage alternatives such as bike/ped activities by providing appropriate facilities. Despite the assertion on the TIS from the applicant that there is a relatively good score of 80 for bike/ped activities in the area, the Walkscore website (www.walkscore.com) scores Ft Myers Beach as "somewhat walkable with (58) and "Bikeable" with 68 scores, well below 80. Therefore, the proposed development is inconsistent with the Comprehensive Plan's Goal 7, Policy 7-J-2 and Sec 10-287 (1)(b)&(c).

Based upon the above findings and the testimony presented by the Bonnemas, Max Forgey, AICP, and his neighbors, the undersigned recommends denial of this application consistent with the staff report and the LPA.

Respectfully,

/s/ Mohsen Salehi, AICP, ITE(F)

/s/ Charles Andrew Roark, P.E., CTL

Mohsen Salehi, AICP, ITE(F)

Charles Andrew ("Drew") Roark, P.E., CTL

cc: Dale Bonnema
Katie Berkey, Esq., AICP
Max Forgey, AICP
Thomas Slaughter

Greater Charlotte Harbor, A Comparison of Boating Patterns by Season Study

Tables Referenced Herein

Table 5-1

Average Number of Reported Trips

Month	All	Ramp	Dock	Marina Wet Slip	Marina Dry Storage	95% confidence internal (mean) All Users
January	3.76	3.10	3.81	5.18	3.77	(3.56 – 3.96)
February	4.10	3.28	4.12	5.81	4.29	(3.89 – 4.31)
March	4.90	4.09	4.91	6.16	4.95	(4.67 – 5.12)
April	5.23*	4.83	5.38	6.15	5.09	(5.01 – 5.45)
May	5.09	5.24	5.38	4.70	4.77	(4.86 – 5.32)
June	4.70	5.27	4.97	3.37	4.31	(4.47 – 4.93)
July	4.33	4.96	4.66	2.72	3.90	(4.11 – 4.55)
August	3.99	4.62	4.25	2.45	3.59	(3.77 – 4.21)
September	3.95	4.47	4.26	2.63	3.51	(3.74 – 4.15)
October	4.23**	4.26	4.59	3.92	3.94	(4.03 – 4.44)
November	4.19	3.60	4.49	5.41	4.02	(3.98 – 4.40)
December	3.60	3.19	3.82	4.76	3.19	(3.40 – 3.80)
Monthly Avg. (overall)	4.34 N = 1,595†	4.25 564	4.55 457	4.49 222	4.11 339	(4.17 – 4.51) 1,595

* Primary peak; ** Secondary peak (based on the reported trips of boaters from all four users).

† N includes 13 additional boaters that launched from a shoreline, causeway, or other location. Note: 95% Confidence Intervals (shown in parentheses) are interpreted as follows:

Bold: if interval contains the mean of 4.34 trips

Bold and Italic: if the lower limit of the interval > 4.34

Table 8-1

<i>Season:</i>	All Respondents	Ramp	Dock	Marina Wet	Marina Dry
<i>Winter</i>	11.46 9	9.56 <u>6</u>	11.75 <u>8</u>	15.76 <u>12</u>	11.26 9
<i>Spring</i>	15.22 12	14.18 12	15.60 12	17.62 13	14.83 13
<i>Summer</i>	13.03 10	14.85 <u>12</u>	13.90 <u>11</u>	8.55 <u>4</u>	11.81 10
<i>Fall</i>	12.38 10	12.35 10	13.35 10	11.98 <u>8</u>	11.49 10
Season (Overall)	13.00 10.25	12.75 10	13.67 10.75	13.47 10	12.35 10.75
N* =	1,595*	564	457	222	339
	Percentage of N*	35.3%	28.7%	13.9%	21.3%

Mean shown in bold type; median in non-bold type.

* Sample contains survey respondents classified as “Other” – boaters launching from Beach, Shoreline, or Causeway – accounting for 13 additional survey respondents
 ... 8% of the total number of respondents that answered Question 7

Figure 9-1

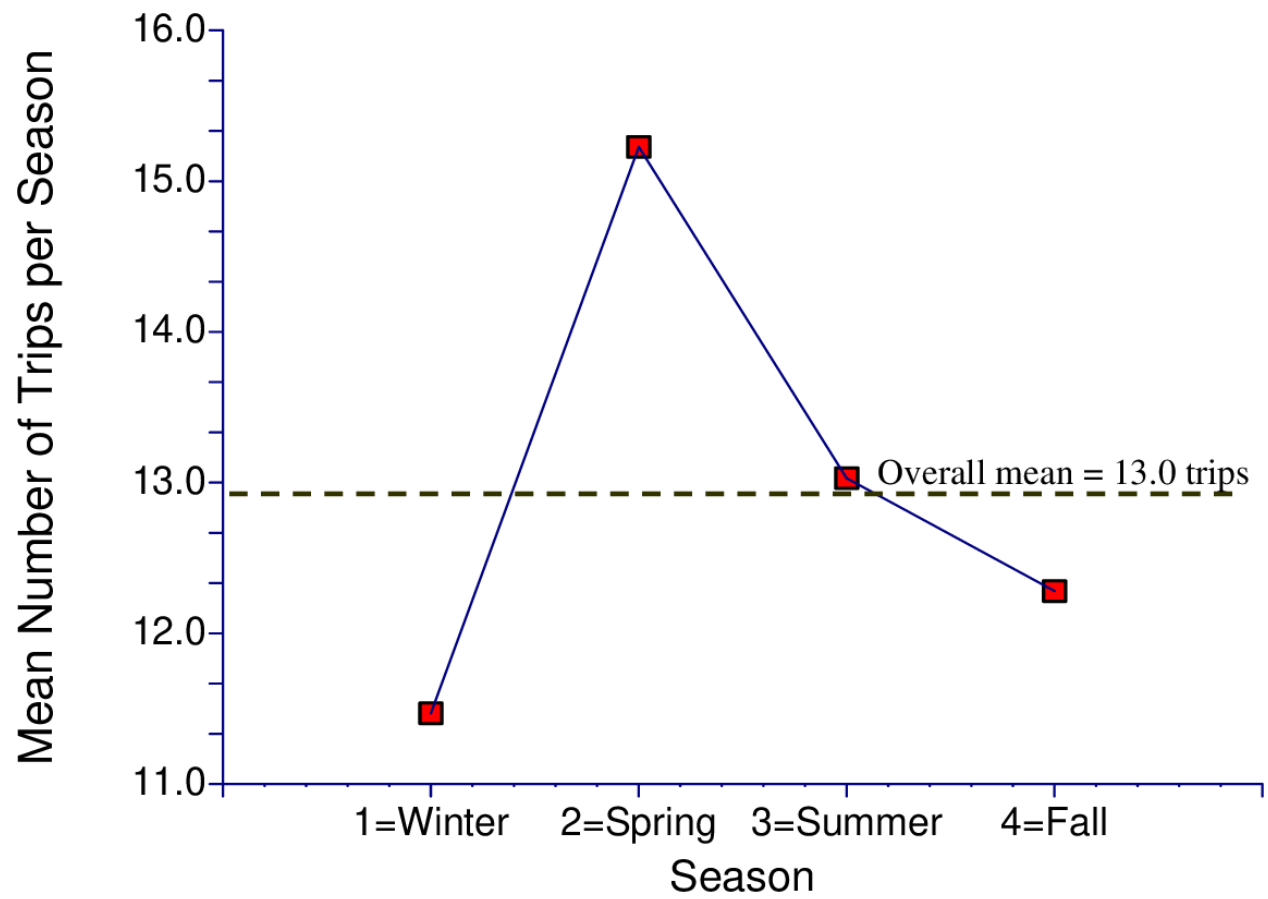


Table 11-1

<i>Season:</i>	All Users	Ramp	Dock	Marina Wet	Marina Dry	Other
<i>Winter</i>	8:46AM 9:00 (678)	8:05† 7:30*† (223)	9:02 9:30 (177)	8:58 9:00 (125)	9:19†† 10:00†† (137)	(16)
<i>Spring</i>	8:48AM 9:00 (2,045)	8:08† 8:00† (591)	8:57 9:00 (630)	9:09 9:30†† (332)	9:09 9:30†† (479)	(13)
<i>Summer</i>	8:16AM* 8:30* (871)	7:37*† 7:30*† (336)	8:43* 9:00 (290)	8:48* 9:00 (79)	8:31* 9:00 (158)	(8)
<i>Fall</i>	8:50AM 9:00 (610)	8:20† 8:00† (204)	9:06 9:00 (199)	9:01 9:00 (101)	9:09 9:30†† (104)	(2)
Typical Season (year)	8:41AM 9:00 N=4,204	8:02AM 8:00 (1,354)	8:57PM 9:00 (1,296)	9:03AM 9:30 (637)	9:04AM 9:30 (878)	(39)

Note: Mean shown in bold type; median in non-bold type. Sub-sample sizes are shown in parentheses.

Table 12-1

<i>Season:</i>	All Users	Ramp	Dock	Marina Wet	Marina Dry	Other
<i>Winter</i>	2:34PM 2:00 (157)	3:27*† 2:45*† (46)	2:08 1:30 (54)	2:01 1:00 (30)	2:25 1:15 (26)	(1)
<i>Spring</i>	2:24PM 2:00 (360)	2:51† 2:30† (84)	2:06 1:30 (131)	2:04 1:30 (56)	2:37 2:00 (85)	(4)
<i>Summer</i>	3:01PM* 2:30* (125)	3:11* 2:45* (32)	3:03* 2:30* (55)	2:57* 2:30* (14)	2:52* 2:30 (22)	(2)
<i>Fall</i>	2:10PM 1:45 (92)	2:01** 1:00** (22)	2:00 1:45 (36)	1:54 1:00 (17)	2:58*† 2:00† (17)	(0)
Typical Season (year)	2:30PM 2:00 N=734	2:58PM 2:30 (184)	2:17PM 2:00 (276)	2:08PM 1:15 (117)	2:40PM 2:00 (150)	(7)

Note: Mean shown in bold type; median in non-bold type. Sub-sample sizes are shown in parentheses.

* Significantly greater (later) than values observed from the same user group during other seasons at the 95% confidence level;

** Significantly less (earlier) than values observed from the same user group during other seasons at the 95% confidence level;

† Significantly greater (later) than values observed in other user groups during the same season at the 95% confidence level.

Table 13-1

<i>Season:</i>	All Users	Ramp	Dock	Marina Wet	Marina Dry	Other
<i>Winter</i>	5.14 hrs 5 hrs (686)	5.98† 6† (231)	4.71 4††** (198)	5.20 4.5 (99)	4.33†† 4.5 (148)	(10)
<i>Spring</i>	5.34 hrs 5 hrs (2013)	6.51† 6† (592)	5.16 5 (641)	4.45††** 4††** (237)	4.64†† 4.5 (532)	(11)
<i>Summer</i>	5.61 hrs 5 hrs (886)	6.70†* 6† (328)	5.15 5 (301)	5.03 5 (70)	4.63†† 5 (180)	(7)
<i>Fall</i>	5.25 hrs 5 hrs (583)	6.04† 6† (210)	5.24 5 (200)	4.85 4†† (61)	4.00††** 4††** (110)	(2)
Typical Season (year)	5.34 hrs 5 hrs N=4168	6.39 (1361)	5.10 (1340)	4.75 (467)	4.52 (970)	(30)

Note: Mean shown in bold type; median in non-bold type. Sub-sample sizes are shown in parentheses.

* Significantly greater (longer) than values observed from the same user group during other seasons at the 95% confidence level;

** Significantly less (shorter) than values observed from the same user group during other seasons at the 95% confidence level;

† Significantly greater (longer) than values observed in other user groups during the same season at the 95% confidence level;

†† Significantly less (shorter) than values observed in other user groups during the same season at the 95% confidence level.

Table 15-1

<i>Season:</i>	All Users	Ramp	Dock	Marina Wet	Marina Dry	Other
<i>Winter</i>	.408^{††} (832)	.599* (272)	.366** (232)	.231** (151)	.306**^{††} (160)	(17)
<i>Spring</i>	.397^{††} (,2399)	.568* (679)	.360 (758)	.265** (380)	.334** (565)	(17)
<i>Summer</i>	.526[†] (1,010)	.648* (376)	.450**[†] (351)	.377**[†] (90)	.486**[†] (183)	(10)
<i>Fall</i>	.438 (714)	.658*[†] (234)	.380** (234)	.276** (123)	.289**^{††} (121)	(2)
Overall	.431 N=4,955	.606* (1,561)	.384** (1,575)	.274** (744)	.351** (1,029)	(46)

Note: Sample and sub-sample sizes shown in parentheses.



MOHSEN SALEHI, AICP, ITE(F)
Corbel Design Consulting Svcs
Ft Myers, FL (239/994-1320)
Mohsen@corbeldesign.com

ACADEMIC BACKGROUND

Masters Degree of City & Regional Planning, Urban Design/Infrastructure Major, Clemson University, Clemson, SC, 1984

Bachelors Degree of Architectural Engineering, Design/Construction Major, Southern Polytechnic State University (formerly a division of Georgia Institute of Technology), Marietta, Georgia, 1980

SPECIALIZED PROFESSIONAL COMPETENCE

Mr. Salehi's career spans over 30 years of public- and private-sector experience with an extensive track record in transportation/infrastructure planning and urban design, low impact development and redevelopment projects, complete streets/context sensitive design solutions, traffic calming/roadway safety audits, traffic and parking studies, development review services, and expert testimony for public agencies and community organizations.

Corbel Design Consulting Services, 1997-present

Provide full-service infrastructure/transportation planning services to public- and private-sector clients throughout southeast and southwest Florida, including continuous focus on Complete Street concepts.

- **Florida Main Street Program, 1997-current**
Member of resource teams dispatched to Clewiston, Clearwater Beach, and Dania Beach communities with traffic circulation and design services, PM Bob Field, 410-323-4465. Presented at FMS annual conferences in Ft. Pierce (1999) & Fort Walton Beach (2002), Stuart (2014), & St Petersburg (2015).
- **Florida Redevelopment Association (FRA), 1997-present**
Provided technical services for parking and flood insurance. PM Carol Westmoreland, @850-701-3608.
- **Roadway Safety Audit, Bonita Springs, 2012-13**
Conducted roadway safety audit for completing 1.1 mile section of Old SR 41 from Bonita Beach Road to Collier County line. PM Domingo Noriega, P.E. @813-503-7743.
- **Bayshore Corridor Redevelopment Overlay, Collier County, 1999-00**
Developed an overlay to create incentives for urban design and traffic calming for tax base enhancements. PM Jim LaRue @ 239-334-3366.
- Development review & transportation concurrency services, Comp Plan & LDC for LaRue Planning & Management Services' public sector clients including Village of Estero, Boynton Beach, North Bay Village, El Portal, Moore Haven, & City of Okeechobee. PM Jim LaRue @ 239-334-3366.
- Expert Testimony before Lee County BOCC (on Behalf of Pine Island Community), & St Johns County BOCC (on behalf of Vilano Beach Community).
- Consultancy for CALTRAN Engineering Group for Miami Downtown Development Authority Complete Streets Project, SE/SW 1st; Charlotte County: Countywide Parking

Study (2019), Deep Creek Community Sidewalk Master Plan (2020), PM Juan Calderon @786-456-7700.

Traffic Consultant, City of Bonita Springs (Public Works), 2000-11, Provided transportation planning services, reporting to City Manager Gary Price @239-980-9400.

- **Bonita Springs Bikeways/Walkways Facilities Plan Update, 2008-09**
Prioritized facilities funding based on Complete Street Decision Matrix.
- **Project Management Services**
 - Traffic Circulation Study, 2008-09
 - I-75/BBR interchange improvements (Addition of left turns and sidewalks relocation behind overpass supports), 2007-08
 - East Terry I-75 overpass widening , 2005
- **Development review & urban design services, 2008-09**
- **Expert testimony, 2000-11**
Testified before Bonita Springs City Council, Planning & Zoning Board, & Local Planning Agencies.

Project Manager, Lee County Community Redevelopment Agency (CRA), 1995-97

Managed several concurrent projects reporting to County Manager Roger Desjarlais @239-533-2221.

- **Old 41 Corridor**
Responsible for \$3.1 million TIF funded for planning and design from Imperial River Bridge to Oak Creek Bridge in Bonita Springs (0.3 miles)
- **Palm Beach Blvd/I-75 interchange**
Conducted \$500,000 Storefront Grant program & redevelopment concept plan for Dos Rios.
- CRA liaison for local redevelopment planning committees.

Section Manager, Lee County Dept. of Transportation and Engineering (DOT&E), 1990-95

Responsible for DOT&E's Alternate Modes Section.

- Annual budget of \$1 million and \$2.8 million in federal funding under Intermodal Surface Transportation Efficiency Act (ISTEA) including:
 - Six Mile Cypress Bikepath (8.3 miles)
 - Stringfellow Bikepath (12.1 miles)
 - Estero Blvd Sidewalk (4.2 miles)
 - Ten Mile Canal Linear Park (3 miles)

- Funds used for planning, design, and construction of safe, routes to schools (including design-build of Lehigh Acres Pedestrian Bridge over ECWMD canal as an alternative to bussing due to hazardous walking conditions), transit (installation of bike racks on LeeTran busses), public parks (free access for bicyclists and pedestrian to Lakes Park) & commercial facilities for walking, cycling & promotion of demand management solutions in Lee County
- Acted as liaison before Bicycle/Pedestrian Advisory Committee (BPAC), Chairman Ed Benjamin @239-410-5186.

Consultant, Neighborhood Planner/Architectural Consultant, 1989-90

Reported to Dagmar Epsten @404-577-0370.

- Responsible for redevelopment & revitalization of 2.1-mile Dekalb Ave. corridor & Reynolds-town neighborhoods
- Conducted building energy audits, Designed ADA compliant solutions for private schools

Urban Planner, City of Atlanta Bureau of Planning (BOP), 1987-89

Reported to Reemberto Rodriguez @240-777-5307.

- Responsible for Urban Design/Land Use Section of BOP.
- Coordinated land use amendments to the City's redevelopment plan and transit oriented developments (TOD)/parking limitation districts in the vicinity of transit stations (MARTA).

Urban Designer, Central Area Study II (CAS II), City of Atlanta, 1985-87

Reported to Reemberto Rodriguez @240-777-5307.

- Responsible for traffic & parking data collection, analyses for a public private joint planning effort for redevelopment of downtown Atlanta.
- Supervised 10 interns.
- Provided urban design services.
- Participated in three design charettes.

PROFESSIONAL AFFILIATIONS

- American Institute of Certified Planners (AICP) Member
- Institute of Transportation Engineers (ITE) Fellow
- American Society of Civil Engineers (ASCE) Transportation & Development Institute Member
- Southwest Florida Branch of American Public Works Association (APWA) Member

PROFESSIONAL AWARDS & CERTIFICATIONS

- Florida Planning Association/Promised Lands Section Scholarship Award for FPC 2020
- Florida Planning & Zoning Association's 2002 Certificate of Merit for Greater Pine Island Community Plan Update
- 1999 Outstanding Public Report for Town of Fort Myers Beach Comprehensive Plan
-

- Florida Department of Transportation (FDOT) Pre-qualified for System Planning (13.4), Corridor Planning (13.5), & Land Planning/Engineering (13.6) 2013-15.

PRESENTATIONS & PUBLICATIONS

- Florida Main Street Program, *Implications of New Transportation Trends for Main Street Businesses*, August 2015, St. Petersburg, Florida
- Florida Main Street Program, *Visioning Okeechobee*, September 2014, Stuart, Florida
- Florida Redevelopment Association Professional Development Program, *Parking Problem? No Problem!* June 2003, Orlando, Florida
- Florida Main Street Program, *Economic Vitality & the Arts/Arts Enterprise Zones*, March 2002, Fort Walton Beach, Florida
- Florida Main Street Program, *Parking Problems and Solutions*, October 1999, Fort Pierce, Florida
- American Planning Association Conference, Peachtree Street: The Linear City, May 1989, Atlanta, Georgia
- Clemson University Graduate School 1984 Master's thesis entitled: *An Alternative Energy Approach in Optimizing Growth within Built Environments*

SAMPLE EXPERT WITNESS TESTIMONY SERVICES

- City of Ft Pierce Commission, in Opposition to Case#19-4390002 Cumberland Farms Major Amendment to PD, Provided traffic impact analyses testimony, August 2019
- The Circuit Court of Lee County, in Support of Case# 18-CA-003805, Chris Patton V. Town of Ft Myers Beach/TPI-FMB Rezoning Case, Provided land use and traffic impact analyses report, 2018-19
- The Circuit Court of Lee County, in Support of Case# 18-CA-001938, Lani Kai Island Resort Vs. Town of Ft Myers Beach, Provided parking calculations, 2019
- Florida Division of Administrative Hearings, in support of DOAH Case No.: 18-003613, ARGO V. Village of Estero Provided deposition testimony for the Village Comp Plan Transportation Element, February 13, 2019
- St. Johns County Board of County Commissioners, in opposition to Case# 2016-03, COMPAMD Watermarke /Beachcomber, provided traffic Impact analysis and testimony, September 20, 2016

SAMPLE PROJECTS

Bonita Springs: MPO's Congestion Monitoring Report

http://www.mpo-swfl.org/content/CMR_081009.pdf

Pine Island Community Plan Update

<http://spikowski.com/Pine%20Island%20Report-September30.pdf>

Fort Myers Beach Access & Circulation

<http://www.spikowski.com/SummaryReport%20w-o%20App%20C-D.pdf>

Miami Downtown Development Authority SE/SW 1st St

Complete Streets Project/ Aerial Drones footage for:

- SW First St at SW First Ct - curb extension with cones
<https://vimeo.com/165801251>
- SE First St at SE Third Av - ped island with cones
<https://vimeo.com/165801250>

Charles Andrew (Drew) Roark P.E. CTL



Mr. Roark has 28 years of experience in the transportation consulting industry with over 10 years of senior management experience in the transportation consulting industry. He has experience from traffic data collection to directing the Transportation Sector for the Southeast US for large engineering firms. As is shown below, although Mr. Roark's experience is broad in many different areas within the industry, his technical specialties are primarily in the area of traffic engineering and planning. Mr. Roark has been directly involved with

multiple Project Development and Environment (PD&E) studies, managed specialty projects such as the Florida Department of Transportation Central Office Transportation Statistics Data Support project and the Florida Statewide Motor Carrier Compliance General Consultant contract. Mr. Roark is experienced in preparation and review of transportation impact studies for numerous Developments of Regional Impact (DRI) throughout the state of Florida. His experience has included preparation and supervision of data collection programs, coordination with local review agencies, preparation of traffic signal warrant reports, modeling of future traffic volumes using the FSUTMS model, calculations of projected impact fees including independent impact fee studies and preliminary roadway planning and design for maximizing safety and mobility.

RELEVANT PROJECT EXPERIENCE

- **Statewide Trip Generation Study, Florida Department of Transportation, Research Center – Project Manager.** A statewide study investigating trip generation rates associated with Fast Food with drive through and Coffee Shops with drive through land uses. Study will compare the trip generation rates of 40 sites around the State of Florida in multiple context classifications as well as the service times and queueing from the site. The site will determine if different brands of the same land use exhibit different operating characteristics. The project is focused on the prevention of queueing into the adjacent roadway system and improving safety.
- **Motor Carrier Compliance (OMCC) General Consultant, Florida Department of Transportation, Central Office--Project Manager.** A General Consultant contract providing architectural and engineering services, including planning, environmental, building design, geotechnical, landscaping, developing design criteria for design-build, permitting and other necessary services to assist in the planning, construction and management of various projects and facilities around the state of Florida managed by the OMCC.
- **City of Tallahassee Traffic Signal Management Plan (TSMP). Tallahassee, Florida. Traffic Engineer.** The TSMP is a process developed by FHWA to provide a framework for delivery of high-quality service to the public through an efficient and well-maintained traffic signal system. The City of Tallahassee's goals were to develop a Traffic Signal Strategic Business Plan which would provide a succinct description of all activities required for City staff to manage the traffic signal program, offer a basis for introducing new staff to the processes relevant to their roles, both inside and outside the program or City, illustrate to management and outside funding agencies the structured approach to traffic signal management, specify an approach to strategically shift design, maintenance and operations from reactionary to proactive and to effectively plan for needed capital improvements, as well as other goals.

Alex Roark Engineering, PLLC

Years of Experience: 28

Education:

- Bachelor of Science in Civil Engineering, University of South Florida, 1997

Professional Registration:

- Registered Professional Engineer: Florida (No. 56826), 2001
- Registered Professional Traffic Operations Engineer: (No. 1105), 2003 - 2009

Certifications:

- Certification in Transportation and Logistics (CTL), 2014 – Lifetime Member

Professional Membership:

- Board Member, Tampa Bay Chapter Institute of Transportation Engineers, 2005 - 2007
- Member, Institute of Transportation Engineers, Planning Council
- Member, Leadership Tallahassee Class 26
- Board Member, Tallahassee Economic Development Council, 2014
- Certification in Transportation and Logistics (CTL), 2014 – Lifetime Member
- Public Relations Committee Member, ACEC FL - Current
- Transportation Committee Member, ACEC FL – Current
- Small Business Subcommittee Member, ACEC FL – Current
- Florida Engineering Society – Big Bend Chapter – Current

Additional Activities:

- Adjunct Professor, FAMU-FSU College of Engineering – Transportation Engineering Course – Fall 2022 – Spring 2023



- **Transportation Statistics Data Support Contract, Florida Department of Transportation, Central Office (2012-2015) (multiple selections) - Project Manager/Officer.** Involves a General Consultant contract supporting Central Office Statistics. This contract includes assignments in traffic monitoring (primarily relating to data extraction from the permanent count stations, teaching the Project Traffic Forecasting classes and development of the new Project Traffic Forecasting database), data collection (freight, RCI, RITA, SLD, Video Log, route sequencing and Quality Control processes), data analysis (HPMS, city-county mileage web site and VMT) and GIS Basemap (FREAC, Remote sensing, ArcGIS and ArcSDE application development and testing) areas.
- **US 319 at Songbird Avenue Traffic Signal Design. Crawfordville, Florida. Engineer of Record.** Project includes a traffic signal design for an intersection on US 319, Crawfordville Highway. Mast arms were required and a unique design to avoid and minimize utility conflicts as well as voids found in the soil.
- **City of Fort Myers, Florida Traffic Signal Design. Signal Design Lead.** Project included the re-design of six traffic signals. Five of the intersections included mast arms, and one was strain pole. The intersections are located on First and Second Street, which were one-way pairs and were being converted back to two-way and taken over by the City of Fort Myers. Challenges included trying to re-use as much of the existing infrastructure as possible.
- **Transportation Impact Analyses.** Conducted transportation impact analysis for the following projects as well as over a dozen others in the Tallahassee Area:

Publix, Wakulla County, Florida
Florida Mall DRI, Orange County, Florida
Northbrook Development, Collier County, Florida
Sarasota Memorial Hospital, Sarasota County, Florida
Connerton DRI, Pasco County, Florida
Tampa Tech Park, Hillsborough County, Florida
- **Woodville Highway Safety Study. FDOT District 3, Tallahassee, Florida. Project Manager.** Project included evaluation of five years of crash records to determine patterns and appropriate crash mitigation and crash modification factors using the Highway Safety Manual. Recommendations including conceptual designs and benefit cost analyses were included.
- **Hillsborough County Signal Warrants – Hillsborough County Government, Hillsborough County, Florida – Project Manager.** As part of an on-call contract this project included providing traffic signal warrant analyses at intersections specified by Hillsborough County. Field and traffic volume count data were collected at each intersection. Scope included analyzing dozens of intersections that were suspected of the need for a signal or were citizen inquiries.
- **US 98 (SR 30) from CR 30F(Airport Road) to the Walton County Line, Florida Department of Transportation, District 3.** Project is the design of a capacity improvement from four to six lanes including major pedestrian facilities. Our portion of the project included traffic data collection, analysis and signal design, noise analysis, landscape architecture, and permitting.
- **Bannerman Road Corridor Study, Leon County, Florida--Project Manager.** Preparation of a corridor study to analyze a two-lane divided roadway and its applicability to be widened to four lanes. Project includes traffic analysis, development of alternatives, evaluation of the preferred alignment, potential environmental impacts, public participation and documenting the analysis completed.
- **Mobility Plan, City of Destin, Florida – 3TP, Traffic Engineer.** Establishing an up-to-date mobility fee including a carrying capacity study, a full update and documentation of the City's mobility plans, an assessment of the role of land use in generating transportation demand, and mobility fee calculations tied to planned improvements.
- **Destin Traffic Signals Update, Destin, Florida – 3TP.** This project included updating the phasing, timings, and geometries of all of the traffic signals within the City of Destin. As a sub to 3TP, all of the services and deliverables including the updated Synchro files and models were provided.

KATHLEEN O. BERKEY, B.C.S., AICP

Becker & Poliakoff, P.A.
12140 Carissa Commerce Court, Suite 200, Fort Myers, FL 33966
kberkey@beckerlawyers.com
(239) 433-7707

BAR ADMISSION, CERTIFICATIONS, AND QUALIFICATIONS

- The Florida Bar, September 2011 - Present
- Board Certified Specialist, City, County, and Local Government Law, August 2019 - Present
- American Institute of Certified Planners (AICP), June 2012 - Present
- Recognized as an expert witness in land use planning/zoning by Lee County, Village of Estero, Glades County, City of Fort Myers, DeSoto County, City of Punta Gorda, and Okeechobee County.

EDUCATION

University of North Carolina School of Law, Chapel Hill, North Carolina
Juris Doctor, May 2011
Graduated with *Pro Bono* distinction, completing over 140 hours of *Pro Bono* service

Honors and Activities:

- Articles Editor, *North Carolina Journal of International Law and Commercial Regulation*
- Senior Associate Justice, Student Supreme Court
- Guest Blog Contributor, *North Carolina Journal of Law and Technology*
- Teaching Assistant, Environmental Law & Policy (ENST350)

University of North Carolina at Chapel Hill, Chapel Hill, North Carolina
Master of City and Regional Planning, May 2011
Land Use and Environmental Planning Specialization

Honors and Activities:

- Epsilon Eta Environmental Honors Fraternity
- Research Assistant, Land Use and Environmental Law

Franklin & Marshall College, Lancaster, Pennsylvania
Bachelor of Arts, American Studies, Public Policy minor, May 2005
Magna cum laude; Phi Beta Kappa

Honors and Activities:

- Winner, J. Fred and Nancy B. Sener Prize in American Studies for highest academic achievement in the major and strong character
- Conducted original oceanographic research in the Caribbean and Sargasso Seas with the Sea Education Association and received the Dean's Award merit scholarship
- Hackman Research Scholar studying the academic architecture of Charles Z. Klauder
- Recipient, Albert W. and Helen C. Meserve and Buchanan merit scholarship

KATHLEEN O. BERKEY, B.C.S., AICP

Becker & Poliakoff, P.A.
12140 Carissa Commerce Court, Suite 200, Fort Myers, FL 33966
kberkey@beckerlawyers.com
(239) 433-7707

SELECTED EXPERIENCE

Becker & Poliakoff, P.A., Fort Myers, Florida

Shareholder Attorney and Certified Land Planner, September 2018 – Present

- Represent clients in planning, zoning, and environmental matters before community groups and city/county commissions, councils, and boards.
- Prepare variance, special exception, rezoning, easement vacation, development order, comprehensive plan amendment, land development code amendment applications, and environmental permitting applications.
- Represent condominium, cooperative, and homeowners' association clients with the management and operational aspects of governing their communities, as well as zoning and land use matters.
- Perform legal research and draft agreements, memoranda, briefs, and motions in environmental, land use and local government, and community association law matters.
- Serve as Alternate Hearing Examiner for Code Enforcement, City of Bonita Springs (2019-Present)

Honors and Activities:

- Recognized in the 2023 and 2024 editions of *The Best Lawyers in America*®, one of the oldest and most revered peer review publications, in Community Association Law and Land Use and Zoning Law.
- Recognized as the 2021 Apex Award winner by the Greater Fort Myers Chamber of Commerce and Women in Business Committee for excellence in the areas of professionalism, philanthropy, and leadership.
- Named a "Florida Rising Star" by Super Lawyers (2021 – Present). This peer designation is awarded only to a select number of accomplished attorneys in each state. The Rising Stars selection process considers peer recognition, professional achievement in the legal practice, and other cogent factors.
- Honored as the Zonta Club of Bonita Springs-Estero's "Woman of the Year" in recognition of her philanthropic and service contributions to improve the lives and status of women in our community (2020).
- One of five finalists and one of three finalists for the 14th and 15th Annual Apex Award by the Greater Fort Myers Chamber of Commerce and Women in Business Committee, respectively (2019 and 2021).
- Honored by *Naples Herald* as one of the "Top 40 Under 40" for being distinguished in her profession and in the community (2018).

Kimley-Horn and Associates, Inc., Fort Myers, Florida

Senior Planner + Project Manager, May 2017 – September 2018

- Analyze existing and future conditions for parks, recreation, open space, and public schools and consistency with comprehensive planning policies and land development code regulations.
- Research and analyze policy related to growth management and the environment.
- Represent clients in planning, zoning, and environmental matters before community groups and city/county commissions, councils, and boards.
- Prepare variance, special exception, rezoning, easement vacation, development order, comprehensive plan amendment, land development code amendment applications, and environmental permitting applications.

Pavese Law Firm, Fort Myers, Florida

Senior Associate and Certified Land Planner, August 2011 – May 2017

- Counsel and advise clients on federal, state, and local laws and compliance in the areas of building and environmental permitting, growth management, planning, and zoning.
- Analyze existing and future conditions for parks, recreation, open space, and public schools and consistency with comprehensive planning policies and land development code regulations.
- Represent clients in planning, zoning, and environmental matters before community groups and city/county commissions, councils, and boards.

KATHLEEN O. BERKEY, B.C.S., AICP

Becker & Poliakoff, P.A.
12140 Carissa Commerce Court, Suite 200, Fort Myers, FL 33966
kberkey@beckerlawyers.com
(239) 433-7707

- Prepare variance, special exception, rezoning, easement vacation, development order, comprehensive plan amendment, land development code amendment applications, and environmental permitting applications.
- Perform legal research and draft agreements, memoranda, briefs, and motions in environmental, land use and local government, real estate, Community Development District, and community association matters.

Honors and Activities:

- Recognized by *Florida Trend Magazine* as one of "Florida's Legal Elite" and "Legal Up & Comer" (2017).
- Honored by *Gulfshore Business* as one of the "Top 40 Under 40" for being distinguished in her profession and in the community (2014).
- Selected as one of 37 young professionals to join the Connect Florida Statewide Leadership Institute, assisting emerging leaders to continue making a positive impact on Florida (2012).

Hopping Green and Sams, P.A., Tallahassee, Florida

***Law Clerk*, May – August 2010**

- Performed legal research and drafted memoranda and briefs in land use, administrative law, environmental law, real estate, oil and gas, local government, and Community Development Districts.
- Counseled clients regarding the local, state, and federal approvals required for mixed-use development projects, as well as the impacts of recent statutory and regulatory changes.

Network Building and Consulting, LLC, Hanover, Maryland

***Land Use Specialist*, May – August 2009**

***Zoning Manager*, June 2005 – July 2007**

- Represented seven national and regional wireless communication providers in preparing and filing special exception, variance, condition use, and building permit applications for telecommunications facilities in over 35 jurisdictions.
- Conducted zoning analysis, managed engineering firms, and presented at public hearings and community meetings.
- Performed field inspections to gather qualitative and quantitative data relevant to the development review process and counsel clients on which site design elements would be necessary for their proposed sites to comply with local ordinances and comprehensive plans.

Office of Policy and Management, State of Connecticut, Hartford, Connecticut

***Cooperative Education Intern (Office of Responsible Growth)*, May – August 2008**

- Organized and participated in regional roundtables to receive input from city and town officials in developing planning agendas tailored to the specific needs of the state's different planning regions.
- Coordinated transit-oriented development projects between developers, Department of Transportation, and Office of Responsible Growth, and conducted draft plan/project reviews for of each project and prioritized funding.
- Researched other states' models of regional tax-base revenue sharing, smart growth and water resources planning to prepare for future development in Connecticut.
- Assisted in revising the State Plan of Conservation and Development.
- Assisted Intergovernmental Policy Division in collecting, analyzing, and publishing municipal data, including Municipal Fiscal Indicators utilizing financial and demographic information from each municipality.

KATHLEEN O. BERKEY, B.C.S., AICP

Becker & Poliakoff, P.A.

12140 Carissa Commerce Court, Suite 200, Fort Myers, FL 33966

kberkey@beckerlawyers.com

(239) 433-7707

SELECTED PUBLICATIONS AND PRESENTATIONS

- "The Role of Land Use Lawyers and Planners Throughout the Various Phases of Land Development," guest lecturer, Real Estate Fundamentals, Florida Gulf Coast University (Fort Myers, Fla., Mar. 29, 2016, Oct. 27, 2015, Feb. 12, 2015, Oct. 7, 2014, Sep. 12, 2013).
- "The Planner as a Social Entrepreneur," co-presenter, Florida Chapter, American Planning Association (Hollywood, Fla., Sep. 10, 2015).
- "Career Opportunities and Paths in Real Estate, Land Use, and Environmental Law," co-presenter and panelist, Florida Gulf Coast University (Fort Myers, Fla., Nov. 13, 2014).
- "Legal Practice Area Exploration: Real Estate, Land Use, and Environmental Law," presenter, Florida Gulf Coast University Phi Alpha Delta Pre-Law Fraternity Chapter (Fort Myers, Fla., Oct. 13, 2014).
- "Building Healthy Places: Integrating Health into Planning, Designing, Developing, and Managing our Communities," co-presenter, Florida Chapter, American Planning Association (Jacksonville, Fla., Sep. 5, 2014).
- "Follow and Promote @Yourself Online: Defrag and Optimize Your #OnlineBrand," presenter, Franklin & Marshall College Webinar Series (May 22, 2014).
- Master's thesis selected for publication as lead article in the nation's oldest law review dedicated solely to environmental issues (Kathleen D. Oppenheimer & Todd K. BenDor, *A Comprehensive Solution to the Marine Biofouling Problem for the Endangered Florida Manatee and Other Species*, 42:2 ENVTL. LAW 415, 415-67 (2012)).
- "Opportunities and Incentives for Renewable Energy in Florida," co-presenter, Florida Chapter, American Planning Association (Naples, Fla., Sep. 14, 2012).
- "Batten Down the Hatches: Tips for a Successful Job Search in Today's Economy," co-presenter, Florida Chapter of the American Planning Association's annual conference (Naples, Fla., Sep. 14, 2012).

SELECTED PROFESSIONAL ASSOCIATIONS

- Incoming Chair of Mission Advancement (June 2024), Management Committee Member (2011-Present), and Post Co-Chair of the Young Leaders Group (2012-2017) and Women's Leadership Initiative (2013-2018)
- American Planning Association – Florida Chapter (2011-Present)

From: [Marilyn Anderson](#)
To: [Sarah Propst](#)
Subject: CPA20230152
Date: Sunday, March 31, 2024 8:58:44 PM

Dear LPA and Town Council-

I own the property at 929 Third St. FMB which backs to Moss Marine property. I am concerned about changing the zoning on this property from marina and mixed residential to pedestrian commercial prior to Moss Marine submitting a CPD for the entire project. Once the property is rezoned, it will give them additional benefits by right to build a hotel(s) without additional public benefit. The rezoning should be included as part of the entire project which should be submitted through the CPD process.

Thank you for your consideration
Marilyn Anderson

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

From: [Kathy](#)
To: [Sarah Propst](#)
Subject: Fwd: Local Planning Agency meeting 4/9/2024
Date: Tuesday, April 9, 2024 8:20:03 AM

Sorry, this was returned due to error in email.

Thank you, Kathy

Sent from my iPhone

Begin forwarded message:

From: Kathy <Bpduddy@comcast.net>
Date: April 8, 2024 at 12:28:39 PM EDT
To: sarahpropst@fmbgov.com, amy@fmbgov.com
Subject: Local Planning Agency meeting 4/9/2024

We are writing to express our opposition to the proposed change of land use at Moss Marina from a Marina and Mixed Residential designation to Pedestrian Commercial designation

The infrastructure of the neighborhood cannot handle any potential rezoning and future development.

Thank you,

Kathy Duddy 917 & 920 Third Street
Mary Houlihan 917 Third Street

Sent from my iPhone

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

From: [Brian Duddy](#)
To: [Sarah Propst](#)
Subject: LPA April 9, 2024 Meeting
Date: Sunday, April 7, 2024 7:39:51 PM

Hi Sarah

I can't be at the meeting, but I would like to voice my opposition to the rezoning Moss Marina.

My wife's family has had a house at 917 Third Street for over 30 years and we are the owners of 920 Third Street.

To start, in all my years of coming to FMB I have never heard of a business district until after the hurricane. Now it seems like the town wants to jam everything into this area.

This side of Third Street is basically a peninsula - one way in one way out. If Moss Marina gets their way, they are going to jam 400 hotel rooms and other businesses into this quiet neighborhood which will eventually force the remaining neighbors who haven't left because of the hurricane to leave. A lot of the homes on the street have been in families for years, like mine.

When Moss Marina had the gambling boat the traffic on Third Street was awful with no regard for the speed limit. We also had people urinating on our lawns and on a couple, occasions passed out under our house. I can't imagine what 400 hotel rooms are going to bring.

I am sure Mr. Freeland will get approval of some sort, but I would like to suggest that if/when he does that Third Street becomes a dead end with no access to what they are proposing from Third Street.

I am all for change and understand that Hurricane Ian has made change inevitable, but this project is just too much for this neighborhood.

--

Thanks
Brian Duddy
781-838-2886

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

Opposition to Case No. 20230152 for Arches Bayfront Request to Change the Future Land Use for Eight (8) Parcels to Pedestrian Commercial, Town Council 5/6/2024

Greetings Fort Myers Beach Town Council:

We own a home at 725 Matanzas Court that is approximately 72-feet across the Island Shores Canal from the property subject to the above referenced request to change the future land use of Marina (3.53 acres) and Mixed Residential (1 acre) to Pedestrian Commercial. Accordingly, we would be detrimentally impacted and suffer special damages as a result of the change in character to the neighborhood if the future land use change is approved, and we have standing to challenge this application to protect our private property interests and quality of life.

The current future land use designation, subject to a CPD rezoning, yields a maximum intensity of 295,990 sf of floor area as compared to the proposed future land use designation, subject to a CPD rezoning, yields a maximum intensity of 493,317 sf of floor area. This equals a 66.7% increase that will be accessible through well-established residential neighborhoods worthy of preservation. The proposed intensification is not compatible with the north end's character as "quiet" and "comfortably removed" from the "core area" and related "seasonal traffic congestion and outdoor entertainment activities" per the Comprehensive Plan (Pages 2-3 and 3-10).

We have retained two professional traffic engineers and they both concur that the traffic study submitted by the applicant is inaccurate and misleading.

One of the most popular activities on Fort Myers Beach is boating... Estero Island NEEDS commercial marinas and Moss Marina currently provides public benefits in that boats can be serviced, and dry storage for in-and-out service are available to island residents. If Arches Bayfront is developed, there will be no more boat services, there will be no more dry storage... There will be just dock space for rent at \$200+ a night for *wealthy tourists*. There will be NO marine public benefit for the *residents* of the Town.

The commercial marina use has been very successful for decades and can continue for decades to come. There is no "right" to grant a future land use change and eventually extreme intensity to burden the residents of the Island. If the developer wants to enter the hotel/resort business, he can sell Moss Marina and purchase several parcels elsewhere in the island that have the proper zoning and density! (Wyndham property, etc...)

Below is a quote from the Fort Myers Beach Town website
(<https://www.fortmyersbeachfl.gov/60/Island-History>):

*"...Lee County's approval of high rise development on Estero Island brought incorporation efforts to a successful passage. In 1995 a referendum passed to incorporate Estero Island as a means to engage **citizens of the island in the preservation of their own small town character**. After legislation was enacted by the State of Florida, on December 31, 1995 the Town of Fort Myers Beach was born."* (emphasis added).

This Fort Myers Beach Town Council and the Local Planning Agency have repeatedly *supported the Comp Plan* and have resisted substantial changes. The Fort Myers Beach Town was founded on limiting the growth of large developments that threaten the small-town character of the Island. The Comprehensive Plan and Land Development Code were written to protect the Island from large development and to preserve and protect well-established residential neighborhoods, not to protect the expanding businesses from residential intrusion!

The Mixed Residential future land use designation was specifically "designed for older subdivisions with mixed housing types on smaller lots...to ensure that Fort Myers Beach retains a variety of neighborhoods and housing types." Policy 4-B-4. Please retain these older subdivisions and the variety of housing afforded by them consistent with the Comprehensive instead of allowing them to get gobbled up for the greatest intensity allowed!

If approved, this change will leave the north end, which has been since the 1999 Comprehensive Plan envisioned to be "quiet" and comfortably removed from the more intense commercial uses permitted in the core area and the associated traffic and noise, exposed to future, additional adverse impacts from future development beyond Arches Bayfront. **Arches Bayfront will be just the first domino to fall** to the detriment of the entire island and the well-established residential neighborhoods, resulting in a loss of a variety of housing types and commercial marina service and repair uses that are in the public's interest at this prime waterfront site. There are many more commercial properties island-wide that will follow this case and will be purchasing residential lots and expanding their businesses! *Where will it end?!!*

Anita Cereceta, Fort Myers Beach former mayor, current Local Planning Agency, Chair, April 9 meeting:

["I can't escape the very essential premise of our incorporation and of our Comprehensive Plan that hopes and aspires to maintain the small town character of Fort Myers Beach and most and above all else wishes to protect the people who live on this island from commercial intrusion..."](#).

["... in my opinion, it would destroy that neighborhood."](#)

Changing the zoning for multiple lots from Residential to the most intense Commercial is a huge mistake that can never be undone! This "GIFT" from the FMB Town to Moss Marina would result in an increase in their land value of MILLIONS of dollars!

Does the Fort Myers Beach Town, and more specifically the *residents and taxpayers* of this Island, want the Times Square and downtown district to expand into well-established residential neighborhoods in a complete contradiction of the Comprehensive Plan?

This debate can become very complex, and many of the issues can be distracting, but the heart of the matter, and the root *issue that may need to be litigated for years* to come, is quite simple:

Why would this Fort Myers Beach Town Council violate the principles that the Town was founded on and codified in the Comprehensive Plan to allow RESIDENTIAL lots to become the most intensive COMMERCIAL use and form the massive Arches Bayfront resort?

We respectfully request that the Fort Myers Beach Town Council please do what is right:

Please follow the Comp Plan.

Please accept the recommendation from your professional planning staff.

Please take the directive from the LPA.

Please DENY.

Thank you, 
Dale & Jay Bonnema
725 Matanzas Ct

Kathleen "Katie" O. Berkey, AICP
Shareholder and Certified Land Planner
Board Certified Attorney, City, County, and
Local Government Law
Phone: 239.628.4919 Fax: 239.433.5933
KBerkey@beckerlawyers.com



Becker & Poliakoff
Six Mile Corporate Park
12140 Carissa Commerce Court, Suite 200
Fort Myers, Florida 33966

Northern Trust Building
4001 Tamiami Trail North, Suite 270
Naples, Florida 34103

April 3, 2024

VIA E-MAIL ONLY: sarah.propst@fmbgov.com

Sarah Propst, AICP, PMP
Community Development, Planning Manager
Town of Fort Myers Beach

RE: Magnum FMB 1 LLC Opposition to Case No. 20230151 for Arches Bayfront Request to Change The Future Land Use For Eight (8) Parcels To Pedestrian Commercial, Respectively, at Parcel No. 244623W30030A0010, 401 OLD SAN CARLOS BLVD, FORT MYERS BEACH, 33931

Dear Ms. Propst:

I am an attorney who is certified in City, County, and Local Government Law by the Florida Bar representing Magnum FMB 1 LLC ("Magnum"), the owner of certain real property located at 725 Matanzas Court, Fort Myers Beach, Florida. Magnum is manager-managed by Mr. Dale Bonnema, who also resides at this address. Magnum's property is approximately 72-feet from the property subject to the proposed future land use change, which, if approved, will detrimentally affect Magnum and Mr. Bonnema. Accordingly, Magnum and Mr. Bonnema oppose the above-referenced application due to threatened harm and disproportionate impacts threatened by same.

Together with this letter, Magnum submits the **enclosed** Expert Planning Report prepared by Max Forgey, AICP, Forgey Planning, dated April 3, 2024, and Mr. Forgey's CV. Magnum has established the threat the proposed future land use change, at the greatest intensity permitted by the Comprehensive Plan, and that the proposal is incompatible with longstanding, surrounding uses. As a result, the proposal greatly diminishes the existing residents' quality of life. For all the above reasons and those enclosed in the Report, which are supported by substantial competent evidence, we respectfully urge the LPA to recommend denial to Town Council and for Town Council to ultimately deny this application.

Thank you.

Sarah Propst, AICP, PMP
April 3, 2024
Page 2

Very truly yours,



Kathleen O. Berkey
For the Firm

KOB/ma

Enclosures (as stated)

cc: Client
Max Forgey, AICP, Forgey Planning (via e-mail only w/encl: max@forgeyplanning.com)
Nancy Ann M. Stuparich, Esquire, Vose Law Firm LLP, Town Attorney (via e-mail only:
bvose@voselaw.com)

DARYL MAX FORGEY, AICP
LAND USE PLANNER & EXPERT WITNESS
FORGEY PLANNING LLC
max@forgeyplanning.com
239.560.5864

Town of Fort Myers Beach
Local Planning Agency
2731 Oak Street
Fort Myers Beach, FL 33931
239.765.0202

April 3, 2024

SUBJECT: JUSTIFICATION FOR DENIAL OF APPLICATION NO, 20230152, TO AMEND FUTURE LAND USE MAP SERIES (FLUM) OF THE TOWN OF FORT MYERS BEACH COMPREHENSIVE PLAN ON EIGHT (8) PARCELS OF LAND WITH A FLU DESIGNATION OF MARINA AND MIXED RESIDENTIAL TO PEDESTRIAN COMMERCIAL FLU AND JOIN TWO (2) EXISTING PARCELS OF LAND WITH A FLU OF PEDESTRIAN COMMERCIAL.

1. PURPOSE OF REPORT AND QUALIFICATIONS OF EXPERT

Purpose of this report. This report was prepared on behalf of client Magnum FMB 1 LLC (“Magnum”) who owns 725 Matanzas Ct, Fort Myers Beach, FL 33931-2119. Magnum is manager-managed by Dale Bonnema who also resides at this address and whose use and enjoyment of the property will be adversely affected by the proposed amendments to the Town of Fort Myers Beach Comprehensive Plan if approved. Magnum’s property is only approximately 72-feet from the property subject to the proposed future land use change.

This report sets forth the justifications for denial of the FLUM amendment, which is scheduled for public hearing on April 9, 2024, by Local Planning Agency (LPA). This report supplements testimony which will be provided in person on Mr. Bonnema’s behalf, as well as by neighbors and residents in the immediate vicinity. It should be noted that the staff report for this application was not available for review when this report was prepared, and Mr. Bonnema and his professional team reserve the right to augment their data and analysis based upon information which may be contained in the staff report or obtained in the LPA hearing.

Companion Application No. 20230151. There is a companion rezoning application on the same subject property for a DCI -Planned Development/ Rezoning. No date has been scheduled for the consideration of the rezoning application.

Qualifications and professional experience. The undersigned is a certified land use planner and expert witness with a Master of Public Affairs (MPA) degree with a concentration in Urban and Regional Planning from the O'Neill School of Public and Environmental Affairs at Indiana University Bloomington; and has been a member in good standing of the American Institute of Certified Planners (AICP) since 1993. A copy of the resume of Daryl Max Forgey, detailing his professional qualifications and career experiences, is appended to this report.

2. LEGISLATIVE NATURE OF CASE No. 20230152

Case No. 20230152 is legislative in nature; the companion application 20230151, which will not be heard on April 9th, is quasi-judicial. Comprehensive plans in Florida must be amended by legislative procedures. W. Thomas Hawkins, in his magisterial *Land Use Law in Florida* [Routledge, 2021] posits that “[l]egislative actions create a general rule or policy which will be applicable to an open class of individuals, interests, or situations,” and cites four examples of legislative actions, including Comprehensive Plan adoption and amendments, adoption of land development code, and rezoning of many properties. [pg. 51]. The proposed action is legislative in nature, because it would amend the Town of Fort Myers Beach Comprehensive Plan, imposing a dramatic change in scale and intensity of use on 4.98 acres on land that is incompatible with the surrounding neighborhood.

The Comprehensive Plan enshrines the Town’s vision of its future, one which provides guidance to property owners, local governments, and infrastructure and service providers, among others. A local government has every good reason to maintain its comprehensive plan and land development regulations in their existing state unless and until a better use reveals itself. The desires of one individual property owner for personal enrichment or aggrandizement should not justify replacing the property owner’s existing entitlement.

Hawkins summarized the judicial standard of review as follows: “Courts review legislative decisions using the fairly debatable standard. The standard has two parts. First, laws must bear a substantial relation to a legitimate police power purpose. Second, the connection between that rule and its purported purpose may not be clearly arbitrary and unreasonable.” [pg. 51]. In this case, there is no reason to doubt that the existing long-standing FLUM designations do not bear a substantial relation to a legitimate police power, and there is no reason to assume that denying an existing and long-standing FLUM designation could possibly be considered arbitrary or unreasonable.

The undersigned concludes that the existing land use designations on the subject property allow a reasonable use to the applicant. The Town Council, as the Town’s governing body, has no

obligation to transmit or adopt this amendment to its Comprehensive Plan, and should deny it outright.

3. INCOMPATIBILITY BETWEEN THE PROPOSED AND EXISTING USES

Florida Statutes define “compatibility” as follows: “(9) ‘Compatibility’ means a condition in which land uses or conditions can coexist in relative proximity to each other in a stable fashion over time such that no use or condition is unduly negatively impacted directly or indirectly by another use or condition.” [Ch. 163.3164(9)]. The proposed amendment to the Town of Fort Myers Beach Comprehensive Plan would, if adopted, introduce a condition of incompatibility upon Mr. Bonnema and other area residents by imposing a dense multi-story hotel on a less-than-five acre property towering over his existing single family dwelling. These two uses—low versus high-rise; single family residential versus 400-unit hotel; quiet versus noisy cannot coexist in such an extremely close proximity in a stable fashion over time without negatively impacting the use and enjoyment which is valued by Mr. Bonnema and his neighbors. The proposed use fails to meet the test established in Ch. 163.3164(9), Florida Statutes, and should be denied for that reason alone.

4. AREAS OF CONCERN AND INSUFFICIENCY

- A. **Comprehensive Plan Consistency: Existing Land Uses.** The Comprehensive Plan defines the existing character of the North End as generally lined with low-rise homes on the Bay, which are mostly single-family homes on larger lots than some of the older subdivisions [“Community Design Element,” pg. 3-10. The Comprehensive Plan also articulates a vision for the North End: “The north end of the island retains its residential and resort identity. Its motel rooms, older cottages and high-rises all benefit from their proximity to Bowditch Point and the downtown ‘core area,’ yet are comfortably removed from seasonal traffic congestion and outdoor entertainment activities that many residents find intrusive.” [“Envisioning Tomorrow’s Fort Myers Beach,” pg. 2-3, *emphasis added*].

The existing FLU designations of Marina and Mixed Residential provide land use entitlements with many options for land owners. “Marina,” which applies to only 6.9 acres island-wide, is defined as “water access services, primarily for pleasure boating, including related accessory uses provided they don’t displace marina services. Cruise ships and similar uses that draw large amounts of vehicular traffic are not permitted in this category.” [Future Land Use Element, pg. 4-40].

“Mixed Residential” is a more common use applying to 590.9 acres throughout the island, and is defined as “applied to older subdivisions with mixed housing types on smaller lots, and to newer high-rise buildings. The maximum density is 6 dwelling units per acre, except where a Future Land Use Map overlay indicates a maximum density of 10 units per acre

for legally existing dwelling units. Commercial activities are limited to lower-impact uses such as offices and motels.” [Future Land Use Element, pg. 4-40].

These FLUM designations have been in place since the island was incorporated, and Mr. Bonnema and his Matanzas neighbors have relied upon the representations of the Comprehensive Plan in good faith. The Applicant enjoys an entitlement far more than those across the canal, and any intensification of use would resound to the detriment of Mr. Bonnema and his neighbors. [Future Land Use Element, pg. 4-39].

- B. Comprehensive Plan Consistency: Proposed Pedestrian Commercial FLUM Designation.** The proposed Pedestrian Commercial designation applies to 77.8 acres island-wide and is defined as “a primarily commercial district applied to the intense activity centers of Times Square (including Old San Carlos and nearby portions of Estero Boulevard) and the area around the Villa Santini Plaza. The maximum density of residential development is 6 dwelling units per acre, except where a Future Land Use Map overlay indicates a density of 10 units per acre for affordable units consistent with the adopted redevelopment plan.”

While the proposed amendment would not increase the maximum densities allowed on the subject property, it would make two changes which would adversely impact the neighboring residential properties: (1) the historically residential property would be redesignated as “primarily commercial” within an “intense activity center;” and (2) the property would lose the existing restriction by which “[c]ommercial activities are limited to lower-impact uses such as offices and motels” [Future Land Use Element, pg. 4-40].

There is an additional concern to this proposed redesignation, and that is the simple fact that the applicant does not propose sidewalks or trails of any kind, negating any realistic pedestrian use of this property.

- C. Overbuilding: Inconsistency with Objective 4-B and Policy 4-B-1.** This objective and policy are stated *verbatim*:

“OBJECTIVE 4-B FUTURE LAND USE MAP CATEGORIES. Reduce the potential for further overbuilding through a new Future Land Use Map that protects remaining natural and historic resources, preserves the small-town character of Fort Myers Beach, and protects residential neighborhoods against commercial intrusions.

“POLICY 4-B-1 OVERBUILDING: Judicious planning could have avoided the kind of overbuilding found at Fort Myers Beach by limiting construction to match road capacity and the physical environment. Since such planning came too late, the town must deal with today’s congestion plus the impacts of future development that has vested rights to proceed. These conditions have shaped the vision of this plan, as development rights once granted

are not easily or lightly reversed; great care has been taken in this plan to balance important public and private rights.”

Reducing potential overbuilding and protecting the small town character are core values of the Town of Fort Myers Beach Comprehensive Plan. The proposed land use change would be inconsistent with Objective 4-B and Policy 4-B-1, and should be denied.

- D. **Community Value and Impact.** The benefits of the proposed use are similar to those of any commercial development on the island—the use would create some jobs, although it is unclear how many of the persons employed would be Fort Myers Beach residents, and it would generate tax revenues. Conversely, the impacts on neighboring uses, such as Mr. Bonnema’s residence and that of his neighbors, are profound and pose a risk to community identity and sustainability. Additionally, there is a danger to public safety inherent in the lack of sidewalks to this ostensibly pedestrian-oriented development, because there would be no separation between vehicular traffic and cyclists and pedestrians.
- E. **Public Engagement and Transparency.** There appears to have been little, if any, public engagement between the developer and the residential neighbors which might have resulted in a less impactful project.

5. RECOMMENDED FINDINGS OF FACT JUSTIFYING DENIAL OF APPLICATION

The Town of Fort Myers Beach LPA and Town Council should deny this proposed FLUM amendment based upon the following findings of fact:

Finding 1: The Fort Myers Beach Comprehensive Plan was adopted by ordinance and is applicable to all land uses in incorporated Fort Myers Beach.

Finding 2: The Comprehensive Plan, of which the Future Land Use Element (FLUE) and Future Land Use Map (FLUM) are constituent parts, has designated all portions of the subject property as either Marina or Mixed Residential.

Finding 3: The proposed amendment is a legislative action and the Town Council, as the Town’s governing body, is under no obligation to approve the application for FLUM amendment.

Finding 4: The owner of the subject property enjoys a bountiful entitlement that exceeds those enjoyed by neighboring residential properties, and would suffer no harm by proposed application were denied.

Finding 5: The proposed uses are incompatible, as the term is defined in Florida Statutes Sec. 163.3164(9), in scale and use with neighboring properties, and the incompatibility cannot be ameliorated over time if approved as proposed. In addition, if approved, the

proposed project will become the new example of which to assert compatibility for future projects, further threatening the low-intensity, quiet existing character of the North End.

Finding 6: The proposed redesignation of the property to Pedestrian Commercial would replace a predominately residential district with a predominately commercial district, with would have a profound impact on nearby residential uses in the form of traffic, noise, light, and 24-hour activities.

Finding 7: The proposed use should not be designated as a “pedestrian” use because it was designed with no pedestrian component.

Finding 8: The proposed use is inconsistent with Objective 4-B and Policy 4-B-1 of the Fort Myers Beach Comprehensive Plan because it would constitute overbuilding and would be contrary to the small town character which is a core value of the Plan.

Based upon the above findings, and the testimony which will be presented by Mr. Bonnema and his neighbors, the undersigned, in his professional opinion, recommends denial of this application.

Respectfully,

A handwritten signature in black ink that reads "Max Forgey". The signature is written in a cursive, flowing style.

Daryl Max Forgey AICP #051,330
max@forgeyplanning.com

cc: Dale Bonnema
Kathleen O. Berkey, Esquire, AICP
Tom Slaughter



Max Forgey is an experienced land use planner with more than three decades of professional experience and exceptional success in administration of local government comprehensive planning strategies, land development and regulatory controls, governmental relations, and public policy communications. Primary clients are governmental organizations and private property owners.

His professional knowledge encompasses creating and developing community and small-area plans, urban design and architectural standards, land development entitlements, project management, and expert witness testimony. Max has worked on more than 30 cases across 25 Florida counties and municipalities, appearing before local planning agencies, city and county elected bodies, hearing examiners, administrative law judges, and circuit court proceedings.

Max also actively participates in and leads speaking engagements at professional development conferences and symposia through the Promised Lands section of the American Planning Association Florida chapter, with the American Institute of Certified Planners, with 1000 Friends of Florida and other organizations.

Qualifications

- FORGEY PLANNING. Owner of an urban planning and land-use consulting practice.
- Master of Public Affairs (MPA) in Urban and Regional Planning, Indiana University.
- Member American Institute of Certified Planners (AICP).
- Qualified as an expert witness in Lee County Hearing Examiner proceedings.
- Former Planning and Community Development Director in Charlotte County.
- Former Planning Commissioner (LPA), City of Cape Coral, Florida.

Accomplishments

- Established FORGEY PLANNING, an urban planning and land use consulting practice.
- Developed a template for auditing the effectiveness of existing local governments comprehensive plans and zoning code for internal consistency of plan policy framework.
- Authored “The Platted Lands Challenge” report for the six-county area of Southwest Florida offering policy guidance for platted, scattered-lot properties.
- Development of implementation strategies which employ automation to create linked mixed media tools for restructuring and updating local government planning and zoning regulations.

Certification

AICP (American Institute of Certified Planners) Certification #051,330 Florida Chapter, APA Member in good standing since 1993. A national professional certification maintained by the American Planning Association. AICPs must first meet educational standards and then pass an examination covering all aspects of professional planning practice and are expected to maintain their membership through a self-directed program of study that is monitored by the national organization, which includes regular training in law and ethics.

Professional Experience

Forgey Planning

Cape Coral, FL

Owner. 2008-present. A solo planning practice concentrating comprehensive planning work for Lee and Sarasota Counties, the City of North Port, and the Captiva Community Panel. Developed a template for auditing the effectiveness of existing local governments comprehensive plans which has been applied in Sarasota County and the City of North Port. An expert witness since 2013, working on more than 30 cases in 25 Florida counties and municipalities, appearing before planning commissions, city councils, county commissions, hearing examiners, administrative law judges, and circuit court. Qualified as an expert witness in Lee County Hearing Examiner proceedings.

Zoning Technologies

Cape Coral, FL

President. 2011-2017. A start-up subsection 'S' corporation that specialized in restructuring and updating local government comprehensive plans and developing implementation strategies which employ automation to create linked tools (e.g. application forms, automated worksheets, case reports, and adopting resolutions). The Zoning Technologies expert system prototype products were marketed statewide and were demonstrated at the American Planning Association (APA) national conference in Atlanta in 2014.

Osceola County, Florida

Kissimmee, FL

Planning Coordinator. 2005-2008. Authored key elements of the Osceola County Comprehensive Plan and most of the County's 2008 Evaluation and Appraisal Report.

Clay County, Florida

Green Cove Springs, FL

Senior Planner. 2003-2005. Authored the county's Interlocal Service Delivery Agreement Report (ISDAR) mandated by the Florida legislature, identifying all service overlaps between and among all local governments within Clay County.

Lake County, Florida

Tavares, FL

Planning Director. 2001-2003. Staff liaison to the Environmental Lands Management Advisory Committee, a citizen organization created by the Board of County Commissioners to study the creation of an environmental land program. Recommended policies were ratified in November 2002, when Lake County voters approved a one-third mil assessment for the acquisition of environmental lands.

Southwest Florida Regional Planning Council

Fort Myers, FL

Planner. 1997-1998. Reviewed local government plan amendments throughout the six-county area and authored “The Platted Lands Challenge” report.

Charlotte County, Florida

Port Charlotte, FL

Community Development Director 1995-1997; Planning Director 1990-1995. Early in my tenure, Gulf Development Corporation (GDC), the County’s largest land subdivider, declared bankruptcy, shifting responsibility for completion of roads, bridges, drainage works, and utilities, to the public sector and forcing a host of development decisions upon the local government and public agencies. I had three memorable achievements during these seven years:

- Managed the research, preparation, and adoption of the County’s Evaluation and Appraisal Report (EAR) and Comprehensive Plan. Aggressively negotiated with the Florida Department of Community Affairs (DCA) to remove the Plan’s not-in-compliance finding.
- Led the staff team that rewrote the Charlotte County Comprehensive Plan and was the point person in the successful four-year effort to negotiate a stipulated settlement agreement between the Board of County Commissioners and the Florida Department of Community Affairs to find Charlotte County’s Comprehensive Plan in compliance with Florida’s Growth Management Act.
- Advocated against the rezoning of 42 parks (illustrated as such on GDC sales maps and the County’s Future Land Use Maps) to residential uses. The Company’s receivers eventually relented on their policy position and donated 41 parcels to the people of Charlotte County.

City of Cape Coral

Cape Coral, FL

Deputy Planning Director. 1985-1990. Authored and supervised preparation of key elements of the 1988 Comprehensive Plan (the City’s first plan under the 1985 Growth Management Act) and the City’s 1989 Land Development Code.

Education

Indiana University

Bloomington, IN

Master of Public Affairs (MPA) from the O’Neil School of Public and Environmental Affairs, 1982. Concentration in Urban and Regional Planning.

Bachelor of Arts (BA). 1976. Undergraduate degree in English Literature and History.

Important Cases, Continuing Education, Writing & Teaching

- Economic Development Plan for City of Cape Coral, Florida. A major evaluation of the

community's economy and resources with recommendations for improving the City's long-term outlook. Subcontractor with DCG Corplan LLC, Bruce M. Hoch, Managing Director, August 17th to present.

- Contract Planner & Expert Witness for Town of Kenneth City, a municipality of 5000 population in Pinellas County that has no professional planning staff. Preparing Evaluation and Appraisal Report and other products in collaboration with Town Manager Lacy LaFave and Town Attorney Ralf Brookes, August 16, 2023, to present.
- Attending and participating in American Planning Association, Florida Chapter State Conference in Jacksonville September 5th through 6th, 2023.
- Attending and participating in the 23rd Annual Florida Land Use Law Conference in Tampa on August 28th and 29th, 2023.
- Program chair for APA Florida/ FPZA *"The Perfect Storm Eight Months Out: A Symposium for Professional Planners, Design Professionals, Plan Commissioners & Regular People"* at the Charlotte County Event & Conference Center Punta Gorda May 12, 2023.
- Presenting a panel *"Incorporation, Annexation, and Disincorporation"* with Jim Studiale, AICP, and Luke Lirot, Esq. at APA Florida state conference on Orlando September 7, 2022.
- Co-presented a panel *"Legislative and Quasi-judicial: What Every Planner Needs to Know"* with Attorney Andrew Dickman, AICP, at annual conference of Florida Planning and Zoning Association on Captiva Island June 3, 2022.
- Program Chair for *"The Swamp Peddlers"*, an APA Florida/ Florida Planning & Zoning Association symposium conducted on August 6, 2021, in Punta Gorda. Keynote speaker Jason Vuic and other presenters explored the legacy of land sales scams in Southwest Florida on the twentieth anniversary of the General Development Corporation bankruptcy.
- Designed and co-presented *"Land Use 101"*, a seminar for planning commissioners, elected officials, and new planners, hosted by the City of Cape Coral on June 16 and July 14, 2021 with co-presenters Vince Cautero, AICP, the City's Community Development Director, and Attorney Ralf Brookes.
- Expert witness for client West Villagers for Responsible Government (WV4RG), a citizen organization which challenged the annexation of the 8730-acre non-contiguous West Villages subdivisions into the City of North Port. The City Commission rejected the Villagers' challenge by a unanimous vote, but following appeal presented by attorney Luke Lirot, the Twelfth District overturned the City's order denying petition for contraction in *West Villagers for Responsible Government v. City of North Port*.

- Moderated a panel for law credit at the September 9, 2020 Zoom-facilitated American Planning Association's Florida state conference. Co-presenters were attorneys Karen Consalo, Thomas Hawkins, and Andrew Dickman. "*The Rules are Very Different Here: How to Reform Florida's Land Use Decision-making Process*" surveyed the inconsistencies among local governments' handling of land use decision-making and proposed a new Environmental Land Management Study (ELMS) to improve those processes.
- Attended and participated in American Planning Association Florida chapter's 18th annual *Public Policy Workshop* at Florida State University, Tallahassee February 2020.
- Drafted update of Town of *Fort Myers Beach Sign Ordinance* to reflect SCOTUS *Reed v. Gilbert* opinion for Weiler Engineering Fall 2019-Winter 2020.
- Program chair for "*Planners in Peril: Law, Legislation, and Ethics for Design Professionals*," an APA Florida Promised Lands section symposium December 6, 2019 at Bonita Springs City Hall.
- Program chair for "*How High is the Water, Ma?: Rising Sea Level on the Florida Gulf Coast and what we can do about it*," sponsored by Friends of Boca Grande Community Center, March 22, 2019 at the Boca Grande Community Center Auditorium.
- Member, *Faith Presbyterian Affordable Housing Board*, a not-for-profit corporation which aspires to offer quality housing for low- and moderate-income persons in Cape Coral. Appointed 2018; appointment ended December 2020.
- Received 2018 American Planning Association Florida Chapter, Promised Lands section's first-ever *Wayne Daltry Award for Planning Programs* for developing professional education symposia.
- Prepared *policy audit of Town of Fort Myers Beach Comprehensive Plan* for Weiler Engineering, Summer 2018.
- Program chair for American Planning Association symposium "*Warped Tour '18: Land Use Law for Planners*" March 23, 2018, in Punta Gorda.
- Attended and participated in the hurricane-shortened APA Florida chapter annual conference in Daytona Beach September 4-6, 2017. Led panel with Greg Beliveau, AICP and Jane West Esq. entitled "*How to Build a Better Client.*"
- Program chair for Captiva Community Panel/ Florida APA symposium "*Now in My Back Yard: Rising Sea Level on Florida's Gulf Coast and what can be done about it*" January 13, 2017, at South Seas Resort on Captiva Island.

- Co-authored article with Karen Consalo, Esq. *“Best Practices for Local Government Land Use Decision-making”* in Summer 2016 edition of *Florida Planning*.
- Speaker at American Planning Association Florida Chapter Annual Conference in Tampa, September 9, 2016. *“A Pre-tirement Guide for Perplexed Planners: Making the Transition to Solo Practitioner.”*
- Attended and participated in CLE International’s annual *Land Use Law symposium* in Tampa, August 18-19, 2016, and August 6-7, 2015.
- Speaker at University of Central Florida 2016 Public Administration Research Conference April 8, 2016. Topic: *“What’s the Big Idea: New Software that Aids Land Use Decisions.”*
- Attended and participated in *APA Florida chapter annual conference* in Hollywood, Florida September 10-13, 2015.
- Coordinator and presenter for daylong FAPA-sponsored symposium *“Everything You Ever Wanted to Know about Florida Land Use”* in Cape Coral May 16, 2014.

Jurisdictions - Expert Witness Work

Bonita Springs
 Bradenton
 Cape Coral (5)
 Charlotte County (2)
 Collier County (2)
 DeSoto County
 Fort Myers Beach (2)
 Hardee County
 Hendry County (C Court)
 Hernando County
 Highlands County
 Hillsborough County (3)
 Hillsboro Beach
 Kenneth City
 Lantana
 Lee County (8)

Miramar
 Monroe Co (ALJ)
 North Port
 Orange County
 Ormond Beach
 Pasco County (2)
 Palm Beach County (ALJ) Polk
 County (C court)
 Punta Gorda (2)
 St. Johns County (4)
 Sarasota County
 Sumter County
 Suwannee County
 Venice

Max Forgey



Max@ForgeyPlanning.com



239.560.5864



236 SE 45th Street
 Cape Coral, FL 33904





Town of Fort Myers Beach
Community Development Services - Planning Division
2525 Estero Blvd,
Fort Myers Beach, FL 33931

NOTICE TO PROPERTY OWNERS WITHIN 500 FEET

Notice is hereby given that the Local Planning Agency/ Town Council of the Town of Fort Myers Beach will be conducting a public hearing at the Town Hall Council Chambers located at 2731 Oak St, Fort Myers Beach, Florida, 33931.

TIME: 9 AM

DATE: LPA April 9, 2024, and 1st Town Council May 6, 2024

CASE: CPA20230152

ADDRESS: 450 Harbor Ct

APPLICANT: Ink Engineering Inc

REQUEST: Comprehensive plan map amendment to change 3.53 acres of Marina Future Land Use District (450 Harbor Court) and 1 acre of Mixed Residential Future Land Use District (445, 441, & 436 Harbor Court & 435 & 438 Bonita Street) to Pedestrian Commercial Future Land Use District.

TOWN CONTACT: SARAH PROPST SARAH.PROPST@FMBGOV.COM

You may appear in person, through counsel, or through an authorized agent and provide testimony, legal argument, or other evidence. At this hearing, the **Local Planning Agency/ Town Council** will review the application materials and hear testimony to make a **recommendation/decision**. Complete records or transcripts of the proceedings are not provided by the Town.

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

Town of Fort Myers Beach
Community Development Services - Planning Division
2525 Estero Blvd,
Fort Myers Beach, FL 33931

NOTICE TO PROPERTY OWNERS WITHIN 500 FEET

Notice is hereby given that the Local Planning Agency/ Town Council of the Town of Fort Myers Beach will be conducting a public hearing at the Town Hall Council Chambers located at 2731 Oak St, Fort Myers Beach, Florida, 33931.

TIME: 9 AM

DATE: LPA April 9, 2024, and 1st Town Council May 6, 2024

CASE: CPA20230152

ADDRESS: 450 Harbor Ct

APPLICANT: Ink Engineering Inc

REQUEST: Comprehensive plan map amendment to change 3.53 acres of Marina Future Land Use District (450 Harbor Court) and 1 acre of Mixed Residential Future Land Use District (445, 441, & 436 Harbor Court & 435 & 438 Bonita Street) to Pedestrian Commercial Future Land Use District.

TOWN CONTACT: SARAH PROPST SARAH.PROPST@FMBGOV.COM

You may appear in person, through counsel, or through an authorized agent and provide testimony, legal argument, or other evidence. At this hearing, the **Local Planning Agency/ Town Council** will review the application materials and hear testimony to make a **recommendation/decision**. Complete records or transcripts of the proceedings are not provided by the Town.

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



Town of Fort Myers Beach
Community Development Services - Planning Division
2525 Estero Blvd,
Fort Myers Beach, FL 33931

NOTICE TO PROPERTY OWNERS WITHIN 500 FEET

Notice is hereby given that the Local Planning Agency/ Town Council of the Town of Fort Myers Beach will be conducting a public hearing at the Town Hall Council Chambers located at 2731 Oak St, Fort Myers Beach, Florida, 33931.

TIME: 9 AM

DATE: LPA April 9, 2024, and 1st Town Council May 6, 2024

CASE: CPA20230152

ADDRESS: 450 Harbor Ct

APPLICANT: Ink Engineering Inc

REQUEST: Comprehensive plan map amendment to change 3.53 acres of Marina Future Land Use District (450 Harbor Court) and 1 acre of Mixed Residential Future Land Use District (445, 441, & 436 Harbor Court & 435 & 438 Bonita Street) to Pedestrian Commercial Future Land Use District.

TOWN CONTACT: SARAH PROPST SARAH.PROPST@FMBGOV.COM

You may appear in person, through counsel, or through an authorized agent and provide testimony, legal argument, or other evidence. At this hearing, the **Local Planning Agency/ Town Council** will review the application materials and hear testimony to make a **recommendation/decision**. Complete records or transcripts of the proceedings are not provided by the Town.

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



Town of Fort Myers Beach
Community Development Services - Planning Division
2525 Estero Blvd,
Fort Myers Beach, FL 33931

NOTICE TO PROPERTY OWNERS WITHIN 500 FEET

Notice is hereby given that the Local Planning Agency/ Town Council of the Town of Fort Myers Beach will be conducting a public hearing at the Town Hall Council Chambers located at 2731 Oak St, Fort Myers Beach, Florida, 33931.

TIME: 9 AM

DATE: LPA April 9, 2024, and 1st Town Council May 6, 2024

CASE: CPA20230152

ADDRESS: 450 Harbor Ct

APPLICANT: Ink Engineering Inc

REQUEST: Comprehensive plan map amendment to change 3.53 acres of Marina Future Land Use District (450 Harbor Court) and 1 acre of Mixed Residential Future Land Use District (445, 441, & 436 Harbor Court & 435 & 438 Bonita Street) to Pedestrian Commercial Future Land Use District.

TOWN CONTACT: SARAH PROPST SARAH.PROPST@FMBGOV.COM

You may appear in person, through counsel, or through an authorized agent and provide testimony, legal argument, or other evidence. At this hearing, the **Local Planning Agency/ Town Council** will review the application materials and hear testimony to make a **recommendation/decision**. Complete records or transcripts of the proceedings are not provided by the Town.

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

Town of Fort Myers Beach
2525 Estero Blvd,
Fort Myers Beach, FL 33931

Town of Fort Myers Beach
2525 Estero Blvd,
Fort Myers Beach, FL 33931

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»«Next Record»

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»«Next Record»

Town of Fort Myers Beach
2525 Estero Blvd,
Fort Myers Beach, FL 33931

Town of Fort Myers Beach
2525 Estero Blvd,
Fort Myers Beach, FL 33931

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»«Next Record»

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»

NOTICE OF PUBLIC HEARINGS

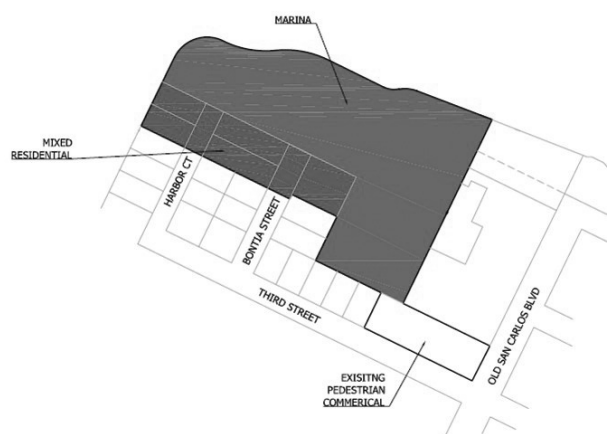
Notice is hereby given that the Town of Fort Myers Beach will hold a public hearing at a Local Planning Agency meeting beginning at 9:00 AM on Tuesday, April 9, 2024 regarding the ordinances listed below, and then at a Town Council meeting beginning at 9:00 AM on Monday, May 6, 2024 regarding the ordinances listed below. Both meetings and public hearings will take place at the Town Hall located at 2731 Oak Street, Fort Myers Beach, FL 33931.

ORDINANCE 24-08

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING THE TOWN OF FORT MYERS BEACH COMPREHENSIVE PLAN IN ITS ENTIRETY, PURSUANT TO 163.3184 (3), FLORIDA STATUTES; PROVIDING FOR ADOPTION OF THE TOWN OF FORT MYERS BEACH COMPREHENSIVE PLAN 2040, INCLUDING AMENDMENTS TO THE FUTURE LAND USE ELEMENT AND THE FUTURE LAND USE MAP, THE COMMUNITY DESIGN ELEMENT, THE TRANSPORTATION ELEMENT, THE HOUSING ELEMENT, THE HISTORIC PRESERVATION ELEMENT, THE UTILITIES ELEMENT, THE CONSERVATION ELEMENT, THE COASTAL MANAGEMENT ELEMENT, THE RECREATION, & OPEN SPACE ELEMENT, THE INTERGOVERNMENTAL COORDINATION ELEMENT, AND THE CAPITAL IMPROVEMENTS ELEMENT; INCLUSIVE OF ALL ASSOCIATED TABLES, EXHIBITS AND MAPS; AUTHORIZING FINDINGS AND ADMINISTRATIVE ACTIONS; PROVIDING FOR TRANSMITTAL; PROVIDING FOR SEVERABILITY; PROVIDING FOR SCRIVENER'S ERRORS; AND PROVIDING FOR EFFECTIVE DATE.

ORDINANCE 24-09

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING TOWN OF FORT MYERS BEACH ADOPTED FUTURE LAND USE MAP DATED JANUARY 1, 1999, FOR THE PROPERTIES LOCATED AT 450, 445, 441 & 436 HARBOR COURT, 435 & 438 BONITA STREET ALSO RESPECTIVELY IDENTIFIED AS STRAP NUMBERS 24-46-23-W3-00027.0000 & 24-46-23-W3-00026.0020, 24-46-23-W3-0030B.0200, 24-46-23-W3-0030B.0190, 24-46-23-W3-0030C.0060, 24-46-23-W3-0030C.0040 & 24-46-23-W3-0030A.0110, FORT MYERS BEACH; PROVIDING FOR CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.



If any person should choose to appeal a decision made at this public hearing, such person would need a record of the proceedings, and for that purpose may need to ensure that a verbatim record of the proceedings is made, which record indicates the testimony and evidence upon which the appeal is to be based. Copies of the full ordinance text are available at Fort Myers Beach Town Hall. Call 239-765-0202 for more information. Town Hall is open between the hours of 8:30 AM and 4:30 PM. Reasonable accommodations will be made in accordance with the Americans with Disabilities Act. If you are in need of reasonable accommodation, contact Town Hall at 239-765-0202. Amy Baker, Town Clerk

1. **Request:**

Meeting Date: May 6, 2024

First Reading and Public Hearing on proposed ordinance 24-10 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING THE TOWN OF FORT MYERS BEACH COMPREHENSIVE PLAN IN ITS ENTIRETY, PURSUANT TO 163.3184 (3), FLORIDA STATUTES; PROVIDING FOR ADOPTION OF THE TOWN OF FORT MYERS BEACH COMPREHENSIVE PLAN 2040, INCLUDING AMENDMENTS TO THE FUTURE LAND USE ELEMENT AND THE FUTURE LAND USE MAP, THE COMMUNITY DESIGN ELEMENT, THE TRANSPORTATION ELEMENT, THE HOUSING ELEMENT, THE HISTORIC PRESERVATION ELEMENT, THE UTILITIES ELEMENT, THE CONSERVATION ELEMENT, THE COASTAL MANAGEMENT ELEMENT, THE RECREATION, & OPEN SPACE ELEMENT, THE INTERGOVERNMENTAL COORDINATION ELEMENT, THE CAPITAL IMPROVEMENTS ELEMENT, AND THE PROPERTY RIGHTS ELEMENT; INCLUSIVE OF ALL ASSOCIATED TABLES, EXHIBITS AND MAPS; AUTHORIZING FINDINGS AND ADMINISTRATIVE ACTIONS; PROVIDING FOR TRANSMITTAL; PROVIDING FOR SEVERABILITY; PROVIDING FOR SCRIVENER'S ERRORS; AND PROVIDING FOR EFFECTIVE DATE. Open the public hearing and schedule for second reading and final adoption on June 3, 2024 at 9:00 AM.

Why the action is necessary:

The Town Council must transmit comprehensive plan language to the state for review prior to the final adoption hearing.

What the action accomplishes:

This will move the comprehensive plan towards adoption after approval by the state.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Ordinance

4. **Submitter of Information:**

Sarah Propst, Community
Development, Planning
Manager

5. **Background:**

The Comprehensive Plan update process has been ongoing for several years. The changes to the Comprehensive Plan text and maps were reviewed and recommended approval by the LPA.

Attachments:

1. 24-10, Comprehensive Plan
2. 24-10, business-impact-estimate-24-10
3. Future Land Use Element May 2024
4. Community Design Element
5. Housing Element
6. Coastal Management
7. Recreation Open Space Element
8. Transportation Element
9. HistoricPreservation Element
10. Capital Improvement Element
11. Conservation Element
12. InterGovernmental Coordination
13. Utilities Element
14. Property Rights Element
15. Full FLU Map

16. TimeSquare Map
17. CivicCenter Map
18. Arts & Theatre Map
19. CenterIsland Map
20. Santinivillage Map

Financial Impact:

unknown

6. Alternative Action

propose changes and transmit to the State for review.

7. Management Recommendations:

Recommend approval

8. Recommended Approval:

Sarah Propst, Community Development, Planning Manager
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 4/29/2024
Approved - 4/29/2024
Approved - 4/30/2024
Final Approval - 4/30/2024

ORDINANCE 24-10

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING THE TOWN OF FORT MYERS BEACH COMPREHENSIVE PLAN IN ITS ENTIRETY, PURSUANT TO 163.3184 (3), FLORIDA STATUTES; PROVIDING FOR ADOPTION OF THE TOWN OF FORT MYERS BEACH COMPREHENSIVE PLAN 2040, INCLUDING AMENDMENTS TO THE FUTURE LAND USE ELEMENT AND THE FUTURE LAND USE MAP, THE COMMUNITY DESIGN ELEMENT, THE TRANSPORTATION ELEMENT, THE HOUSING ELEMENT, THE HISTORIC PRESERVATION ELEMENT, THE UTILITIES ELEMENT, THE CONSERVATION ELEMENT, THE COASTAL MANAGEMENT ELEMENT, THE RECREATION, & OPEN SPACE ELEMENT, THE INTERGOVERNMENTAL COORDINATION ELEMENT, AND THE CAPITAL IMPROVEMENTS ELEMENT; INCLUSIVE OF ALL ASSOCIATED TABLES, EXHIBITS AND MAPS; AUTHORIZING FINDINGS AND ADMINISTRATIVE ACTIONS; PROVIDING FOR TRANSMITTAL; PROVIDING FOR SEVERABILITY; PROVIDING FOR SCRIVENER'S ERRORS; AND PROVIDING FOR EFFECTIVE DATE.

WHEREAS, The Town of Fort Myers Beach, Florida, has adopted a comprehensive plan by X-X and subsequently amended by Ordinance 24-08; and

WHEREAS, the Town Council of the Town of Fort Myers Beach, Florida, desires to amend the Town of Fort Myers Beach's Comprehensive Plan in its entirety, in accordance with Chapter 163.3184(3); and,

WHEREAS, the City Council has provided notice of the proposed Comprehensive Plan 2040 Amendment and has conducted the required public hearings to receive citizen input; and,

WHEREAS, the Comprehensive Plan contains goals, objectives, and policies to guide the development of the Town of Fort Myers Beach through the year 2040, addressing future land use map, the community design element, the transportation element, the housing element, the historic preservation element, the utilities element, the conservation element, the coastal management element, the recreation, & open space element, the intergovernmental coordination element, and the capital improvements element; inclusive of all associated tables, exhibits and maps; and,

WHEREAS, the Local Planning Agency of the Town of Fort Myers Beach, held a public hearing at its duly noticed April 9, 2024 public meeting to consider the proposed Comprehensive Plan amendment and recommended that Town Council adopt the same; and,

WHEREAS, the Town Council has reviewed and considered all relevant evidence, information and testimony, as well as the recommendations of the Local Planning Agency, witnesses, the public, and Town staff and has determined that the proposed amendment is in compliance with Chapters 163.3184 and 166.041, Florida Statutes; and,

WHEREAS, the adoption of the Town's Comprehensive Plan furthers the health, safety and welfare of its citizens, local businesses and visitors of the Town; and,

WHEREAS, all the necessary hearings and public notices, in conformity with the procedural and

substantive requirements of Florida Statutes and the Comprehensive Plan have been complied with.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA, as follows:

Section 1. Ratification of Recitals. The Town Council of the Town of Fort Myers Beach, Florida, hereby adopts and ratifies those matters as set forth in the foregoing recitals.

Section 2. Comprehensive plan amendment. The amendment to the Town of Fort Myers Beach Comprehensive Plan 2040 is hereby adopted amending the Goals, Objectives & Policies and Data Inventory & Analysis, including the Future Land Use Maps and all tables incorporated by reference, for the following elements: future land use map, the community design element, the transportation element, the housing element, the historic preservation element, the utilities element, the conservation element, the coastal management element, the recreation, & open space element, the intergovernmental coordination element, and the capital improvements element, as set forth in the attached Exhibit "A". A certified copy of the Town of Fort Myers Beach Comprehensive Plan 2040 shall be located in the Town Clerk's office.

Section 3. Transmittal. The Town of Fort Myers Beach shall transmit within ten (10) working days, the amendment or amendments and appropriate supporting data and analyses to the reviewing agencies in accordance with 163.31 84(3)(b)1, Florida Statute, and as specified in the State Land Planning Agency's procedural rules. Also, the Town of Fort Myers Beach shall transmit a copy of the amendments and supporting data and analyses to any other local government or governmental agency that has filed a written request with the Town of Fort Myers Beach.

Section 4. Severability. The provisions of this Ordinance are intended to be severable. If any provision of this Ordinance is determined to void or declared illegal, invalid, or unconstitutional by a court of competent jurisdiction, the remainder of this Ordinance shall remain in full force and effect.

Section 5. Repeal of Laws in Conflict. If any ordinances, or parts of ordinances, or if any sections, or parts of sections, of the Ordinances of the Town of Fort Myers Beach, Florida, are in conflict herewith, this Ordinance shall control to the extent of the conflicting provisions.

Section 6. Scrivener's Errors. Sections of this Ordinance may be renumbered or re-lettered and corrections of typographical errors, which do not affect the intent, may be authorized by the Town Manager, or the Town Manager's designee, without need of public hearing, by filing a corrected or re-codified copy of same with the Town Clerk.

Section 7. Effective Date. The effective date of this plan amendment, if the amendment is not timely challenged, shall be thirty-one (31) days after the state land planning agency notifies the Town of Fort Myers Beach that the plan amendment package is complete. If timely challenged, this amendment shall become effective on the date the state land planning agency or the Administration Commission enters a final order determining the adopted amendment to be in compliance in accordance with 166.3184 (3)(c)(4), Florida Statute. No development orders, development permits, or land uses dependent on this amendment may be issued or commence before it has become effective. If a final order of noncompliance is issued by the Administration Commission this amendment may nevertheless be made effective by adoption of a resolution affirming its effective status, a copy of which resolution shall be sent to the state land planning agency.

PASSAGE UPON FIRST READING

The foregoing Ordinance was moved for passage upon first reading this ____ day of ____, 2024, by Council Member _____. The motion was seconded by Council Member _____. Upon being put to a vote, the vote was as follows:

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

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



Business Impact Estimate

This form should be included in the agenda packet for the item under which the proposed ordinance is to be considered and must be posted on the [City's/Town's/Village's] website by the time notice of the proposed ordinance is published.

Proposed ordinance's title/reference:

Ordinance 24-10 AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING THE TOWN OF FORT MYERS BEACH COMPREHENSIVE PLAN IN ITS ENTIRETY, PURSUANT TO 163.3184 (3), FLORIDA STATUTES; PROVIDING FOR ADOPTION OF THE TOWN OF FORT MYERS BEACH COMPREHENSIVE PLAN 2040, INCLUDING AMENDMENTS TO THE FUTURE LAND USE ELEMENT AND THE FUTURE LAND USE MAP, THE COMMUNITY DESIGN ELEMENT, THE TRANSPORTATION ELEMENT, THE HOUSING ELEMENT, THE HISTORIC PRESERVATION ELEMENT, THE UTILITIES ELEMENT, THE CONSERVATION ELEMENT, THE COASTAL MANAGEMENT ELEMENT, THE RECREATION, & OPEN SPACE ELEMENT, THE INTERGOVERNMENTAL COORDINATION ELEMENT, THE CAPITAL IMPROVEMENTS ELEMENT, AND THE PROPERTY RIGHTS ELEMENT; INCLUSIVE OF ALL ASSOCIATED TABLES, EXHIBITS AND MAPS; AUTHORIZING FINDINGS AND ADMINISTRATIVE ACTIONS; PROVIDING FOR TRANSMITTAL; PROVIDING FOR SEVERABILITY; PROVIDING FOR SCRIVENER'S ERRORS; AND PROVIDING FOR EFFECTIVE DATE.

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 [City/Town/Village] is of the view that a business impact estimate is not required by state law¹ for the proposed ordinance, but the [City/Town/Village] 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:

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

- 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 [City/Town/Village] hereby publishes the following information:

1. Summary of the proposed ordinance (must include a statement of the public purpose, such as serving the public health, safety, morals and welfare):

The proposed ordinance amends the comprehensive plan elements and future land use map. This serves the public health, safety, and orderly development.

2. An estimate of the direct economic impact of the proposed ordinance on private, for-profit businesses in the [City/Town/Village], 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 [City's/Town's/Village'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 24-10.

Ordinance 24-10 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 Comprehensive plan impacts the entire community. This comprehensive plan update does not increase restrictions on businesses.

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

[You may wish to include in this section the methodology or data used to prepare the Business Impact Estimate. For example: [City/Town/Village] staff solicited comments from businesses in the [City/Town/Village] as to the potential impact of the proposed ordinance by contacting the chamber of commerce, social media posting, direct mail or direct email, posting on [City/Town/Village] website, public workshop, etc. You may also wish to include efforts made to reduce the potential fiscal impact on businesses. You may also wish to state here that the proposed ordinance is a generally applicable ordinance that applies to all persons similarly situated (individuals as well as businesses) and, therefore, the proposed ordinance does not affect only businesses].

Town of FMB: Future Land Use Element

EXISTING		PROPOSED	
GOAL 4:	To keep Fort Myers Beach a healthy and vibrant “small town,” while capitalizing on the vitality and amenities available in a beach–resort environment and minimizing the damage that a hurricane could inflict.	GOAL-4- <u>FLU-1</u>	To keep Fort Myers Beach a healthy and vibrant “small town,” while capitalizing on the vitality and amenities available in a beach–resort environment and minimizing the damage <u>to the natural and built environment</u> that a hurricane, <u>sea-level rise</u> , and coastal erosion could inflict.
OBJECTIVE 4	-A SMALL-TOWN CHARACTER — Maintain the small-town character of Fort Myers Beach and the pedestrian-oriented “public realm” that allows people to move around without their cars even in the midst of peak-season congestion.	OBJECTIVE 4 <u>FLU-1-A</u>	SMALL-TOWN CHARACTER — Maintain the small-town character of Fort Myers Beach and the pedestrian-oriented “public realm” that allows people to move <u>throughout the island around</u> without their <u>the need of</u> cars even in the midst of peak-season congestion.
POLICY 4-A-1	Maintaining the town’s current “human scale” is a fundamental redevelopment principle. Fort Myers Beach is best enjoyed from outside a car; new buildings should be designed to encourage use or admiration by people on foot or bicycle, rather than separating them with gates, walls, deep setbacks, or unnecessary building heights.	POLICY 4-A-1 <u>FLU-1-A-1</u>	Maintaining the town’s current “human scale” is a fundamental redevelopment principle. Fort Myers Beach is best enjoyed from outside a car; n <u>New buildings should be designed to encourage use or admiration by people on foot or bicycle, rather than separating them with gates, walls, deep setbacks, or unnecessary building heights. The Land Development Codes should ensure that improvements which potentially impact the appearance of Estero Boulevard, as well as major activity centers such as Times Square and Villa Santini, the mixed-use districts, the town’s shoreline, scenic views of the waterfront and tidal waters, public parks and other public grounds and institutions are managed and enhanced through application of the site plan review process.</u> <u>Community character is reflected in Floor to Area Ratios (FAR), lot sizes, house sizes, site placement, height, architectural features and existing vegetation. The Town should strive to stabilize and preserve neighborhoods and establish urban design standards which protect and promote quality of life, in order to prevent teardowns, encourage re-use, infill and new development.</u>
POLICY 4-A-2	The Town of Fort Myers Beach values its vibrant economy and walkable commercial areas. Through this plan, the town will ensure that new commercial activities, when allowed, will contribute to the pedestrian-oriented public realm.	POLICY 4-A-2 <u>FLU-1-A-2</u>	The Town of Fort Myers Beach values its vibrant economy and walkable commercial areas. Through this plan, the town will ensure that new commercial activities, when allowed, will contribute to the pedestrian-oriented public realm. <u>All new development is encouraged to provide for amenities that enhance the public realm, including, but not limited to: art, benches, bike racks, trash receptacles, right-of-way landscaping, etc.</u>
POLICY 4-A-3	The town shall protect residential neighborhoods from intrusive commercial activities (see Policies 4-C-2 and 4-C-3 below).	POLICY 4-A-3 <u>FLU-1-A-3</u>	The town shall <u>should</u> protect residential neighborhoods from intrusive commercial activities (see Policies 4-C-2 and 4-C-3 below). <u>Stable residential areas should be protected from encroachment by incompatible development. However, within</u>

			<u>residential areas, the Land Development Codes should allow home-based businesses that do not detract from the residential quality of the neighborhood. These regulations should incorporate criteria for determining compatible home occupation uses, and standards to ascertain that no negative impacts on adjoining properties result.</u>
POLICY 4-A-4	Easy walking access to the beach is a key element of the town's human scale. Development trends that inhibit this access are undesirable (including traffic improvements to Estero Boulevard that would make it a barrier to the beach for pedestrians).	POLICY 4-A-4 <u>FLU-1-A-4</u>	Easy walking access to the beach is a key element of the town's human scale. Development trends that inhibit this access are undesirable. (including traffic improvements to Estero Boulevard that would make it a barrier to the beach for pedestrians). <u>The Town should not vacate, diminish, or otherwise impair publicly owned pathways (without replacement or demonstrated benefit to the Town), sidewalks, roads, ends of roads, parking areas, docks or boat launching facilities, and other access points currently used, or susceptible to use, by the public to access the shorelines, consistent with Comprehensive Plan unless there is documented evidence that physical public access is destabilizing unaltered shorelines. Further, the Town shall not abandon any right-of-way, improved or unimproved, which terminates on a body of water.</u>
NEW	NEW	<u>POLICY FLU-1-A-5</u>	<u>The Town shall explore opportunities to provide innovative parking solutions on the Island to meet future demands. The town shall maximize efficient use of land, minimize gaps in the urban landscape, and improve urban form by: encouraging redevelopment of existing surface parking lots; discouraging creation of new surface lots; consolidate parking in strategically located parking structures; and manage parking as a system. The Town shall consider/encourage the use of shared parking.</u>
POLICY 4-A-5	The town contains many important natural resources despite its urbanized character. Preservation of those resources is of the highest importance and is a frequent theme throughout this plan.	POLICY 4-A-5 <u>FLU-1-A-6</u>	The town contains many important natural resources despite its urbanized character. Preservation of those resources is of the highest importance and is a frequent theme throughout this plan. Efforts shall be made to update the Town's Land Development Codes to address development in floodplains, shoreline protection, wetlands protection, water quality, urban forestry and habitats for listed protected or endangered species.
POLICY 4-A-6	The beaches provide incomparable recreational and environmental benefits to the town; careful management of the beach, including renourishment when necessary, can increase both. Frequent beach accesses are essential to the town's character and shall be maintained and expanded where possible.	POLICY 4-A-6 <u>FLU-1-A-7</u>	The beaches provide incomparable recreational and environmental benefits to the town; careful management of the beach, including renourishment when necessary, can increase both. Frequent beach accesses are essential to the town's character and shall be maintained and expanded where possible.

NEW	NEW	<u>POLICY FLU -1-A-8</u>	<u>The Town, together with the private sector, shall consider proactive steps and pilot programs to adapt for sea level rise and storm surges, including but not limited to preserving transportation options, increasing residential building resiliency, preserving landscaping and residential building aesthetics, and preserving water quality.</u>
POLICY 4-A-7	Estero Bay also provides great benefits to the town and can be enhanced by improving public access and reversing the decline in water quality. The Conservation and Coastal Management Elements of this plan outline the town's efforts on these matters.	POLICY 4-A-7 <u>FLU-1-A-9</u>	Estero Bay also provides great benefits to the town and can be enhanced by improving public access and reversing the decline in water quality. The Conservation and Coastal/ Management Elements of this plan outline the town's efforts on these matters.
POLICY 4-A-8	The town shall establish clear and consistent rules and processes that govern private and public development. They shall be incorporated into an illustrated Land Development Code that: i. defines the permitted uses and illustrates the dimensions needed to implement this comprehensive plan; ii. illustrates the types and dimensions of allowable signs that will identify businesses and other destinations without damaging the aesthetic qualities of the town; iii. resolves inconsistencies between current zoning and land development regulations and this comprehensive plan using the guidelines found in Chapter 15; iv. encourages the conservation and re-use of historic buildings as described in the Historic Preservation Element; v. in existing subdivisions, controls the scale of new homes to avoid the replacement of existing homes with excessively large structures; and vi. ensures the availability of public facilities at the levels of service specified in this plan concurrently with the impacts of development (see Capital Improvements Element for a summary of these levels of service plus guidelines for the town's Concurrency Management System).	POLICY 4-A-8 <u>FLU-1-A-10</u>	The town shall establish clear and consistent rules and processes that govern private and public development. They Town shall be <u>consider the need to</u> incorporated into an illustrated <u>portions of the</u> Land Development Code that: i. Defines the permitted uses and illustrates the dimensions needed to implement this comprehensive plan; ii. illustrates the types and dimensions of allowable signs that will identify businesses and other destinations without damaging the aesthetic qualities of the town; iii. resolves inconsistencies between current zoning and land development regulations and this comprehensive plan using the guidelines found in Chapter 15; iv. encourages the conservation and re-use of historic buildings as described in the Historic Preservation Element; v. in existing subdivisions, controls the scale of new homes to avoid the replacement of existing homes with excessively large structures; and vi. ensures the availability of public facilities at the levels of service specified in this plan concurrently with the impacts of development (see Capital Improvements Element for a summary of these levels of service plus guidelines for the town's Concurrency Management System). vii. <u>ensures that the approval of all development shall be subject to the availability of adequate levels of service for all facilities and services that are subject to concurrency management requirements.</u>
POLICY 4-A-9	Many amenities available to local residents are the result of the local tourist economy and would diminish if hotels and motels were displaced.	POLICY 4-A-9 <u>FLU-1-A-11</u>	Many amenities available to local residents are the result of the local tourist economy and would diminish if hotels and motels were displaced. Landowners may redevelop hotels and motels for other

	Landowners may redevelop hotels and motels for other uses, but special incentives of this plan such as post-disaster and pre-disaster buildback (Objectives 4-D and 4-E) only apply if the current use is maintained.		uses, but special incentives of this plan such as post-disaster and pre-disaster buildback (Objectives 4-D and 4-E) only apply if the current use is maintained. <u>Hotels and motels with special incentives as provided by this plan may be rebuilt as post-disaster and pre-disaster buildback only if the current Hotel or Motel use is maintained.</u>
POLICY 4-A-10	Hotels and motels may be constructed or converted to condominium ownership provided they are operated as hotels or motels. The Land Development Code provides detailed regulations that distinguish hotels and motels from residential uses and other types of lodging.	POLICY 4-A-10 <u>FLU-1-A-12</u>	Hotels and motels may be constructed or converted to condominium ownership provided they are operated as hotels or motels. The Land Development Code shall provides detailed regulations that distinguish hotels and motels from residential uses and other types of lodging.
NEW	NEW	<u>POLICY FLU-1-A-13</u>	<u>The Land Development Codes shall be amended to be consistent with this Comprehensive Plan within 12 months of any Comprehensive Plan update.</u>
OBJECTIVE 4-B	FUTURE LAND USE MAP CATEGORIES — Reduce the potential for further overbuilding through a new Future Land Use Map that protects remaining natural and historic resources, preserves the small-town character of Fort Myers Beach, and protects residential neighborhoods against commercial intrusions.	OBJECTIVE 4-B <u>FLU-1-B</u>	FUTURE LAND USE MAP CATEGORIES -- Reduce the potential for further overbuilding through a new Future Land Use Map that protects <u>and enhances the</u> remaining natural and historic resources, preserves the small-town character of Fort Myers Beach, and protects residential neighborhoods against commercial intrusions.
POLICY 4-B-1	OVERBUILDING: Judicious planning could have avoided the kind of overbuilding found at Fort Myers Beach by limiting construction to match road capacity and the physical environment. Since such planning came too late, the town must deal with today's congestion plus the impacts of future development that has vested rights to proceed. These conditions have shaped the vision of this plan, as development rights once granted are not easily or lightly reversed; great care has been taken in this plan to balance important public and private rights.	POLICY 4-B-1	OVERBUILDING: Judicious planning could have avoided the kind of overbuilding found at Fort Myers Beach by limiting construction to match road capacity and the physical environment. Since such planning came too late, the town must deal with today's congestion plus the impacts of future development that has vested rights to proceed. These conditions have shaped the vision of this plan, as development rights once granted are not easily or lightly reversed; great care has been taken in this plan to balance important public and private rights.
POLICY 4-B-2	MAP ADOPTION: The Town of Fort Myers Beach hereby adopts a Future Land Use Map (Figure 16) to govern further subdivision and development within its municipal boundary. The entire town is located within the coastal high-hazard area, as shown on Figure 17 which is part of the adopted Future Land Use Map series. This map advances the principles of this comprehensive plan by	POLICY 4-B-2 <u>FLU-1-B-1</u>	MAP ADOPTION: The Town of Fort Myers Beach hereby adopts a Future Land Use Map (Figure 16) to govern further subdivision and development within its municipal boundary. The entire town is located within the coastal high-hazard area, as shown on <u>the Coastal High Hazard Areas map Figure 17</u> which is part of the adopted Future Land Use Map series. This map advances the principles of this comprehensive plan by assigning one of <u>nine</u> eight categories to all land and water, based on its location, condition, and existing uses.

	assigning one of eight categories to all land and water, based on its location, condition, and existing uses.		
NEW	NEW	<u>POLICY FLU-1-B-2</u>	<u>LAND USE CATEGORIES</u> The following Future Land Use designations shall be applied to the Future Land Use Map:
POLICY 4-B-3	“LOW DENSITY”: designed for existing subdivisions with an established low-density character (primarily single-family homes). For new development, the maximum density is 4 dwelling units per acre, and commercial activities are limited to home occupations as described in the Land Development Code (limited to incidental uses by the dwelling unit’s occupant that do not attract customers or generate additional traffic).	POLICY 4-B-3 <u>FLU-1-B-3</u>	“ <u>LOW DENSITY RESIDENTIAL</u> ”: designed for existing subdivisions with an established low-density character (primarily single-family homes). For new development, the maximum density is 4 dwelling units per acre, and commercial activities are limited to home occupations as described in the Land Development Code (limited to incidental uses by the dwelling unit’s occupant that do not attract customers or generate additional traffic).
POLICY 4-B-4	“MIXED RESIDENTIAL”: designed for older subdivisions with mixed housing types on smaller lots, newer high-rise buildings, and mobile home and RV parks. This category will ensure that Fort Myers Beach retains a variety of neighborhoods and housing types. For new development, the maximum density is 6 dwelling units per acre (except where the Future Land Use Map’s “platted overlay” indicates a maximum density of 10 units per acre for legally existing dwelling units). Commercial activities are limited to lower-impact uses such as offices, motels, churches, and public uses, and must be sensitive to nearby residential uses, complement any adjoining commercial uses, contribute to the public realm as described in this comprehensive plan, and meet the design concepts of this plan and the Land Development Code. These qualities and overall consistency with this comprehensive plan shall be evaluated by the town through the planned development rezoning process. Non-residential uses (including motels and churches) now comprise 7.9% of the land in this category, and this percentage shall not exceed 12%.	POLICY 4-B-4 <u>FLU-1-B-4</u>	“ <u>MIXED MEDIUM RESIDENTIAL</u> ”: designed for older subdivisions with mixed housing types on smaller lots, newer high-rise buildings, and mobile home and RV parks . This category will ensure that Fort Myers Beach retains a variety of neighborhoods and housing types. For new development, the maximum density is 6 dwelling units per acre (except where the Future Land Use Map’s “platted overlay” indicates a maximum density of 10 units per acre for legally existing dwelling units). <u>except those developments previously vested with 10 units under the “platted overlay” may continue.</u> Commercial activities are limited to lower impact uses such as offices, motels, churches, and public uses, and must be sensitive to nearby residential uses, complement any adjoining commercial uses, contribute to the public realm as described in this comprehensive plan, and meet the design concepts of this plan and the Land Development Code. These qualities and overall consistency with this comprehensive plan shall be evaluated by the town through the planned development rezoning process. Non-residential uses (including motels and churches) now comprise 7.9% of the land in this category, and this percentage shall not exceed 12%.
NEW	NEW		“ <u>MIXED-USE</u> ”: This land use designation is designed for portions of the Town along Estero Boulevard to allow for intense commercial and multifamily residential development. Each mixed-use district is prescribed a maximum density and intensity. To obtain approval for new or expanded commercial activities, proposals must be sensitive to nearby residential uses, contribute to the public realm as described in this comprehensive plan, and meet the design concepts

		<u>POLICY FLU-1-B-5</u>	of this plan and the Land Development Code. These qualities and overall consistency with this comprehensive plan shall be evaluated by the Town. Where commercial uses are permitted, residential uses are encouraged in upper floors. Within the Mixed-Use land use category, all existing “Marina” uses described shall be preserved and allowed to remain on parcels that were zoned for marinas prior to adoption of this plan. The following provides for the specific Mixed-Use Districts a. <u>TIME SQUARE MIXED-USED (TS-MU) DISTRICT</u> Purpose: The Time Square Mixed-Use District is an intense activity center that serves as the Town’s main tourist destination. The district is located at the Town’s northern gateway and is generally bounded by First Street-to Estero Boulevard, and from Old San Carlos Boulevard to Pearl Street. The district shall encourage mixed-uses and compact urban design that enhances the pedestrian experience and limits the use of vehicles. The Town shall encourage the preservation of existing housing on the bay side of Estero Boulevard. Properties abutting Estero Boulevard shall be encouraged to develop to primarily meet the needs of visitors. Uses which may be permitted: Where permissible and consistent with Flood regulations, development on Estero Boulevard shall be in a mixed-use context with commercial uses required on the ground floor. Development shall encourage preservation or enhancement of existing hotel/motel and multifamily densities east of Estero Boulevard. Uses permitted include, general retail, personal services, restaurants/bars (including outdoor dining), take-out and outdoor walk-up facilities, marine-dependent and marine related uses, lodging/hotel accommodations, and live entertainment venues. New surface parking lots as a principal use are discouraged. The Land Development Codes shall prescribe and limit the permitted uses in this district. Intensity: The District’s maximum building height shall be established by the Land Development Codes. Maximum building heights shall include considerations of flood elevation, freeboard standards as may be adopted and amended from time to time by the Town and provide for provisions for non-habitable ground floor space as applicable. The non-residential Floor Area Ratios (FAR) in the TS-MU shall not exceed 2.5.
--	--	--------------------------------	---

			<u>Transient residential (hotel and motel) shall be counted as non-residential development and subject to rules on FAR.</u> <u>Density:</u> <u>The permitted density is up to six (6) units per acre.</u> b. <u>CIVIC CENTER MIXED-USE (CC-MU) DISTRICT</u> <u>Purpose:</u> <u>The Civic Center Mixed-Use District includes properties adjacent to Estero Boulevard from Chapel Street to Lover's Lane as provided for in the Future Land Use Map. The CC-MU District's core, approximately bounded by Chapel Street and School Street, is envisioned to support a mix of housing options and neighborhood-serving retail uses for the immediate residential cluster. The town shall encourage the collocation of any redeveloped or new municipal services and educational facilities within the district. Encroachment into the adjacent low-density residential districts shall be prohibited. The use of landscaping, increased setbacks and reduced building heights shall be employed to serve as a transition between the land use categories.</u> <u>Uses which may be permitted:</u> <u>As limited by the Land Development Codes, permitted uses shall include civic/municipal uses, business and professional offices (including emergency, medical and dental), retail sales and personal service establishments, restaurants (including outdoor dining). Hotel/motel uses shall be conditional. Compact residential developments that support various housing types for permanent residents of the Island is encouraged in this district, including but not limited to Workforce Housing. When permitted, properties along Estero Boulevard shall be redeveloped in a mixed-use context only with retail or commercial uses required on the ground floor.</u> <u>Intensity:</u> <u>The District's maximum building height shall be established by the Land Development Codes. Maximum building heights shall include considerations of flood elevation, freeboard standards as may be adopted and amended from time to time by the Town and provide for provisions for non-habitable ground floor space as applicable. The non-residential Floor Area Ratios (FAR) in the CC-MU shall not exceed 1.5.</u> <u>Density:</u> <u>The maximum density is up to six (6) dwelling units per acre.</u> c. <u>CENTER ISLAND MIXED-USE (CI-MU) DISTRICT</u>
--	--	--	--

			<u>Purpose:</u> The Center Island Mixed-Use District's general boundaries are generally from Estero Bay to the Gulf, and from Bayview Avenue to Madera Road. The Center Island Mixed-Use District is envisioned as a lifestyle retail center with a mix of uses that supports the existing marina. The intent of this district is to provide development opportunities for existing and new medium-intensity commercial uses to serve the Town. <u>Uses which may be permitted:</u> As limited by the Land Development Codes, permitted uses include various types of commercial business and professional offices (including medical and dental), retail sales and personal service establishments, restaurants (including outdoor dining), and residential (only in mixed-use context). Marine-related and marine-dependent uses that support an active waterfront and marina are highly encouraged. Elimination or reduction of the marina use is prohibited. <u>Intensity:</u> The District's maximum building height shall be established by the Land Development Codes. Maximum building heights shall include considerations of flood elevation, freeboard standards as may be adopted and amended from time to time by the Town, and provide for provisions for non-habitable ground floor space as applicable. The non-residential Floor Area Ratios (FAR) in the CI-MU shall not exceed 1.5. <u>Density:</u> The maximum density is up to six (6) dwelling units per acre. d. <u>THEATRE & ARTS MIXED-USE (TA-MU) DISTRICT</u> <u>Purpose:</u> The Theatre & Arts Mixed- Use District is envisioned as the cultural, theater, and arts district for the Island. The TA-MU District is composed of the properties abutting Estero Boulevard to the west, from Mound Road to Ibis Street, and includes the Beach Theatre site. The Town shall encourage the preservation of the theatre. <u>Uses which may be permitted:</u> Uses that support and enhance the Town's cultural assets are encouraged in the TA-MU District. Permitted uses, as limited by the Land Development Codes, includes commercial recreation, retail, restaurants (including outdoor dining), venue spaces, theaters, artisanal retail, art galleries, music and dance studios, arts education, and live/work units. Live/work units are permitted on the ground level. Exclusively residential uses are permitted only above the ground floor.
--	--	--	---

			<u>Intensity:</u> The District's maximum building height shall be established by the Land Development Codes. Maximum building heights shall include considerations of flood elevation, freeboard standards as may be adopted and amended from time to time by the Town, and provide for provisions for non-habitable ground floor space as applicable. The non-residential Floor Area Ratios (FAR) in the TA-MU shall not exceed 1.5. <u>Density:</u> The maximum density is up to six (6) dwelling units per acre. e. <u>THE SANTINI VILLAGE MIXED-USE (SV-MU) DISTRICT</u> <u>Purpose:</u> Santini Village Mixed-Use District is the tallest and most dense district on the island with tourist supporting services and commercial uses. It is also envisioned as a redevelopment opportunity with more entertainment, tourist and neighborhood commercial uses at the southern gateway of the Island. The SV-MU District includes the existing Santini Marina Plaza Shops. The general boundaries include the properties along Estero Boulevard from Island Pines Way south to Bella Lago Drive as depicted on the Future Land Use map. The City's redevelopment plan for Santini Plaza, prepared by Dover, Kohl & Partners established a vision for this area. The plan shall serve as a guide to the District's redevelopment. Special consideration shall be given to the existing marina. The marina site shall be redeveloped in a mixed-use context to promote an active waterfront with a mix of uses. The marina use shall not be eliminated by the site's redevelopment. <u>Uses which may be permitted:</u> Uses shall serve the needs of residents and visitors, as limited by the Land Development Codes. Permitted uses include general retail, amusement centers, bars, restaurants (including outdoor dining), residential, personal services, professional offices (including dental and medical), assisted living facilities, hotel/lodging accommodations, and marine-related/dependent uses. For properties abutting Estero Boulevard, commercial development is required on the ground floor, subject to FEMA regulations. <u>Intensity:</u> The District's maximum building height shall be established by the Land Development Codes. Maximum building heights shall include considerations of flood elevation, freeboard standards as may be adopted and amended from time to time by the Town, and provide for
--	--	--	---

			<u>provisions for non-habitable ground floor space as applicable.</u> <u>The maximum non-residential FAR for the SV-MU district is 1.5.</u> <u>Density:</u> <u>The maximum density is up to six (6) dwelling units per acre.</u>
POLICY 4-B-5	“BOULEVARD”: a mixed-use district along portions of Estero Boulevard, including less intense commercial areas, historic cottages, and mixed housing types. This category is not intended to allow commercial uses on all properties; its mixed-use nature is intended to remain permanently. For new residential development, the maximum density is 6 dwelling units per acre (except where the Future Land Use Map’s “platted overlay” indicates a maximum density of 10 units per acre for legally existing dwelling units). To obtain approval for new or expanded commercial activities, proposals must be sensitive to nearby residential uses, complement any adjoining commercial uses, contribute to the public realm as described in this comprehensive plan, and meet the design concepts of this plan and the Land Development Code. These qualities and overall consistency with this comprehensive plan shall be evaluated by the town through the planned development rezoning process. Non-residential uses (including motels and churches) now comprise 46.9% of the land in this category, and this percentage shall not exceed 70%.	POLICY 4-B-5 <u>FLU-1-B-6</u>	“BOULEVARD”: a mixed-use district along portions of Estero Boulevard, including less intense commercial areas, <u>traditionally comprised of</u> historic cottages, and mixed housing types. This category is not intended to allow commercial uses on all properties; its mixed-use nature is intended to remain permanently. For new residential development, the maximum density is 6 dwelling units per acre (except where the Future Land Use Map’s “platted overlay” indicates a maximum density of 10 units per acre for legally existing dwelling units). To obtain approval for new or expanded commercial activities, proposals must be sensitive to nearby residential uses, complement any adjoining commercial uses, contribute to the public realm as described in this comprehensive plan, and meet the design concepts of this plan and the Land Development Code. These qualities and overall consistency with this comprehensive plan shall be evaluated by the town through the planned development rezoning process. Non-residential uses (including motels and churches) now comprise 46.9% of the land in this category, and this percentage shall not exceed 70%. <u>The non-residential Floor Area Ratios (FAR) in the Boulevard shall not exceed 1.5.</u> <u>Density:</u> <u>Permitted density may be increased up to ten (10) units per acre provided that at least 10% of the development is for affordable or workforce housing as covenanted for a minimum of 30 years. Those developments previously vested with 10 units under the “platted overlay” may continue.</u>

POLICY 4-B-6	“PEDESTRIAN COMMERCIAL”: a primarily commercial district applied to the intense activity centers of Times Square (including Old San Carlos and nearby portions of Estero Boulevard) and the area around the Villa Santini Plaza. For new development, the maximum density is 6 dwelling units per acre (except where the Future Land Use Map’s “platted overlay” indicates a maximum density of 10 units per acre for affordable units consistent with the adopted redevelopment plan). Commercial activities must contribute to the pedestrian-oriented public realm as described in this comprehensive plan and must meet the design concepts of this plan and the Land Development Code. Where commercial uses are permitted, residential uses are encouraged in upper floors. All “Marina” uses in Policy 4-B-7 are also allowed on parcels that were zoned for marinas prior to adoption of this plan. Nonresidential uses (including motels and churches) now comprise 58.9% of the land in this category, and this percentage shall not exceed 90%.	POLICY 4-B-6 <u>FLU-1-B-7</u>	“PEDESTRIAN COMMERCIAL”: a primarily commercial district applied to the intense activity centers of Times Square (including Old San Carlos and nearby portions of Estero Boulevard) and the area around the Villa Santini Plaza. For new development, the maximum density is up to 6 dwelling units per acre (except where the Future Land Use Map’s “platted overlay” indicates a maximum density of 10 units per acre for affordable units consistent with the adopted redevelopment plan). <u>Those developments previously vested with 10 units under the “platted overlay” may continue.</u> Commercial activities must contribute to the pedestrian-oriented public realm as described in this comprehensive plan and must meet the design concepts of this plan and the Land Development Code. Where commercial uses are permitted, residential uses are encouraged in upper floors. All “Marina” uses in Policy 4-B-7 are also allowed on parcels that were zoned for marinas prior to adoption of this plan. Nonresidential uses (including motels and churches) now comprise 58.9% of the land in this category, and this percentage shall not exceed 90%.
POLICY 4-B-7	“MARINA”: designed for prime sites that can provide access to the valuable waters around Fort Myers Beach. This category provides services for recreational boating, including related accessory uses provided that don’t displace recreational marina services. Cruise ships and similar uses that draw large amounts of vehicular traffic are not permitted in this category. Specific regulations will be placed in the Land Development Code.	POLICY 4-B-7 <u>FLU-1-B-8</u>	“MARINA”: designed for prime sites that can provide access to the valuable waters around Fort Myers Beach. This category provides services for recreational boating, including related accessory uses provided that don’t displace recreational marina services. Cruise ships and similar uses that draw large amounts of vehicular traffic are not permitted in this category. Specific regulations will be placed in the Land Development Code. <u>Existing Marinas are prime sites that can provide access to the valuable waters around Fort Myers Beach. Development within the Marina district shall be limited to 1.5 FAR and 0 dwelling units per acre. This category shall prioritize services for limited industrial and recreational boating, including related accessory uses. The redevelopment of existing Marinas shall encourage a working waterfront with mixed-use development, inclusive of commercial and residential uses, provided the uses do not displace marina dependent and related services. Specific regulations will be placed in the Land Development Code.</u>

POLICY 4-B-8	“RECREATION”: applied to public parks, schools, undevelopable portions of Bay Beach, and those parts of Gulf beaches that lie seaward of the 1978 coastal construction control line. Additional accretions of beach, whether by natural causes or through beach renourishment, will automatically be assigned to this category. No new residential development is permitted (although several existing buildings were legally constructed partially seaward of the 1978 control line). The maximum density of residential development here is 1 dwelling units per 20 acres, with all dwelling units to be constructed outside his category. Allowable uses are parks, schools, libraries, bathing beaches, beach access points, and related public facilities. Non-recreational uses (such as the elementary school) now comprise 2.7% of the land in this category; additional school sites and public buildings shall not increase this percentage beyond 6%.	POLICY 4-B-8 <u>FLU-1-B-9</u>	“RECREATION AND OPEN SPACE”: This designation provides for applied to public parks, schools, undevelopable portions of Bay Beach, and those parts of Gulf beaches that lie seaward of the 1978 coastal construction control line. Additional accretions of beach, whether by natural causes or through beach renourishment, will automatically be assigned to this category. No new residential development is permitted (although several existing buildings were legally constructed partially seaward of the 1978 control line). The maximum density of residential development here is 1 dwelling units per 20 acres, with all dwelling units to be constructed outside his category. Allowable uses are parks, schools, libraries, bathing beaches, beach access points, and related public facilities. Non-recreational uses (such as the elementary school) now comprise 2.7% of the land in this category; additional school sites and public buildings shall not increase this percentage beyond 6%.
POLICY 4-B-9	“WETLANDS”: a conservation district applied to all remaining wetlands. The maximum density of residential development here is 1 dwelling units per 20 acres. Other allowable uses, if compatible with wetland functions, are passive recreation, walking access to tidal waters (boardwalks and docks), and restoration of degraded habitats. Prohibited activities include placement of fill material; dredging of boat basins and channels; placement of seawalls or other shoreline stabilization; and removal of native vegetation.	POLICY 4-B-9 <u>FLU-1-B-10</u>	“WETLANDS”: a conservation district applied to all remaining wetlands. The maximum density of residential development here is 1 dwelling units per 20 acres. Other allowable uses, if compatible with wetland functions, are passive recreation, walking access to tidal waters (boardwalks and docks), and restoration of degraded habitats. Prohibited activities include placement of fill material; dredging of boat basins and channels; placement of seawalls or other shoreline stabilization; and removal of native vegetation.
POLICY 4-B-10	“TIDAL WATER”: applied to all saltwater canals and all waters surrounding Estero Island that lie within the municipal boundary (out 1,000 feet). No residential development is permitted. Allowable uses are water sports, boating, swimming, fishing, and similar uses. Also allowed are fixed structures for water access provided they comply with Land Development Code provisions designed to avoid impeding navigation and to minimize environmental damage and interference with aesthetic enjoyment of surrounding waters.	POLICY 4-B-10 <u>FLU-1-B-11</u>	“TIDAL WATER”: applied to all saltwater canals and all waters surrounding Estero Island that lie within the municipal boundary (out 1,000 feet). No residential development is permitted. Allowable uses are water sports, boating, swimming, fishing, and similar uses. Also allowed are fixed structures for water access provided they comply with Land Development Code provisions designed to avoid impeding navigation and to minimize environmental damage and interference with aesthetic enjoyment of surrounding waters.
POLICY 4-B-11	PLATTED OVERLAY: This is not a separate category on the Future Land Use Map, but is applied in addition to one of the eight categories	POLICY 4-B-11 <u>FLU-1-B-12</u>	PLATTED OVERLAY: This is not a separate category on the Future Land Use Map, but is applied in addition to one of the eight categories listed above. Allowable land uses are the same as in the

	listed above. Allowable land uses are the same as in the underlying category, but the maximum residential density is 10 units per acre. This density level applies in the Pedestrian Commercial category only for affordable units consistent with the adopted redevelopment plan; in other categories it applies only to recognize existing dwelling units that were built legally but which would be non-conforming under a density cap of 6 units per acre.		underlying category, but the maximum residential density is 10 units per acre. This density level applies in the Pedestrian Commercial category only for affordable units consistent with the adopted redevelopment plan; in other categories it applies only to recognize existing dwelling units that were built legally but which would be non-conforming under a density cap of 6 units per acre. <u>The Mixed-Use, Boulevard, and Pedestrian Commercial future land use designations signify the areas within the town envisioned for the most intense development and land use activities. The intensity of development is determined by the recommended Floor Area Ratio (FAR) specified for each land use district.</u>
POLICY 4-B-12	LAND-USE TYPES DEFINED: For purposes of this comprehensive plan, land uses are divided into the following types: i. Residential uses include detached homes, accessory apartments (see Policy 4-C-7), home occupations (see Policy 4- B-3), mobile homes, apartments, and condominiums, provided that no dwellings are rented for periods shorter than one week. ii. Commercial uses involve the sale or rental of goods or services, including businesses such as retail stores, offices, restaurants/bars, service/craft/rental businesses, RV parks, and hotels/motels/resorts; churches and civic buildings are also included in this category. iii. Marina uses involve the use of prime waterfront sites to support recreational boating, such as wet or dry boat storage, sales/rentals of boats and supplies, and boat repair. iv. Industrial uses such as manufacturing, seafood processing, and warehousing are not permitted in the Town of Fort Myers Beach, except for dry storage of boats at approved marinas. v. Recreational uses include beaches, parks, playgrounds, and similar uses. vi. Mixed uses means some combination of the above land-use types in a single building, or on a single site, or on different sites within a single category on the Future Land Use Map, depending on the context.	POLICY 4-B-12 <u>FLU-1-B-13</u>	LAND-USE TYPES DEFINED: For purposes of this comprehensive plan, land uses are divided into the following types: i. Residential uses include detached homes, accessory apartments (see Policy 4-C-7), home occupations (see Policy 4- B-3), <u>mobile homes, assisted living facilities, apartments, live-work units, accessory dwelling units for commercial structures,</u> and condominiums, provided that no dwellings are rented for periods shorter than one week. ii. Commercial uses involve the sale or rental of goods or services, including businesses such as <u>art galleries, art/music/dance/theater studios, retail stores, offices (including medical and veterinary), urgent care facilities,</u> restaurants/bars, service/craft/rental businesses, <u>RV</u> parks, and hotels/motels/resorts; churches and civic buildings are also included in this category. iii. Marina uses involve the use of prime waterfront sites to support <u>a mix of uses, including residential, commercial,</u> recreational boating, such as wet or dry boat storage, sales/rentals of boats and supplies, and boat repair. iv. Industrial uses such as manufacturing, seafood processing, and warehousing are not permitted in the Town of Fort Myers Beach, except for dry storage of boats at approved marinas. v. Recreational uses include beaches, parks, playgrounds, and similar uses. vi. Mixed uses means some combination of the above land-use types in a single building, or on a single site, or on different sites within a single category on the Future Land Use Map, depending on the context.
POLICY 4-B-13	PUBLIC FACILITIES: Most public facilities such as parks, schools, libraries, fire stations, and	POLICY 4-B-13 <u>FLU-1-B-14</u>	Public facilities such as parks, schools, libraries, fire stations, and government buildings will <u>may continue be</u>

	government buildings will continue be located within the “Recreation” category (but only park structures are allowed seaward of the 1978 Coastal Construction Control Line). When no suitable sites can be found in the “Recreation” category, public facilities may also be located in “Mixed Residential,” “Boulevard,” and “Pedestrian Commercial” categories as may be allowed by the Land Development Code.		located within the “Recreation” category (but only <u>non-habitable</u> park structures are allowed seaward of the 1978 Coastal Construction Control Line), <u>and all mixed-use, commercial, and boulevard land use categories</u> . When no suitable sites can be found in the “Recreation” category, public facilities may also be located in “Mixed Residential,” “Boulevard,” and “Pedestrian Commercial” categories as may be allowed by the Land Development Code.
POLICY 4-B-14	SCHOOLS: Public and private schools may be located in the following categories on the future land use map: Mixed Residential, Boulevard, Pedestrian Commercial, or Recreation (but never seaward of the 1978 coastal construction control line). The maximum intensity of new or expanded schools shall not exceed a floor-area-ratio of 0.50 (the total floor area of the building divided by the buildable area of the site). Governmental agencies providing parks, libraries and community centers are strongly encouraged to locate them near schools.	POLICY 4-B-14 <u>FLU-1-B-15</u>	SCHOOLS: Public and private schools may be located in <u>all mixed-use, commercial, and boulevard land use categories except for Wetlands and Recreation and Open Space</u> , provided that the school <u>is the following categories on the future land use map: Mixed Residential, Boulevard, Pedestrian Commercial “Mixed-Use”, or Recreation (but never not</u> seaward of the 1978 coastal construction control line) <u>and compliant with Flood and other regulations as established by the Land Development Codes. The historic Beach Elementary School shall be exempted.</u> The maximum intensity of new or expanded schools shall not exceed a floor-area-ratio of 0.50 (the total floor area of the building divided by the buildable area of the site). Governmental agencies providing parks, libraries and community centers are strongly encouraged to locate them near schools.
OBJECTIVE 4-C	APPLYING THE FUTURE LAND USE MAP — The Future Land Use Map shall be interpreted in accordance with the following policies.	OBJECTIVE 4-C <u>FLU-1-C</u>	APPLYING THE FUTURE LAND USE MAP — The Future Land Use Map shall be interpreted in accordance with the following policies.
POLICY 4-C-1	LEGAL EFFECT: The density limits and land-use restrictions described above for each category are legally binding immediately upon adoption of this comprehensive plan. During the preparation of the new Land Development Code that will fully implement this plan, conflicts may arise with previous regulations and zoning districts. Chapter 15 of this plan describes how such conflicts will be resolved.	POLICY 4-C-1 <u>FLU-1-C-1</u>	LEGAL EFFECT: The density limits and land-use restrictions described above for each category are legally binding immediately upon adoption of this comprehensive plan. During the preparation of the new Land Development Code that will fully implement this plan, conflicts may arise with previous regulations and zoning districts. Chapter 15 of this plan describes how such conflicts will be resolved.
POLICY 4-C-2	COMMERCIAL INTENSITY: The maximum intensity of allowable commercial development in any category may be controlled by height regulations (see Policy 4-C-4) or by other provisions of this plan and the Land Development Code. Standards in the Land Development Code will encourage more intense commercial uses only in the “Pedestrian Commercial” category. The Land Development Code shall specify maximum	POLICY 4-C-2 <u>FLU-1-C-2</u>	COMMERCIAL INTENSITY: The maximum intensity of allowable commercial development in any category may be controlled by height and Floor to Area Ratio (FAR) regulations (see Policy 4-C-4) or by other provisions of this plan and the Land Development Code. Standards in the Land Development Code will encourage more intense commercial uses <u>on properties with frontage on Estero Boulevard and only in the “Pedestrian Commercial” “Mixed-Use” and “Boulevard” category-categories.</u> The Land Development Code shall specify maximum commercial intensities using floor-area-ratios (the

	commercial intensities using floor-area-ratios (the total floor area of the building divided by the area of the site in the category allowing commercial uses). The Land Development Code may allow floor-area-ratios in the “Pedestrian Commercial” category as high as 2.5, and in other categories as high as 1.5,		total floor area of the building divided by the area of the site in the category allowing commercial uses). The Land Development Code may allow floor-area-ratios in the “Pedestrian Commercial” category as high as 2.5, and in other categories as high as 1.5,
POLICY 4-C-3	COMMERCIAL LOCATIONS: When evaluating proposals for new or expanded commercial uses in categories where they are permitted, the following principles shall apply: i. No rezonings for commercial uses shall be allowed in the “Low Density” category. ii. Where new or expanded commercial uses are encouraged, as in the “Pedestrian Commercial” category, the Land Development Code shall specify its permitted form and extent and provide a streamlined approval process. Landowners may also use the planned development rezoning process to seek approval of other forms of commercial development in that category. iii. In the “Mixed Residential” category, commercial uses are limited to lower-impact uses such as offices, motels, and public uses, and must be sensitive to nearby residential uses, complement any adjoining commercial uses, contribute to the public realm as described in this comprehensive plan, and meet the design concepts of this plan and the Land Development Code. Landowners may seek commercial rezoning only through the planned development process. iv. In the “Boulevard” category, where mixed-use development including some commercial uses may be permissible, landowners may seek commercial rezoning only through the planned development process. Proposals must be sensitive to nearby residential uses, complement any adjoining commercial uses, contribute to the public realm as described in this comprehensive plan, and meet the design concepts of this plan and the Land Development Code. v. The following principles shall be considered by the town when evaluating requests for new commercial uses:	POLICY 4-C-3 <u>FLU-1-C-3</u>	COMMERCIAL LOCATIONS: When evaluating proposals for new or expanded commercial uses in categories where they are permitted, the following principles shall apply: i. No rezonings for purely commercial uses shall be allowed in the “Low Density Residential” category. ii. Where new or expanded commercial uses are encouraged, as in the “Pedestrian Commercial” category, the Land Development Code shall specify its permitted form and extent and provide a streamlined approval process. Landowners may also use the planned development rezoning process to seek approval of other forms of commercial development in that category. iii. In the “Mixed Medium Residential” category, commercial uses are limited to lower impact uses such as offices, motels, and public uses, and must be sensitive to nearby residential uses, complement any adjoining commercial uses, contribute to the public realm as described in this comprehensive plan, <u>satisfy concurrency requirements for public facilities</u>, and meet the design concepts of this plan and the Land Development Code. Landowners may seek commercial rezoning only through the planned development process. iv. In the “Boulevard” and “Mixed-Use” category, where mixed-use development including some commercial and <u>residential</u> uses may be <u>are</u> permissible, landowners may seek commercial rezoning only through the planned development process. Proposals must be sensitive to nearby residential uses, complement any adjoining commercial uses, contribute to the public realm as described in this comprehensive plan, and meet the design concepts of this plan and the Land Development Code. v. The following principles shall be considered by the town <u>When</u> evaluating requests for new commercial uses: <u>shopping</u> a. Shopping and services for residents and overnight guests are strongly preferred over shopping and

	a. Shopping and services for residents and overnight guests are strongly preferred over shopping and services that will attract additional day visitors during peak-season congestion. b. Shopping and services that contribute to the pedestrian character of the town are strongly preferred over buildings designed primarily for vehicular access. vi. The neighborhood context of proposed commercial uses is of paramount importance. The sensitivity of a proposed commercial activity to nearby residential areas can be affected by: a. the type of commercial activities (such as traffic to be generated, hours of operation, and noise); b. its physical scale (such as the height, and bulk of proposed buildings); and c. the orientation of buildings and parking). Commercial activities that will intrude into residential neighborhoods because of their type, scale, or orientation shall not be approved.		services that will attract additional day visitors during peak-season congestion. b. Shopping and services that contribute to the pedestrian character of the town are strongly preferred over buildings designed primarily for vehicular access. vi. The neighborhood context of proposed commercial uses is of paramount importance. The sensitivity of a proposed commercial activity to nearby residential areas can be affected by: a. the type of commercial activities (such as traffic to be generated, hours of operation, and noise); b. its physical scale (such as the height, and bulk of proposed buildings); and c. the orientation of buildings and parking). Commercial activities that will intrude into residential neighborhoods because of their type, scale, or orientation shall not be approved.
POLICY 4-C-4	BUILDING HEIGHTS: The Land Development Code shall limit the height of new buildings under most conditions to two stories above flood elevation (exceptions may include the buildback situations (see Policies 4-D-1 and 4-E-1), and different heights may be applied to officially designated redevelopment areas such as Times Square, Red Coconut/Gulf View Colony, and Villa Santini Plaza). In those few cases where individual parcels of land are so surrounded by tall buildings on lots that are contiguous (or directly across a street) that this two-story height limit would be unreasonable, landowners may seek relief through the planned development rezoning process, which requires a public hearing and notification of adjacent property owners. The town will approve, modify, or deny such requests after evaluating the level of unfairness that would result from the specific circumstances and the degree the specific proposal conforms with all aspects of this comprehensive plan, including its land-use and design policies, pedestrian orientation, and natural resource criteria. Particular attention would be paid to any permanent view corridors to Gulf or Bay	POLICY 4-C-4 FLU-1-C-4	BUILDING HEIGHTS: The Land Development Code shall limit the height of new buildings under most conditions to two <u>three</u> stories or 30 feet above flood elevation except where otherwise noted in this Comprehensive Plan Land Use categories and to provide for workforce housing units protected by a minimum 30-year covenant, (exceptions may include the buildback situations (see Policies 4-D-1 and 4-E-1), and different heights may be applied to officially designated redevelopment <u>Mixed-Use</u> areas such as Times Square, Red Coconut/Gulf View Colony, and Villa Santini Plaza). <u>The town may consider taller building heights in the mixed-use districts, if appropriate. Mixed-use district regulations shall include provisions to limit heights or provide for additional buffers when the development is located within 100 ft of detached single-family residences.</u> In those few cases where individual parcels of land are so surrounded by tall buildings on lots that are contiguous (or directly across a street) that this two <u>three</u>-story height limit would be unreasonable, landowners may seek relief through the planned development rezoning process, which requires a public hearing and notification of adjacent property owners. The town will approve, modify, or deny such requests after evaluating the level of unfairness that would result from the specific circumstances and the degree the specific proposal conforms with all aspects of this comprehensive plan, including its land-use and design policies, pedestrian orientation, and natural resource criteria.

	waters that could be provided in exchange for allowing a building to be taller than two stories. In each case, the town shall balance the public benefits of the height limit against other public benefits that would result from the specific proposal.		Particular attention would be paid to any permanent view corridors to Gulf or Bay waters that could be provided in exchange for allowing a building to be taller than two <u>three</u> stories, including the ground story. <u>The ground floor for developments along the Gulf side of Estero Boulevard shall be encouraged to provide non-habitable uses that enhance the view corridors to the Gulf.</u> In each case, the town shall balance the public benefits of the height limit against other public benefits that would result from the specific proposal.
POLICY 4-C-5	DENSITY: This plan establishes density levels as the maximum number of residential dwelling units allowed per acre of land (DU/acre). This acreage includes all residential land plus land within the development to be used for street and utility rights-of-way, recreation and open space, water management, and existing lakes that are entirely contained within the residential development. Commercial and other non-residential land shall not be included in this acreage; however, where mixed uses are permitted in a single building, residential densities will be computed without regard for commercial uses located on lower floors. When computing densities on existing subdivisions where lots are smaller than 15,000 square feet, one-half the width of adjoining streets and canals may be included in the acreage, and computed densities greater than 1.50 DU/acre may be rounded up to two dwelling units where multiple dwelling are permitted.	POLICY 4-C-5 <u>FLU-1-C-5</u>	DENSITY: This plan establishes density levels as the maximum number of residential dwelling units allowed per acre of land (DU/acre). This acreage includes all residential land plus land within the development to be used for street and utility rights-of-way, recreation and open space, water management, and existing lakes that are entirely contained within the residential development. Commercial and other non-residential land shall not be included in this acreage; however, where mixed uses are permitted in a single building, residential densities will be computed without regard for commercial uses located on lower floors. When computing densities on existing subdivisions where lots are smaller than 15,000 square feet, one-half the width of adjoining streets and canals may be included in the acreage, and computed densities greater than 1.50 DU/acre may be rounded up to two dwelling units where multiple dwelling are permitted.
POLICY 4-C-6	MOTEL DENSITIES: The Land Development Code shall specify equivalency factors between guest units (which include motel rooms) and full dwelling units. These factors may vary based on size of guest unit and on land-use categories on the Future Land Use Map. They may vary between a low of one guest unit and a high of three guest units for each dwelling unit. (These factors would apply only where guest units are already permitted.) In order to implement the 1999 Old San Carlos Boulevard / Crescent Street Master Plan that encourages mixed-use buildings with second and third floors over shops on Old San Carlos, hotel rooms may be substituted for otherwise allowable office space in that situation and location only without using the equivalency factors that apply	POLICY 4-C-6 <u>FLU-1-C-6</u>	MOTEL TRANSIENT DENSITIES: The Land Development Code shall provide for the usage of commercial, mixed-use, or transient residential FAR, and minimum hotel/motel unit sizes as the basis for calculating transient residential unit. –specify equivalency factors between guest units (which include motel rooms) and full dwelling units. These factors may vary based on size of guest unit and on land-use categories on the Future Land Use Map. They may vary between a low of one guest unit and a high of three guest units for each dwelling unit. (These factors would apply only where guest units are already permitted.) In order to implement the 1999 Old San Carlos Boulevard / Crescent Street Master Plan that encourages mixed-use buildings with second and third floors over shops on Old San Carlos, hotel rooms may be substituted for otherwise allowable office space in that situation and location only without using the equivalency factors that apply everywhere else in the town. This alternate method for capping the number of hotel rooms applies only

	everywhere else in the town. This alternate method for capping the number of hotel rooms applies only to properties between Fifth to First Streets that lie within 200 feet east and west of the centerline of Old San Carlos Boulevard. Hotel rooms built under this alternate method must have at least 250 square feet per rentable unit, and under no circumstances shall buildings they are located in exceed four stories (with the ground level counted as the first story).		to properties between Fifth to First Streets that lie within 200 feet east and west of the centerline of Old San Carlos Boulevard. Hotel rooms built under this alternate method must have at least 250 square feet per rentable unit, and under no circumstances shall buildings they are located in exceed four stories (with the ground level counted as the first story).
POLICY 4-C-7	ACCESSORY APARTMENTS: Accessory apartments are common at Fort Myers Beach and may be legal under several circumstances: i. If the apartment is in a building that meets all requirements (including density limits in this plan); or ii. If the apartment was built prior to zoning in 1962 and has been in continuous use, it may qualify as a “legally non-conforming use” and can continue in use until taken out of service; or iii. If the apartment was built between 1962 and 1984 and complies with all requirements except the density cap of 6 dwelling units per acre and the floodplain elevation requirements (both of which took effect in 1984); or iv. If a single existing apartment is in an owner-occupied home, it is not considered an independent dwelling unit and may be allowed under certain conditions as specified in the Land Development Code.	POLICY 4-C-7 <u>FLU-1-C-7</u>	ACCESSORY DWELLING UNITS FOR RESIDENTIAL PROPERTIES APARTMENTS: Accessory apartments are common provide an option for inclusive housing in at Fort Myers Beach and may be legal under several circumstances. For the purposes of density calculation, accessory dwelling units shall be counted as 0.5 units. i. If the apartment is in a building that meets all requirements (including density limits in this plan); or ii. If the apartment was built prior to zoning in 1962 and has been in continuous use, it may qualify as a “legally non-conforming use” and can continue in use until taken out of service; or iii. If the apartment was built between 1962 and 1984 and complies with all requirements except the density cap of 6 dwelling units per acre and the floodplain elevation requirements (both of which took effect in 1984); or iv. If a single existing apartment is in an owner-occupied home, it is not considered an independent dwelling unit and may be allowed under certain conditions as specified in the Land Development Code.
NEW	NEW	POLICY <u>FLU-1-C-8</u>	<u>AUXILIARY DWELLING UNITS FOR COMMERCIAL PROPERTIES:</u> The Town shall evaluate and provide for Land Development Codes that provide auxiliary dwelling units in existing commercial structures, while maintaining commercial uses on the ground floor. The Town shall explore density transfer of existing transient units in properties designated Commercial, to facilitate the development of auxiliary dwelling units on properties with a land use designation of Commercial.
POLICY 4-C-8	DENSITY TRANSFERS: The Town Council may, at its discretion, permit the transfer of residential and hotel/motel development rights from one parcel to another if the following conditions are met:	POLICY 4-C-8 <u>FLU-1-C-9</u>	DENSITY TRANSFERS: The Town Council may, at its discretion, permit the transfer of residential and <u>transient (including hotel/motel)</u> development rights from one parcel to another if the following conditions are met:

	i. the transfer is clearly in the public interest, as determined by the Town Council; ii. the parcels affected by the transfer are in close proximity to each other; iii. the density of residential or hotel/motel units being transferred is based upon allowable density levels in the category from which the density is being transferred; iv. the transfer is approved through the planned development rezoning process; and v. binding permanent restrictions are placed on the property from which development rights have been transferred to guarantee the permanence of the transfer.		i. the transfer is clearly in the public interest, as determined by the Town Council; ii. the parcels affected by the transfer are in close proximity to each other; iii. the density of residential or hotel/motel units being transferred is based upon allowable density levels in the category from which the density is being transferred; iv. the transfer is approved through the planned development rezoning process; and v. binding permanent restrictions are placed on the property from which development rights have been transferred to guarantee the permanence of the transfer.
POLICY 4-C-9	UTILITY SERVICES: Utility services may be constructed in any category on the Future Land Use Map provided all development regulations are met including proper zoning.	POLICY 4-C-9 <u>FLU-1-C-10</u>	UTILITY SERVICES: Utility services may be constructed in any category on the Future Land Use Map provided all development regulations are met including proper zoning.
POLICY 4-C-10	MAP AMENDMENTS: The intensity and density levels allowed by the Future Land Use Map may be increased through formal amendments to this plan if such increases are clearly in the public interest, not just in the private interest of a petitioning landowner. Petitions from landowners will be accepted annually. The Town Council may accept applications more frequently at its sole discretion.	POLICY 4-C-10 <u>FLU-1-C-11</u>	MAP AMENDMENTS: The intensity and density levels allowed by the Future Land Use Map may be increased through formal amendments to this plan if such increases are clearly in the public interest, not just in the private interest of a petitioning landowner. Petitions from landowners will be accepted annually. The Town Council may accept applications more frequently at its sole discretion.
POLICY 4-C-11	SANTOS ROAD: The town is interested in considering land-use alternatives for parcels bordering Palermo Circle, Santos Road, and Estero Boulevard. Alternatives may include: Santos Road being added into the pedestrian zone; limited retail on the ground floor along Santos, with shared off-site parking; better buffering of existing parking and refuse areas; and a clear separation between all commercial uses and the residential areas on Palermo Circle. These options would be explored by a privately-funded but town-initiated planning process, with full involvement of affected and nearby landowners.	POLICY 4-C-11	POLICY 4-C-11 SANTOS ROAD: The town is interested in considering land-use alternatives for parcels bordering Palermo Circle, Santos Road, and Estero Boulevard. Alternatives may include: Santos Road being added into the pedestrian zone; limited retail on the ground floor along Santos, with shared off-site parking; better buffering of existing parking and refuse areas; and a clear separation between all commercial uses and the residential areas on Palermo Circle. These options would be explored by a privately-funded but town-initiated planning process, with full involvement of affected and nearby landowners.
POLICY 4-C-12	WETLAND BUFFERS: Upland development shall maintain a 75-foot separation between wetlands and buildings or other impervious surfaces. This requirement shall not apply to platted lots, or to a previously approved development order to the extent it cannot reasonably be modified to comply	POLICY 4-C-12 <u>FLU-1-C-12</u>	WETLAND BUFFERS: Upland development shall maintain a 75-foot separation between wetlands and buildings or other impervious surfaces. This requirement shall not apply to platted lots, or to a previously approved development order to the extent it cannot reasonably be modified to comply with this requirement (see Chapter 15 of this plan for details).

	with this requirement (see Chapter 15 of this plan for details).		
OBJECTIVE 4-D	POST-DISASTER REDEVELOPMENT —Provide for the organized and healthy reconstruction of Fort Myers Beach after a major storm by showcasing successful local examples of floodproofing, by requiring redevelopment activities to meet stricter standards for flood- and wind-resistance, and by improving the current post-disaster buildback policy.	OBJECTIVE 4-D <u>FLU-1-D</u>	POST-DISASTER REDEVELOPMENT — Provide for the organized and healthy reconstruction of Fort Myers Beach after a major storm by showcasing successful local examples of flood- proofing, by requiring redevelopment activities to meet stricter standards for flood- and wind-resistance, and by improving the current post-disaster buildback policy.
POLICY 4-D-1	POST-DISASTER BUILDBACK POLICY: Following a natural disaster, land may be redeveloped in accordance with the Future Land Use Map or, at the landowner's option, in accordance with the following "buildback policy" begun by Lee County in 1989. This policy applies only where development is damaged by fire, hurricane or other natural disaster, and allows the following options: i. Buildings/development damaged less than 50% of their replacement cost (measured at the time of damage) can be rebuilt to their original condition, subject only to current building and life safety codes. ii. Buildings/development damaged more than 50% of their replacement cost can be rebuilt to their legally documented actual use, density, intensity, size, and style provided the new construction complies with: a. federal requirements for elevation above the 100-year flood level; b. any building code requirements for floodproofing; c. current building and life safety codes; d. Coastal Construction Control Line requirements; and e. any required zoning or other development regulations (other than density or intensity), except where compliance with such regulations would preclude reconstruction otherwise intended by this policy. iii. Redevelopment of damaged property is not allowed for a more intense use or at a density higher than the original lawful density except where	POLICY 4-D-1 <u>FLU-1-D-1</u>	POLICY 4-D-1 POST-DISASTER BUILDBACK POLICY: Following a natural disaster, land may be redeveloped in accordance with the Future Land Use Map or, at the landowner's option, in accordance with the following "buildback policy" begun by Lee County in 1989. This policy applies only where development is damaged by fire, hurricane or other natural disaster, and allows the following options: i. Buildings/development damaged less than 50% of their replacement cost (measured at the time of damage-can be rebuilt to their original condition, subject only to current building and life safety codes. ii. Buildings/development damaged more than 50% of their replacement cost can be rebuilt to their legally documented actual use, density, intensity, and size, and style provided the new construction complies with: a. <u>current</u> federal requirements for elevation above flood level; b. any building code requirements for floodproofing; c. current building and life safety codes; d. Coastal Construction Control Line requirements; and e. any required zoning or other development regulations (other than density or intensity), except where compliance with such regulations would preclude reconstruction otherwise intended by this policy. iii. Redevelopment of damaged property is not allowed for a more intense use or at a density higher than the original lawful density except where such higher density is permitted under this plan and the town's Land Development Codes. To further implement this policy, the town may establish blanket reductions in non-vital development regulations (e.g. buffering, open space, side setbacks, etc.) to minimize the need for individual variances or compliance determinations prior to

	such higher density is permitted under this plan and the town's land development regulations. To further implement this policy, the town may establish blanket reductions in non-vital development regulations (e.g. buffering, open space, side setbacks, etc.) to minimize the need for individual variances or compliance determinations prior to reconstruction. The Land Development Code may also establish procedures to document actual uses, densities, and intensities, and compliance with regulations in effect at the time of construction, through such means as photographs, diagrams, plans, affidavits, permits, appraisals, tax records, etc.		reconstruction. The Land Development Code may also establish procedures to document actual uses, densities, and intensities, and compliance with regulations in effect at the time of construction, through such means as photographs, diagrams, plans, affidavits, permits, appraisals, tax records, etc.
OBJECTIVE 4-E	HAZARD MITIGATION — Mitigate the potential effects of hurricanes by easing regulations that impede the strengthening of existing buildings, by encouraging the relocation of vulnerable structures and facilities, and by allowing the upgrading or replacement of grandfathered structures without first awaiting their destruction in a storm.	OBJECTIVE <u>FLU-1-E</u>	HAZARD MITIGATION — Mitigate the potential effects of <u>storm surges, flooding, sea-level rise, coastal erosion, and hurricanes</u> by easing regulations that impede the strengthening of existing buildings, by encouraging the relocation of vulnerable structures and facilities, and by allowing the upgrading or replacement of grandfathered structures without first awaiting their destruction in a storm.
POLICY 4-E-1	PRE-DISASTER BUILDBACK POLICY: Owners of existing developments that exceed the current density or height limits may also be permitted to replace for the same use it at up to the existing lawful density and intensity (up to the original square footage) prior to a natural disaster. Landowners may request this option through the planned development rezoning process, which requires a public hearing and notification of adjacent property owners. The town will approve, modify, or deny such a request based on the conformance of the specific proposal with this comprehensive plan, including its land-use and design policies, pedestrian orientation, and natural resource criteria. The Town Council may approve additional enclosed square-footage only if an existing building is being elevated on property that allows commercial uses; dry-floodproofed commercial space at ground level could be permitted in addition to the replacement of the pre-existing enclosed square footage.	POLICY 4-E-1 <u>FLU-1-E-1</u>	PRE-DISASTER BUILDBACK POLICY: Owners of existing developments that exceed the current density or height limits may also be permitted to replace for the same use it at up to the existing lawful density and intensity (up to the original square footage) prior to a natural disaster. Landowners may request this option through the planned development rezoning process, which requires a public hearing and notification of adjacent property owners. The town will approve, modify, or deny such a request based on the conformance of the specific proposal with this comprehensive plan, including its land-use and design policies, pedestrian orientation, and natural resource criteria. <u>Such development shall be deemed legally non-conforming where applicable. The Town may require that the new building be built to a higher resiliency standard as a condition to allow the non-conformity, including adherence to FEMA regulations and the Florida Building Code.</u> The Town Council may approve additional enclosed square-footage only if an existing building is being elevated on property that allows commercial uses; dry-flood-proofed commercial space at ground level could be permitted in addition to the replacement of the pre-existing enclosed square footage.
POLICY 4-E-2	COASTAL SETBACKS: To protect against future storm damage and to maintain healthy beaches,	POLICY 4-E-2 <u>FLU-1-E-2</u>	COASTAL SETBACKS: To protect against future storm damage and to maintain healthy beaches, the Town of Fort Myers Beach wishes

	the Town of Fort Myers Beach wishes to see all buildings relocated landward of the 1978 Coastal Construction Control Line. This line has been used on the Future Land Use Map to delineate the edge of land-use categories allowing urban development. Some existing buildings lie partially seaward of this line; when these buildings are reconstructed (either before or after a natural disaster), they shall be rebuilt landward of this line. Exceptions to this rule may be permitted by the town only where it can be scientifically demonstrated that the 1978 line is irrelevant because of more recent changes to the natural shoreline. The town shall seek the opinion of the Florida Department of Environmental Protection in evaluating any requests for exceptions. (Exceptions must also comply with all state laws and regulations regarding coastal construction.)		to see all buildings relocated landward of the 1978 Coastal Construction Control Line. This line has been used on the Future Land Use Map to delineate the edge of land-use categories allowing urban development. Some existing buildings lie partially seaward of this line; when these buildings are reconstructed (either before or after a natural disaster), they shall be rebuilt landward of this line. Exceptions to this rule may be permitted by the town only where it can be scientifically demonstrated that the 1978 line is irrelevant because of more recent changes to the natural shoreline. The town shall seek the opinion of the Florida Department of Environmental Protection in evaluating any requests for exceptions. (Exceptions must also comply with all state laws and regulations regarding coastal construction.)
POLICY 4-E-3	NATIONAL FLOOD INSURANCE PROGRAM: The town will continually maintain a floodplain ordinance that reduces future damage from flooding and qualifies landowners for the National Flood Insurance Program. The town shall modify its current floodplain ordinance in accordance with this comprehensive plan through measures such as: i. not counting costs of strengthening buildings as “improvements” that are limited to 50% of a building’s value; and ii. minimizing the negative effects of the 50% rule on historic buildings; and iii. adjusting the time period for calculating the 50% rule to encourage healthy redevelopment in this plan’s “Pedestrian Commercial” category; and iv. providing reasonable alternatives for determining the value of older buildings.	POLICY 4-E-3 <u>FLU-1-E-3</u>	NATIONAL FLOOD INSURANCE PROGRAM: The town will continually maintain a floodplain ordinance that reduces future damage from flooding and qualifies landowners for the National Flood Insurance Program (NFIP). The town shall modify its current floodplain ordinance in accordance with this comprehensive plan through measures such as: <u>means that encourage higher standards and strategies that will improve the Town’s NFIP Community Rating System (CRS) rating and ensure availability of flood insurance and flood insurance premium discounts for residents.</u> i. not counting costs of strengthening buildings as “improvements” that are limited to 50% of a building’s value; and ii. minimizing the negative effects of the 50% rule on historic buildings; and iii. adjusting the time period for calculating the 50% rule to encourage healthy redevelopment in this plan’s “Pedestrian Commercial” “Mixed-Use” category; and iv. providing reasonable alternatives for determining the value of older buildings.
POLICY 4-E-4	FLOODPROOFING OF COMMERCIAL BUILDINGS: Where commercial development is allowed by this comprehensive plan, full-height dry floodproofing is the most desirable alternative for providing ground-level commercial space in pedestrian areas.	POLICY 4-E-3 <u>FLU-1-E-3</u>	FLOODPROOFING OF COMMERCIAL BUILDINGS: Where commercial development is allowed by this comprehensive plan, full-height dry floodproofing is the most desirable alternative for providing ground-level commercial space in pedestrian areas.

POLICY 4-E-5	COASTAL BUILDING REGULATIONS: The town shall request state approval of an island-wide (rather than parcel-by-parcel) approach to limiting obstructions below flood elevation if this change is needed to avoid the loss of pedestrian activity near Times Square.	POLICY 4-E-5	COASTAL BUILDING REGULATIONS: The town shall request state approval of an island-wide (rather than parcel-by-parcel) approach to limiting obstructions below flood elevation if this change is needed to avoid the loss of pedestrian activity near Times Square.
OBJECTIVE 4-F	REDEVELOPMENT — Take positive steps to redevelop areas that are reaching obsolescence or beginning to show blight by designing and implementing public improvements near Times Square to spur private redevelopment there, by supporting the conversion of the Villa Santini Plaza into a pedestrian precinct, by providing an opportunity for landowners to replace vulnerable mobile homes and recreational vehicles with permanent structures in the Gulfview Colony/Red Coconut area, and by providing building code relief for historic buildings.	OBJECTIVE 4-F <u>FLU-1-F</u>	REDEVELOPMENT — Take positive steps to redevelop areas that are reaching obsolescence or beginning to show blight by designing and implementing public improvements near Times Square to spur private redevelopment there, by supporting the conversion of the Villa Santini Plaza into a pedestrian precinct, by providing an opportunity for landowners to replace vulnerable mobile homes and recreational vehicles with permanent structures in the Gulfview Colony/Red Coconut area, <u>and the proposed Arts and Theater district,</u> and by providing building code relief for historic buildings.
POLICY 4-F-1	HISTORIC BUILDINGS: The protection of historic buildings is of great importance to the town, and shall be aided by implementing the policies set forth in other elements of this comprehensive plan.	POLICY 4-F-1 <u>FLU-1-F-1</u>	HISTORIC BUILDINGS: The protection of historic buildings is of great importance to the town, and shall be aided by implementing the policies set forth in other elements of this comprehensive plan.
POLICY 4-F-2	SPECIFIC REDEVELOPMENT PLANS: This comprehensive plan anticipates substantial redevelopment over the coming years. Specific concepts have been developed for three specific areas: i. Times Square – The Estero Island CRA's plan for the Times Square area is reflected in this plan, bounded by the “Pedestrian Commercial” category at Times Square. Implementation of that plan will be on-going as discussed through this comprehensive plan and in accordance with the specific regulations provided in the Land Development Code. The Times Square redevelopment plan is described in Community Design Policies 3-D-1 through 3-D-13. ii. Villa Santini Plaza – This area is shown as “Pedestrian Commercial” on the Future Land Use Map. Existing land uses may continue. If landowners wish to redevelop part or all of this property, the following concepts shall apply: a. buildings are brought closer to the street; b. drainage has been placed underground to make room for wide sidewalks, street trees, and some	POLICY 4-F-2 <u>FLU-1-F-2</u>	SPECIFIC REDEVELOPMENT PLANS: This comprehensive plan anticipates substantial redevelopment over the coming years. Specific concepts have been developed for <u>three specific areas the Gulfview Colony/Red Coconut Village, and Santini Village.</u> i. Times Square – The Estero Island CRA's plan for the Times Square area is reflected in this plan, bounded by the “Pedestrian Commercial” category at Times Square. Implementation of that plan will be on-going as discussed through this comprehensive plan and in accordance with the specific regulations provided in the Land Development Code. The Times Square redevelopment plan is described in Community Design Policies 3-D-1 through 3-D-13. ii. Villa Santini Plaza – This area is shown as “Pedestrian Commercial” the Future Land Use Map. Existing land uses may continue. If landowners wish to redevelop part or all of this property, the following concepts shall apply: a. buildings are brought closer to the street; b. drainage has been placed underground to make room for wide sidewalks, street trees, and some on-street parking (once passive traffic calming activities have reduced speeding on Estero Boulevard);

	on-street parking (once passive traffic calming activities have reduced speeding on Estero Boulevard); c. the shopping center is reconfigured with a central green plaza and better ties to the marina to the rear; and d. off-street loading areas are provided for delivery vehicles; This redevelopment plan can only be accomplished through a public-private partnership as described in Community Design Policies 3-C-1 and 3-C-2. iii. Gulfview Colony/Red Coconut – This area is shown as “Mixed Residential” and “Boulevard” on the Future Land Use Map. If landowners wish to redevelop part or all of this property, the following concepts are encouraged, and shall form the basis for a preapproved redevelopment option in the Land Development Code: a. traditional neighborhood design emphasizing porches on the front; primary entrances visible from the street; and cars to the rear (except for on-street parking); b. detached houses or cottages (with optional accessory apartments) abutting existing single-family homes; c. low-rise townhouses or apartments allowed toward the center; d. walkable narrow streets with shade trees that double as view corridor to the Preserve and Gulf; e. substantial open space with views to be maintained from Estero Boulevard to the Gulf; f. mixed commercial and residential uses along the Bay side of Estero Boulevard; g. quiet internal street connections to the north and south; h. significantly reduced density from the existing level of 27 RV/mobile homes per acre at the Red Coconut to a maximum level of 15 dwelling units per acre; i. provision for a publicly acquired access point to the Matanzas Pass Preserve. This redevelopment plan is described in Community Design Policies 3-A-5 and 3-A- 6. Different redevelopment concepts that are consistent with this comprehensive plan may also		c. the shopping center is reconfigured with a central green plaza and better ties to the marina to the rear; and d. off-street loading areas are provided for delivery vehicles; This redevelopment plan can only be accomplished through a public-private partnership as described in Community Design Policies 3-C-1 and 3-C-2. This area is shown as “Mixed Residential” and “Boulevard” the Future Land Use Map. If landowners wish to redevelop part or all of this property, the following concepts are encouraged, and shall form the basis for a pre- approved redevelopment option in the Land Development Code: a. traditional neighborhood design emphasizing porches on the front; primary entrances visible from the street; and cars to the rear (except for on-street parking); b. detached houses or cottages (with optional accessory apartments) abutting existing single-family homes; c. low-rise townhouses or apartments allowed toward the center; d. walkable narrow streets with shade trees that double as view corridor to the Preserve and Gulf; e. substantial open space with views to be maintained from Estero Boulevard to the Gulf; f. mixed commercial and residential uses along the Bay side of Estero Boulevard; g. quiet internal street connections to the north and south; h. significantly reduced density from the existing level of 27 RV/mobile homes per acre at the Red Coconut to a maximum level of 15 dwelling units per acre; i. provision for a publicly acquired access point to the Matanzas Pass Preserve. This redevelopment plan is described in Community Design Policies 3-A-5 and 3-A- 6. j. Floor area ratios shall not exceed 1.5. k. Residential density shall allow up to 15 dwelling units per acre for redevelopment in accordance with this section. Different redevelopment concepts that are consistent with this comprehensive plan may also be proposed for
--	--	--	---

	be proposed for any of these areas through the planned development rezoning process.		any of these areas through the planned development rezoning process.
NEW	NEW	<u>POLICY FLU-1-F-3</u>	<u>WORKFORCE HOUSING DENSITY: The Town shall evaluate the implementation of a workforce housing policy to allow additional density and building heights in the mixed-use areas. To qualify, developers shall provide a minimum of 10% of workforce housing as covenanted for a minimum of 30 years unless otherwise noted in the Land Use Designations in this Comprehensive Plan. Additional building height can be achieved as an incentive for providing workforce housing on or nearby off island. The Town's Land Development Code provides the guidelines for additional building height and density.</u>

Strikethrough: Text to be removed.

Underline: Text to be added.

Town of FMB: Community Design Element

EXISTING		PROPOSED	
GOAL 1	To continually improve the appearance and functioning of transportation corridors, commercial areas, and links to natural and recreational areas.	<u>GOAL CD-1</u>	<u>GROWTH AND DEVELOPMENT</u> <u>Accommodate growth while preserving the island's beachfront character by providing an alternative growth pattern that addresses traffic congestion, promotes a compatible mix of uses and encourages a variety of housing types and affordability to rejuvenate the existing fabric of the community and community character.</u>
OBJECTIVE 1-A	ESTERO BOULEVARD — Improve the functioning and appearance of Estero Boulevard as the premier public space and primary circulation route of Fort Myers Beach.	<u>OBJECTIVE CD-1-A</u>	<u>NEIGHBORHOOD SERVING COMMERCIAL CORES</u> <u>Identify mixed-use commercial districts throughout the island that provide neighborhood serving commercial uses and lifestyle retail around clusters of residential uses.</u>
POLICY 1-A-1	Changes along Estero Boulevard should improve on the characteristics that make it a boulevard in character and not just in name: safe and interesting to walk along, impressive landscaping, and scaled to people rather than high-speed traffic.	<u>POLICY CD-1-A-1</u>	<u>MIX OF USES</u> <u>Provide a complementary mix of land uses with design characteristics that provide:</u> i. <u>Uses that meet the daily needs of residents</u> ii. <u>A variety of affordable housing types</u>
POLICY 1-A-2	The town should develop a sidewalk and streetscape plan for all of Estero Boulevard that builds on the design theme of the 1997 improvements from Times Square and to the Lani Kai. This plan should recreate the historic "Avenue of Palms" concept by adding appropriate palm trees such as coconuts on both sides between the sidewalk and new curbs. This plan should also address related needs such as parking and trolley pull-offs, and should be sufficiently detailed to estimate costs and suggest potential phases of construction. Priorities should include positive impacts on: i. stimulating revitalization consistent with the town's overall vision in this comprehensive plan ii. completing pedestrian and bike path linkages from one end of the island to the other; iii. managing traffic flow; iv. improving pedestrian crossings; including push button (demand) lights; textured materials to emphasize crossings to drivers; and covered seating areas and other "oasis" amenities at trolley stops and beach accesses;	<u>POLICY CD-1-A-2</u>	<u>CREATE THE TIMES SQUARE MIXED-USE DISTRICT.</u> <u>The Times Square Mixed-Use District is the main tourist/entertainment district which will accommodate the most growth in terms of height and density with a predominance of residential uses on the east side of Estero Boulevard and hotel lodging and commercial uses on the west side. It is the main gateway to the island. Entertainment and tourist supporting commercial uses should be clustered here to reduce the need to drive throughout the island and to encourage walking.</u>

COMMUNITY DESIGN (April 2024) pg. 1 of 12

	v. lowering construction and maintenance costs from the original design; vi. correcting drainage problems; vii. coordinating with utility undergrounding; and viii. working within new and available sources of funds. After completing that plan, the town shall establish a phased schedule of capital improvements to complete this network.		
POLICY 1-A-3	In commercial and mixed-use areas, the town shall identify specific portions of Estero Boulevard where changes in land development regulations could work towards a more coherent “framing” of the Boulevard. New regulations should accomplish the following design goals over time through infill and redevelopment: i. bringing buildings closer to the side- walk; ii. encouraging or requiring compatible means of meeting the mandatory flood elevation requirements (for example; using dry-floodproofing techniques, or designs such as the old hardware store which is built close to the street with outside steps up, but with added steps up inside to reach the flood elevation); iii. locating most parking to the rear of buildings, limiting curb cuts, and promoting shared parking areas; iv. facilitating pedestrian and bicycle access and contributing to the interconnected- ness of the circulation system; v. adopting design guidelines that encourage architecture and urbanism along Estero Boulevard that contributes to the human scale and “beach cottage character” (such as the Huston Studio or Hussey tourist information center).	Policy CD-1-A-3	<u>CREATE THE CIVIC CENTER MIXED-USE DISTRICT</u> <u>Civic Center Mixed-Use District is a commercial district with residential on the east side of Estero Boulevard and commercial on the west. A strong mixed-use core is envisioned on the east side of Estero Boulevard as a redevelopment site. The core will support a mix of housing options and neighborhood serving retail uses for the immediate residential cluster.</u>
OBJECTIVE 1-B	OTHER PUBLIC SPACES — Beautify public spaces throughout the island.	POLICY CD-1-A-4	<u>CREATE THE CENTER ISLAND MIXED-USE DISTRICT</u> <u>The Center Island Mixed-Use District will support the nearby marina uses and provide lifestyle retail uses like cafes with outdoor dining and neighborhood serving retail for the surrounding residential neighborhood.</u>
POLICY 1-B-1	Create Estero Boulevard gateways or entry features at the south end near Big Carlos Pass and near the touchdown of the Matanzas Pass bridge.	POLICY CD-1-A-5	<u>CREATE THE THEATRE & ARTS MIXED-USE DISTRICT</u> <u>The Theatre & Arts Mixed- Use District is envisioned with arts and theatre related uses like cafes, art galleries, art studios,</u>

Commented [MD1]: CIVIC CENTER

			<u>and restaurants. Existing views to the water here should be preserved.</u>
POLICY 1-B-2	Improve the appearance of the town throughout by landscaping public property and rights-of-way with native vegetation.	<u>POLICY CD-1-A-6</u>	<u>CREATE THE SANTINI VILLAGE MIXED-USE DISTRICT</u> Santini Village Mixed-Use District is the tallest and most dense district on the island with tourist supporting uses and commercial. It is also envisioned as a redevelopment opportunity with more entertainment, tourist and neighborhood commercial uses as the southern gateway to the island.
POLICY 1-B-3	Identify potential mechanisms to implement and maintain special amenities such as entry features, monuments, or other special land- scape projects.	<u>OBJECTIVE CD-1-B</u>	<u>TRANSITION ZONES AND CONSERVATION DISTRICTS</u> Create language to prevent commercial intrusion into the residential neighborhoods by providing transitions from commercial to residential uses. Use Conservation Districts to maintain the scale, massing and character of Fort Myers Beach and new construction.
POLICY 1-B-4	Monitor the effectiveness of the county's pro- gram for removing trash and debris from the beachfront and Bay accesses.	<u>POLICY CD-1-B-1</u>	<u>TRANSITION ZONES</u> New development on properties abutting single family homes and one and two story multi-family homes shall provide a building profile that matches the height of the abutting property as prescribed in the land development codes, to create an incremental transition in height.
POLICY 1-B-5	Develop a program for placing utilities underground that addresses both public and private sector development.	<u>POLICY CD-1-B-2</u>	<u>CREATE CONSERVATION DISTRICTS</u> Develop specific standards for the Conservation District. Use Conservation Districts to maintain the scale, massing and character of Fort Myers Beach and new construction. New buildings and additions should match the height and bulk of existing building form, with architectural treatments and building articulation that are consistent with the existing building vernacular.
POLICY 1-B-6	Conduct regular and adequate street cleaning (sweeping or vacuuming) throughout the town. Evaluate effective methods to keep streets and drainage systems clean despite the abundance of blown sand and the absence of curbs.	<u>OBJECTIVE CD-1-C</u>	<u>Workforce Housing Through Density and Height Bonus</u>
GOAL 2	To upgrade residential neighbor- hoods throughout Estero Island.	<u>POLICY CD-1-C-1</u>	<u>Each of the mixed-use districts may provide for additional bonus height for developments that provide a workforce housing component.</u>
OBJECTIVE 2-A	HIDDEN PATHS — Create an additional interconnected system of pedestrian and bicycle pathways throughout the island to improve mobility and promote community inter- action.	<u>POLICY CD-1-C-2</u>	<u>The Town shall determine the minimum requirements for the workforce housing component as a policy in the land development regulations.</u>
POLICY 2-A-1	The town should encourage a community- sponsored program to identify and build a system of existing and potential "hidden paths" parallel to but behind Estero Boulevard. A local foundation or community land trust	<u>OBJECTIVE CD-1-D</u>	<u>MASTER PLANNED DEVELOPMENT</u> Provide mechanisms to incentivize master planning large parcels and land assemblies for mixed-use development.

	could identify and acquire existing vacant lots or easements to gradually complete the network. These parcels could be transferred back to the town for long-term maintenance.		
POLICY 2-A-2	The town shall adopt changes to the land development regulations to allow small portions of existing lots to become a part of the hidden-path network without diminishing future uses of those lots.	<u>POLICY CD-1-D-1</u>	<u>The Town may consider and approve requests for Master Planned Developments. Assembled parcels that exceed four (4) acres can be master planned such that the applicant can propose new building scale, massing and uses from the underlying zoning.</u>
POLICY 2-A-3	The town shall ensure coordination between efforts to develop this hidden-path network and its new streetscape plan for Estero Boulevard.	<u>POLICY CD-1-D-2</u>	<u>Assembled parcels that exceed seven (7) acres must have a workforce housing and housing component to enjoy the benefits of changing the underlying zoning to be determined by the Town.</u>
OBJECTIVE 2-B	SIDE STREETS — Encourage residents to achieve a higher ambition for their residential streets, improving their walkability, comfort, beauty, inter- connectedness, and safety.	<u>POLICY CD-1-D-3</u>	<u>Assembled parcels that exceed seven (7) acres must provide a master plan for approval by the Town at a public hearing.</u>
POLICY 2-B-1	The town strongly supports the planting of regularly spaced street trees in public rights- of-way on residential streets. The selection of specific trees shall be guided by public input and the following criteria: i. amount of shade provided, especially during the summer months; ii. the amount of water and other regular maintenance that will be required (such as types of leaves, fronds, and fruit); iii. potential damage from extensive root systems or other characteristics of specific trees; iv. variety and beauty, including flowering characteristics; v. the potential for wildlife utilization; vi. a strong preference for native trees such as live oak, gumbo limbo, sea grape, cabbage palm, mastic, Jamaica dog- wood, mahogany, black olive, strangler fig, pigeon plum, and buttonwood; and vii. a prohibition on the use of invasive trees such as Australian pine, Brazilian pepper, melaleuca, and Java plum.	<u>OBJECTIVE CD-1-E</u>	<u>PRESERVING BUILDING SCALE BY ADAPTIVE REUSE OF EXISTING BUILDING STOCK</u> <u>Encourage conversions from vacation rentals and motels to condominiums to provide affordable housing options for Fort Myers Beach's workforce.</u>
POLICY 2-B-2	The town should develop a residential streets program that provides guidelines and technical assistance to neighborhoods that wish to improve their public spaces as civic projects. The program could include the following elements:	<u>POLICY CD-1-E-1</u>	<u>ADAPTIVE REUSE</u> <u>Encourage the adaptive reuse of existing structures located within mixed-use and commercial land use designations, particularly those that were originally established as motels or vacation rentals are over 50 years old, by providing</u>

	i. assistance in developing a workable approach on a street-by-street basis, consistent with the island-wide concept; ii. volunteer local arborists to provide specific advice and technical assistance; iii. assistance in preparing a planting plan for street trees; iv. financial assistance for planting street trees; v. a booklet describing the characteristics of desirable street trees for Fort Myers Beach; vi. a guidebook for tree planting, irrigation, and pruning methods; vii. a plan for short- and long-term maintenance of planted areas and street trees; viii. a current list of contact persons and a description of the process for requesting street repairs and maintenance and for reporting code violations; and ix. information on how to form a street lighting district.		<u>incentives, such as relief in the Land Development Regulations, grants to facilitate retrofitting or rehabilitation, etc.</u>
GOAL 3	To revitalize and improve specific transitional neighborhoods.	<u>POLICY CD-1-E-2</u>	<u>INCENTIVES FOR ADAPTIVE REUSE</u> <u>Develop an incentives package in the Land Development Regulations that encourage adaptive reuse of motels and vacation rentals to convert to condominiums to maintain the historic character and development pattern over time.</u>
OBJECTIVE 3-A	HEART OF THE ISLAND — Redevelop the School/Library/Bay Oaks area as the new “heart of the island.”	<u>OBJECTIVE CD-1-F</u>	<u>STREET FRONTAGES AND PARKING LOTS</u> <u>Develop policies to limit parking lots fronting main streets in the Land Development Regulations.</u>
POLICY 3-A-1	The complex of civic activities in the Bay Oaks area is a key community asset. Its access and significance would be enhanced by creating a main entryway; School Street could become a walkable palm-lined street of restored and infill cottages that announce the entry to this center of civic activity.	<u>POLICY CD-1-F-1</u>	<u>RESTRICTING PARKING AS A PRIMARY USE ON ESTERO BOULEVARD</u> <u>Parking lots shall not be encouraged as a primary use on Estero Boulevard.</u>
POLICY 3-A-2	A prominent civic structure benefits the community most when its location serves the public conveniently and when its design helps shape the surrounding public spaces and provides a new and symbolic vista from other public places.	<u>POLICY CD-1-F-2</u>	<u>RESTRICTING PARKING FRONTAGE LENGTH ON ESTERO BOULEVARD</u> <u>Parking lot frontages shall ideally be limited in size to one fourth the lot width on Estero Boulevard.</u>
POLICY 3-A-3	If the town ever decides to build a Town Hall rather than renting office space, a new building, even if modest in size, should help complete a center of public activity and should be visually prominent as a showcase of urban design.	<u>POLICY CD-1-F-3</u>	<u>PARKING STANDARDS FOR NEW DEVELOPMENT IN MIXED-USE COMMERCIAL DISTRICTS</u> <u>Within the Mixed-Use Commercial Districts, new development shall locate and design off-street parking areas in a manner that does not detract from the character by providing standards in the Land Development Regulations,</u>

			such as locating parking to rear of buildings, limiting curb cuts, and landscaping and façade requirements.
POLICY 3-A-4	A “heart of the island” plan should be prepared to coordinate the public and private actions needed to fully implement this concept, including identifying the sequence of actions, responsibilities for implementation, and potential funding sources. Initial actions should include: i. develop a design concept consistent with the new streetscape plan for Estero Boulevard, identifying approximate costs, potential funding sources, and suggested phasing; ii. refine regulations that would allow a compatible mix of uses such as residential, live-work spaces such as studios or galleries, and small-scale specialty retail uses consistent with the historic theme, including eased setback and parking regulations to accommodate the unique needs of renovations of existing and move-on cottages; and iii. prepare architectural guidelines for cottage renovations and for infill development.	<u>POLICY CD-1-F-4</u>	<u>PARKING STANDARDS IN TIMES SQUARE</u> <u>Improve the current parking situation near Times Square through the means outlined in the Transportation Element of this plan.</u>
POLICY 3-A-5	Provide in the new Land Development Code a pre-approved option for the future redevelopment of the Red Coconut/Gulfview Colony properties consistent with the town’s vision of traditional neighborhoods — neighborhoods that recreate a small-town feel; which are pedestrian and bicycle friendly with an internal circulation system that makes it possible to walk or bicycle to schools and services without always using Estero Boulevard; which retain the psychological connection and views to both the Bay and the beach; and which offer a variety of housing types and opportunity for mixed uses.	<u>POLICY CD-1-F-5</u>	<u>PARKING SUPPLY</u> <u>Evaluate parking supply needs by conducting a parking supply study and determine parking solutions including shared parking, structured parking that meets the character of the Island and parking management practices like centralized parking and offsite parking for employees.</u>
POLICY 3-A-6	In accordance with Policies 4-E-1 and 4-F-2 of the Future Land Use Element, evaluate any alternative redevelopment concepts for any portion of the Gulfview Colony/ Red Coconut properties as to the following design principles: i. retains and/or creates water views through street layout, site design, and architectural design; ii. provides a variety of housing types rather than uniformity;	<u>OBJECTIVE CD-1-G</u>	<u>DESIGN STANDARDS FOR PRESERVING BEACHFRONT CHARACTER</u> <u>Develop building design standards to preserve and enhance the existing beachfront character.</u>

	iii. locates the more durable housing types and mix of uses along the Bay side of Estero Boulevard; iv. new streets create a highly connected network which includes mid-block paths or alleys; v. streets have sidewalks and street trees; vi. local streets are interconnected from Donora and Shell Mound through to the north.		
OBJECTIVE 3-B	NEAR-TOWN NEIGHBORHOODS — Revitalize older residential areas using traditional neighborhood techniques for renovations and infill.	<u>POLICY CD-1-G-1</u>	<u>NEIGHBORHOODS AND MIXED-USE DISTRICTS</u> Maintain design standards in the Land Development Regulations for neighborhoods and districts which protect and enhance their unique character through building setbacks, building footprint, massing and scale. These can be enhanced through Conservation District language to protect the Fort Myers Beach building vernacular and encourage adaptive reuse for motels and vacation rentals.
POLICY 3-B-1	The town shall prepare and adopt land development regulations to apply to the older “near-town neighborhoods” that will encourage renovations and compatible infill development, using the following types of techniques: i. modifying lot size, setback, and parking requirements where the current regulations hinder redevelopment; ii. adding design guidelines to encourage front porches, decks, and other elements from the cottage design tradition to help frame public spaces and define private areas; iii. modifying permitted uses to accommodate quiet home offices and possibly other mixed uses; iv. modifying current limitations on the number of guests and/or length of stays to protect residential areas from excessive intrusion by poorly regulated short- term rentals.	<u>POLICY CD-1-G-2</u>	<u>ESTERO BOULEVARD</u> Continue to make improvements to Estero Boulevard in terms of the eclectic character of building design with incentives in the Land Development Regulations.
OBJECTIVE 3-C	SANTINI “MAIN STREET” — Redevelop the Villa Santini Plaza and its environs as a “Main Street” town center for the south end of the island.	<u>POLICY CD-1-G-3</u>	<u>GUIDELINES FOR BUILDING COMPATIBILITY WITH FLOOD REGULATIONS</u> Encourage or require compatible means of meeting the mandatory flood -elevation requirements (for example, using dry-floodproofing techniques, having maximum allowable floor to ceiling height that match adjacent structures especially for buildings that need to be elevated at grade level and using gradual inclines for grade changes on commercial properties.

POLICY 3-C-1	The town wishes to convert, over time, the existing Villa Santini Plaza and surrounding land from its current configuration of auto- oriented commercial uses. The desired plan would create a new "Main Street" shopping and civic center to serve residents of the south end of Estero Island and visitors to the state park on Black Island and Lovers Key (see Policy 4-F-2(ii) of the Future Land Use Element). To accomplish this goal, the town wishes to structure a public/private partner- ship agreement that provides for the following: i. outlines the public improvements necessary to implement the concept, and identifies the agencies and entities in- volved and their respective roles; ii. provides the town's design criteria to guide the preparation of the development plan by the property owners; and iii. sets forth the process for the partner- ship, identifies responsibilities, areas of commitment, timing and process, order of magnitude costs, fiscal impacts/bene- fits, and any reimbursements.	GOAL CD-2	<u>COMMUNITY CHARACTER OF PUBLIC SPACES</u> <u>Improve the physical appearance of the island's public spaces, paths, streets and streetscape to achieve a unified small town character which balances the needs of both residents and tourists.</u>
POLICY 3-C-2	The town shall adopt new development regulations for this area to bring about the desired redevelopment pattern in the Villa Santini area. Along the nearby section of Estero Boulevard, buildings being constructed or renovated shall extend closer to the street and provide front access to pedestrians and on-street parking. Internal site layouts shall be reconfigured to accommodate a central green/plaza area for overflow parking and a trolley transfer point generally consistent with the 1997 design concept pre- pared by Dover, Kohl & Partners.	OBJECTIVE CD-2-A	<u>PUBLIC SPACES AND VIEWS TO THE WATER</u> <u>Use urban design standards to reinforce walkable streets, public and private spaces and a sense of community through the public realm.</u>
OBJECTIVE 3-D	TIMES SQUARE — Stimulate the revitalization of the downtown core area (near Times Square) as the nucleus of commercial and tourist activities.	POLICY CD-2-A-2	<u>OPEN SPACE AND LAND USE</u> <u>Beautify public spaces throughout the island and preserve and protect natural areas that serve and benefit the public.</u>
POLICY 3-D-1	The town shall create a Downtown Redevelopment Agency to assist the Main Street pro- gram in revitalizing downtown as a lively, inviting, comfortable, and safe public environment.	POLICY CD-2-A-3	<u>VIEW CORRIDORS</u> <u>Maintain existing public rights-of-way that provide view corridors to water bodies and, whenever possible, provide features such as benches, landscaping, and trash receptacles to enhance the areas as pocket parks, and develop a process and criteria for identifying specific scenic resources, view corridors, and vistas that should be preserved or enhanced as new development and redevelopment occurs.</u>

POLICY 3-D-2	Downtown revitalization shall be based on the concepts in the Core Area Master Plan prepared for the Estero Island CRA Commit- tee in 1993-94, as refined during the continuing implementation of that plan. Those concepts are summarized in the following policies.	<u>POLICY CD-2-A-4</u>	<u>ENTRY GATEWAYS</u> <u>Create Estero Boulevard gateways or entry features at the south end near Big Carlos Pass and near the touchdown of the Matanzas Pass bridge.</u>
POLICY 3-D-3	Continue with sidewalk improvements: i. Standard sidewalk widths should be provided by the public sector and/or private developers in each development project as it is implemented. Consider a program for private sidewalk reservation through dedication or easement, particularly along Old San Carlos. ii. Use selected materials in public rights- of-way and private property improvements adjacent to sidewalks, such as in plazas or building setbacks. iii. Provide special design treatment (e.g. continuation of sidewalk paving patterns) at major intersections of the primary pedestrian streets to create a visual link and distinguish the pedestrian surface from the vehicular right-of- way.	<u>OBJECTIVE CD-2-B</u>	<u>STREETSCAPE</u> <u>Enhance the existing paths and sidewalks and streetscape to foster a more appealing environment for walking and biking.</u>
POLICY 3-D-4	Implement the pedestrian circulation plan: i. Complete the Bay-side sidewalk and streetscape improvements for Estero Boulevard within the Core area with underground utilities and improved sidewalks. ii. Construct sidewalks (5' wide minimum sidewalk) along all streets in the Core Area. iii. Provide a bike path along Estero Boule- vard utilizing Crescent Street to Third Street across to Old San Carlos and then connecting back to Estero Boulevard and north to Bowditch Point. iv. Promote the function of Old San Carlos as a pedestrian spine linking Times Square and the marina by implementing public sidewalks and major crosswalks designed to work in conjunction with arcades or plazas located on private property. v. Work with the private sector to establish a site for a new public pedestrian plaza at the east of Old San Carlos.	<u>POLICY CD-2-B-1</u>	<u>COMMERCIAL STREETSCAPE</u> <u>Improve the appearance of the town throughout by developing land development regulations for landscaping public property and rights-of-way with native vegetation and ensuring sidewalks are six (6) feet wide in residential zones and up to twelve (12) feet wide in mixed-use commercial districts.</u>

	vi. Provide new on-street parking and side-walk on the south side of Crescent Street. vii. Reconfigure Third and Fourth Streets with on-street parking and sidewalks on both sides of the street. viii. Coordinate all proposed improvements with the pedestrian, parking, mass transit, and traffic circulation concepts in the Transportation Element of this plan.		
POLICY 3-D-5	Improve the current parking situation near Times Square through the means outlined in the Transportation Element of this plan. Suggestions from the Core Area Master Plan include: i. Implement parking management practices that create a positive experience for visitors and business operations. ii. Encourage the private sector to build and operate expanded parking areas, using public sector assistance if needed for land assembly and regulatory relief. iii. Expand the supply of shared on-street parking with 165 new parallel and angled spaces. iv. If the new supply of parking will be inadequate and a parking garage must be built, appropriate locations would be to the rear of new storefronts facing Old San Carlos.	<u>POLICY CD-2-B-2</u>	<u>LANDSCAPE FEATURES</u> Identify potential mechanisms to implement and maintain special amenities such as entry features, monuments, or other special landscape projects through a formal landscape planning process.
POLICY 3-D-6	Design and construct streetscape improvements for Old San Carlos, Crescent Street, Center Street, and First through Fifth Street. These include on-street parking, new side-walks, buried utilities, and landscaping.	<u>POLICY CD-2-B-3</u>	<u>STREET CROSSINGS</u> Improve pedestrian crossings; including push button (demand) lights; textured materials to emphasize crossings to drivers; and covered seating areas and other "oasis" amenities at trolley stops and beach accesses that are consistent with the Manual of Uniform Traffic Control Devices and the Florida Design Manual as applicable.
POLICY 3-D-7	Continue to implement the stormwater management plan (an exfiltration system that integrates the existing storm sewer pipe system and inlets with exfiltration trenches under Estero Boulevard). Similar systems can be installed for private development under parking lots or open space.	<u>POLICY CD-2-B-4</u>	<u>RESIDENTIAL STREETSCAPE</u> Develop a landscape plan in the Land Development Regulations for residential streets. The plan should consider regularly spaced street trees in public rights-of-way on residential streets which provide adequate shade, color and interest, are low maintenance, with root systems that will not damage sidewalks, accommodate wildlife, are non-invasive.
POLICY 3-D-8	Provide technical assistance regarding dry flood proofing methods and design to individuals seeking to develop or improve their properties.	<u>POLICY CD-2-B-5:</u>	<u>RESIDENTIAL STREET PROGRAM</u> The town should develop a residential streets program to implement the landscape plan. The Program can provide:

			i. <u>assistance in developing a workable approach on a street-by-street basis, consistent with the island-wide concept.</u> ii. <u>volunteer local arborists to provide specific advice and technical assistance.</u> iii. <u>financial assistance for planting trees.</u> iv. <u>a booklet describing the characteristics of desirable street trees for Fort Myers Beach.</u> v. <u>a guidebook for tree planting, irrigation, and pruning methods.</u> vi. <u>a plan for short- and long-term maintenance of planted areas and street trees.</u>
POLICY 3-D-9	Enhance Lynn Hall Park with continuing beach renourishment, beach volleyball areas, and possibly a performance pavilion (in the southeast corner of the park next to Times Square). Include a pedestrian path linking the beach and the northern portion of Estero Boulevard.	<u>GOAL CD-3</u>	<u>CONNECTIVITY AND MOBILITY TO REDUCE TRAFFIC IMPACTS</u> <u>Plan for interconnected streets and pedestrian paths that connect to mixed-use commercial districts to enhance mobility options.</u>
		<u>OBJECTIVE CD-3-A</u>	<u>COMPLETE STREETS AND BICYCLE INFRASTRUCTURE</u> <u>Provide for comfortable streets, street grid and interconnected paths that includes designated spaces for walking, biking, cars and transit that seamlessly connect to mixed-use commercial districts.</u>
		<u>POLICY CD-3-A-1</u>	<u>INTERCONNECTED PATHS</u> <u>Create an additional interconnected system of pedestrian and bicycle pathways throughout the island to improve mobility and promote community interaction that connects to mixed-use commercial districts behind Estero Boulevard.</u>
		<u>POLICY CD-3-A-2</u>	<u>STREET CONNECTIVITY</u> <u>Preserve, enhance, and provide connectivity for the downtown character and neighborhoods while fostering complete streets initiatives. Maintain and enhance the tightly gridded, interconnected street network that facilitates the dispersal of traffic and contributes to the character of Fort Myers Beach.</u>
		<u>POLICY CD-3-A-3</u>	<u>MAINTAIN PEDESTRIAN CIRCULATION</u> <u>Maintain the pedestrian circulation plan:</u> i. <u>Bayside sidewalk and streetscape improvements for Estero Boulevard within the Core area with underground utilities and improved sidewalks.</u> ii. <u>Sidewalks (5' wide minimum sidewalk) along all streets in the Core Area.</u>

			iii. <u>Bike path along Estero Boulevard utilizing Crescent Street to Third Street across to Old San Carlos and then connecting back to Estero Boulevard and north to Bowditch Point.</u> iv. <u>Old San Carlos as a pedestrian spine linking Times Square and the marina by implementing public sidewalks and major crosswalks designed to work in conjunction with arcades or plazas located on private property.</u> v. <u>A new public pedestrian plaza at the east of Old San Carlos.</u> vi. <u>New on-street parking and side- walk on the south side of Crescent Street.</u> vii. <u>Third and Fourth Streets with on-street parking and sidewalks on both sides of the street.</u> <u>Proposed improvements with the pedestrian, parking, mass transit, and traffic circulation concepts in the Transportation Element of this plan.</u>
--	--	--	--

Town of FMB: Housing Element

Strikethrough: Text to be removed.

Underline: Text to be added.

EXISTING		PROPOSED	
GOAL 12:	To keep a wide variety of housing types available to people at all stages of their lives.	GOAL 12 <u>HOU-1</u>	To keep a wide variety of housing types available to people at all stages of their lives. <u>Encourage the availability of attainable housing options within Fort Myers Beach for residents of all ages.</u>
OBJECTIVE 12-A	GENERAL HOUSING STRATEGIES — Maintain or increase 1997 federal/ state funding levels for affordable housing; maintain an adequate supply of land to meet forecasted housing needs; and maintain current levels of on-island housing suitable for employees working within the town.	OBJECTIVE 12-A <u>HOU-1-A</u>	GENERAL HOUSING STRATEGIES — Maintain or increase 1997 federal/state funding levels for affordable housing; m <u>Maintain an adequate supply of land to meet forecasted housing needs; and maintain current levels of on-island housing suitable for employees working within the town.</u>
POLICY 12-A-1	The town shall pursue the following affordable housing strategies: i. Provide liaison and technical assistance in linking eligible activities to partnerships and governmental funding sources; ii. Encourage a variety of housing types and cost ranges through flexible provisions in the Land Development Code (see Policy 12-C-1); iii. Focus planning efforts on specific areas that are in transition, such as the near-town neighborhoods between Times Square and Bay Oaks, and reinforces the quality of existing stable neighborhoods; iv. Implement an incentive-driven regulatory system and the town's new policy regarding accessory apartments (see Policy 4-C-7); v. Promote revitalization of existing housing including historic structures (see specific programs in the Historic Preservation Element); and vi. Assist service workers to find suitable housing on the island.	POLICY 12-A-1 <u>HOU-1-A-1</u>	The town shall pursue <u>evaluate</u> the following affordable housing strategies: i. Provide liaison and technical assistance in linking eligible activities to partnerships and governmental funding sources; ii. Encourage a variety of housing types and cost ranges through flexible provisions in the Land Development Code, <u>including accessory dwelling units in single family residential areas (see Policy 12-C-1);</u> iii. Focus planning efforts on specific areas that are in transition, such as the near-town neighborhoods between Times Square and Bay Oaks, and reinforces the quality of existing stable neighborhoods; iv. <u>Consider implementation of</u> Implement an incentive-driven regulatory system and the town's new policy regarding <u>create and maintain policies on accessory apartments, pathways for hotel to condo conversions, and single family to duplex, triplex, and quadruplex as appropriate (see Policy 4-C-7);</u> v. <u>Consider development of land development codes that support and enable its aging population to remain independent and in their own home or in a non-health care environment for as long as their health allows. Development</u>

			<u>and design strategies that enable older residents to remain in their community as their housing needs change allowing accessory dwelling units, such as garage apartments and “in law” suites in all residential areas and connecting residential neighborhoods to daily commercial needs by allowing mixed-income and mixed housing types to be located close to neighborhood or commercial shopping areas, civic or cultural institutions, and parks and open space areas;</u> vi. Promote revitalization of existing housing including historic structures (see specific programs in the Historic Preservation Element); and vii. Assist service workers to find suitable housing on the island.
POLICY 12-A-2	This plan’s Future Land Use Map shall continually designate sufficient residential and mixed-use land for varying housing densities and housing types to accommodate the town’s forecasted housing needs through build-out.	POLICY 12-A-2 <u>HOU-1-A-2</u>	This plan’s Future Land Use Map shall continually designate sufficient residential and mixed-use land for varying housing densities and housing types to accommodate the town’s forecasted housing needs through build-out.
POLICY 12-A-3	The town shall help provide access to affordable housing services for its residents with special attention to the needs of its low-income and “special needs” population. i. The town shall seek an agreement with Lee County to retain the town’s standing as an eligible area for expenditures under the county’s federal and state entitlement programs, provided assurances are made that town residents received a reasonable share of these expenditures over time. Unless determined to be infeasible or undesirable, the town shall enter into a cooperative agreement with Lee County before October 1998. ii. The town shall promote the use of public-private partnerships wherever feasible to accomplish the implementation of its housing objectives. Such partnerships could include a Downtown Redevelopment Agency, non-profit housing providers, and private developers and builders. iii. Encourage local lenders to provide affordable homeownership opportunities (including needed renovations) through programs such as mortgage assistance, reduced closing costs, and lower interest rates.	POLICY 12-A-3 <u>HOU-1-A-3</u>	The town shall help provide access to affordable housing services for its residents with special attention to the needs of its low-income and “special needs” population. i. The town shall seek an agreement with Lee County to retain the town’s standing as an eligible area for expenditures under the county’s federal and state entitlement programs, provided assurances are made that town residents received a reasonable share of these expenditures over time. Unless determined to be infeasible or undesirable, the town shall enter into a cooperative agreement with Lee County before October 1998. ii. The town shall promote the use of public-private partnerships wherever feasible to accomplish the implementation of its housing objectives. Such partnerships could include a Downtown Redevelopment Agency, non-profit housing providers, and private developers and builders. iii. Encourage local lenders to provide affordable homeownership opportunities (including needed renovations) through programs such as

			mortgage assistance, reduced closing costs, and lower interest rates.
POLICY 12-A-4	The town shall strive to eliminate substandard housing conditions and improve the structural and aesthetic qualities of existing housing. The town shall identify unsafe or substandard structures and take appropriate actions to address such conditions by adopting the Standard Housing Code by 1999 and enforcing it to regulate conditions in rental housing. Emphasis shall be on renovation rather than demolition wherever possible.	POLICY 12-A-4 <u>HOU-1-A-4</u>	The town shall strive to eliminate substandard housing conditions and improve the structural and aesthetic qualities of existing housing. The town shall identify unsafe or substandard structures and take appropriate actions to address such conditions by adopting the Standard Housing Code by 1999 and enforcing it to regulate conditions in rental housing. Emphasis shall be on renovation rather than demolition wherever possible. <u>New housing shall be built to comply with the applicable Florida Building Code and FEMA standards.</u>
POLICY 12-A-5	If ever necessary, the town shall provide equitable housing for citizens who must be relocated through government action supported by federal funds consistent with Chapter 421.55 F.S.	POLICY 12-A-5	If ever necessary, the town shall provide equitable housing for citizens who must be relocated through government action supported by federal funds consistent with Chapter 421.55 F.S.
POLICY 12-A-6	The town shall update this element using a state-approved methodology after census data for the year 2000 is available and no later than the town's next scheduled evaluation and appraisal report.	POLICY 12-A-6 <u>HOU-1-A-5</u>	The town shall update this element using a state-approved methodology after census data for the year 2000 <u>2020</u> is available and no later than the town's next scheduled evaluation and appraisal report.
OBJECTIVE 12-B	NEIGHBORHOOD-SPECIFIC HOUSING STRATEGIES — This plan's vision for revitalized and stable neighborhoods shall guide neighborhood-specific strategies to upgrade the housing stock and maintain a wide range of housing types and costs.	OBJECTIVE 12-B <u>HOU-1-B</u>	NEIGHBORHOOD-SPECIFIC HOUSING STRATEGIES — This plan's vision for revitalized and stable neighborhoods shall guide neighborhood-specific strategies to upgrade the housing stock and maintain a wide range of housing types and costs.
POLICY 12-B-1	DOWNTOWN (TIMES SQUARE) — Promote new construction and rehabilitation of existing structures for compact moderate-priced housing on Crescent Street consisting of multi-family units of various sizes, targeted for yearround occupancy for persons who wish to live or work downtown, through: i. The regulatory framework and incentives provided through the redevelopment overlay zone; ii. Activities of a Downtown Redevelopment Agency (if established, see Community Design Element Policy 3-D-1) such as land assembly, provision of infrastructure (drainage, sidewalks, streetscape, undergrounding of utilities etc), and low-interest revolving loans. iii. Other measures to encourage residential uses over retail throughout the downtown area.	POLICY 12-B-1 <u>HOU-1-B-1</u>	DOWNTOWN (TIMES SQUARE) — Promote new construction and <u>redevelopment to include rehabilitation of existing structures</u> for compact moderate-priced housing on Crescent Street consisting of multi-family units of various sizes, targeted for year- round occupancy for persons who wish to live or work downtown, through: i. The regulatory framework and incentives provided through the redevelopment overlay zone; ii. Activities of a Downtown Redevelopment Agency (if established, see Community Design Element Policy 3-D-1) such as land assembly, provision of infrastructure (drainage, sidewalks, streetscape, undergrounding of utilities etc), and low-interest revolving loans.

			iii. Other measures to encourage residential uses over <u>along with</u> retail throughout the downtown area.
POLICY 12-B-2	HEART OF THE ISLAND – CIVIC CENTER — Promote the revitalization of the School Street (see Community Design Policy 3-A-4) as a walkable palm-lined street of restored and infill cottages for residential use, live-work spaces such as studios or galleries, and small-scale specialty retail uses consistent with the historic theme with retail on the ground floor and residential above. i. Prepare regulations that would allow a compatible mix of uses and would ease setback and parking requirements to accommodate the unique needs of renovations of existing and move-on cottages. ii. Provide architectural and design guidelines which illustrate cost-effective rehabilitation techniques consistent with the historic theme. iii. In partnership with the Estero Island Historic Society, seek grant funds to reduce costs of move-on and rehabilitation of historic cottages.	POLICY 12-B-2 <u>HOU-1-B-2</u>	HEART OF THE ISLAND – CIVIC CENTER — Promote the revitalization of the <u>area</u> School Street (see Community Design Policy 3-A-4) as a walkable palm-lined street of restored and infill cottages for residential use, <u>housing to age in place</u>, live-work spaces such as studios or galleries, and small-scale specialty retail uses consistent with the historic theme with retail on the ground floor and residential above. i. Prepare regulations that would allow a compatible mix of uses and would ease setback and parking requirements to accommodate the unique needs of renovations of existing and move-on cottages. ii. Provide architectural and design guidelines which illustrate cost-effective rehabilitation techniques consistent with the historic theme. iii. In partnership with the Estero Island Historic Society, Seek grant funds to reduce costs of move-on and rehabilitation of historic cottages.
POLICY 12-B-3	RED COCONUT/GULFVIEW COLONY AREA — Support the continued use of the Red Coconut/Gulfview Colony area (see Community Design Policy 3-A-5) as a pleasant home for visitors and long-term residents, and provide a pre-approved option for redevelopment as a traditional neighborhood with a variety of housing types.	POLICY 12-B-3 <u>HOU-1-B-3</u>	RED COCONUT/GULFVIEW COLONY AREA — Support the continued use of the Red Coconut/Gulfview Colony area (see Community Design Policy 3-A-5) as a pleasant home for visitors and long-term residents, and provide a pre-approved option for redevelopment as a traditional <u>mixed-use</u> neighborhood with a variety of housing types.
POLICY 12-B-4	NEAR-TOWN NEIGHBORHOODS — Revitalize the older near-town residential areas using traditional neighborhood techniques for renovations and infill (see Community Design Policy 3-B-1), using methods such as: i. Modify current regulations that have proven to be barriers to redevelopment. ii. Encourage the cottage design tradition of front porches and decks to help frame public spaces and define private areas, promoting neighborhood safety. iii. Permit quiet home offices (and possibly other mixed uses as determined appropriate). iv. Protect residential areas from intrusion by poorly regulated shortterm rentals. v. Provide access to federal and state housing programs available to income qualifying owners through Lee County's programs.	POLICY 12-B-4 <u>HOU-1-B-4</u>	NEAR-TOWN NEIGHBORHOODS <u>PRESERVATION</u> — Revitalize the older near-town residential areas using traditional neighborhood <u>smart-growth</u> techniques for renovations and infill (see Community Design Policy 3-B-1), using methods such as: i. Modify current regulations that have proven to be barriers to redevelopment. ii. Encourage the cottage design tradition of front porches and decks to help frame public spaces and define private areas, promoting neighborhood safety. iii. Permit quiet home offices (and possibly other mixed uses as determined appropriate). iv. Protect residential areas from intrusion by poorly regulated short-term rentals.

			v. Provide access to federal and state housing programs available to income-qualifying owners through Lee County's programs. vi. <u>Promote compact, walkable, neighborhoods that serve the diverse needs of both visitors and residents.</u> vii. <u>Provide for redevelopment of single-family dwellings to multifamily dwellings in the form of duplex, triplex, and quadruplexes, provided the facade is visually consistent with surrounding development.</u>
OBJECTIVE 12-C	REVISE THE CURRENT REGULATORY SYSTEM — Complete a thorough revision of the town's land development regulations by the end of 1999 to provide clear and consistent rules for development and redevelopment.	OBJECTIVE 12-C <u>HOU-1-C</u>	REVISE THE CURRENT REGULATORY SYSTEM — Complete a thorough revision of t The town's land development regulations by the end of 1999 to <u>shall</u> provide clear and consistent rules for <u>housing</u> development and redevelopment.
POLICY 12-C-1	The town's zoning and development regulations shall allow a variety of lot sizes, densities, and housing types.	POLICY 12-C-1 <u>HOU-1-C-1</u>	The town's zoning and development regulations shall allow a variety of lot sizes, densities, and housing types.
POLICY 12-C-2	Implement the town's new policy on accessory apartments in residential neighborhoods and include standards by which to measure compliance.	POLICY 12-C-2 <u>HOU-1-C-2</u>	Implement t The town's <u>land development code new policy on</u> <u>shall provide for attached and detached accessory dwelling units</u> apartments in residential neighborhoods and include standards by which to measure compliance. <u>Where permitted, the Town shall set specific standards and conditions regarding the design, size and occupancy, among other conditions as necessary, to ensure quality development and maintenance of neighborhood standards as appropriate.</u>
POLICY 12-C-3	Adopt the Standard Existing Buildings Code by 1999 (see Historic Preservation Policy 13-B-6).	POLICY 12-C-3 <u>HOU-1-C-3</u>	Adopt <u>Update/Revise</u> the Standard Existing Buildings Code by 1999 (see Historic Preservation Policy 13-B-6).
POLICY 12-C-4	The land development regulations shall include measures to implement Chapter 419 F.S. about the proper siting of group homes and foster care facilities.	POLICY 12-C-4 <u>HOU-1-C-4</u>	The land development regulations shall include measures <u>for</u> to implement Chapter 419 F.S. about the proper siting of group homes and foster care facilities.
POLICY 12-C-5	Consider (and implement as feasible) various methods to reduce the cost of constructing or rehabilitating housing, such as: i. adjusting impact fee schedules so that small units or housing designed for island employees would pay less than larger housing units; ii. supporting DCA's new "residential construction mitigation program" to help lower-income residents	POLICY 12-C-5 <u>HOU-1-C-5</u>	12-C-5 Consider (and implement as feasible) various methods to reduce the cost of constructing or rehabilitating housing, such as: i. adjusting impact fee schedules so that small units or <u>affordable or workforce housing</u> designed for island employees would pay less than larger housing units;

	retrofit their homes to increase their safety and protect their investments before a disaster occurs using low-interest loans or grants; iii. considering a bonus system to allow densities above what is normally allowed if reserved for housing in a price range affordable by low- or moderate-income residents; or iv. relaxing rules that require many sound buildings to be elevated above expected flood levels before they can be structurally improved.		ii. supporting DCA's new "residential construction mitigation program" to help lower-income residents retrofit their homes to increase their safety and protect their investments before a disaster occurs using low-interest loans or grants; iii. <u>considering Utilize a bonus system land with mixed-use designation to allow densities above what is normally allowed if reserved for housing in a price range affordable by low- or moderate-income residents; or</u> iv. relaxing rules that require many sound buildings to be elevated above expected flood levels before they can be structurally improved. v. <u>Expediting permitting and reduction of permitting fees</u>
OBJECTIVE 12-D	HISTORICALLY SIGNIFICANT HOUSING — Retain at least 90% of the town's historically significant housing for residential uses (or appropriate adaptive re-uses).	OBJECTIVE 12-D <u>HOU-1-D</u>	HISTORICALLY SIGNIFICANT HOUSING — Retain at least 90% of the town's historically significant housing <u>where appropriate</u> for residential uses (or appropriate adaptive re-uses).
POLICY 12-D-1	The town shall maintain the inventory of historic structures contained in the Historic Preservation Element.	POLICY 12-D-1 <u>HOU-1-D-1</u>	The town shall maintain the inventory of historic structures contained in the Historic Preservation Element.
POLICY 12-D-2	The town, in cooperation with the Estero Island Historic Society, will assist owners of historically significant housing in locating funds to restore or rehabilitate their homes. Assistance may be provided to move buildings if there is no other option to save the home.	POLICY 12-D-2 <u>HOU-1-D-2</u>	The town, in cooperation with the Estero Island Historic Society, will assist owners of historically significant housing in locating funds to restore or rehabilitate their homes. Assistance may be provided to move buildings if there is no other option to save the home.
POLICY 12-D-3	The town shall consider other incentives to encourage renovation of historic structures, as detailed in the Historic Preservation Element. Such incentives could include property tax relief, transfer of development rights, and below-market interest rate loans.	POLICY 12-D-3 <u>HOU-1-D-3</u>	The town shall consider other incentives to encourage renovation of historic structures, as detailed in the Historic Preservation Element. Such incentives could include property tax relief, transfer of development rights, and below-market interest rate loans.
NEW	NEW	<u>OBJECTIVE HOU-1-E</u>	<u>HOUSING AFFORDABILITY AND ATTAINABILITY -- The Town may evaluate current programs to incentivize the construction and development of affordable housing.</u>

NEW	NEW	<u>POLICY HOU-1-E-1</u>	<u>The Town shall consider implementing an inclusionary zoning ordinance, to encourage construction of affordable housing with new residential construction in its designed activity centers.</u>
NEW	NEW	<u>POLICY HOU-1-E-2</u>	<u>The Town shall continue to review financial and other incentives to assist the private sector in the provision of workforce housing including, but not limited to:</u> • <u>Temporary decreases in property tax assessment</u> • <u>Density bonuses</u> • <u>Tax increment financing (TIF)</u> • <u>Municipal land agreements (land banking and land swapping or conveyance, or rental of land)</u> • <u>Application fee reductions</u> • <u>Other financing that incentivizes the development of affordable and workforce housing</u>
NEW	NEW	<u>POLICY HOU-1-E-3</u>	<u>The Town shall aim to expedite the processing of building permits for Affordable, Attainable and Workforce Housing Units.</u>
NEW	NEW	<u>POLICY HOU-1-E-4</u>	<u>The Town may consider allowing reduced parking requirements for affordable and workforce housing.</u>
NEW	NEW	<u>POLICY HOU-1-E-5</u>	<u>The Town shall explore the creation of pre-approved designs for workforce housing in order to reduce development costs for such developments.</u>
NEW	NEW	<u>POLICY HOU-1-E-6</u>	<u>The Town shall continue to maintain an inventory of Town owned property available for use as affordable housing as required by Florida Statutes.</u>
NEW	NEW	<u>POLICY HOU-1-E-7</u>	<u>The Town shall consider opportunities for partnerships with private and public sector partners to explore the acquisition of vacant parcels and construct new single-family homes for very-low- income, and low-income households that are first-time home buyers.</u>

NEW	NEW	<u>POLICY HOU-1-E-8</u>	<u>The Town shall consider the creation of a community land trust for affordable housing, and consider mechanisms like land assembly of city-owned vacant lots to support development of affordable housing.</u>
NEW	NEW	<u>POLICY HOU-1-E-9</u>	<u>The City shall periodically evaluate minimum unit sizes in its land development regulations to determine impact on housing attainability and amend regulations as needed to enhance local housing availability and affordability.</u>
NEW	NEW	<u>POLICY HOU-1-E-10</u>	<u>To preserve diversity of housing and to prevent over proliferation of undersized units on the basis of affordable or workforce housing, the Town will consider limiting the number of microunits, defined as units between 250 and 500 square feet in size, to 15% maximum of all multifamily developments.</u>
NEW	NEW	<u>POLICY HOU-1-E-11</u>	<u>The Town shall consider incorporating into its code, workforce dwelling bonuses for development of auxiliary dwellings, residential dwellings in commercial spaces, and for affordable and workforce housing in commercial zones of the Town.</u>
NEW	NEW	<u>POLICY HOU-1-E-12</u>	<u>The Town shall consider incorporating into its land development regulations, provisions for conversion of underutilized office space into workforce housing. The Town will encourage form-based zoning in commercial, transient residential, and mixed-use areas of the Town to provide for conversions for additional housing by adopting such regulations into its land development code by 2025.</u>

COASTAL MANAGEMENT ELEMENT

GOAL CM-1 5: To keep the public aware of the potential effects of flooding, sea-level rise, hurricanes and tropical storms and to plan a more sustainable redevelopment pattern that protects coastal resources, minimizes threats to life and property, and limits public expenditures in areas subject to destruction by storms.

OBJECTIVE CM-1 5-A COASTAL PLANNING GENERALLY —Protect and enhance coastal resources through an on-going planning process that recognizes the advantages and limitations of living within a sensitive coastal environment. Enhancement of coastal resources can be measured by increased sea turtle nesting, improvements in estuarine water quality, and restoration of sand dunes. Important limitations on development in this coastal high hazard area include the existing over-concentration of people plus town, state, and federal policies against public expenditures that subsidize further private development.

POLICY CM-1 5-A-1 The town shall maintain and enforce building codes at least as stringent as required by Florida law to limit the potential damage of structures from hurricanes, tropical storms, and flooding. These codes shall include wind-resistance commensurate with the risk of a coastal environment and building elevation requirements that conform with federal laws and Flood Insurance Rate Maps.

POLICY CM-1 5-A-2 The maximum density of future residential development is limited to the densities described in the Future Land Use Element in recognition of natural hazards and existing population concentrations. For rebuilding of existing development, refer to the buildback policies under ~~Objective 4-D and 4-E~~ of the Future Land Use Element.

POLICY CM-1 5-A-3 When state funding is required for the relocation or replacement of infrastructure currently within the Coastal Building Zone, the capacity of the replacement structure shall be limited to maintaining required service levels, protecting existing residents, and providing for recreation and open space needs.

POLICY CM-1 5-A-4 Since the entire Town of Fort Myers Beach is within the coastal planning area and is designated as a coastal high hazard area, specific policies addressing historic buildings, phasing of infrastructure, limitations on development, and environmental resources are contained in other elements of this plan and are not repeated here.

POLICY CM-1 5-A-5 Due to the physical constraints of its coastal location, the Town of Fort Myers Beach commits to a future policy of no increase in the net development capacity (island-wide) that would be allowed by the Fort Myers Beach comprehensive plan.

POLICY CM-1 5-A-6 The entire town is located within the coastal high-hazard area, as shown on the Coastal High Hazard Area map ~~Figure 17~~ which is part of the adopted Future Land Use Map series (see Policy 4-B-2).

OBJECTIVE CM-1 5-B NATURAL DISASTER PLANNING — Reduce the threat of loss of life and property resulting from catastrophic storms by reducing evacuation times and improving shelter capabilities from their current levels.

POLICY CM-1 5-B-1 The town shall work to improve the capability of evacuating Fort Myers Beach when a tropical storm or hurricane threatens to strike. Specific problem areas include:

- i. County officials may be reluctant to order a county-wide evacuation even though an evacuation may be warranted for low-lying coastal areas such as Fort Myers Beach. town officials should be prepared to order a local evacuation if one is warranted.
- ii. Australian pines and other trees not native to Florida situated along evacuation routes can pose a threat to evacuation routes due to decay or shallow root systems; such trees need to be identified, pruned or removed. If feasible, the removed tree shall be replaced with a Florida native-tree, following FPL best practices Right Tree, Right place, and shall be equal in diameter at breast height (DBH) or height.
- iii. In a cooperative process with Lee County, Sanibel, and the Southwest Florida Regional Planning Council, the town shall seek to improve mainland shelter capacities including private sheltering options.
- iv. The town shall work closely with Lee County and Florida DOT to maintain or improve hurricane evacuation times and procedures, including off-island traffic bottlenecks.

POLICY CM-1 5-B-2 The town shall participate fully in the federal government's National Flood Insurance Program and seek constant improvements under the Community Rating System.

POLICY CM-1 5-B-3 The town shall encourage owners of private buildings to strengthen or otherwise protect them before severe storms strike to reduce avoidable damage to life and property. Town regulations that unnecessarily interfere with this important form of hazard mitigation shall be modified as described in Policy 4-E-3 of the Future Land Use Element.

POLICY CM-1 5-B-4 The town shall develop and adopt a storm emergency plan for preparing for, responding to, and recovering from a hurricane or tropical storm. The emergency plan shall be reviewed and updated every five (5) years in conjunction with any updates to the town's roadway level of service. Hazard mitigation recommendations of local peacetime emergency plan or interagency hazard mitigation reports shall be evaluated for inclusion in the town's plans.

POLICY CM-1 5-B-5 Capital improvements to infrastructure and facilities under the town's jurisdiction that can maintain or improve evacuation times will be identified and included in the Capital Improvements Element.

POLICY CM-1 5-B-6 The town shall maintain substantial reserve funds for emergency work that will be needed immediately following a major storm.

OBJECTIVE CM-1 5-C POST-DISASTER REDEVELOPMENT —

Plan for post-disaster rebuilding that will reduce the exposure of human life and property to future disasters and improve the community in other ways during the rebuilding process.

POLICY CM-1 5-C-1 ~~By 1999, the~~ The town in cooperation with Lee County officials shall prepare a post-disaster redevelopment plan. Such plan shall be consistent with this comprehensive plan and use the following priorities:

- i. Activities which prevent further loss of life or that minimize public health risks;
- ii. Activities which restore the basic public infrastructure and services to support the population;
- iii. Activities which prevent further damage to public or private property;
- iv. Activities which begin the rebuilding process as promptly as possible.

POLICY CM-1 5-C-2 ~~By 1998, the~~ The town shall evaluate the elevation and drainage characteristics of evacuation routes to the mainland to identify problem areas that may prematurely block evacuation. Solutions shall be sought in cooperation with agencies having jurisdiction over such facilities.

POLICY CM-1 5-C-3 Rebuilding after a natural disaster is allowed in accordance with the “buildback policy” found in ~~Policy 4-C-7~~ of the Future Land Use Element.

POLICY CM-1 5-C-4 To further coordinate the redevelopment activities proposed under this plan with state and federal floodplain management programs, the town shall pursue the following activities:

- i. Pursue all potential measures to encourage corrective and preventative measures to existing houses and businesses to increase their resistance to flooding and high winds before a disaster occurs. Examples include storm shutters; shatter- proof glass; strengthening roof attachments, floors, and walls; and minor floodproofing.
- ii. Allow non-conforming buildings to be modified provided the modifications do not increase the non-conformity to current development standards in the Land Development Regulations.
- iii. Investigate the feasibility promoting pedestrian activity in some redeveloping commercial zones by raising the existing grade of roads and sidewalks one to three feet, thus allowing adjoining commercial space to remain at ground level while reducing the required height of dry floodproofing.
- iv. Explore with the Department of Environmental Protection an alternative method of controlling building intensity seaward of the Coastal Construction Control Line. The current rule allows 20% of any single building’s frontage to be enclosed at ground level. This percentage may be too high for most parts of the town, but is too low where pedestrian zones exist or are being created. An alternative means of computing the 20% rule could better meet the state’s coastal management goals and the town’s revitalization program.

POLICY CM-1 5-C-5 New publicly funded buildings within the town shall be designed to withstand major storms and be able to serve as shelters/operation centers for emergency personnel. New public buildings shall comply with State and FEMA requirements, and be encouraged to pursue LEED accreditation.

POLICY CM-1 5-C-6 Design new and replacement infrastructure to minimize damage caused by flooding and high winds:

- i. Power lines shall be relocated under-ground whenever possible.
- ii. Water and sewer systems should eliminate infiltration of flood waters and be designed to function with auxiliary power when needed.
- iii. Roads should be designed to manage minimum levels of flooding and be located where least susceptible to storm damage.

POLICY CM-1 5-C-7 Continue to inventory buildings that are repeatedly damaged by flood waters to identify those that have recorded one or more National Flood Insurance Program (NFIP) flood losses of \$1,000 or more since 1978. Buildings identified as a repetitive loss by FEMA since 1978

shall be demolished and shall be permitted to be reconstructed under the town's build back policy, or current regulations.

OBJECTIVE CM-1 5--D BEACHES AND DUNES — Conserve and enhance the shoreline of Estero Island by protecting natural areas, increasing the amount of dunes, renourishing beaches to counter natural erosion, and reducing negative man-made impacts on beaches and dunes.

POLICY 5-D-1 The town's policies on shoreline protection measures shall be as follows (see also Objective 5 and related policies in the Conservation Element of this plan):

- i. Beach renourishment will be necessary along much of the Gulf beach. The long-term recreational and economic benefits will offset the cost. The town shall work closely with Lee County, which has agreed to take the lead role in carrying out this important activity. All practical measures shall be taken to ensure that beach renourishment improves sea turtle nesting and migratory bird nesting habitats rather than interfering with it. Public access to existing and renourished beaches is an important priority of the town of Fort Myers Beach.
- ii. Sand dunes should be protected and recreated wherever they have been removed. Native dune plants should be protected and non-native exotics removed. Dune walkovers should be constructed where they do not exist and existing structures should be maintained.
- iii. The use of vehicles on any part of the beach should be severely limited in accordance with Conservation element Policy 6-E-4(iv).
- iv. Buildings and other structures should be located as far away from the shoreline and dune system as possible since the beach is a constantly changing environment. Beachfront development shall be protected from coastal erosion, wave action, and storms by vegetation, setbacks, and/or beach renourishment rather than by seawalls or other hardened structures which tend to hasten beach erosion, interfere with public access, and block sea turtle nesting.
- v. Development (other than minor structures) shall not be allowed seaward of the 1978 Coastal Construction Control Line. Development seaward of the 1991 Coastal Construction Control Line may be permitted provided it complies with this comprehensive plan and all state and local permitting requirements.
- vi. Where buildings are threatened by erosion that cannot be reversed by major beach renourishment, the town's priorities are (1) to allow the structure to be moved away from the beach; (2) to allow emergency renourishment (including the use of trucked-in sand); and (3) to allow rip-rap only when the previous priorities are not possible. Existing seawalls on the beach may be maintained or removed but not rebuilt.
- vii. The absolute last resort for shoreline protection is the use of hardened structures (except that terminal groins may be permitted at inlets if acceptable to state and federal permitting agencies). New beachfront buildings requiring seawalls for protection from coastal erosion shall not be permitted.
- viii. Fish kills resulting from Red Tide and other harmful algal blooms have a negative impact on the town's shoreline. The town shall manage removal and remediate impacted shoreline for the continued enjoyment of residents and visitors. The town shall collaborate with local, state, and federal agencies, coalitions, and nonprofit

organizations to support policies/programs that address the impacts of harmful algal blooms that impact the town's shoreline.

OBJECTIVE CM-1 5--E ACCESS TO THE WATER — ~~Increase the number of well-maintained~~ Improve accesses to beaches, bays, and navigable waters to serve the existing and future population and visitors.

POLICY CM-1 5--E-1 Ensure the continued maintenance of existing beach access points, currently provided by Lee County with funds from the Tourist Development Council.

POLICY CM-1 5--E-2 Evaluate the need for expanded parking areas and the potential for revenue generation from metered parking as a funding source for additional public access amenities.

POLICY CM-1 5--E-3 The town encourages Lee County to continue its program of improving beach access points that are not currently marked.

POLICY CM-1 5--E-4 The town shall identify any water access points that are hidden, fenced off, or blocked by encroachments, and then ensure that appropriate public access is restored. Wayfinding shall be encouraged to be provided at key locations in town to identify and promote use of beach access points.

POLICY CM-1 5--E-5 The town shall attempt to acquire one or more beach access points at the southern end of the island.

POLICY CM-1 5--E-6 The town shall monitor the effectiveness of its ordinances regulating water activities (vessel control, water safety, personal watercraft, and parasailing), and install manatee habitat education signs at waterfront locations. In cooperation with providers and citizens, develop a program of education, interagency cooperation for enforcement, and additional regulation as needed to protect the coastal waters and the safety and welfare of residents and visitors.

POLICY CM-1 5--E-7 This plan minimizes the potential for land use conflicts between waterfront uses and other land uses through the following priorities for development/ redevelopment of the shoreline:

- i. Intense multi-family uses are limited to areas vested by previous regulations; to the rebuilding of existing sites following a natural disaster (~~see Policy 4-D-1~~); and to voluntary rebuilding of existing sites in accordance with the Future Land Use Element.
- ii. Future development or redevelopment of shoreline land uses must ensure compatibility with surrounding lands and provide proper buffering where needed.
- iii. ~~In determining applicable land uses for a site, priority~~ Site, priority shall be given to water dependent land uses in the following order:
 - Conservation uses
 - Water-dependent uses such as marinas which are available for use by the general public;
 - Recreational uses; and
 - Other uses that are compatible with the surrounding neighborhood.

OBJECTIVE CM-1 5--F HARBOR PLANNING — Initiate a cooperative planning process for Matanzas Pass and surrounding waterways ~~by 1998~~.

POLICY CM-1_5--F-1 The town shall take an active role in initiating and participating in the planning process for Matanzas Pass and nearby waters ~~envisioned by Policy 94.6.3 of the Lee County Comprehensive Plan~~. This process would be conducted by a new entity charged with both planning and implementation. This entity would have the following characteristics:

- i. Balanced representation of competing interests such as local governments, recreational and commercial boating interests, and regional/state/federal agencies with jurisdiction over these waters;
- ii. A commitment to address and resolve competing interests for use and protection of these water, including commercial fishing and shipping, recreational boating, public anchorage, environmental protection, and protection of other shoreline users; and
- iii. The process will be public to seek the active support of all interests so that this planning process can be the first step to- wards long-term cooperation and protection of these valuable resources.

RECREATION AND OPEN SPACE ELEMENT

OBJECTIVE ROS-1-B: PUBLIC ACCESS AT BEACHES AND BAYS

Increase the number and quality of public access points to the Gulf beaches and Estero Bay, parks and natural preserves.

POLICY ROS-1-B -BG-1: Beach Access

Maintain or improve existing levels of beach and bay access which provide for the continued maintenance of existing beach access points, and evaluate the need for more parking.

POLICY ROS-1-B-2: View Corridors

The town shall aim to preserve and enhance publicly-owned view corridors to the beach and water, and encourage additional preservation of scenic vistas on private property, when possible.

POLICY ROS-1-B G-3: Great Calusa Blueway

Support and participate in Lee County's "Great Calusa Blueway" paddling trail by making convenient links between the trail and the town's environmental, cultural, and historical points of interest.

POLICY ROS-1-B G-4: Beach Access to Mound House and Mantanza's Pass Preserve

~~Acquire one or more beach access points at the southern end of the island in addition to acquiring the Newton estate~~ Specifically provide enhancements for beach access and paddling trail points at Mound House and Mantanza's Pass Preserve for additional public access to the beach. ~~and as a mid-island interpretative facility and rest area for the "Great Calusa Blueway" and the natural walking trail that is provided by the continuous beachfront along Estero Island.~~

OBJECTIVE 10-E POLICY ROS-1-B-5: Natural Preserves

Enhance public access to the town's nature preserve areas, while ensuring their ecological sustainability and providing for their long-term maintenance.

~~POLICY 10-B-4-1 MATANZAS PASS PRESERVE Prepare for the transition of the long-term maintenance responsibility of the Matanzas Pass Preserve from Lee County in accordance with Conservation Policy 6-B-3.~~

POLICY ROS-1-B -6-E-2-: Little Estero Island Critical Wildlife Area and Mantanza Pass Preserve

Enhance access for the public enjoyment and protection of the areas.

~~POLICY 10-B-4-3 OTHER NATURAL PRESERVES — Establish a citizen task force to evaluate opportunities to designate additional open spaces and natural preserves, and to identify potential funding sources including grants and a 3% utility tax.~~

POLICY ROS-1-B-7: OBJECTIVE 10-B Bowditch Point Park

~~Enhance the natural resources at Bowditch Point Park~~ Increase accessibility for recreational purposes by:

- i. ~~Actively promote alternate means of access to Bowditch Point Park such as electric trams and more~~ frequent and free trolley service, and especially the construction of public docks on the Bay side for private boats and a water taxis stop. Actions to support these activities shall include appropriate changes to the Land Development Code, any required rezoning's, and formal requests for funding to Lee County, and may also include further public transit subsidies or financial support for dock construction.
- ii. ~~POLICY 10-B-3 If requested by Lee County, consider the costs and benefits of assuming management responsibility for Bowditch Point Park while ensuring its~~ ensure continued accessibility to visitors from throughout the county and beyond.
- iii. ~~POLICY 10-B-4 Encourage and support~~ Lee County to provide additional on-site parking for the general public at Bowditch Point (in addition to the existing spaces for the handicapped) by adopting an appropriate resolution of support by the town council and by granting the required zoning changes.

POLICY ROS-1-B-8 -F-1 Linking Mound House to Great Calusa Blueway

Link the Mound House ~~Site facility~~ to other cultural and recreational points of interest by providing appropriate dockage to serve the Great Calusa Blueway paddling trail and water taxis as well as links to bike and pedestrian paths.

POLICY ROS-1-B-9: Wayfinding

Increase public awareness of available recreation opportunities through signage on roadways, at park entrances, and within large parks.

~~-F-3 Acquire the beachfront estate of James and Eleanor Newton and operate it as a small community park with close links to the paddling trail in Matanzas Pass, the pedestrian and bicycle facilities on Estero Boulevard, and the adjoining public beach.~~

OBJECTIVE ROS-1-C: SUSTAINABILITY

Develop policies to promote sustainability in the parks.

POLICY ROS-1-C-1 OBJECTIVE 10-A Lead Efforts to Improve Natural Areas

Assume a leadership role with other agencies to improve the viability of the natural areas around the town as an integral part of a comprehensive recreational system. Measures of success may include public acquisition of additional beachfront land; designation of canoe trails or water shuttle service linking Fort Myers Beach to

surrounding natural resources; ~~for the successful implementation of a plan for the coordinated use and protection of Matanzas Pass.~~

POLICY ROS-1-C-1 A-1 Marine Task Force

Expand the purview of the town's Marine Resources Task Force to include the sustainability of recreational use of marine resources. ~~along with the activities described in Conservation Policy 6-A-4.~~

POLICY 10-C-5A-4 ~~Promote the use of a water shuttle to link the components of the town's recreational system without adding traffic on the roads.~~

POLICY ROS-1-C-2 A-5 Public Land Acquisition to Meet Sustainability Priorities

Support the following priorities for public land acquisition outside the town's boundaries:

- i. Land that will contribute to the sustainability and enhancement of the comprehensive recreation system;
- ii. Land that can provide opportunities for public appreciation of environmental and archaeological resources;
- iii. Land that will provide additional beach access (such as Bunche Beach) for visitors who cannot reach Fort Myers Beach due to congested roads.

POLICY ROS-1-C-3 Eco/heritage Task Force

Establish a task force on eco/heritage tourism to develop and implement the town's "eco/heritage" program. The task force would work closely with Marine Resources Task Force to advise the town on appropriate components of the statewide plan of the Governor's Advisory Committee on Eco-Heritage Tourism where adopted.

~~POLICY 10-C-11 Encourage Lee County to plant native shade trees at Bowditch Point and~~

~~control the spread of invasive exotic vegetation such as Australian pines~~

~~to improve wildlife habitat and enhance opportunities for bird watching. If~~

~~the Australian pines are destroyed by high winds, the town encourages~~

~~their re-placement with native shade trees. This encouragement may be~~

~~expressed by resolution of the town council if requested by Lee County.~~

POLICY ROS-1-C-4: Florida Friendly and Native Plants

Use Florida Friendly and native plants in all parks and open spaces to the greatest extent possible.

OBJECTIVE 10-~~1~~ROS-1-D: Implementation and Coordination— Provide a Maintain a comprehensive and cost-effective recreational system that meets the future needs of Fort Myers Beach.

~~POLICY 10-D-1~~ Demonstrate through the annual budget and five-year Capital Improvements Program that the park and recreation standards of this plan are being met.

POLICY ROS-1-D-1 ~~10-D-4~~: Coordinating Funding Sources

The town shall work with the county, surrounding jurisdictions, state and federal agencies, non-profit organizations, national, state and local land trusts, private organizations and corporations, and other groups to identify funding sources and mechanisms and to structure partnerships to implement the policies of this Recreation Element.

POLICY ROS-1-D-2 ~~10-D-2~~ Cost Sharing Mechanisms

Promote a cooperative effort among the town, Lee County, city of Sanibel, and other counties and regional agencies to develop cost-sharing mechanisms for improvements needed to improve the experience of visitors.

POLICY ROS-1-D-3 ~~10-D-3~~ Adequate Private Recreational Facilities for New Development

The town shall require through its development regulations that major redevelopment activities include adequate private recreational facilities for their residents.

POLICY ROS-1-D-4 ~~10-D-4~~: Maintenance

Ensure a high level of maintenance and facility development to preserve and enhance quality of parks and recreational facilities.

POLICY ROS-1-D-5 ~~10-D-5~~: Matanzas Pass

Maintain ~~initiating~~ a cooperative planning process for Matanzas Pass and surrounding waterways. ~~by 1998.~~

POLICY ROS-1-D-6: ~~10-D-6~~ Agency on Bay Management

Actively participate in the Agency on Bay Management and the Southwest Florida Regional Harbor Board.

OBJECTIVE ROS-1-E: Monitoring

The following measures shall be used to monitor the achievement of the objectives in the Recreation and Open Space Element:

- The number of projects and amount of funds expended for the acquisition

and protection of the Town's beaches for preservation and increased public access.

- Achievement of the LOS standard.
- Comparison of park acreage from 2022 to 2029.
- The number of interagency partnerships, school agreements and interlocal agreements.
- The implementation status of strategies to maintain and increase public participation in park planning, construction, and operational issues, and to increase the public's awareness of recreational opportunities.
- Implementing ADA accessibility requirements in Publicly owned park space.

TRANSPORTATION ELEMENT

GOAL ~~7~~ T-1: To improve ~~peak-season~~ mobility without reducing the permeability of Estero Boulevard to foot traffic or damaging the small-town character of Fort Myers Beach. The town seeks to reduce speeding, improve evacuation capabilities, and improve mobility through balanced transportation improvements such as a continuous system of sidewalks and bikeways, a network of trolleys and water taxis linked to off-island systems, and parking options matched to road capacity.

OBJECTIVE T-17-A DEFINING THE PROBLEMS — Through this plan, the Town of Fort Myers Beach will address its three major transportation problems: congestion (by supporting public transit and pedestrian improvements), parking (by improving public parking near Times Square), and speeding (through passive traffic calming on Estero Boulevard).

POLICY T-17-A-1 CONGESTION: ~~Every winter~~ During peak times Estero Boulevard can ~~becomes so~~ crowded that traffic backs up, sometimes for miles in both directions. Much of this congestion is caused by visitors, who will continue to frequent the beaches regardless of development levels on Estero Island. Despite the road congestion, the town welcomes visitors and intends to provide mobility alternatives as described in this plan.

POLICY T-17-A-2 PARKING: Even though existing parking lots are not used to capacity, parking is not abundant at Fort Myers Beach. ~~The welcome rebirth of commercial activity near Times Square will increase the demand for parking.~~ The Town of Fort Myers Beach will address parking shortages through the methods outlined in this plan.

POLICY T-17-A-3 SPEEDING: Despite the virtual crawl of traffic on parts of Estero Boulevard, speeding is also a problem. ~~If motorists didn't speed on Estero Boulevard, many more people would get out of their own cars.~~ The town will protect the pedestrian environment along Estero Boulevard and will ~~not widen travel lanes or discourage~~ encourage safe pedestrian movement across the boulevard and throughout the Town.

OBJECTIVE T-17-B CONVENTIONAL SOLUTIONS — The usual response to traffic congestion is widening roads or building alternate routes. Estero Island's long narrow shape, frequent navigable canals, sensitive environmental, and highly urbanized character preclude these solutions. Congestion management at Fort Myers Beach must aim to reduce delay and improve safety, not just for motorists but for pedestrians and bicyclists as well.

POLICY T-17-B-1 DELAY AND SAFETY: The town recognizes that many efforts to reduce delay and improve safety for motorists have the opposite effect on pedestrians. Creative solutions will be required to address both concerns, particularly for pedestrians.

POLICY T-17-B-2 WIDENING: Under no circumstances shall conventional four-laning of Estero Boulevard be considered as a desirable means of improving traffic circulation on Estero Island.

POLICY T-17-B-3 IMPROVEMENTS TO ESTERO BOULEVARD: The Town of Fort Myers Beach shall initiate additional pedestrian and streetscape improvements along Estero Boulevard beginning in 1999, and shall negotiate with Lee County for the turnover of responsibility for its maintenance if necessary to carry out these improvements or to further other town policies.

OBJECTIVE T-17-C EVACUATION ROUTE — Estero Boulevard's critical function as the sole evacuation route for Fort Myers Beach shall be considered in all planning and development activities.

POLICY T-17-C-1 EVACUATION CAPACITY: Evacuation routes do not need to be designed as high-speed roadways. The critical factor is the total number of cars that can evacuate in a given period of time. The town shall evaluate all efforts by Lee County or by the town to reduce speeding on Estero Boulevard during the design phase to ensure that these efforts will not hinder an effective evacuation.

POLICY T-17-C-2 FLOODING: The town shall analyze actual flooding of evacuation routes ~~that occurs due to tropical storms or hurricanes~~, and shall initiate physical improvements that can avoid future flooding at those locations.

OBJECTIVE T-17-D VARIETY OF TRAVEL MODES — The Town of Fort Myers Beach shall make efforts every year to improve mobility for its residents and visitors, striving for a balanced transportation system that allows safe movement ~~even during peak periods of traffic congestion of pedestrians and vehicles~~. These efforts may include further subsidies to improve the trolley system, the use of impact fees to improve sidewalks, and creation of critical links on the hidden-path system.

POLICY T-17-D-1 ARRIVE WITHOUT A CAR: Fewer vehicles would be driven to Fort Myers Beach if scheduled airport shuttle service were available. The town shall encourage this service and the designation of a central drop-off point that could include a trolley stop and taxi stand.

POLICY T-1-D-2 REDUCE NEED OF CAR: Promote compact development, enhance pedestrian realm, and promote modes of transportation other than single occupancy vehicles.

POLICY T-1-D-3 OFF-ISLAND PARKING: Work with Lee County to secure off-island land for the purposes of extended parking. Continue to encourage or incentives visitors to park off the island to reduce number of vehicles.

POLICY T-17-D-24 IMPROVE TROLLEY SERVICE: Trolley ridership increases when service is more frequent and when fares are low or free, yet no long-term funding or operational plan has been developed for providing higher service levels. Practical measures to improve trolley usage include:

- i. Recurring subsidies from tourism sources so that service can be enhanced and congestion minimized during heavy seasonal traffic;

- ii. Pull-offs at important stops along Estero Boulevard so that passengers can safely board and traffic is not blocked excessively; these pull-offs could be built during other improvements to Estero Boulevard or required by the Land Development Code during the re-development process.
- iii. Clear signs at every stop with full route and fare information;
- iv. Bus shelters at key locations, with roofs, benches, and transparent sides;
- v. Replacement of the existing trolley buses with clean-fuel vehicles so that businesses won't object to having trolleys stop at their front doors; and
- vi. Accommodation of the special needs of the transportation disadvantaged.

POLICY T-17-D-35 ALTERNATE TRAVEL MODES: The town shall support alternatives to car travel to free up road capacity for trips that do require a car. Public funding sources shall include county/state gasoline taxes and road impact fees. The town shall modify its road impact fee ordinance by 1999 to allow these fees to be spent (within legal limits) on capital improvements that relieve road congestion, such as better sidewalks, trolley improvements, and off-island parking areas. ~~The town seeks to at least double the usage of the trolley system by the year 2001 (from its 1996 total ridership level of 238,754).~~

POLICY T-17-D-46 ENCOURAGE WATER TAXIS: Fort Myers Beach has great potential for water transportation, with its canals, natural waterways, and high levels of tourism. To encourage the private sector to provide this service, the town shall ease regulations that require a water taxi to provide dedicated parking spaces at every stop and shall encourage restaurants, motels, and marinas to provide dockage for water taxis. Where possible, water taxi drop-off sites should avoid areas of high manatee concentration, or use protective measure such as propeller guards, jet propulsion, or electric motors.

POLICY T-17-D-57 HIDDEN-PATH SYSTEM: The town shall support the creation of a quiet network of "hidden paths" running on the Bay side parallel to Estero Boulevard. This network would provide an alternative to walking and cycling along Estero Boulevard (as described further in the Community Design Element). ~~Initial land acquisition shall begin in 1999.~~

T-1-D-8 Coordination with Lee County: The town shall collaborate with Lee County to expand the LeeTran route on Estero Island.

OBJECTIVE T-17-E UPGRADE ESTERO BOULEVARD — As part of its ~~congestion-avoidance strategy to enhance pedestrian amenities and reduce the use of single occupancy vehicles~~, the town shall methodically upgrade Estero Boulevard to reduce speeding and encourage walking, as higher traffic speeds and car-oriented businesses are antithetical to its pedestrian character. ~~(If a suitable partnership to this end cannot be achieved with Lee County, the town may consider taking on maintenance responsibility for Estero Boulevard.)~~

POLICY T-17-E-1 TIMES SQUARE STREETSCAPE: The town shall ~~begin work by 1999~~ toward extending southward the curbs, colorful sidewalks, and street trees installed by the Estero Island CRA in 1996. Similar side- walks should be placed on both sides of Estero Boulevard as far south as the public library, including drainage, lighting, and trolley improvements. ~~Unspent funds from the Estero Island CRA should be sought from Lee County toward this end.~~ Generous urban sidewalks should also be built in the future around the Villa Santini Plaza as part of its redevelopment (as described in the Community Design Element).

POLICY ~~T-17-E-2~~ TRAFFIC CALMING: The town shall support two types of traffic calming to reduce speeding, which endangers lives and diminishes the quality of the pedestrian environment of Fort Myers Beach:

- i. The first is “active” or traditional traffic calming along residential streets, using physical techniques such as speed humps, narrowed lanes, landscaping, traffic diverters, jogs, or traffic circles at intersections, ~~where appropriate.~~
- ii. Preferred method is ~~The second is~~ “passive” traffic calming along Estero Boulevard, to control speeding without reducing the number of vehicles that can use the road. Techniques include full curbs and sidewalks separated by street trees; buildings nearer the road; interesting vistas for drivers; and avoidance of overly wide travel lanes or intersections.

POLICY ~~T-17-E-3~~ BUILDINGS CLOSE TO THE STREET: ~~Where pedestrian levels are high, buildings~~ Buildings should adjoin the sidewalk rather than be separated by parking spaces. Front walls of stores, offices, and restaurants should have large windows rather than blank walls, preferably shaded by awnings or canopies. Access to parking areas shall be off side streets wherever possible. The town’s Land Development Code shall implement these concepts ~~beginning in 1999.~~

POLICY ~~T-17-E-4~~ SIDEWALKS AND BIKEWAYS: The town shall work toward major expansion of sidewalks and bikeways. In addition to the next phase of Estero Boulevard sidewalks (see Policy 7-E-1 above), the town shall support the following projects:

- i. Support Lee County’s imminent plans to fill the gaps from Buccaneer to Estrellita Drive and from the Villa Santini Plaza to Bay Beach Lane using federal funds;
- ii. Initiate extensive improvements ~~by 1999~~ to Old San Carlos and Crescent Street in conjunction with parking improvements (see Policy ~~T-1-F-2~~ ~~7-F-2~~);
- iii. Initiate engineering studies ~~by 1999~~ for bikeways and additional sidewalks on the second side of Estero Boulevard and improved pedestrian crossings, including consideration of a pedestrian overpass at Times Square.

OBJECTIVE ~~T-17-F~~ OPTIMIZE THE PARKING SUPPLY — Off-island parking facilities served by convenient public transportation should be provided to meet peak-season demands. For year-around demand, the town shall provide additional on-island public parking spaces, based in part on a new peak- season occupancy survey of existing public parking spaces.

POLICY ~~T-17-F-1~~ ENCOURAGE SHARED PARKING LOTS: Parking lots serving a variety of land uses require much less space than separate on-site lots for each business. Shared lots waste less land and encourage walking because businesses aren’t separated by large parking lots. The town shall encourage shared parking lots when businesses are relatively small, are clustered together, and have different busy periods.

POLICY ~~T-17-F-2~~ SHARED PARKING NEAR TIMES SQUARE: The town shall strive to alleviate parking congestion and enhance accessibility for visitors and residents near Time Square by supporting or encouraging the development of shared parking facilities or a parking garage.

~~The Estero Island CRA recommended a reservoir of shared parking behind businesses along Old San Carlos and adding 165 on-street parking spaces near Times Square (although some of these spaces would merely replace spaces lost to new recreational facilities at Lynn Hall Park). The town shall investigate the feasibility of this concept in 1998-1999 and proceed toward implementation, or create an alternate plan that may include a parking garages near Times Square.~~

POLICY ~~T-17-F-3~~ BETTER PARKING LOTS: Large parking lots or garages are usually more cost-efficient to build and maintain, but may not be the best solution for Fort Myers Beach. Disadvantages of large lots include high capital costs; the possibility of providing more parking than is needed or can be handled by the road system; and the unsightliness of most large parking lots and garages.

POLICY 7-F-4 DIRECT VISITORS TO AVAILABLE PARKING: Many visitors are unaware of existing parking lots; others would be dissuaded from driving if they were aware of the shortage of parking. Variable message signs can aid both situations. The town should encourage Lee County and FDOT to install these signs with information about all major parking areas, including the state park at Lovers Key.

OBJECTIVE ~~T-17-G~~ THE FUTURE OF THE BRIDGES — Match bridge capacity to Estero Island with the capacity of Estero Boulevard.

~~POLICY 7-G-1 ADEQUACY OF THE SKY BRIDGE: There is little evidence that traffic congestion at Fort Myers Beach is caused by any inadequacy of the Matanzas Pass Sky Bridge, which unlike Estero Boulevard has no interference from intersecting streets, parking spaces, or pedestrians crossing the street.~~

POLICY ~~T-1-G-1~~ 7-G-2 CHANGES TO THE SKY BRIDGE: If parking lots at Bowditch Point or Times Square greatly increase demand for north-bound turns at the foot of the bridge, striping a third lane on the existing bridge might be considered, as might a reversible third lane during the peak season.

POLICY ~~T-1-G-2~~ 7-G-3 RESPONSIBILITY FOR THE SKY BRIDGE: FDOT may be willing to turn over responsibility for the Sky Bridge to the Town of Fort Myers Beach. This would be advantageous to the town only if part of a congestion management system with peak-period tolls, off-island parking lots, and improved mass transit .

POLICY ~~7-G-4~~ ADDITIONAL BRIDGE CAPACITY: Additional bridge capacity should not be directed to Times Square (except for the potential re-striping in Policy-~~7T-1-D-2~~). New lanes to Old San Carlos or Crescent Street would also be undesirable, as most congestion is caused by conditions on Estero Boulevard south of Times Square. Previously proposed bridges from Winkler Road or Coconut Road are infeasible from environmental and financial standpoints and need not be considered further.

OBJECTIVE ~~T-17-H~~ EXPERIMENT WIDELY — The town shall constantly search for innovative solutions to long-standing traffic problems and to new problems as they develop, and shall

coordinate its efforts with those of the Lee County Metropolitan Planning Organization. The town shall serve as a catalyst for traffic engineering experiments that would evaluate minor improvements that might improve traffic flow at Fort Myers Beach. Some potential improvements are described in the following policies.

POLICY T-17-H-1 PEDESTRIAN OVERPASSES: Although pedestrian overpasses are often ignored by pedestrians, an overpass providing a panoramic view of the Gulf might be attractive enough to reduce at-grade crossings at Times Square without discouraging foot traffic in this highly congested area. Even without an overpass, the pedestrian-actuated stop light may be replaceable with a flashing caution light to minimize effects of the crossing on traffic flow.

POLICY T-17-H-2 SAN CARLOS BOULEVARD: The five-laning of San Carlos Boulevard has created severe problems near the approach to the Sky Bridge. Creative experiments are needed to discourage drivers from using the right-hand lane, or side streets on San Carlos Island, to bypass the line of cars waiting to enter the bridge.

POLICY T-17-H-3 RESERVED

POLICY T-17-H-4 VARIABLE MESSAGE SIGNS: These signs could advise motorists of congestion delays as well as available parking. The town should urge the detailed study of this concept by Lee County, FDOT, and the Metropolitan Planning Organization.

POLICY T-17-H-5 ORIGIN/DESTINATION DATA: Better data is needed on the origins and destinations of motorists during the peak season, and the town supports the MPO's efforts to obtain this data.

POLICY T-17-H-6 TRANSPORTATION DEMAND MANAGEMENT: This part of a congestion avoidance strategy reduces the number of single-occupant vehicles during peak traffic periods, either by eliminating some trips completely, or by accommodating existing trips in fewer vehicles, or by moving some trips before or after the most congested periods. This strategy may alleviate peak-season traffic congestion if implemented aggressively in cooperation with area businesses.

POLICY T-17-H-7 DELIVERY VEHICLES: To avoid interference with traffic and pedestrian flow, the town shall develop a strategy to limit commercial deliveries during peak traffic periods. Redevelopment plans shall require loading plan with preference to off-street loading. No on-street loading permitted on Estero Blvd.

POLICY T-17-H-8 FLOODING: During periods of minor flooding, the town shall monitor the performance of roadside drainage systems on and off Estero Island to identify areas where an evacuation could be prematurely halted.

POLICY T-17-H-9 PROFESSIONAL ASSISTANCE: The town may wish to retain a creative traffic engineer to provide advice on these experiments on a continuing basis.

POLICY T-17-H-10 CONNECTIONS TO ESTERO BOULEVARD: An excessive number of streets and driveways have direct access to Estero Boulevard, reducing its ability to handle peak-season traffic. The town shall take advantage of any suitable opportunities to consolidate street connections into fewer access points onto Estero Boulevard.

OBJECTIVE T-17-I LEVEL-OF-SERVICE STANDARD — Maintain minimum acceptable levels of service for the transportation system.

POLICY T-17-I-1: Traffic congestion is a serious problem at Fort Myers Beach, caused by a combination of high tourism demand for its beaches and past over-building relative to road capacity. Neither factor is within the control of the Town of Fort Myers Beach, although its residents must tolerate congestion every winter. This comprehensive plan seeks to manage congestion levels and encourage alternate means of mobility including walking, bicycling, and trolleys.

POLICY T-17-I-2: The peak capacity of Estero Boulevard's congested segments is 1,300 vehicles per hour. The minimum acceptable level-of-service standard for Estero Boulevard shall be that average monthly traffic flows from 10:00 A.M. to 5:00 P.M. during each month do not exceed that level for more than four calendar months in any continuous twelve-month period. Measurements from the permanent count station at Donora Boulevard shall be used for this standard.

POLICY T-17-I-3: Figure 18 of this element is hereby adopted as the future transportation map of the Town of Fort Myers Beach.

OBJECTIVE T-17-J PROTECTING PUBLIC ACCESS — Although no future right-of-way needs have been identified, some existing town and county rights-of-way are substandard and few are wider than needed. The town shall review requests to not vacate or acquiesce in the vacation of existing rights-of-way, and shall make efforts to ensure no recognized public access is negatively impacted by vacating the ~~except where no public purpose would be served by retaining the right-of-way.~~

POLICY T-17-J-1 RIGHTS-OF-WAY: Town and county rights-of-way are needed for the undergrounding of utilities; for the expansion of sidewalks and bike paths; for water accesses; for on-street parking; for public transit and road improvements; and for other public purposes. The town shall ~~strictly limit~~ consider limiting vacations of rights-of-way and easements to preserve future access for these purposes.

POLICY T-17-J-2 TRAFFIC IMPACT ANALYSES: A thorough traffic impact analysis is currently required only for major rezonings and very large development orders. The town shall amend its Land Development Code ~~during 2010~~ to:

- i. decrease the thresholds for requiring traffic impact analyses;
- ii. require them to study the cumulative impacts of potential development; and
- iii. use the results in assessing whether impacts are acceptable, and whether an improved design could offset some of the impacts.

Town of FMB: HISTORIC PRESERVATION (HP)

EXISTING		PROPOSED	
GOAL 13	To maintain “the best of the old” when redeveloping our community by appreciating, protecting, and promoting the historic resources of Fort Myers Beach. To provide stewardship of the legacy of our predecessors, cultivating our understanding of the past as a means of sustaining our future.	GOAL 13 <u>HP-1</u>	To maintain “the best of the old” when redeveloping our community by appreciating, protecting, and promoting the historic resources of Fort Myers Beach. To provide stewardship of the legacy of our predecessors, cultivating our understanding of the past as a means of sustaining our future. <u>Create a lasting heritage as the foundation of the town’s historic preservation with key principals: environmental resources, character, sustainability, and preservation maintenance to protect for future generations.</u>
OBJECTIVE 13-F	GENERAL STRATEGIES — Begin in 1999 to develop programs to aggressively identify, document, and evaluate historic and archaeological resources in and around the Town of Fort Myers Beach in order to encourage their long-term protection.	OBJECTIVE 13-F <u>HP-1-A</u>	GENERAL STRATEGIES — Begin in 1999 to develop programs to aggressively identify, document, and evaluate historic and archaeological resources in and around the Town of Fort Myers Beach in order to encourage their long-term protection. <u>IDENTIFY AND EVALUATE HISTORIC RESOURCES</u> <u>The town shall identify historic resources to help protect the town’s heritage and to coincide with its Land Development Codes for historically significant structures.</u>
POLICY 13-F-1	In 1999 the town shall convene an ad hoc historic working group to develop programs, organize volunteers, and make recommendations to the LPA and Town Council relating to Policies 13-A-2, 13-A-3, 13-A-5, 13-B- 1, 13-B-3, 13-B-6, and 13-C-3. This group shall include representatives of the Estero Island Historic Society, the LPA, the Lee County Planning Division, and others with expertise in archaeology, history, and/or construction.	POLICY 13-F-1 <u>HP-1-A-1</u>	In 1999 the town shall convene an ad hoc historic working group to develop programs, organize volunteers, and make recommendations to the LPA and Town Council relating to Policies 13-A-2, 13-A-3, 13-A-5, 13-B- 1, 13-B-3, 13-B-6, and 13-C-3. This group shall include representatives of the Estero Island Historic Society, the LPA, the Lee County Planning Division, and others with expertise in archaeology, history, and/or construction. <u>HISTORIC RESOURCE MAP</u> <u>The Town shall explore efforts to regularly update the historic resources map for properties and historic districts listed on the Local and/or National Registers of Historic Places. Architectural, archaeological, and other related cultural resource surveys shall be conducted pursuant to the standards and policies of the Florida Department of State, Division of Historical Resources and/or the provisions of the National Historic Preservation Act (1966).</u>

POLICY 13-F-2	Acquire high-quality reproductions of all files and photographs from the Florida Master Site File and the Florida Archives for buildings on Estero Island, and make copies available to the public at Town Hall and the public library. This files should be supplemented by an accurate listing of street addresses and parcel numbers, plus a listing of buildings that have been demolished or renovated beyond recognition.After this updating, the town shall notify all property owners of sites listed on the Florida Master Site File.	POLICY 13-F-2 HP-1-A-2	<u>FLORIDA MASTER SITE FILES AND PHOTOGRAPHS</u> Acquire high-quality reproductions of all files and photographs from the Florida Master Site File and the Florida Archives for buildings on Estero Island, and make copies available to the public at Town Hall and the public library. These This-files should be supplemented by an accurate listing of street addresses and parcel numbers, plus a listing of buildings that have been demolished or renovated beyond recognition.After this updating, the town shall notify all property owners of sites listed on the Florida Master Site File.
POLICY 13-F-3	Periodically review and update Lee County's 1986 and 1992 surveys of historic buildings on Estero Island. Additional buildings shall be documented for submission to the Florida Master Site File, and buildings that have been demolished or altered shall be so noted. New information shall be transmit- ted to the Florida Department of State via the Lee County Planning Division.	POLICY 13-F-3 HP-1-A-3	<u>Updates to Historic Building Survey</u> <u>The town shall periodically review and support efforts to</u> update Lee County's 1986 and 1992 surveys of historic buildings on Estero Island. Additional buildings shall be documented for submission to the Florida Master Site File, and buildings that have been demolished or altered shall be so noted. New information shall be transmitted to the Florida Department of State via the Lee County Planning Division.
POLICY 13-F-4	Require all applications for development review to identify the location and status of historic resources and archaeological sites, utilizing as data bases the 1986 Lee County Historic Sites Survey, the 1987 Archaeological Site Inventory and Zone Management Plan for Lee County, the 1992 Historical Report and Survey Supplement for Lee County, and updated information from implementation of Policies 13-A-3 and 13-A-6. This identification of historic and archaeological resources will assist in administering protective regulations.	POLICY 13-F-4	Require all applications for development review to identify the location and status of historic resources and archaeological sites, utilizing as data bases the 1986 Lee County Historic Sites Survey, the 1987 Archaeological Site Inventory and Zone Management Plan for Lee County, the 1992 Historical Report and Survey Supplement for Lee County, and updated information from implementation of Policies 13-A-3 and 13-A-6. This identification of historic and archaeological resources will assist in administering protective regulations.
POLICY 13-F-5	Continue the program begun by Lee County for formally designating historic and archaeological resources, with the following changes: i. Designate the town's Local Planning Agency to serve as the historic preservation board required by the Land Development Code. ii. Contract with Lee County for consultation, technical assistance, and on-going staff support for the town's historic preservation program.	POLICY 13-F-5	Continue the program begun by Lee County for formally designating historic and archaeological resources, with the following changes: i. Designate the town's Local Planning Agency to serve as the historic preservation board required by the Land Development Code. ii. Contract with Lee County for consultation, technical assistance, and on-going staff support for the town's historic preservation program.

POLICY 13-F-6	By 1999, the town shall begin the process of designating one or more historic districts which would include most of the buildings listed on the Florida Master Site File.	POLICY 13-F-6	By 1999, the town shall begin the process of designating one or more historic districts which would include most of the buildings listed on the Florida Master Site File.
POLICY 13-F-7	Request the Estero Island Historic Society to identify appropriate buildings or sites for nomination by the town to the National Register of Historic Places.	POLICY 13-F-7 HP-1-A-4	<u>NATIONAL REGISTER OF HISTORIC PLACES</u> The town shall engage with the Request the Estero Island Historic Society to <u>regularly</u> identify any remaining appropriate buildings or sites for nomination by the town to the National Register of Historic Places.
POLICY 13-F-8	Encourage a private program that would visibly recognize historic building through plaques, certificates, historic markers, awards programs, or certificates of historical and/or archaeological significance.	POLICY 13-F-8	Encourage a private program that would visibly recognize historic building through plaques, certificates, historic markers, awards programs, or certificates of historical and/or archaeological significance.
POLICY 13-F-9	Develop a process and criteria for identifying specific scenic resources, view corridors, and vistas that should be preserved or enhanced as new development and redevelopment occurs. Particular attention should be given to recommendations in the Community Design Element.	POLICY 13-F-9 HP-1-A-5	<u>PROCESS FOR PRESERVING SCENIC RESOURCES</u> The town shall explore the <u>Develop</u> development of a process and criteria for identifying specific scenic resources, view corridors, and vistas that should be preserved or enhanced as new development and redevelopment occurs. Particular attention should be given to recommendations in the Community Design Element.
		<u>OBJECTIVE HP-1-B</u>	<u>DESIGNATION</u> Maintain and increase the town's historic resources listed in the Local and/or National Historic Registers of Historic Places. To promote the preservation of the town's historic character, encourage the maintenance and potential expansion of historic resources listed in the Local and/or National Historic Registers of Historic Places.
		<u>POLICY HP-1-B-1</u>	<u>HISTORIC DESIGNATION OF BUILDINGS</u> Explore potential to designate historic structures from all historic resources.
		<u>POLICY HP-1-B-2</u>	<u>HISTORIC DESIGNATION OF DISTRICTS</u> The town shall explore the designation of a historic districts which would include most of the buildings listed on the Florida Master Site File.
OBJECTIVE 13-G	REGULATIONS AND INCENTIVES — By the end of 1998, establish and maintain a regulatory and incentive system that promotes restoration, reconstruction, and re-use of the town's historic buildings.	OBJECTIVE 13-G HP-1-C	REGULATIONS AND INCENTIVES — <u>REGULATORY TECHNIQUES</u> By the end of 1998, e The town shall evaluate Establish and maintain the establishment of a regulatory and incentive system that promotes restoration, reconstruction, and re-use of the town's historic buildings.
POLICY 13-G-1	Evaluate the provisions of the Certified Local Government program to determine if the town should become certified.	POLICY 13-G-1 HP-1-C-1	<u>CERTIFICATION</u> The Town shall evaluate the provisions of the Certified Local Government program to determine if the town should become certified.

POLICY 13-G-2	Implement Community Design and Housing Policies that call for preparing and adopting land development regulations that will encourage the revitalization of older and historic housing using elements from the cottage design tradition.	POLICY 13-G-2 HP-1-C-2	<u>COMMUNITY DESIGN HOUSING POLICIES</u> <u>The town shall consider the implementation of</u> Implement Community Design and Housing Policies that call for preparing and adopting <u>land development codes</u> that will encourage the revitalization of older and historic housing using elements from the cottage design tradition.
POLICY 13-G-3	Using specific existing historic properties in Fort Myers Beach, determine additional regulatory relief that could be provided to designated historic properties to promote their preservation and rehabilitation.	POLICY 13-G-3 HP-1-C-3	<u>REGULATORY RELIEF</u> <u>The town shall explore the use of</u> Using specific existing historic properties in Fort Myers Beach, determine additional and consider regulatory relief that could be provided to designated historic properties to promote their preservation and rehabilitation.
POLICY 13-G-4	Study the feasibility of a variety of incentives including transfer of development rights and property tax relief to encourage preservation and rehabilitation of historic properties.	POLICY 13-G-4 HP-1-C-4	<u>REGULATORY INCENTIVES FOR HISTORIC PRESERVATION</u> <u>The town shall explore</u> Study the feasibility of a variety of incentives including transfer of development rights and property tax relief to encourage preservation and rehabilitation of historic properties, <u>and consider</u> . Continue to develop new land use and zoning incentives for eligible and historic resources within the land development codes, such as encouraging the adaptive reuse of historic structures within mixed-use zoning districts and providing parking relief strategies.
POLICY 13-G-5	Consider financial incentives for historic preservation that might include a revolving loan fund, grants, federal and state funds for income-eligible recipients, tax increment funds (if a CRA is established), or technical support for the use of investment tax cred- its.	POLICY 13-G-5 HP-1-C-5	<u>FINANCIAL INCENTIVES FOR HISTORIC PRESERVATION</u> Consider <u>Evaluate</u> financial incentives for historic preservation that might include a revolving loan fund, grants, federal and state funds for income-eligible recipients, tax increment funds (if a CRA is established), or technical support for the use of investment tax cred-its.
POLICY 13-G-6	The town shall adopt the Standard Existing Buildings Code into its land development code to encourage the rehabilitation of older buildings throughout the town.	POLICY 13-G-6 HP-1-C-6	<u>STANDARD EXISTING BUILDING CODE</u> The town shall adopt the Standard Existing Buildings Code into its land development code to encourage the rehabilitation of older buildings throughout the town.
		POLICY HP-1-C-7	<u>IDENTIFYING HISTORIC AND ARCHAEOLOGICAL RESOURCES</u> <u>Require all applications for development review to identify the location and status of historic resources and archaeological sites, utilizing as databases information available from the Town, Lee County's Historic Preservation program, and Florida Department of State as appropriate.</u>
		POLICY HP-1-C-8	<u>AMENDMENTS TO LAND DEVELOPMENT CODES</u> <u>The Town will encourage sensitive, adaptive reuse and rehabilitation of structures eligible for historic designation as a preferred alternative to demolition. To this end, as necessary, the Town will regularly evaluate and, where</u>

			<u>necessary, amend the Land Development Codes to ensure the protection — of historic resources.</u>
OBJECTIVE 13-H	CELEBRATING OUR HERITAGE — Continually heighten the appreciation of the town's recent and ancient history and cultural life, and improve opportunities for appropriate public access to publicly supported resources.	OBJECTIVE 13-H HP-1-D	CELEBRATING OUR HERITAGE — Continually heighten the appreciation of the town's recent and ancient history and cultural life, and improve opportunities for appropriate public access to publicly supported resources. <u>PRESERVATION PROGRAMS-</u> <u>Support and expand the city's historic preservation program with the State of Florida office and to comply with the town's ordinances for preservation to coincide with Land Development Codes.</u>
POLICY 13-H-1	Continue to pursue the acquisition of the William Case home (Long Estate). Assist the foundation that will provide long-term management with funding for start-up costs (with the amount needed to be evaluated annually). Link this facility to other cultural, scientific, educational, and recreational activities.	POLICY 13-H-1 HP-1-D-1	Continue to pursue the acquisition of the William Case home (Long Estate). Assist the foundation that will provide long-term management with funding for start-up costs (with the amount needed to be evaluated annually). Link this facility to other cultural, scientific, educational, and recreational activities. <u>CHANGES TO FORMAL DESIGNATION</u> <u>The town shall consider continuing the program begun by Lee County for formally designating historic and archaeological resources. It shall explore the designation of the town's Local Planning Agency to serve as the historic preservation board as required by the Land Development Code. Contract with Lee County for consultation, technical assistance, and on-going staff support for the town's historic preservation program.</u>
POLICY 13-H-2	Support the nomination of the Fort Myers Beach Elementary School and the William Case home (and its site) for the National Register of Historic Places.	POLICY 13-H-2 HP-1-D-2	Support the nomination of the Fort Myers Beach Elementary School and the William Case home (and its site) for the National Register of Historic Places. <u>Encourage privately run programs that would visibly recognize historic building through plaques, certificates, historic markers, awards programs, or certificates of historical and/or archaeological significance.</u>
POLICY 13-H-3	Examine methods that the town could use to aid in the protection of Mound Key.	POLICY 13-H-3 HP-1-D-3	Examine methods that the town could use to aid in the protection of Mound Key. <u>HISTORIC PRESERVATION BOARD</u> <u>The town shall consider the establishment of a qualified Historic Preservation Board that meets the Florida Certified Local Government Guidelines to oversee and further develop the functions of the historic preservation program.</u>

POLICY 13-H-4	Work with Lee County in establishing a net- work of canoe and kayak trails linking the sites of historic and archaeological significance from Pine Island to Estero Bay.	POLICY 13-H-4 HP-1-D-4	Work with Lee County in establishing a net- work of canoe and kayak trails linking the sites of historic and archaeological significance from Pine Island to Estero Bay. <u>STATE COMPREHENSIVE PLAN AND HISTORIC PRESERVATION PLAN</u> <u>Continue to work cooperatively and in conjunction with the State Historic Preservation Office to achieve the goals set forth in the State Comprehensive Plan and the Comprehensive Statewide Historic Preservation Plan.</u>
POLICY 13-H-5	Establish a task force to develop and implement the town's eco/heritage program. The task force would work with the Marine Resources Task Force to advise the town about implementing the recently adopted recommendations of the Governor's Advisory Committee on Eco-heritage Tourism.	POLICY 13-H-5 HP-1-D-5	Establish a task force to develop and implement the town's eco/heritage program. The task force would work with the Marine Resources Task Force to advise the town about implementing the recently adopted recommendations of the Governor's Advisory Committee on Eco-heritage Tourism. <u>CONSISTENCY WITH HISTORIC PRESERVATION ORDINANCES</u> <u>Ensure historic resources remain consistent with the Historic Preservation Ordinances relating to affirmative maintenance, demolition by neglect and boarding, which are adopted in the Land Development Codes and the Code of Ordinances.</u>
POLICY 13-H-6	In cooperation with the Estero Island Historic Society, develop self-guided walking/biking tours of the island's historic points of interest; interpretive panels; and other ways to share the history of the island with visitors.	POLICY 13-H-6 HP-1-D-6	In cooperation with the Estero Island Historic Society, develop self-guided walking/biking tours of the island's historic points of interest; interpretive panels; and other ways to share the history of the island with visitors. <u>ACQUIRING HISTORIC AND CULTURAL RESOURCES</u> <u>The town shall consider the acquisition of historic and cultural resources when ownership would provide a public benefit and when financial resources can be secured.</u>
POLICY 13-H-7	Continue to improve availability and appropriate public access to historic and cultural resources by implementing Community Design Policies 2-A-1/4, 3-D-4, and 3-D-6 and Recreation Policy 10-A-4.	POLICY 13-H-7 HP-1-D-7	Continue to improve availability and appropriate public access to historic and cultural resources by implementing Community Design Policies 2-A-1/4, 3-D-4, and 3-D-6 and Recreation Policy 10-A-4. <u>PUBLIC USES</u> <u>The town shall explore the use historic buildings to accommodate public uses whenever feasible.</u>
		<u>OBJECTIVE HP-1-E</u>	<u>EDUCATION AND PROGRAMMING</u> <u>The town shall support efforts that heighten the appreciation of the town's recent and ancient history and cultural life and</u>

			<u>improve opportunities for appropriate public access to publicly supported resources.</u>
		<u>POLICY HP-1-E-1</u>	<u>Network of Canoe and Kayak Trails</u> <u>Support Lee County in establishing a network of canoe and kayak trails linking the sites of historic and archaeological significance from Pine Island to Estero Bay.</u>
		<u>POLICY HP-1-E-2</u>	<u>TASK FORCE FOR TOWN'S ECO/HERITAGE PROGRAM</u> <u>Consider establishing a task force to develop and implement the town's eco/heritage program. The task force would work with the Marine Resources Task Force to advise the town about implementing the recently adopted recommendations of the Governor's Advisory Committee on Eco-heritage Tourism.</u>
		<u>POLICY HP-1-E-3</u>	<u>SELF-GUIDED WALKING/BIKING TOURS</u> <u>In cooperation with the Estero Island Historic Society, the town shall consider the development of self-guided walking/biking tours of the island's historic points of interest; interpretive panels; and other ways to share the history of the island with visitors.</u>
		<u>POLICY HP-1-E-4</u>	<u>SUBMERGED ARCHAEOLOGICAL SITES</u> <u>Promote knowledge of submerged archaeological sites as cultural heritage and patrimony.</u>
		<u>POLICY HP-1-E-5</u>	<u>PROMOTING HISTORIC AD-VALOREM TAX EXEMPTION PROGRAM</u> <u>Continue to promote the Historic Ad-Valorem Tax Exemption program to property owners of eligible and historic resources. Continue to provide information regarding all local, state and federal financial incentives to the public such as, the City and County Historic Ad- Valorem Tax Exemption program and the Federal Historic Preservation Tax Incentives programs.</u>
		<u>POLICY HP-1-E-6</u>	<u>PROMOTIONAL AND REFERENCE MATERIAL</u> <u>Develop promotional and reference materials about local historic resources, preservation and cultural heritage; such information will be available at City Hall and on the City website.</u>

GOALS - OBJECTIVES - POLICIES

Capital Improvement Element

Based on the analysis of capital improvements issues in this element, the following goals, objectives, and policies are adopted into the Fort Myers Beach Comprehensive Plan:

GOAL 14 CIE-1: To provide major public improvements that help create the safe and beautiful community envisioned in this comprehensive plan.

OBJECTIVE 14-A CIE-1-A CAPITAL IMPROVEMENTS PROGRAM

~~Adopted~~ Each year, as part of the budget process, a capital improvements program () ~~that implements this plan, ensures the availability of services at adopted levels, and carries out the fiscal policies in this element.~~ shall be adopted to achieve and maintain level of service standards identified in the Comprehensive Plan, correct existing deficiencies, accommodate future growth, and provide for necessary replacements, as required.

POLICY 14-A-1 CIE-1-A-1 Role of the CIP

As a part of the town's annual budget process, the town shall adopt a Capital Improvements Program every year that identifies all proposed capital expenditures for the ensuing five-year period, identifies the revenues to fund the expenditures, and describes each project's compliance ~~CIE-1-A-3~~ with the criteria in Policy 14-A-4 below. The proposed CIP shall be balanced, with the proposed expenditures not greater than the amount of revenues available to fund the expenditures. ~~A list of projects that are needed, but unfunded, may be included as an attachment to the balanced CIP.~~ Once adopted, the new five-year schedule of capital improvements shall annually be incorporated into the Capital Improvements Element.

POLICY 14-A-2 CIE-1-A-2: CIP Process

The Capital Improvements Program shall be prepared, adopted, and amended according to the following process:

- i. The proposed CIP shall be developed by the Town Manager in sufficient detail to including a detailed list of proposed projects with estimated costs and timelines, based on a review of existing facilities, level of service standards, current and projected deficiencies, and the capital needs as identified in this comprehensive plan.
- ii. The proposed CIP shall be reviewed by the Local Planning Agency (LPA) which shall consider the consistency of all proposed CIP expenditures with this comprehensive plan.
- iii. After reviewing the report of the LPA, the Town Council shall modify the CIP as needed and adopt it by resolution in conjunction with the annual budget.
- iv. After its adoption, the CIP may be amended by resolution of the Council. All changes to the CIP must be consistent with this comprehensive plan.

POLICY 14-A-3 CIE-1-A-3: CIP Fiscal Policies

All projects included in the CIP should be evaluated for financial feasibility, their impact on the town's budget, and the town's ability to operate the facility. Operating costs associated with public facilities and services programmed in the CIP shall be incorporated into the town's operating budget. The capital portion of the annual budget shall be consistent with the first year of the adopted CIP. Where an amendment to the CIP affects the first year, the annual operating budget shall also be amended to remain consistent with the CIP.

POLICY 11-A-4 CIE-1-A-4: CIP Priorities

The following priorities shall be used in determining which projects are included in the CIP:

- i. ~~Remove a direct and immediate threat to the public health or safety; Protect public health and provide safety and remove direct and immediate threats.~~
- ii. Capital Improvements that ~~Are~~ directed by a court order or otherwise by law.
- iii. Capital Improvements that Are essential for the maintenance of existing infrastructure and associated level of service standards.
- iv. Remove an existing capacity deficiency; Capital improvements needed to correct existing deficiencies.
- v. Capital Improvements that Will accommodate new development or redevelopment anticipated by this comprehensive plan.
- vi. Capital improvements required by a State or federal mandate.
- vii. Projects that advance existing Town approved plans
- viii. Capital improvements that provide economic benefit by reducing operating and/or maintenance costs.
- ix. Projects that will address sea level rise, flooding, energy efficiency, water quality, water efficiency or other sustainability measures.

POLICY 11-A-5 CIE-1-A-5 Other CIP Criteria

For the purpose of further ranking projects that are otherwise equal, the following should be considered:

- i. Priorities found elsewhere in the comprehensive plan.
- ii. Whether the facility project is needed to satisfy a level of service standard in this plan.
- iii. Whether the project competes with other facilities that have been or could reasonably be provided by other governmental entities or the private sector.
- iv. The revenue generating potential of the project.
- v. Whether the project leverages additional benefits to the town, such as offers to donate land or services by the private sector and/or other governmental entities.

POLICY 11-A-6 CIE-1-A-6 Capital Improvement Defined

A “capital improvement” is a project to acquire, build or improve a major asset ~~that will have in order to preserve~~ long-term value, such as sidewalks, roads, landscaping, beach renourishment, parks, and nature preserves. Capital improvements usually have a determined value of at least \$10,000 and may include planning and design studies that will lead to a physical improvement.

POLICY 11-A-7 CIE-1-A-7 Schedule Of Improvements

~~Table 11-7 of this element~~ The capital improvement plan presents the five-year schedule of capital improvements ~~bbe~~ undertaken by the Town of Fort Myers Beach. This schedule will be updated each year through an amendment to this plan to correspond with revisions to the capital improvements program made by the town during its annual budget process

- i. To comply with the Florida Statue, the required five-year schedule of capital improvements also includes the capacity enhancing school improvements and

summary of estimated revenues as presented by the Lee County School District through its Five-Year District Facilities Work Program, ~~as updated each September. For FY 2008/09 through 2012/13, the specific capacity-enhancing school improvements are listed in Table 16-7 of the Public Schools Element and the formal demonstration that those improvements meet all requirements of state law is set forth in that element.~~

- ii. To comply with § 163.3177(3)(a)5, F.S., any capital improvements that Lee County Utilities needs to construct to achieve or maintain the potable water level of service in this plan during the next five years will be included in the town's five-year schedule of capital improvements.

OBJECTIVE 11-B CIE-1-B LEVEL-OF-SERVICE STANDARDS

Adopt and maintain a concurrency management system that ensures that public facilities are provided in accordance with the adopted level of service (LOS) standards for potable water, sanitary sewer, solid waste, stormwater, recreation, and transportation.

POLICY 11-B-1 CIE-1-B-1: Utilities LOS Standards

~~(Repeated from Policy 8-B-1 of the Utilities Element):~~ The minimum acceptable level-of-service standards for utility services within the Town of Fort Myers Beach shall be:

- i. for potable water service:
 - (a) Available supply, treatment, and delivery capacity of ~~275~~260 gallons per capita day per equivalent residential connection (ERC), and delivery of potable water at a minimum pressure of ~~40~~20 pounds per square inch (psi) at the meter anywhere in the system.
 - (b) Prior to issuance of building permits, the town must obtain assurances from Lee County Utilities that an adequate bulk water supply will be available to the town's water distribution system to serve new development at these same rates.
- ii. for sanitary sewer service:
 - (a) Compatible with Lee County's current sanitary sewer standards available capacity to collect, treat, and dispose of wastewater of 200 175 gallons per day per capita per equivalent residential connection (ERC).
- iii. for solid waste disposal service:
 - (a) the ability to collect and manage 7 pounds of municipal solid waste per person per day.

POLICY 11-B-2 CIE-1-B-2: Stormwater LOS Standards {Storm Water Master Plan}

~~(Repeated from Policy 9-D-1 of the Storm-water Management Element):~~ Until completion of the evaluation under ~~Stormwater Management Element Policy 9-F-1 to 6~~, interim levels of service are hereby established for protection from flooding to be provided by stormwater and roadway facilities:

- i. During a 3-day rainfall accumulation of 13.7 inches or less (3-day, 100-year storm as defined by SFWMD), one lane of evacuation routes should remain passable (defined as less than 6 inches of standing water over the crown). Emergency shelters and essential services should not be flooded.
- ii. During a 3-day rainfall accumulation of 11.7 inches or less (3-day, 25-year storm as defined by SFWMD), all lanes of evacuation routes should remain

passable. Emergency shelters and essential services should not be flooded.

- iii. During coastal flooding of up to 4.0 feet above mean sea level, all lanes of evacuation routes should remain passable. Emergency shelters should not be flooded.

POLICY 11-B-3 ~~CIE-1-B-3~~: Recreation LOS Standard

~~(Repeated from Policy 10-D-3 of the Recreation Element)~~: The town adopts the following standard for community parks: for each 7,500 permanent residents or visitors staying at hotels, motels and resorts on the island, 1 centrally located recreation complex that includes 2 ballfields, 2 tennis courts, outdoor basketball courts, play equipment, an indoor gymnasium, and community meeting spaces. Programming shall address all age groups and encompass active recreation, physical improvement, and social, educational, and cultural activities.

- i. The Town shall adopt and maintain a measured level of service standards for parks, recreation and open space facilities upon completion of and in accordance with the Master Recreation Plan. As needed, the Town will arrange for interlocal agreements to provide additional facilities.

POLICY 11-B-4 ~~CIE-1-B-4~~: Transportation LOS Standard

~~(Repeated from Policy 7-I-2 of the Transportation Element)~~: The peak capacity of Estero Boulevard's congested segments is 1,300 vehicles per hour. The minimum acceptable level of service standard for Estero Boulevard shall be that average monthly traffic flows from 10:00 A.M. to 5:00 P.M. during each month do not exceed that level for more than four calendar months in any continuous twelve-month period. Measurements from the permanent count station at Donora Boulevard shall be used for this standard.

POLICY 11-B-4-5 ~~CIE-1-B-5~~: Public School Los Standard

~~Repeated from Policy 16-B-1 of the Public Schools Element~~: The minimum acceptable level-of-service standards for public schools within the Town of Fort Myers Beach shall be:

- i. Elementary Schools: 100% of permanent capacity as adjusted by the school district annually to account for measurable programmatic changes.
- ii. Middle Schools: 100% of permanent capacity as adjusted by the school district annually to account for measurable programmatic changes.
- iii. High Schools: 100% of permanent capacity as adjusted by the school district annually to account for measurable programmatic changes.
- iv. Special Purpose Schools: 100% of permanent capacity as adjusted by the school district annually to account for measurable programmatic changes.
- v. The uniform, district-wide LOS shall be 110 percent of the permanent Florida Inventory of School Houses (FISH) capacity for each elementary, middle and high school.
 - vi. "Permanent capacity" of each of the four types of schools means the combined capacity for all schools of that type that are located in the school district's South Student Assignment Zone, as depicted in Figure 3 of the Public Schools element. (Multi-zone magnet schools and special centers are excluded.) Permanent capacity is the capacity of permanent buildings as determined by the Florida Inventory of School Houses, 2006 edition, published by the Florida Department of Education's Office of Educational Facilities. "Measurable programmatic change" means a change to the operation of a school and measurable capacity impacts including, but not

- limited to, double sessions, floating teachers, year-round schools, and special educational programs.
- vii. Educational Facilities Plan (DEFP) shall contain a five year financially feasible schedule of capital improvements to address existing deficiencies and achieve and maintain the adopted LOS in all concurrency service areas. This financially feasible schedule shall be updated on an annual basis and annually adopted into the CIE.

OBJECTIVE CIE-1-C CONCURRENCY

The town will enforce concurrency requirements to mitigate impacts of new development on infrastructure and services.

POLICY 11-B-5 POLICY CIE-1-C-1: CONCURRENCY REQUIREMENTS

The Town will enforce ~~these levels of service under the concurrency requirements of Florida law by:~~

- i. Withholding development orders or building permits that might cause the adopted levels of service to fall below the minimum standards; or by
- ii. Issuing development orders or building permits subject to the condition that, at the time of the issuance of a certificate of occupancy, the necessary facilities and services must be in place and available to serve the development being authorized (or are guaranteed to be in place through an enforceable development agreement pursuant to Section 163.320 FS or through an agreement or development order pursuant to Chapter 380 FS).
However, for parks/recreation, transportation, and public schools, the following requirements will apply:
- iii. For parks and recreation, the facilities needed to serve new development must be in place or under actual construction within 1 year after issuance of a certificate of occupancy; any required acreage must meet the requirements of 163.3180(2)(b), Florida Statutes.
- iv. For transportation, the facilities needed to serve new development must be in place when a building permit is issued, or under actual construction within 3 years after issuance of a building permit that results in traffic generation if the required facility is listed in Table 11-7, is included in the Five-Year Schedule of Capital Improvements.
- v. ~~For public schools, the facilities needed to serve new development must be in place when a final site plan is issued; or under actual construction within 3 years after issuance if the required facility is listed in Table 11-7, the Five-Year Schedule of Capital Improvements; or mitigation may be accepted by the school district in accordance with the Public Schools Element of this plan.~~ Consistent with the Interlocal Agreement, the uniform, district-wide level of service standards shall be based upon the Florida Inventory of School Houses (FISH) maintained by the Department of the Education (DOE).

~~POLICY 11-B-6 CONCURRENCY MANAGEMENT SYSTEM — The town's concurrency management system shall comply with the revisions of Rule 9J-5.0055 FAC to include:~~

- ~~i. The town's commitment to maintain the adopted level of service standards for potable water, sanitary sewer, solid waste, stormwater, recreation, and transportation.~~
- ~~ii. The town's commitment that future CIEs and amendments to this element maintain this element's financially feasible plan to maintain these levels of service.~~
- ~~iii. A system for monitoring and ensuring adherence to the adopted level of~~

~~service standards, the schedule of capital improvements, and the availability of public facility capacity.~~

~~Standards for interpreting and building permits and specifying when the test for concurrency must be met (which will be no later than issuance of a development order or permit which contains a specific plan for development, including densities and intensities).~~

- ~~iv. The concurrency management system shall be implemented through the Land Development Code and ensure that development orders and building permits that are issued will not result in a reduction in the levels of service below the adopted levels of service.~~

POLICY 11-C-2 CIE-1-C-2: Annual Concurrency Assessment

The town manager shall annually prepare a formal assessment of the current status of the adopted level of service standards, including existing usage of public facilities.

- i. available capacity (committed or uncommitted); and
- ii. additional public facilities that are being planned.

~~Based on this assessment, the Town Council shall determine after a public hearing whether there is cause to withhold or condition building permits or development orders during the following year. Such action, as updated periodically by the Town Council, shall empower the issuance of development permits where this assessment reasonably demonstrates that sufficient capacity will be available to serve all development that is reasonably expected to occur during the period of time approved by the town council. This assessment and its conclusions shall be published by the town at least annually.~~

~~POLICY 11-B-8 CONCURRENCY SHORTFALLS~~

~~Should the annual concurrency assessment indicate problems with maintaining one or more of the adopted level of service standards during the coming year, the Town Council shall immediately take one or more of the following actions:~~

- ~~i. initiate a comprehensive plan amendment to modify the adopted level of service; or determine which types of development permits will have significant impacts on service levels, direct that such permits shall not be granted or shall be granted conditionally (with occupancy dependent upon achievement of the adopted level of service), and set a schedule for the re-assessment of that level of service; or~~
- ~~ii. immediately begin or accelerate capital improvements or other measures to offset any apparent deficiencies in levels of service. Examples would include upgrading potable water lines to improve water pressure; increasing sewage disposal or solid waste capacity; improving drainage or elevating evacuation routes at problem locations; adding recreational facilities; or improving public transit service, bicycle routes, and/or sidewalks to improve non-vehicular mobility.~~

~~The third alternative just listed is the preferred response of the Town of Fort Myers Beach to deficiencies in an adopted level of service, provided that the minimum concurrency requirements of this plan and state law are still met.~~

~~POLICY 11-B-9 CONCURRENCY DEFERRALS AND EXEMPTIONS~~ ~~The town's concurrency management system shall allow deferrals and exemptions only as follows:~~

- ~~i. Some types of development applications do not contain a specific plan for development or authorize any actual development. Such applications shall not approve for concurrency compliance until a later stage of approvals where such~~

~~impacts can be measured and then deducted from available capacity. The town may, however, evaluate probable concurrency impacts at these earlier stages as one factor in determining whether to approve such activities.~~

- ~~ii. Development applications will be exempted from the concurrency management system only if they will create zero or insignificant impacts on public facilities; any such exemptions shall be defined in the Land Development Code.~~

POLICY 11-C-3 CIE-1-C-3: Concurrency Application

The Town's concurrency management system shall be administered in accordance with the remainder of the Land Development Code. The preparation of the annual concurrency assessment shall be the responsibility of the Town Manager, and all decisions resulting from that assessment shall be made directly by the Town Council.

OBJECTIVE 11-D CIE-1-D CAPITAL FINANCING POLICIES

Manage the fiscal resources of the town to ensure the equitable financing of needed public facilities and services.

POLICY 11-D-1 CIE-1-D-1 Existing Development

Existing development shall be responsible for the costs of repairing and replacing existing public facilities and for capital improvements needed to eliminate pre 1998 deficiencies. This responsibility shall be discharged through the payment of property taxes, utility fees, gas taxes, sales taxes, user fees, and taxes and fees.

POLICY 11-D-2 CIE-1-D-2 New Development

New development and redevelopment shall bear a proportionate share of the cost of providing new or expanded public facilities and infrastructure required to maintain service levels through payment of impact fees, connection fees, site-related developer dedications, developer contributions, and other lawfully imposed charges.

POLICY 11-D-3 CIE-1-D-3 Impact Fees

Impact fees for designated public facilities shall be set to capture a substantial proportion of the full and real cost of the designated facility and shall be reviewed and updated regularly.

POLICY 11-D-4 CIE-1-D-4 General Fund

The town will develop specific policies as to the use of general governmental revenues for capital purposes, such as setting aside each year a portion of ad valorem taxes or other general revenues (such as sales taxes, gas taxes, or utility service taxes) for capital improvements.

POLICY 11-D-5 CIE-1-D-5 Grants

The town will actively seek grants from federal, state, and other sources where available and when appropriate for capital facility construction. Consideration will be given to limitations and restrictions involved in such grants.

POLICY 11-D-6 CIE-1-D-6 Internal Consistency

Amendments and updates to the CIP and this Capital Improvements Element shall continue to support the Future Land Use Element, be consistent with all other elements of the comprehensive plan, and where appropriate, be consistent with all other state and regional plan.

CONSERVATION ELEMENT

GOAL CON-1 6:

~~To protect the natural resources in and around the town from further damage and improve their future health and sustainability through regulations, education, enforcement, timely management, public improvements, and cooperation with other entities with similar goals.~~

Maintain and improve the Town of Fort Myers Beach's coastal resources with ongoing commitment through regulations, education, land acquisition and preservation, evaluation, programs, and for cooperation with the federal and county governments and related agencies.

OBJECTIVE CON 1-6-A: ESTUARIES AND BAYS

Improve the condition and function of estuaries and bays surrounding Estero Island, including their components such as seagrass meadows, tidal flats, soft bottoms, oyster bars, tidal creeks, and open water. Improve the viability of existing native coastal and upland habitats and establish additional areas for nature preserve and conservation uses to expand habitat areas and improve the conditions of estuaries and bays surrounding Estero Island.

POLICY CON 1-6-A-1: Protecting Marine Habitats/Resources:

~~Estuaries are the ecological transition between fresh and saltwater systems. They provide extensive habitat for fish and WILDLIFE including the feeding, breeding, and nursery ground for most of the commercially important fish and shellfish and many species of local and migratory birds, while offering a broad array of recreational opportunities. The Town of Fort Myers Beach will take all feasible steps to protect its marine and estuarine habitats and finfish/shellfish resources to ensure their long-term viability and productivity for scientific, commercial, sport, and recreational purposes. The town shall take a leadership role in enacting ordinances and facilitating resolution of jurisdictional problems.~~

The Town of Fort Myers Beach will take all feasible steps to protect its marine and estuarine habitats and finfish/shellfish resources to ensure their long-term viability with enacting ordinances and facilitating resolution will cooperation with other governmental agencies.

~~POLICY 6-A-2 The town will cooperate closely with other governmental agencies in formulating, monitoring, and enforcing regulations to protect the healthy functioning of the estuary, including but not limited to:~~

- ~~i. Marking existing channels crossing through seagrass beds to help boaters avoid damaging them (and their boats);~~ ii.
(i). Establishing permitting criteria for activities within the Town's 1000-foot jurisdiction beyond Estero Island to protect seagrass beds, oyster bars, soft bottoms, and other benthic communities from damage from docks, boat ramps, navigation channels, etc. These criteria would be coordinated with other regulatory agencies to prevent damage and to ensure that every effort is

~~made to protect marine habitats to locate these facilities away from valuable environmental resources. If permits are issued without concurrence from the town, the town may choose to withhold local building permits if a better location or technique could avoid damage to seagrass beds, oyster bars, or other sensitive benthic communities.~~

- ~~(ii) Controlling point and non-point sources of pollution including drainage, sewage pollution, and stormwater runoff.~~
- ~~(iii) Providing hardened shoreline stabilization such as seawalls;~~
- ~~iii. maintaining proper quality and timing of freshwater inputs.~~
- ~~(iv.) Protecting habitats from dredge-and-fill activities.~~
- ~~(v.) protecting sea grasses from “prop scarring” and excessive shading from docks; and protecting important uplands adjacent to wetlands.~~

~~POLICY 6-A-3 In cooperation with other jurisdictions, evaluate the effectiveness of existing regulations and enforcement techniques in preserving the bay and estuary system. Recommend and support such additional measures as necessary to ensure their sustainability, such:~~

- ~~i. Marking existing channels crossing through seagrass beds to help boaters avoid damaging them (and their boats);~~
- ~~ii. Establishing permitting criteria for activities within the town’s 1000-foot jurisdiction beyond Estero Island to protect seagrass beds, oyster bars, soft bottoms, and other benthic communities from damage from docks, boat ramps, navigation channels, etc. These criteria would be coordinated with other regulatory agencies to ensure that every effort is made to locate these facilities away from valuable environmental resources. If permits are issued without concurrence from the town, the town may choose to withhold local building permits if a better location or technique could avoid damage to seagrass beds, oyster bars, or other sensitive benthic communities.~~

~~POLICY 6-A-4 Encourage the organization of a local task force to coordinate and reconcile efforts of various organizations, governments, and businesses to promote long-term sustainability of the estuary. Potential perspectives include eco-tourism, water quality, habitat protection, commercial and recreational uses, and economic development. The task force would promote cooperative activities, assess needs, and recommend methods of coordinating reporting and enforcement of violations. The task force would make recommendations to the town regarding issues such as:~~

- ~~i. Establishing restricted areas and other methods of controlling boat traffic in Estero Bay, particularly around rookery islands and seagrass beds.~~
- ~~ii. Locating a suitable launching point on the Gulf for use by personal watercraft to reduce traffic on the bay side.~~
- ~~iii. Adopting a ban on the commercial collection of live shells.~~
- ~~iv. Recommending capital projects to improve water quality.~~
- ~~v. Recommending regulations to protect local waters.~~

~~POLICY CON 1-6-A-5: Improve Water Quality:~~

~~Maintain or improve estuarine water quality in accordance with policy under Objective 8 below, and economic value of the water bodies surrounding the Town of Fort Myers Beach.~~

~~POLICY 6-A-6 Regularly examine activities that may be within the town's jurisdiction to determine whether more stringent regulations or other actions are needed to ensure the functioning and long-term viability of natural systems.~~

OBJECTIVE CON 1-6-B: COASTAL LANDS

Develop policies to improve and protect coastal lands.

POLICY 6-A-7 CON 1-B-1: PARTICIPATION IN EFFORT TO IMPROVE ESTERO BAY

Participate actively in the Agency on Bay Management, the Charlotte Harbor National Estuary Program, The Estero Bay Management Plan and other entities attempting to improve the environmental health of Estero Bay.

POLICY 6-A-8 CON 1-B-2: PURCHASE 16,000 ACRES FOR ESTERO BAY PRESERVE

Actively encourage the purchase of the full 16,000 mainland acres adjoining Estero Bay to become an expanded Estero Bay State Buffer Preserve.

~~OBJECTIVE 6-B WILDLIFE AND NATIVE HABITATS — Improve the viability of existing native coastal and upland habitats and establish additional areas for nature preserve and conservation uses.~~

~~POLICY 6-B-1 CONSERVATION PROGRAMS GENERALLY — The town will cooperate with local, state, and federal regulatory agencies in establishing and managing natural reserves, preserves, and critical wildlife areas. This cooperation will include increasing public awareness, allowing appropriate access, properly protecting natural resources, and documenting and reporting violations of laws and regulations.~~

~~POLICY 6-B-2 LITTLE ESTERO ISLAND CRITICAL WILDLIFE AREA — In cooperation with state agencies, the town will aid in the stewardship of the Little Estero Island Critical Wildlife Area through activities such as:~~

- ~~i. Prohibit commercial activities within the defined boundaries of Little Estero Island.~~
- ~~ii. Support legislative measures as necessary to protect the long-term future of the preserve.~~
- ~~iii. Inform residents and visitors of the uniqueness and fragility of the island's habitats and identify funding for measures such as designating pedestrian trails and dune walkovers, adding information and interpretive signs, producing educational brochures, and conducting seminars to encourage proper use.~~
- ~~iv. Sponsor a volunteer task force to work with the Florida Game and Fish Water Fish Commission to oversee the daily stewardship of Little Estero Island through activities such as:~~
 - ~~• Identify potentially destructive practices (such as mowing or raking on the shoreline, litter, boat traffic, low flying airplanes, disturbances from vehicles and dogs, etc.) and determine appropriate methods to address them.~~
 - ~~• Inform residents and visitors of the uniqueness and fragility of the island's habitats; plant shoreline vegetation to replace vegetation damaged by visitors or other unnatural causes;~~

~~place and maintain interpretive signs; produce educational brochures; and conduct seminars to encourage proper use.~~

- ~~• Promote voluntary enforcement and possible citizen “volunteer patrols” to educate residents and visitors of the rules of the island and why they are needed.~~
- ~~• Develop guidelines to protect the fragile environment of the preserve and, where appropriate, urge their adoption as land development regulations or part of the town’s code of ordinances.~~

POLICY 6-B-9 CON 1-B-3: Acquisition of Additional Sites:

The town will strive to expand the opportunities for conservation and public appreciation of natural resources through acquisition of additional areas with rare or unique ecological or botanical features, or which provide access to such areas, through activities such as the following:

- i. Identify specific sites that would be desirable for public acquisition.
- ii. Support the efforts of other entities acquiring land that will contribute to the conservation effort (for example, aquatic preserve buffer areas, Bunche Beach, etc.)
- iii. Consider alternative means of land acquisition, such as supporting the efforts of nonprofit conservation land trust or acquiring development rights in lieu of full acquisition.
- iv. Accept donations of land for nature preserves or other resource conservation areas with the following general conditions: if such lands contain ecologically valuable habitat and/or if public ownership of such lands would expand existing or provide increased preservation or resource conservation areas.
- v. When acquiring property, determine the best entity to be responsible to implement a long-range management plan.

POLICY CON 1-6-B-4: Matanzas Pass Preserve:

Prepare for the transition of the long-term maintenance responsibility of the Matanzas Pass Preserve from Lee County to a partnership among the county, the town, and a local non-profit organization such as the Friends of the Matanzas Pass Preserve.

- ~~i. Reinforce and support the efforts of the non-profit organization to expand the voluntary community-based portion of the operation and maintenance of the preserve. Assist their efforts to implement the restoration plan (which includes site preparation, revegetation, and long-term management) and future improvements including new foot trails, repairing and extending boardwalks, providing a canoe/kayak access point, and adding a fishing pier/observation deck. This assistance may take the form of seeking grant funds, lending technical assistance, providing equipment (either directly or through leases with the county), or partial funding.~~
- ~~ii. Negotiate an agreement with the county that assigns responsibilities for the long term maintenance, restoration, and improvement of the preserve, that reflects its status as both a county-wide and local amenity and its importance as natural habitat.~~

POLICY CON 1-6-B-5: Upland Habitat:

Preserve all remaining coastal strand and hammocks and improve the existing habitat through removal infestations of exotic plants and replanting with native species. When these habitats are in private ownership.

- ~~i. Land uses must not result in the degradation of the values and functions of adjoining and nearby wetlands.~~
- ~~ii. Beaches seaward of the 1978 Coastal Construction Control Line are designated on the Future Land Use Map as “Recreation” to preclude their use for further urban development.~~
- ~~iii. Known remaining coastal hammocks are designated on the Future Land Use Map as “Recreation” to preclude their use for further urban development.~~

OBJECTIVE CON 1-C: PROTECTING RESOURCES FROM NON-DEVELOPMENT ACTIVITIES

Develop policies to protect natural resources from non-development activities.

POLICY CON 1-C -1: Wetlands Improvements

Structures or facilities that will improve the functional value of wetlands or provide “no-impact” use for observation, education, research, or passage shall include such structures as public boardwalks, observation decks, or launching areas for non-motorized watercraft shall be conditionally permitted, as appropriate, in the land development regulations.

In accordance with Florida Statutes, the Town will not undertake an independent review of the impacts to wetlands resulting from development in wetlands that is specifically authorized by a state Environmental Resource Permit or exemption. However, no development approval shall be issued by the Town for any project which impacts wetland resources until all requisite permits from other agencies have been obtained and provided to the Town. All conditions placed on such permits shall be incorporated into the final development approval issues by the Town. Violations of such conditions shall be prosecuted through the Town’s code enforcement procedures.

POLICY CON 1-C 2: Prohibitions On Excavation and Mining

Commercial excavation and mining activities are prohibited in the Town of Fort Myers Beach due to potentially detrimental effects to groundwater, surface water, wildlife habitats, and surrounding land uses and values.

POLICY CON 1-C-3: Offshore Gas and Oil Exploration

The Town of Fort Myers Beach opposes offshore gas and oil exploration and excavation activities which may be reasonably expected to threaten the quality of coastal beaches and estuarine ecosystems; or would place oil- or gas-related facilities on coastal beaches, islands, or wetlands; or would require the placement of oil or gas storage facilities on the island.

POLICY CON 1-C -4: Dredging Tidal Canals

The dredging of additional tidal canals is prohibited.

POLICY CON 1-C -5: Water and Sewer Connections and Septic Tanks

The Town shall require connection to central water and sewer systems. No permits shall be issued for new septic tanks within the Town of Fort Myers Beach.

GOAL CON 2: HEALTHY WILDLIFE HABITAT:

OBJECTIVE CON 2-A: PROTECTED SPECIES

The Town of Fort Myers Beach will protect and ensure the management of designated protected species in cooperation with local, state, and federal agencies.

POLICY CON 2-A-1: Additional Protections:

The Town shall assist in the application of state and federal regulations regarding listed species through activities such as:

- i. Prohibit unmitigated development in and around areas designated as habitats, nesting areas, or feeding sites for wildlife listed as endangered or threatened.
- ii. Provide information regarding listed species on properties undergoing development review.
- iii. Withhold development approval until such time as all applicable state and federal permits pertaining to such species have been obtained and copies provided to the town.
- iv. Cooperate with Lee County and other agencies in the establishment of mitigation parks and banks to allow this form of mitigation for local impacts to listed wildlife species and native communities.
- vi. Support public education on the value of wildlife, native communities, and other natural resources through such means as brochures, newspaper articles, public presentations and workshops, and the placement of interpretive displays and development of observation trails at appropriate park sites.
- vii. Encourage and provide technical assistance to volunteer and non-profit organizations such as Turtle Time, Estero Bay Foundation, Estero Bay Buddies, and the Friends of the Matanzas Pass Preserve in their conservation efforts.

POLICY CON 2-A-2: Bald Eagles:

Maintain Lee County's ordinance protecting bald eagle nesting habitat in case bald eagles begin nesting on Estero Island, and urge adherence during development activities to "Habitat Management Guidelines for the Bald Eagle in the Southern Region" prepared by the U.S. Fish and WILDLIFE Service which recommends a primary protection zone with a radius of 750 to 1500 feet around active nests in which no development should occur, and a secondary zone an additional 750 feet to a mile from the outer edge of the primary zone to remain undisturbed during the nesting seasons.

POLICY CON 2-A-3: Manatees:

Recognizing that the waters of the Town provide important habitat for the endangered West Indian manatee, the Town will cooperate with local, state, and federal agencies in the establishment of manatee protection programs, including designation, marking, enforcement of slow-speed manatee protection areas and restriction of activities known to adversely affect manatees. The Town waters or portions of Town waters, as properly marked and permitted through the Florida

Fish and Wildlife Conservation Commission, are hereby established as all year slow speed manatee protection zones:

- i. All waters of Matanzas Pass and Estero Bay east of a line that bears 360° from the northernmost tip (approximate latitude 26°27'56" North, approximate longitude 81°58'04" West) of Estero Island, and west and southwest of a line 1,000 feet east and northeast of and parallel to the general contour of the east and northeastern shorelines of Estero Island, and west of a line beginning at a point (approximate latitude 26°24'34" North, approximate longitude 81°53'03" West) on the eastern shoreline of Estero Island and bearing 36° to a point (approximate latitude 26°24'40" North, approximate longitude 81°53'00" West) on the southern shoreline of Coon Key, but excluding the portions of the marked North-South channel in northern Estero Bay from Green Channel Marker "37" (approximate latitude 26°26'02" North, approximate longitude 81°54'29" West) to Green Channel Marker "57" (approximate latitude 26°25'08" North, approximate longitude 81°53'29" West).
- ii. All waters of Buccaneer Lagoon at the southern end of Estero Island.

POLICY CON 2-A-4: Gopher Tortoises:

The town's policy is to protect gopher tortoise burrows wherever they are found. If unavoidable conflicts make on-site protection infeasible, then off-site mitigation may be provided in accordance with FGFWFC requirements.

POLICY CON 2-A-5: Sea Turtles:

To protect nesting and hatchling sea turtle on the beaches in the Town of Fort Myers Beach ("Town") by ensuring that their nesting habitat is not degraded by artificial light. The objective is to ensure artificial light does not interfere with sea turtle nesting and hatching events through the appropriate design and implementation of coastal lighting systems. In order to further the objective of full implementation, this article also includes provisions designed to educate residents and beach users in the town on the benefits of appropriate coastal lighting and provides for weekly inspections to ensure compliance with the acceptable lighting standards.

GOAL CON 3: GUIDELINES FOR NEW DEVELOPMENT

Development adjacent to aquatic and other nature preserves, wildlife refuges, and recreation areas shall protect the natural character and public benefit of these areas including, but not limited to, scenic values for the benefit of future generations.

OBJECTIVE CON 3-A: WETLANDS PROTECTION

Protect wetlands from development activities.

POLICY CON 3-A-1: Wetlands Definition:

Wetlands include tidal marshes, salt flats, and mangrove swamps that provide valuable habitat, buffering from storms, shoreline stabilization, and production of food for estuarine and coastal waters. The town will cooperate with state and agencies in the formulation, monitoring, and enforcement of regulations restricting activities that contribute to the destruction of wetlands and/or of the

adjacent upland communities that cleanse stormwater inflows. Such potentially destructive activities include construction fill that encroaches on edges of canals and bay waters, dredging of boat basins and channels, use of seawalls, rip rap, and other similar forms of shoreline stabilization, ditching for mosquito control, and any filling or removal of mangrove systems.

POLICY CON 3-A-2: Wetland Boundaries

The Future Land Use Map provides a close approximation of wetland boundaries. Wetland regulations in this plan and in the land development regulations include all wetlands, even in not specifically shown on the Future Land Use Map, that are identified as wetlands in accordance per Florida Statute “Through the use of the unified state delineation methodology described, as ratified and amended by Florida Statue. If the Future Land Use Map is incorrect due to a clear factual error, an administrative process is contained to establish the precise boundary of any wetland.

OBJECTIVE CON 3-B: Protecting Dunes

Protect, maintain and improve dunes and beaches as recreation areas, valuable habitat, protection from storms, and areas of high scenic and aesthetic value. The effect of the town’s efforts may be a noticeable transition from today’s manicured and compacted beach towards a naturally appearing and functioning beach. This transition will be accomplished through education, regulation, and assistance in physical restoration activities.

POLICY CON 3-B-1: Dune Walkover Structures

For any beachfront development approved after the adoption of this plan and for all public beach areas within the town, state-approved dune walk-over structures shall be required at appropriate crossing points. These same structures are also encouraged wherever pedestrians will be crossing dune areas. Minor structures includes, but is not limited to, pile- supported elevated dune and beach walkover structures; beach access ramps and walkways; stairways; pile-supported elevated viewing platforms

POLICY CON 3-B-2: Additional Protections for Dunes and Beaches

The following activities are prohibited to protect dunes and beaches:

- i. Removal of dune vegetation and stabilization of submerged and exposed beach by artificial means other than replenishment with compatible sand.
- ii. Excavation or destructive alteration of beach and dune systems. (Minimal disturbance necessary to accomplish approved beach restoration or renourishment activities or construct dune crossovers is allowable)
- i. Plant appropriate vegetation such as sea oats wherever sand dunes have been destroyed.
- ii. Undertake a management and maintenance program to control invasive exotic vegetation.
- iii. Removal of dune vegetation and stabilization of submerged and exposed beach by artificial means other than replenishment with compatible sand.
- iv. Excavation or destructive alteration of beach and dune systems. (Minimal disturbance necessary to accomplish approved beach

restoration or renourishment activities or construct dune crossovers is allowable.)

POLICY CON 3-B-3: Sea Turtle Nests

All coastal construction projects, including beach restoration and renourishment, shall protect sea turtle nesting areas by limiting construction in dune and beach areas to non-nesting periods (except under emergency conditions). In historic shorebird nesting areas, construction must be completed prior to shorebird nesting. Protection zones shall be marked around sea turtle nests and shorebird nesting areas to ensure that construction activities landward of the dune and beach system are limited to the actual construction site.

POLICY CON 3-B-4: 50ft Buffer Between Structures

The town will-promote the restoration of beach and dune systems to require that lots and parcels created after the adoption of this plan shall be of sufficient size and dimension to ensure a 50-foot buffer between any structures (except dune cross- overs) and the landward edge of the primary dune. This buffer shall remain in its natural state except for the minimum disturbance necessary to accommodate dune crossovers.

POLICY CON 3-B-5: Coastal Construction Line

Any construction activity seaward of the Coastal Construction Control Line not specifically approved by the DEP. Construction of artificial shoreline hardening structures is prohibited except for the emergency use of such structures constructed in compliance the Florida Statute

GOAL CON 4: MONITORING AND EDUCATION

Wetlands and the surrounding natural habitats will be protected, conserved, and monitored.

OBJECTIVE CON 4-A: Monitoring Natural Resources

Develop policies to monitor Fort Meyers Beach's natural resources.

POLICY CON 4-A-1: Evaluating Existing Regulations and Enforcement

In cooperation with other jurisdictions, evaluate the effectiveness of existing regulations and enforcement techniques in preserving the bay and estuary system.

POLICY CON 4-A-2: Monitor Water Quality

In cooperation with Lee County and other agencies, encourage continued water quality monitoring and identify sources of non-point water pollution, especially those found to be occurring from within the town. Develop a program to reduce or eliminate those pollution sources that may include education, regulation, and incentives, and follow-up enforcement.

POLICY CON 4-A-3: Surface Water Contamination

The Town shall comply the requirements of the National Pollutant Discharge Elimination System by prohibiting the discharge of runoff, wastewater, or other potential sources of contamination into surface waters which results in the degradation of the quality of the receiving water body below the applicable standards.

POLICY CON 4-A-4: Soil Erosion

Conserve and protect soils to reduce water and air pollution from wind and water erosion.

POLICY: CON 4-A-5: Monitoring Native Soil and Prevent Erosion

The Town shall implement the following measures to ensure conservation of native soils and prevention of erosion and its polluting impacts:

- i. To reduce airborne pollutants and protect tidal waters from dust caused by wind erosion, adopt requirements for protecting cleared land during construction.
- ii. Land clearing prior to issuance of a building permit or development order.
- iii. An erosion control plan shall be submitted and approved by the town prior to the issuance of a development order. Such plan shall reference the property's topography, vegetation, and hydrology and utilize the best management practices such as the use of staked hay bales or filter cloth between the development site and adjacent swales, surface waters, or wetlands; sodding, seeding, or mulching immediately after final grading; and maintenance of vegetation following development activities in order to reduce the erosion by wind or water.

POLICY CON 4-A-6: Native Soils

The town shall implement the following measures to ensure conservation of native soils and prevention of erosion and its polluting impacts:

- i. To reduce airborne pollutants and protect tidal waters and adhere to the requirements for protecting cleared land during construction.
- ii. An erosion control plan shall be submitted and approved by the town prior to the issuance of a development order and be in compliance with Fort Myers Beach code of ordinances and compliance with NPDES erosion control standards

POLICY CON 4-A-7: Air Quality

Continue to meet or exceed federal air quality standards based on monitoring results from state agencies.

POLICY CON 4-A-8: Information Sharing

Share information, data, and maps with other entities involved with conservation land acquisition and management through measures such as:

- i. Cooperating with Lee County in the following activities:
 - Maintaining a central clearinghouse for environmental studies and recommendations from public and private information sources. Compiling, maintaining, and regularly updating vegetation mapping, listed species, data regarding their habitat, and water resources data.
 - Updating the Lee County Habitat Inventory Map using the county's Geographic Information System.

ii. Cooperate with Lee County and FGFWFC in maintaining an inventory of all native communities and natural habitats to aid in land-use decision-making, development approvals, and ranking of potential acquisitions

iii. Recommend and evaluate such additional measures as necessary to ensure their enforcement techniques in preserving the bay and estuary systems as described per Florida Statute: Florida Legislature has declared as “aquatic preserves” certain submerged lands and associated waters that are of “exceptional biological, aesthetic, and scientific value.” These preserves are “set aside forever... for the benefit of future generations”. Develop a clear approach for evaluating existing regulations and its ongoing enforcement for preserving the bay and estuary system.

OBJECTIVE CON 4-B-: EDUCATION:

POLICY CON 4-B-1: Conservation Programs Generally

Increase education access and protection. The town will develop educational programming for allowing appropriate access, protecting natural resources, and documenting and reporting violations of laws and regulations.

POLICY CON 4-B-2: Little Estero Island Critical Wildlife Area

In cooperation with state agencies, the town will aid in the stewardship of the Little Estero Island Critical WILDLIFE Area through activities such as:

i. Prohibit commercial activities within the defined boundaries of Little Estero Island.

ii. Support legislative measures as necessary to protect the long-term future of the preserve.

iii. Inform residents and visitors of the uniqueness and fragility of the island’s habitats and identify funding for measures such as designating pedestrian trails and dune walkovers, adding information and interpretive signs, producing educational brochures, and conducting seminars to encourage proper use.

iv. Sponsor a volunteer task force to work with the Florida Game and Fish Water Fish Commission to oversee the daily stewardship of Little Estero Island through activities such as:

- Identify potentially destructive practices (such as mowing or raking on the shoreline, litter, boat traffic, low flying airplanes, disturbances from vehicles and dogs, etc.) and determine appropriate methods to address them.

- Inform residents and visitors of the uniqueness and fragility of the island’s habitats; plant shoreline vegetation to replace vegetation damaged by visitors or other unnatural causes; place and maintain interpretive signs; produce educational brochures; and conduct seminars to encourage proper use.

- Develop guidelines to protect the fragile environment of the preserve and, where appropriate, urge their adoption as land development regulations or part of the town’s code of ordinances.

POLICY CON 4-B-3: Task Force Element

Create a local task force to coordinate and reconcile efforts of various organizations, governments, and businesses to promote long- term sustainability of the estuary. The task force would make recommendations to the town regarding issues such as:

- i. Establishing restricted areas and other methods of controlling boat traffic in Estero Bay, particularly around rookery islands and seagrass beds.
- ii. Locating a suitable launching point on the Gulf for use by personal watercraft to reduce traffic on the bay side.
- iii. Adopting a ban on the commercial collection of live shells.
- iv. Recommending capital projects to improve water quality.
- v. Recommending regulations to protect local water

GOAL CON-5: WATER SUPPLY

Protect the water supply.

OBJECTIVE CON-5-A: Water Supply

The City shall protect, monitor, and address issues to ensure quality and quantity of water supply and ensure continued supplies of drinking water of sufficient quantity and quality to meet the projected demands of all consumers and the environment.

POLICY CON-5-A-1: Water Conservation

The town will cooperate with emergency water conservation measures of the South Florida Water Management District.

POLICY CON-5-A-2: Purchasing Bulk Water

The town will continue to purchase bulk water from Lee County Utilities in lieu of providing an independent supply of potable water. Lee County Utilities considers the Town of Fort Myers Beach to be part of its potable water service area and has demonstrated its ability to expand raw water supply and treatment facilities to meet anticipated growth consistent with the 2017 Lower West Coast Water Supply Plan Update prepared by the South Florida Water Management District.

POLICY CON-5-A-3: Water Quality New Development

Maintain or improve estuarine water quality by requiring new development or redevelopment to meet the following standards:

- i. Development shall not degrade the estuarine quality of Estero Bay below those standards established by the state for Class II Outstanding Florida Waters.
- ii. Development shall not degrade surface or ground water quality below state standards established in Chapter 62-302 FAC for surface water; Chapter 52-520, for ground water; and Chapter 10D-6 for bathing places.

POLICY CON-5-A-4: Water and Wastewater Management

Incorporate into the land development code measures applicable to new development and redevelopment to encourage water and wastewater management such as low-volume irrigation systems, xeriscape landscaping techniques, potential hook-ups to re-use water systems, and use of other conservation and recycling techniques demands on groundwater.

Goal CON-6: Solid Waste

The Town will support solid waste management and disaster planning which protects the environment and promotes public health. The Town aspires to support conservation and local sustainability and resiliency efforts by ensuring that solid waste collection needs of the Town are reduced over time through actions that reduce the solid waste generation rate through recycling, yard waste reuse, and education.

Objective CON-6-A: Waste Management to Support Sustainability and Conservation

The Town shall ensure the regular collection, management, and maintenance of solid waste to protect the environment and public health.

Policy CON-6-A-1: The Town shall ensure the collection and management of residential, multifamily and commercial solid waste through municipal, contracted or Town-licensed haulers, and ensure the adequate management of waste streams.

Policy CON-6-A-2: The Town will provide receptacles and solid waste collection services, including recycling, on Town properties and in public places as appropriate.

Policy CON-6-A-3: The Town shall incorporate recycling programs with the goal of achieving 75% recycling of all waste in municipal buildings and offices by 2030.

Policy CON-6-A-4: The Town shall promote, endorse, and implement education and outreach programs on waste conservation, management, and diversion, including, as applicable, the promotion of recycling, beneficial reuse of yard waste, reuse and diversions.

Policy CON-6-A-5: The Town shall conduct regular maintenance and code enforcement to mitigate and abate solid waste impacts from disasters, including, but not limited to regular tree canopy trimming and storm preparation of public property.

Policy CON-6-A-6: The City will incorporate debris removal and management as a component of standard operating procedures for pre-disaster planning and post-disaster recovery efforts.

OBJECTIVE CON-6-B: Waste Reduction

The Town shall promote waste reduction to support a sustainable community.

Policy CON-6-B-1: Eliminating Plastics and Polystyrene

The Town shall consider the elimination of use of single use plastics and polystyrene by the Town, licensees operating on Town property, and users of Town facilities and at permitted events on Town property.

Policy CON-6-B-2: Construction Waste

The Town shall strive to divert municipal construction and demolition waste as feasible.

Policy CON-6-B-3: Residential Composting

The Town shall assess the feasibility of implementing a residential composting

program.

Policy CON-6-B-4: Commercial Waste

The Town shall encourage commercial waste reduction through policies or incentives, including Zero Waste programs.

Objective CON-6-C: Hazardous Waste

The Town shall coordinate with the appropriate entities ensure hazardous wastes are handled, collected, transported, stored, disposed of, and recycled in a manner that protects human health, safety, and the environment.

Policy CON-6-C-1: The Town shall support programs which aims to regulate small generators of hazardous wastes and reduce the volume produced in the Town.

Policy CON-6-C-2: The Town, in conjunction with Lee County and neighboring local governments, shall perform public outreach to inform residents of effective methods to minimize the use of, safely store, dispose of, and recycle hazardous waste products such as oils, solvents, and paints.

Policy CON-6-C-3: The Town shall encourage residents to deposit household hazardous waste at the appropriate collection centers.

~~POLICY 6-B-5 ADJACENT DEVELOPMENT—Development adjacent to aquatic and other nature preserves, wildlife refuges, and recreation areas shall protect the natural character and public benefit of these areas including, but not limited to, scenic values for the benefit of future generations.~~

~~POLICY 6-B-6 RESOURCE MANAGEMENT PLANS—The town will participate with other agencies in preparing and implementing water management plans such as the Charlotte Harbor Management Plan, Surface Water Improvement and Management (SWIM) plans, Estero Bay Aquatic Preserve Management Plans, and similar efforts. The town will reevaluate its policies for protecting and enhancing natural resources upon a review of newly adopted or revised plan by other agencies.~~

~~POLICY 6-B-7 INVASIVE EXOTIC PLANTS—Invasive exotic plants may not be used to meet landscaping requirements for new development. Prohibited species shall be identified in the land development regulations.~~

~~POLICY 6-B-8 SEAWALLS—The town shall encourage planting of mangroves or placement of rip-rap in artificial and natural canal systems to replace existing seawalls in need of repair. Build back of vertical seawalls will not be permitted along natural waterbodies if one or more of the following conditions exist:~~

- ~~i. Build back would cause excessive shoreline erosion or endanger shorelines of surrounding properties.~~

- ~~ii. Build back would threaten wetlands.~~
- ~~iii. Build back would be a threat to public safety or block access to state-owned land or beaches.~~
- ~~iv. Build back would be waterward of the existing seawall alignment on adjacent shorelines.~~

~~POLICY 6-B-9 ACQUISITION OF ADDITIONAL SITES — The town will strive to expand the~~

~~opportunities for conservation and public appreciation of natural resources through acquisition of additional areas with rare or unique ecological or botanical features, or which provide access to such areas, through activities such as the following:~~

- ~~i. Identify specific sites that would be desirable for public acquisition.~~
- ~~ii. Support the efforts of other entities acquiring land that will contribute to the conservation effort (for example, aquatic preserve buffer areas, Bunche Beach, etc.)~~
- ~~iii. Consider alternative means of land acquisition, such as supporting the efforts of non-profit conservation land trust or acquiring development rights in lieu of full acquisition.~~
- ~~iv. Accept donations of land for nature preserves or other resource conservation areas with the following general conditions: if such lands contain ecologically valuable habitat and/or if public ownership of such lands would expand existing or provide increased preservation or resource conservation areas.~~
- ~~v. When acquiring property, determine the best entity to be responsible to implement a long-range management plan.~~

~~POLICY 6-B-10 INFORMATION SHARING — Share information, data, and maps with other entities involved with conservation land acquisition and management through measures such as:~~

- ~~i. Cooperating with Lee County in the following activities:

 - ~~• Maintaining a central clearinghouse for environmental studies and recommendations from public and private information sources.~~
 - ~~• Compiling, maintaining, and regularly updating vegetation mapping, listed species, data regarding their habitat, and water resources data.~~
 - ~~• Updating the Lee County Habitat Inventory Map using the county's Geographic Information System.~~~~
- ~~ii. Cooperate with Lee County and FGFWFC in maintaining an inventory of all native communities and natural habitats to aid in land-use decision-making, development approvals, and ranking of potential acquisitions.~~

~~OBJECTIVE 6-C PROTECTED SPECIES — Increase cooperation with local, state, and federal agencies in protecting wildlife species listed as endangered, threatened, or of special concern, and conserve the habitats upon which they depend in order to maintain balanced, biologically productive ecosystems.~~

~~POLICY 6-C-1 PROTECTIVE MEASURES GENERALLY —~~

~~The town shall assist in the application of state and federal regulations regarding listed species through activities such as:~~

- ~~i. Provide information regarding listed species on properties undergoing~~

development review.

ii. ~~Withhold development approval until such time as all applicable state and federal permits pertaining to such species have been obtained and copies provided to the town.~~

iii. ~~Cooperate with local, state, and federal agencies in developing species-specific Habitat Conservation Plans as authorize by the Endangered Species Act. Until such plans are developed, the town's criteria for approval of development proposals shall be consistent with the provisions of the listed species guidelines promulgated by the FGFWFC.~~

iv. ~~Cooperate with Lee County and other agencies in the establishment of mitigation parks and banks to allow this form of mitigation for local impacts to listed wildlife species and native communities.~~

v. ~~Support public education on the value of wildlife, native communities, and other natural resources through such means as brochures, newspaper articles, public presentations and workshops, and the placement of interpretive displays and development of observation trails at appropriate park sites.~~

vi. ~~Encourage and provide technical assistance to volunteer and non-profit organizations such as Turtle Time, Estero Bay Foundation, Estero Bay Buddies, and the Friends of the Matanzas Pass Preserve in their conservation efforts.~~

~~POLICY 6-C-2 BALD EAGLES — Maintain Lee County's ordinance protecting bald eagle nesting habitat in case bald eagles begin nesting on Estero Island, and urge adherence during~~

~~development activities to "Habitat Management Guidelines for the Bald Eagle in the Southern Region" prepared by the U.S. Fish and Wildlife Service which recommends a primary protection zone with a radius of 750 to 1500 feet around active nests in which no development should occur, and a secondary zone an additional 750 feet to a mile from the outer edge of the primary zone to remain undisturbed during the nesting seasons. Nest trees should not be touched in any way by development activities unless the nest site has been de-classified by the FGFWFC.~~

~~POLICY 6-C-3 MANATEES — Recognizing that the waters of the town provide important habitat for the endangered West Indian manatee, the town will cooperate with local, state, and federal agencies in the establishment of manatee protection programs, including restriction of activities known to adversely affect manatees. The town shall cooperate in the designation, marking, and enforcement of slow-speed manatee protection areas. The town shall cooperate with Lee County in preparing and implementing a manatee protection plan, particularly in providing educational materials and programs to inform the town's boating population of the presence of manatees and of how to avoid destruction of manatee habitat and avoid manatee/boat collisions. The town supports the incorporation of the SWFRPC's 1995 marina siting study into Lee County's Manatee Protection Plan.~~

~~POLICY 6-C-4 GOPHER TORTOISES — The town's policy is to protect gopher tortoise burrows wherever they are found. If unavoidable conflicts make on-site protection infeasible, then off-site mitigation may be provided in accordance with FGFWFC requirements.~~

~~POLICY 6-C-5 SEA TURTLES — The town shall prepare and adopt a new sea turtle ordinance by the end of 1998 to supersede Lee County's existing Sea Turtle Protection Ordinance. The new ordinance shall provide standards for coastal uses and development~~

~~and shall prohibit, during sea turtle nesting season, any point source of light or any reflective surface of a light fixture being visible from the beach;
also, areas seaward of a frontal dune must not be directly, indirectly, or cumulatively illuminated. Other beach activities to be regulated include:~~

- ~~i. Beach raking, scraping, and other activities that unnecessarily compact the sand and/or damage dunes or prevent the re-creation of dunes;~~
- ~~ii. Unauthorized vehicular traffic on the beach;~~
- ~~iii. Storage of beach furniture, cabanas, jet skis, sailboats, and other equipment on the beach that may interfere with sea turtle nesting;~~
- ~~iv. Drainage of swimming pools, parking lots, and building roofs into point discharges directly onto the beach.~~

~~OBJECTIVE 6-D WETLANDS — Preserve all remaining wetlands; protect them from further degradation; and improve their condition and natural functions.~~

~~POLICY 6-D-1 Wetlands include tidal marshes, salt flats, and mangrove swamps that provide valuable habitat, buffering from storms, shoreline stabilization, and production of food for estuarine and coastal waters. The town will cooperate with state and federal agencies in the formulation, monitoring, and enforcement of regulations restricting activities that contribute to the destruction of wetlands and/or of the adjacent upland communities that cleanse stormwater inflows. Such potentially destructive activities include construction fill that encroaches on edges of canals and bay waters, dredging of boat basins and channels, use of seawalls, rip rap, and other similar forms of shoreline stabilization, ditching for mosquito control, and any filling or removal of mangrove systems.~~

~~POLICY 6-D-2 The Future Land Use Map provides a close approximation of wetland boundaries. Wetland regulations in this plan and in the land development regulations include all wetlands, even in not specifically shown on the Future Land Use Map, that are identified as wetlands in accordance with F.S. 373.019 (17) through the use of the unified state delineation methodology described in FAC Chapter 62-340, as ratified and amended by F.S. 373.4211. If the Future Land Use Map is incorrect due to a clear factual error, an administrative process is contained in Chapter 15 to establish the precise boundary of any wetland.~~

~~POLICY 6-D-3 In accordance with F.S. 163.3184(6)(c), the town will not undertake an independent review of the impacts to wetlands resulting from development in wetlands that is specifically authorized by a state Environmental Resource Permit or exemption. However, no development approval shall be issued by the town for any project which impacts wetland resources until all requisite permits from other agencies have been obtained and provided to the town. All conditions placed on such permits shall be incorporated into the final development approval issues by the town. Violations of such conditions shall be prosecuted through the town's code enforcement procedures.~~

~~POLICY 6-D-4 The following activities in and near wetlands may be desirable and are not forbidden by this comprehensive plan: —~~

- i. ~~Activities necessary to prevent or eliminate a public hazard, such as elimination of a dangerous curve in a road, dredging in order to clean up a spill of hazardous waste, or removal of underwater obstructions to boat traffic.~~
- ii. ~~Activities which provide a direct benefit to the public at large which would exceed any public loss as a result of the activity, such as removal of exotic species, restoration of natural hydroperiods, impacts associated with the maintenance of existing drainage works, or providing water access that is open to the public.~~
- iii. ~~Resource-oriented activities such as passive recreation, outdoor education, or other uses where protection of wetland functions and values is the primary attraction.~~
- iv. ~~Structures or facilities that will improve the functional value of wetlands or provide “no-impact” use for observation, education, research, or passage (walking or non-motorized boats); these could include such structures as public boardwalks, observation decks, or launching areas for non-motorized watercraft.~~

~~POLICY 6-E-1 For any beachfront development approved after the adoption of this plan and for all public beach areas within the town, state-approved dune walk-over structures shall be required at appropriate crossing points. These same structures are also encouraged wherever pedestrians will be crossing dune areas.~~

~~POLICY 6-E-2 All coastal construction projects, including beach restoration and renourishment, shall protect sea turtle nesting areas by limiting construction in dune and beach areas to non-nesting periods (except under emergency conditions). In historic shorebird nesting areas, construction must be completed prior to shorebird nesting.~~

~~POLICY 6-E-3 The town will implement the following measures to promote the restoration of beach and dune systems:~~

- i. ~~Initiate a program to recreate a dune line and plant appropriate vegetation such as sea oats wherever sand dunes have been destroyed.~~
- ii. ~~Require the use of indigenous plants species for public and private dune restoration or renourishment projects.~~
- iii. ~~Require that lots and parcels created after the adoption of this plan shall be of sufficient size and dimension to ensure a 50-foot buffer between any structures (except dune cross-overs) and the landward edge of the primary dune. This buffer shall remain in its natural state except for the minimum disturbance necessary to accommodate dune crossovers.~~
- iv. ~~Undertake a management and maintenance program to control invasive exotic vegetation as a cooperative effort of the town and its citizenry.~~
- v. ~~Consider erosion control taxing/benefit units, grants, and other cost-sharing funding mechanisms to provide funds for beach renourishment and management projects (see Coastal Management Element for strategies on beach renourishment).~~

~~POLICY 6-E-4 The following activities are prohibited to protect dunes and beaches:~~

- i. ~~Removal of dune vegetation and stabilization of submerged and exposed beach by artificial means other than replenishment with compatible sand.~~

- ii. ~~Excavation or destructive alteration of beach and dune systems. (Minimal disturbance necessary to accomplish approved beach restoration or renourishment activities or construct dune cross-overs is allowable under this policy.)~~
- iii. ~~Operation of motor vehicles on beaches and dunes (except in association with law enforcement activities, emergency medical services, public land/resources management, state-licensed sea turtle monitoring, once-daily delivery and pickup of beach equipment, minimal cleaning of litter and of excessive accumulations of natural debris, or as necessitated by an approved restoration, renourishment, or emergency project).~~
- iv. ~~Any construction activity seaward of the Coastal Construction Control Line not specifically approved by the DEP.~~
- v. ~~Construction of artificial shoreline hardening structures except the emergency use of such structures constructed in compliance with Chapter 161, F.S. If a hardened structure is absolutely necessary along the beach, riprap revetments are preferred. New seawalls are not permitted.~~

~~OBJECTIVE 6-F AIR QUALITY—Continue to meet or exceed federal air quality standards based on monitoring results from state agencies.~~

~~POLICY 6-F-1 Ensure that the town's land development regulations do not include any disincentives to the use of clean alternative energy sources such as active and passive solar technology.~~

~~POLICY 6-F-2 Reduce automobile emissions through programs developed in the Transportation Element to reduce single-occupant automobile trips. Mobility alternatives include increased ridership on the trolley system; introduction of an electric tram system throughout the Island, incentives for visitors to park off-island or park once on-island, a water taxi or water shuttle system; and an interconnected system of bicycle and pedestrian paths.~~

~~POLICY 6-F-3 Establish criteria for any new facility that would require an air quality permit including monitoring procedures to supplement those provided by the state and enter into agreements with Lee County and other relevant agencies to ensure that the town's concerns are addressed during the permitting stages of potential point source pollution generators.~~

~~OBJECTIVE 6-G SOIL EROSION—Conserve and protect soils to reduce water and air pollution from wind and water erosion.~~

~~POLICY 6-G-1 The town shall implement the following measures to ensure conservation of native soils and prevention of erosion and its polluting impacts:~~

- i. ~~To reduce airborne pollutants and protect tidal waters from dust caused by wind erosion, adopt requirements for protecting cleared land during construction.~~
- ii. ~~Land clearing prior to issuance of a building permit or development order.....~~
- iii. ~~An erosion control plan shall be submitted and approved by the town prior to the~~

~~issuance of a development order. Such plan shall reference the property's topography, vegetation, and hydrology and utilize the best management practices such as the use of staked hay bales or filter cloth between the development site and adjacent swales, surface waters, or wetlands; sodding, seeding, or mulching immediately after final grading; and maintenance of vegetation following development activities in order to reduce the erosion by wind or water.~~

~~OBJECTIVE 6-H WATER QUALITY—Improve the water quality and economic value of the water bodies surrounding the Town of Fort Myers Beach beyond the levels existing in 1997.~~

~~POLICY 6-H-1 As an integral part of the Estero Bay estuary system, the town shall take all feasible measures in an intergovernmental effort to protect, maintain, and improve water quality in Estero Bay.~~

~~POLICY 6-H-2 No garbage or untreated sewage shall be discharged into tidal waters.~~

~~POLICY 6-H-3 Maintain or improve estuarine water quality by requiring new development or redevelopment to meet the following standards:~~

- ~~i. Development shall not degrade the estuarine quality of Estero Bay below those standards established by the state for Class II Outstanding Florida Waters.~~
- ~~ii. Development shall not degrade surface or ground water quality below state standards established in Chapter 62-302 FAC for surface water; Chapter 52-520, for ground water; and Chapter 10D-6 for bathing places.~~

~~POLICY 6-H-4 In cooperation with Lee County and other agencies, encourage continued water quality monitoring and identify sources of non-point water pollution, especially those found to be occurring from within the town. Develop a program to reduce or eliminate those pollution sources that may include education, regulation, and incentives, and follow-up enforcement.~~

~~POLICY 6-H-5 The town will implement the measures adopted in the Stormwater Management Element to reduce the polluting impacts of stormwater runoff.~~

~~POLICY 6-H-6 The town shall comply the requirements of the National Pollutant Discharge Elimination System by prohibiting the discharge of runoff, wastewater, or other potential sources of contamination into surface waters which results in the degradation of the quality of the receiving water body below the applicable standards.~~

~~OBJECTIVE 6-I WATER SUPPLY—Ensure continued supplies of drinking water of sufficient quantity and quality to meet the projected demands of all consumers and the environment.~~

~~POLICY 6-I-1 Incorporate into the land development code measures applicable to new development and~~

~~redevelopment to encourage water and wastewater management such as low-volume irrigation systems, xeriscape landscaping techniques, potential hook-ups to re-use water systems, and use of other conservation and recycling techniques.~~

~~POLICY 6-I-2 The town will cooperate with emergency water conservation measures of the South Florida Water Management District.~~

~~POLICY 6-I-3 The town will continue to purchase bulk water from Lee County Utilities in lieu of providing an independent supply of potable water. Lee County Utilities considers the Town of Fort Myers Beach to be part of its potable water service area and has demonstrated its ability to expand raw water supply and treatment facilities to meet anticipated growth consistent with the 2005–2006 Lower West Coast Water Supply Plan Update (prepared by the South Florida Water Management District).~~

OBJECTIVE 6-J GROUNDWATER — Maintain the quality of groundwater resources and improve as necessary to meet state or federal standards.

~~POLICY 6-J-1 Commercial excavation and mining activities are prohibited in the Town of Fort Myers Beach due to potentially detrimental effects to groundwater, surface water, wildlife habitats, and surrounding land uses and values.~~

~~POLICY 6-J-2 The Town of Fort Myers Beach opposes offshore gas and oil exploration and excavation activities which may be reasonably expected to threaten the quality of coastal beaches and estuarine ecosystems; or would place oil or gas-related facilities on coastal beaches, islands, or wetlands; or would require the placement of oil or gas storage facilities on the island.~~

~~POLICY 6-J-3 The dredging of additional tidal canals is prohibited.~~

~~POLICY 6-J-4 The town shall support Lee County's programs to properly dispose of hazardous wastes.~~

~~POLICY 6-J-5 The town shall require connection to central water and sewer systems to eliminate demands on groundwater and reduce the potential for contamination from septic tanks.~~

~~POLICY 6-J-6 Identify any remaining septic tanks and require their use be discontinued~~

INTERGOVERNMENTAL COORDINATION

GOAL IGC14: To efficiently coordinate plans, policies, and public services among the many public and private agencies that play important community roles.

OBJECTIVE IGC-A14-ACCOORDINATION OF PLANS — Ensure coordination of this comprehensive plan with comprehensive plans of Lee County and the Lee County School Board, other units of local government providing services but not having regulatory authority over the use of land, and with regional and state plans.

POLICY IGC- 14-A-1 The town will coordinate planning activities called for by this comprehensive plan with other local governments, the school board, other units of local government providing services but not having regulatory authority over the use of land, the regional planning council, and the state through informal coordination, working groups, workshops, joint meetings of governing boards, participation in coordinating organizations, special task forces, and by formal interlocal agreements as the need arises.

POLICY IGC- 14-A-2 In the areas where the town's comprehensive plan addresses the subject matter of the State Comprehensive Plan in Chapter 187 F.S. and/or the 1995 2002 Southwest Florida Strategic Regional Policy Plan, the town's plan has been designed to be compatible with and further these plans. Future amendments to this plan shall maintain this compatibility. The town will incorporate into the land development code appropriate regulations to further attain mutually held objectives.

POLICY IGC- 14--A-3 Where conflicts with other entities cannot be resolved through discussion among those concerned or other means, the town shall consider resolution through interlocal agreements and/or the informal mediation process of the Southwest Florida Regional Planning Council.

POLICY IGC- 14--A-4 Pursuant to the 1996 amendments to Chapter 163.3177 F.S., the town shall cooperate with the Lee County and other municipalities within the county, the Lee County School Board and any unit of local government providing services in the county in the following activities:

- i. Developing principles and guidelines to be used in the accomplishment of coordination of the adopted comprehensive plans;
- ii. Describing joint processes for collaborative planning and decision-making on population projections and public school siting, the location and extension of public facilities subject to concurrency, and siting facilities with countywide significance

The town will cooperate in establishing, by interlocal or other formal agreement executed by all affected entities, the joint processes described above, pursuant to the schedule to be established by the state land planning agency.

POLICY IGC- 14--A-5 The town will coordinate with Lee County and the South Florida Water Management District to ~~insure~~ ensure that this Comprehensive Plan remains consistent with Lee County's Water Supply Facilities Work Plan (~~last updated in July 2008~~) and SFWMD's ~~2017~~2005–2006 Lower West Coast Water Supply Plan Update (~~approved on July 12, 2006~~). The town commits to updating this Comprehensive Plan in accordance with statutory timeframes, ~~which in 2009 required this update within 18 months after SFWMD updates or amends its 2006 Lower West Coast Water Supply Plan Update.~~

OBJECTIVE IGC-B COORDINATION OF SERVICES — Ensure coordination among relevant entities in establishing level-of-service standards for public facilities, providing for efficient delivery of services, monitoring progress toward goals, and constructing improvements.

POLICY IGC- 14--B-1 Along Old San Carlos and Estero Boulevard, ~~T~~the town would like to see major power lines placed underground to protect the lines, to avoid interruptions to evacuation due to fallen lines, and to improve the visual experience for tourists and residents.

POLICY ~~IGC- 14--B-2~~ Level-of-service standards for public facilities, as specified in Policies 2-A through 2-D of the Capital Improvements Element, have been coordinated with the level-of-service standards of entities operating these facilities. Future amendments to these standards shall be similarly coordinated.

POLICY ~~IGC- 14--B-3~~ To foster coordination with special districts, the town shall review the annual public facilities report prepared by special districts pursuant to Section 189.415, F.S.

POLICY ~~IGC- 14--B-4~~ The Town Council shall appoint a committee ~~by 1999~~ to evaluate the relationship between the town and the three independent special districts and suggest whether efficiencies could be achieved through closer cooperation.

POLICY ~~IGC- 14--B-5~~ The town shall continue to cooperate with Lee County's process of monitoring for conflicts in level-of-service standards for public facilities, and shall help resolve any conflicts.

POLICY ~~IGC- 14--B-6~~ The town shall work closely with public and private service providers to coordinate expected utility improvements with roadway projects and/or become a party to the county's interlocal agreement with such entities.

POLICY ~~IGC- 14--B-7~~ The town shall seek a significant role in policy matters concerning Lee County Utilities' sewer service, based on the town's dual roles as a major user of this service and its location directly downstream of any effluent discharges into tidal waters.

OBJECTIVE ~~IGC- 14-C~~ COORDINATION OF NEW DEVELOPMENT — Work closely with Lee County in evaluating and addressing the effects of new development.

POLICY ~~IGC- 14-C-1~~ ~~During 1998, resolve the current~~ Resolve any ambiguity over the county's and town's roles in collecting and spending road impact fees.

POLICY ~~IGC- 14-C-2~~ In cooperation with Lee County, establish a process and enter into interlocal agreements as needed to address the following:

- i. Impacts of proposed new development or re-development in Lee County outside the town's boundaries which may impact the town's levels of service, natural resource standards, evacuation times, or other significant impacts.
- ii. Impacts, if any, of development proposed in the town's comprehensive plan upon development in the adjacent county area.
- iii. Resolution of annexation issues that may arise.
- iv. Implementation of joint planning areas and/or joint infrastructure service areas.
- v. Procedure for notification and exchange of information regarding changes in land use or zoning and/or other issues potentially affecting the area adjacent to the town's boundaries.

OBJECTIVE ~~IGC-14-D~~ COORDINATION OF IMPLEMENTATION — Promote cooperative solutions to multi-jurisdictional problems and opportunities through active participation in coordinating entities, strengthening coordination mechanisms, leading by example (particularly through timely implementation of the policies of the town's comprehensive plan), and fostering community involvement in implementing this plan.

POLICY ~~IGC- 14-D-1~~ The town shall continue to participate actively in the Lee County Metropolitan Planning Organization and ~~intends to join~~ the Southwest Florida Regional Planning Council.

POLICY IGC-14-D-2 The town shall continue to participate in relevant coordinating entities sponsored by the regional planning council such as:

- i. Southwest Florida Chief Administrative Officers
- ii. Regional Harbor Board
- iii. Estero Bay Agency on Bay Management
- iv. Beach Restoration working group convened by WCIND, SWFRPC, and Lee County Coastal Advisory Council
- v. Southwest Florida Issues Group of the Governor's Commission for a Sustainable South Florida
- vi. Charlotte Harbor National Estuary Program

POLICY IGC-14-D-3 The town shall continue to foster close cooperation among WCIND, SFWMD, DEP, FGFWFC, DCA, other state and federal agencies as appropriate, Lee County, local task forces, non-profit organizations and volunteer groups to implement the policies of the town's comprehensive plan.

POLICY IGC-14-D-4 The town shall actively participate in efforts that promote the consistent and coordinated management of bays, estuaries, and harbors that fall under the jurisdiction of more than one local government through the entities described in Policies 5- D-1/2/3 and specifically by implementing Policy 5-F-1 of the Coastal Management Element initiating a cooperative planning process for Matanzas Pass and surrounding waterways by 1998.

POLICY IGC-14-D-5 The town shall coordinate implementation of the comprehensive plan with the programs and permitting requirements of all relevant regional, state, and federal agencies and shall support the regulatory and enforcement efforts of those agencies by requiring applicants for development orders to obtain approval from these other agencies prior to the city's authorizing commencement of development activities.

POLICY IGC-14-D-6 The town will continue cooperating with Lee County over appropriate long-term responsibilities, cost sharing, and the transition process for county-owned facilities within the jurisdictional boundaries of the town, formalizing resolution of these matters through interlocal agreements.

POLICY IGC-14-D-7 The town shall continue to coordinate informally with the Fort Myers Beach Elementary School and the Fort Myers Beach Library District to address mutual needs.

POLICY IGC-14-D-8 The town will exchange information with the Fort Myers Beach Fire Control District and solicit input from the fire district on development proposals.

POLICY IGC-14-D-9 The town will consider joining the Lee County Regional Water Supply Authority.

POLICY IGC-14-D-10 Should the need for a new permanent dredge spoil disposal site arise, the town will coordinate with Lee County and the West Coast Inland Navigational District and resolve conflicts between the town and a public agency seeking a dredge spoil disposal site through the Coastal Resources Interagency Management Committee's dispute resolution process.

UTILITIES ELEMENT

GOAL U-18: To improve the existing systems that provide safe drinking water, irrigation water, sewer service, and solid waste disposal in order to reduce environmental impacts on land and water while keeping costs as economical as possible.

OBJECTIVE U-1-8-A RELATIONS WITH UTILITIES — Increase the town's role in influencing utility providers about service alternatives, facility locations, and conservation of resources.

POLICY U-1-8-A-1 Mandatory customer connections to water and sewer utilities shall continue to be the policy of the Town of Fort Myers Beach.

POLICY U-1-8-A-2 When considering improvements to utility systems, utility companies should expect involvement by the ~~town~~ Town in evaluating alternatives and seeking the best interests of utility customers and other people and resources affected by those decisions.

POLICY U-1-8--A-3 The ~~town~~ Town shall seek a significant role in policy matters concerning Lee County Utilities' sewer service, based on the ~~town's~~ Town's dual roles as a major user of this service and its location directly downstream of any effluent discharges into tidal waters.

POLICY U-1-8--A-4 The ~~town's~~ Town's potable water supply distribution system is supplied by Lee County Utilities under terms set forth in a bulk water agreement approved in August 2001. Lee County Utilities has a long-term expansion plan that details existing and proposed uses of traditional and alternative water supply sources, in accordance with SFWMD's Lower West Coast Water Supply Plan Update (~~July 2006~~ December 2016). Lee County Utilities' expansion plan, the Water Supply Facilities Work Plan, was last updated in ~~July 2008~~ January 2016 and is incorporated herein by reference.

POLICY U-1-8--A-5 The ~~town~~ Town shares a common interest with Lee County government in ensuring that potable water supplies will be sufficient to meet future demands. The ~~town~~ Town will coordinate with Lee County on an ongoing basis on the following matters:

1. Analyzing peak season demands and providing sufficient allocations of water.
2. Using consistent population projections and level-of-service standards.
3. Conserving water by adopting a conservation rate structure (see Policy 8-C-6).
4. Implementing a leak detection program and replacing obsolete portions of the water supply system.

Policy U-1-A-6: The town shall collaborate with its utility service partners to promote green and environmentally friendly practices, fostering sustainability and environmental stewardship in the town's development.

OBJECTIVE U-1-8-B LEVELS OF SERVICE — Maintain minimum acceptable levels of service for potable water, sanitary sewer, and solid waste disposal.

POLICY U-1-8--B-1 The minimum acceptable level of service standards for utility services within the Town of Fort Myers Beach shall be:

i. for potable water service:

(a) available supply, treatment, and delivery capacity of ~~260~~ 275 gallons per day per equivalent residential connection (ERC), and delivery of potable water at a minimum pressure of ~~20~~ 40 pounds per square inch (psi) at the meter anywhere in the system.

(b) Prior to issuance of building permits, the town must obtain assurances from Lee County Utilities that an adequate bulk water supply will be available to the town's water distribution system to serve new development at these same rates.

ii. for sanitary sewer service: Compatible with Lee County's current sanitary sewer standards ~~available capacity to collect, treat, and dispose of wastewater of 175 gallons per day per equivalent connection (ERC).~~

iii. for solid waste disposal service: the ability to collect and manage 7 pounds of municipal solid waste (or equivalent volume) per day per capita , pursuant to Lee Plan Policy 62.2.5 and Lee County Ordinance 17-19. per person per day.

~~An ERC is defined as the total number of meter equivalents using the methodology of the Florida Public Service Commission (and is synonymous with their use of the term "equivalent residential units"). ERCs are used to convert commercial and industrial water or sanitary sewer use into standard units that are based on typical rates of use in dwelling units.~~

POLICY U-1-8-B-2 ~~The town~~ Town will enforce these levels of service under the concurrency requirements of Florida law by requiring one of the following before issuance of development permits:

i. development orders or building permits

will be issued subject to the condition that, at the time of the issuance of a certificate of occupancy, the necessary facilities and services must be in place and available to serve the development being authorized; or

ii. at the time development orders or building permits are issued, the necessary facilities and services are guaranteed to be in place and available to serve the development at the time of issuance of a certificate of occupancy through an enforceable development agreement pursuant to Section 163.3220, *Florida Statutes*, or through an agreement or development order pursuant to Chapter 380, *Florida Statutes*.

POLICY U-1-8-B-3 The concurrency management system in the ~~town's~~ Town's Land Development

Code shall be amended to requirement the assessment of water supply capacity, in addition to treatment plant capacity, when determining compliance with the potable water level of service specified in Policy 8-B-1.

OBJECTIVE U-1-8-C WATER CONSERVATION — Take all reasonable steps to conserve potable water supplies, ~~aiming for a 10% per-capita reduction in water use by 2005.~~

POLICY U-1-8-C-1 The town shall, by resolution, encourage Lee County Utilities to expand its facilities and agreements for recycling treated wastewater for reuse as irrigation water; deep-well injection of surplus wastewater should be limited to emergency use only.

POLICY U-1-8-C-2 The town shall consult with the South Florida Water Management District to obtain suggestions on regulations to conserve water before adopting such regulations.

POLICY U-1-8-C-3 The town will use drought-tolerant vegetation, xeriscape techniques, recycled water, or other available methods for landscaping publicly owned lands, and encourages private landowners to do the same to reduce usage of potable water for irrigation purposes.

POLICY U-1-8-C-4 The town will continue to require, through its building codes, the use of water-saving plumbing fixtures in all new development and redevelopment.

POLICY U-1-8-C-5 The town will support public educational programs that encourage water conservation practices.

POLICY U-1-8-C-6 The town should consider implementing a strong conservation rate program where large water users pay a higher rate per gallon than is charged to frugal users.

OBJECTIVE U-1-8-D SOLID WASTE — Add recycling pickup at commercial enterprises, and maintain an efficient solid waste system that stresses recycling of reusable materials plus safe and efficient disposal of that which cannot be recycled.

POLICY U-1-8-D-1 The town will ensure the routine collection of residential and commercial wastes; special collections of bulky items; separate curbside and bulk collection of recyclable materials; and separate collection of yard wastes and construction debris.

POLICY U-1-8-D-2 The town will continue its participation in Lee County's program of recycling, incineration, and disposal of solid wastes.

POLICY U-1-8-D-3 The town will seek to expand the current program to collect recyclables from motels and other tourist lodgings, and to collect and recycle additional materials.

POLICY U-1-8-D-4 The town will consider an ordinance requiring mandatory recycling of solid waste if voluntary participation does not achieve standards set by state or regional agencies.

POLICY U-1-8-D-5 The town will evaluate methods of improving the cost-effectiveness of solid waste collection, and may consider franchising the collection process independently of Lee County.

POLICY U-1-8-D-6 The town will cooperate with Lee County in implementing programs to decrease the volume of solid waste requiring landfilling (e.g. source separation of material which can be reused, recycled, or disposed of in another manner). The town shall also support and assist in programs to reduce roadside litter and illegal dumping, such as Keep Lee County Beautiful' s annual coastal cleanups.

POLICY U-1-8-D-7 The town will cooperate with the Lee County in educating businesses and residents on the proper management of hazardous wastes and the provision of convenient disposal opportunities for the benefit of the town's citizens and visitors. This cooperation shall include distributing written material prepared by Lee County and publicizing their regular schedule of household hazardous waste collection days.

PROPERTY RIGHTS ELEMENT

Goal : **The Town of Fort Myers Beach will make decisions with respect for property rights and with respect for people’s rights to participate in decisions that affect their lives and property.**

Objective 1 The Town of Fort Myers Beach will respect judicially acknowledged and constitutionally protected private property rights.

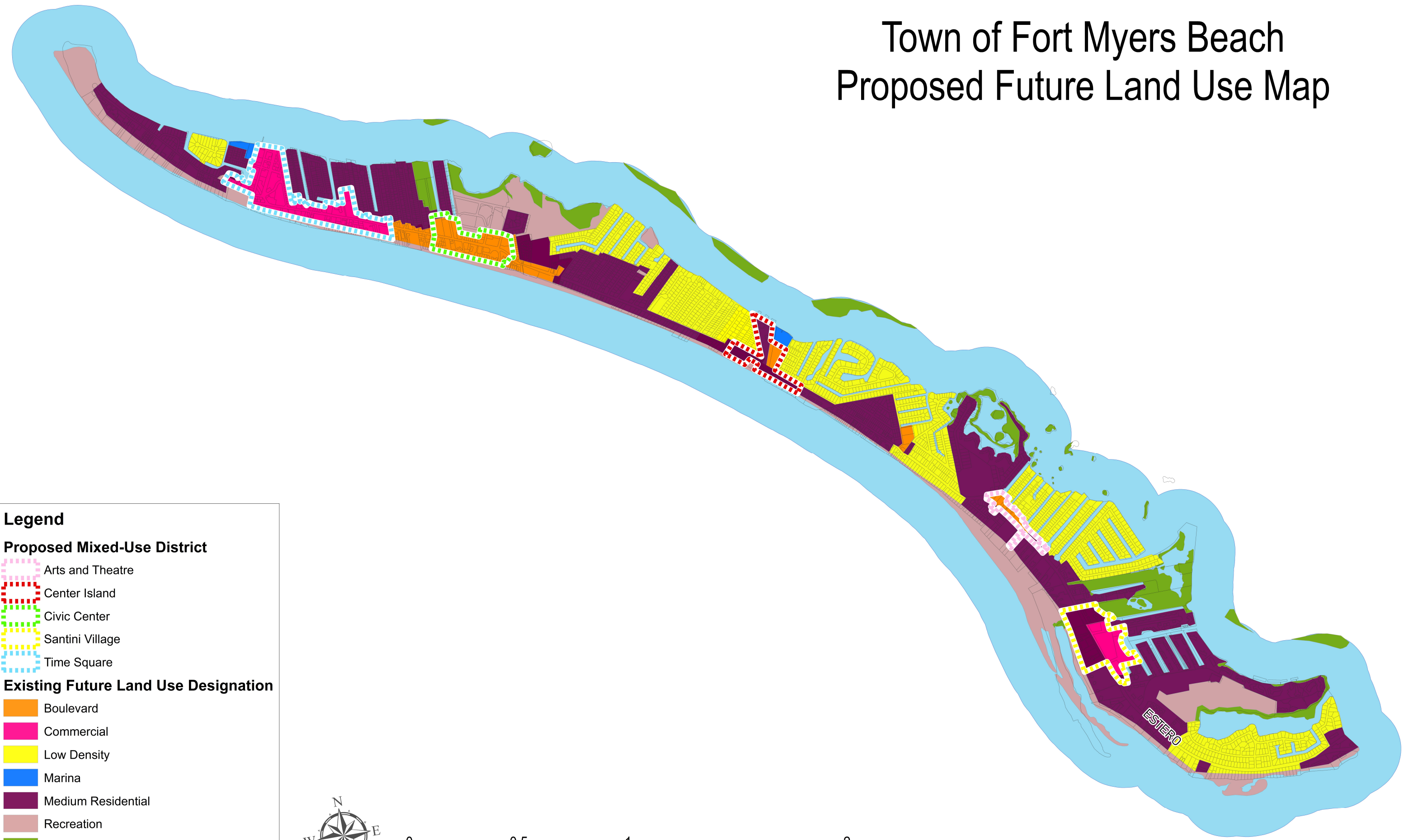
Policy 1.1 The Town of Fort Myers Beach will consider in its decision-making the right of a property owner to physically possess and control his or her interests in the property, including easements, leases, or mineral rights.

Policy 1.2 The Town of Fort Myers Beach will consider in its decision-making the right of a property owner to use, maintain, develop, and improve his or her property for personal use or for the use of any other person, subject to state law and local ordinances.

Policy 1.3 The Town of Fort Myers Beach will consider in its decision-making the right of the property owner to privacy and to exclude others from the property to protect the owner’s possessions and property.

Policy 1.4 The Town of Fort Myers Beach will consider in its decision-making the right of a property owner to dispose of his or her property through sale or gift.

Town of Fort Myers Beach Proposed Future Land Use Map



Legend

Proposed Mixed-Use District

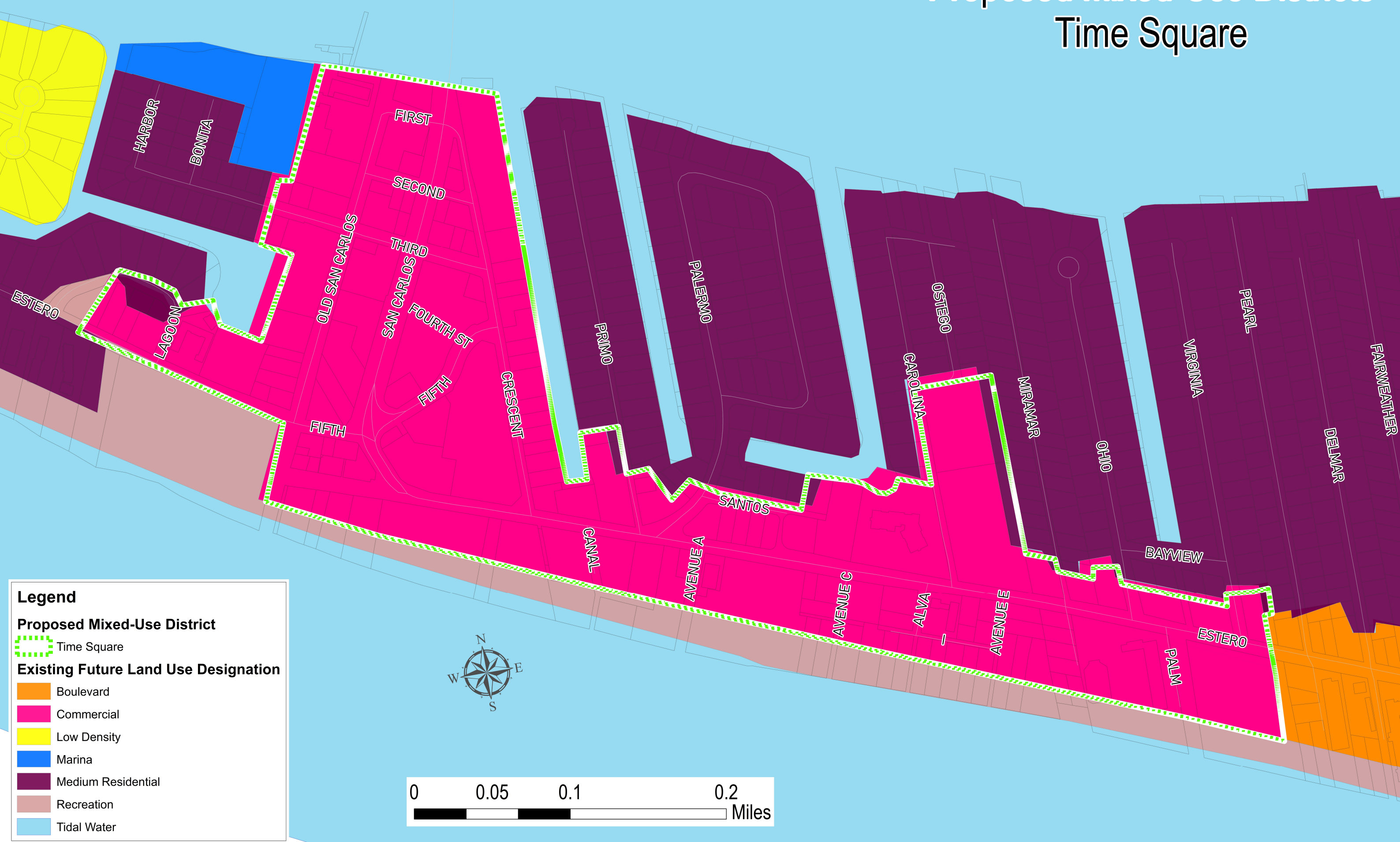
- Arts and Theatre
- Center Island
- Civic Center
- Santini Village
- Time Square

Existing Future Land Use Designation

- Boulevard
- Commercial
- Low Density
- Marina
- Medium Residential
- Recreation
- Wetlands
- Tidal Water

Proposed Mixed-Use Districts

Time Square



Legend

Proposed Mixed-Use District

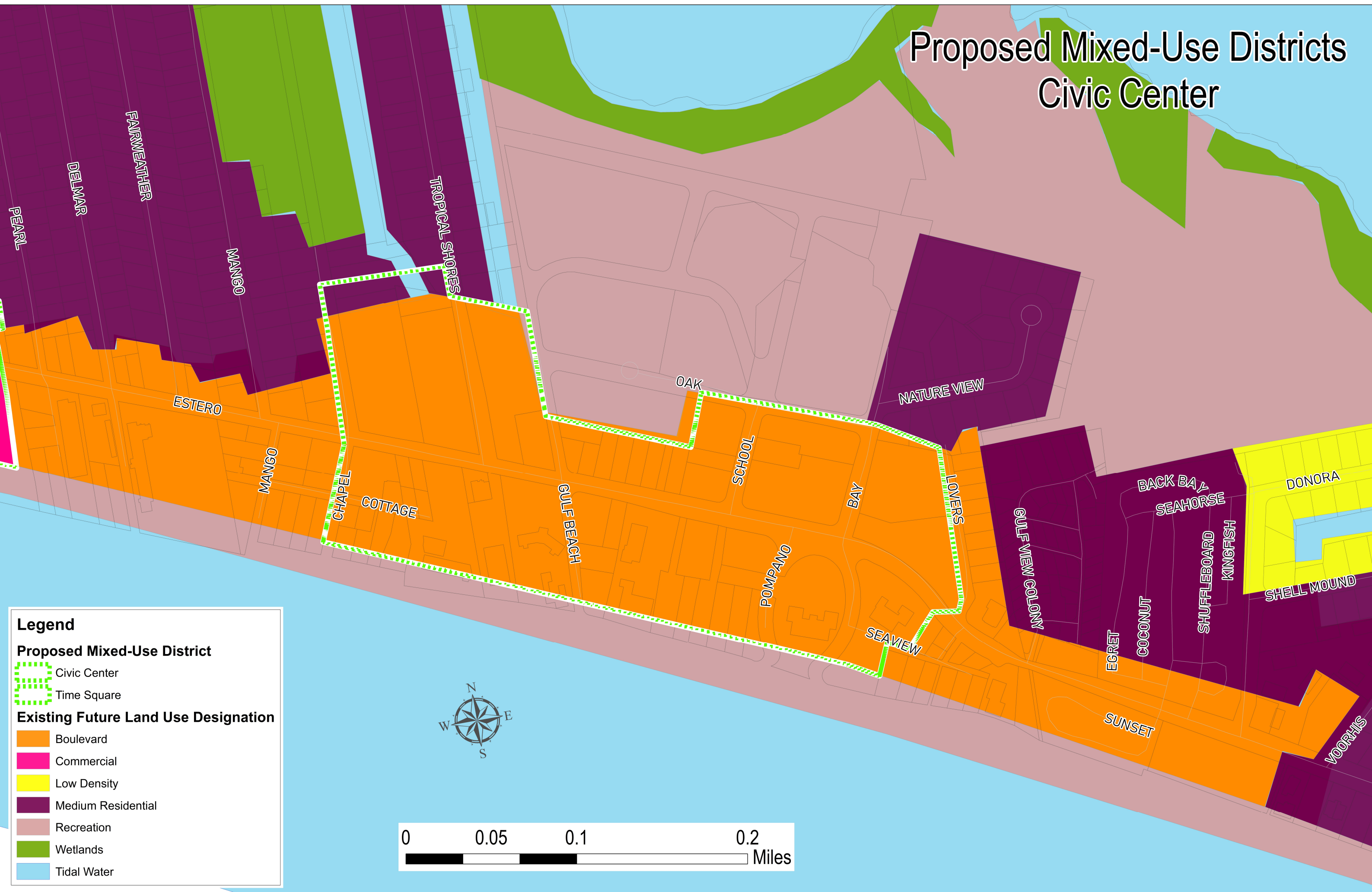
Time Square

Existing Future Land Use Designation

- Boulevard
- Commercial
- Low Density
- Marina
- Medium Residential
- Recreation
- Tidal Water

Proposed Mixed-Use Districts

Civic Center



Proposed Mixed-Use Districts

Arts & Theatre



Legend

Proposed Mixed-Use District

 Arts and Theatre

Existing Future Land Use Designation

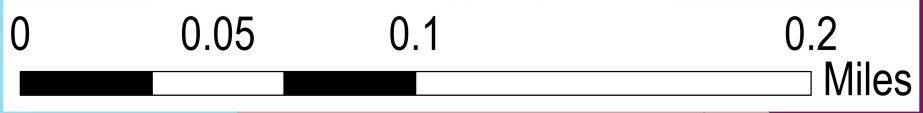
 Low Density

 Medium Residential

 Recreation

 Wetlands

 Tidal Water



Proposed Mixed-Use Districts

Center Island

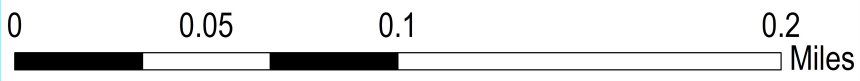
Legend

Proposed Mixed-Use District

 Center Island

Existing Future Land Use Designation

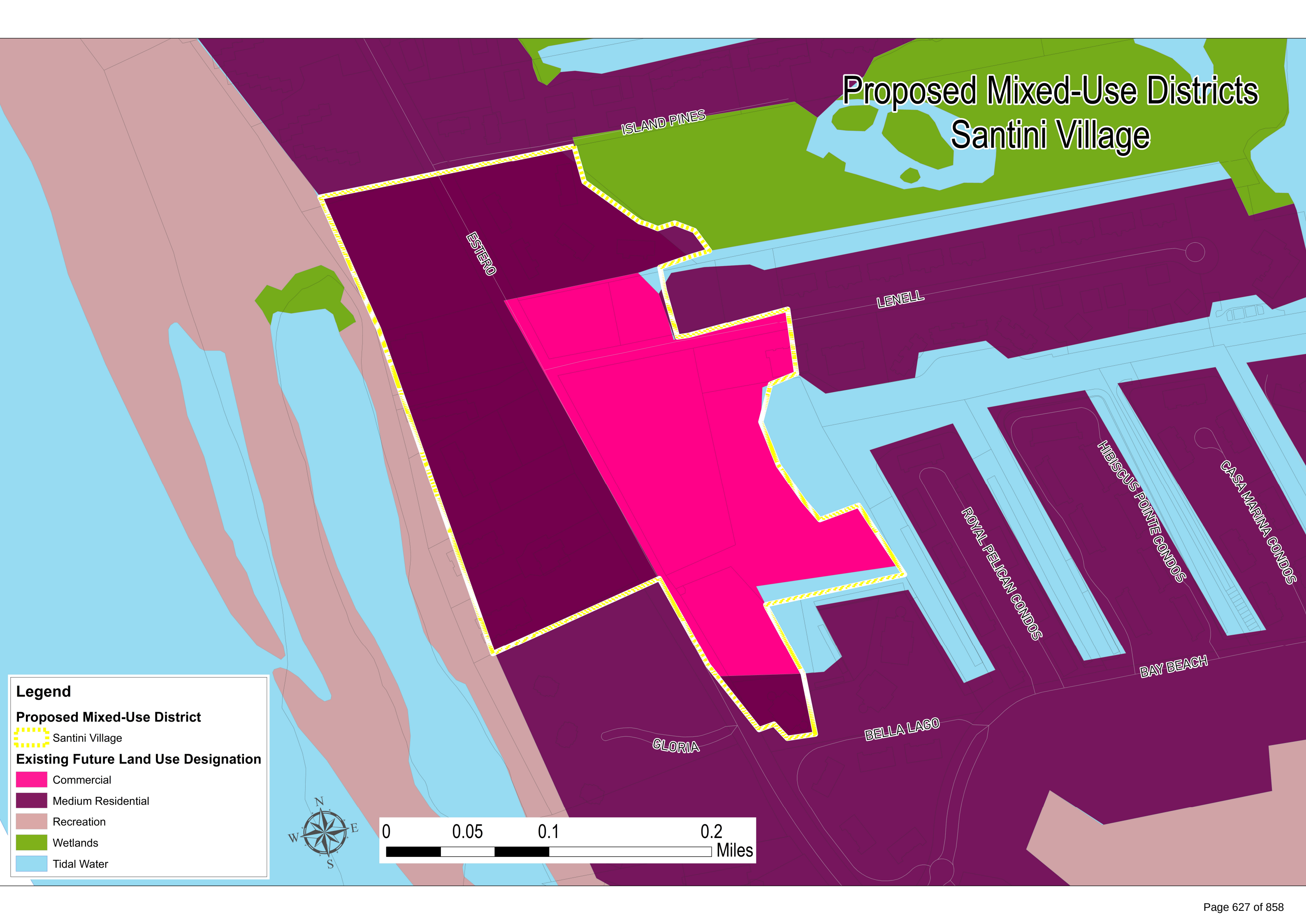
-  Boulevard
-  Low Density
-  Marina
-  Medium Residential
-  Recreation
-  Wetlands
-  Tidal Water



May 1, 2024

Proposed Mixed-Use Districts

Santini Village



Legend

Proposed Mixed-Use District

 Santini Village

Existing Future Land Use Designation

 Commercial

 Medium Residential

 Recreation

 Wetlands

 Tidal Water

1. **Request:**

Meeting Date: May 6, 2024

Second Reading and Final 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.

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, Community
Development, Planning
Manager

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. The draft ordinance was presented to the Town Council on April 15, 2024 and the ordinance was approved for second reading and adoption on May 6, 2024 with no additional changes.

Attachments:

1. Ordinance 24-08 (1) ns edits 4282024
2. TC Memo (1) ns updated 4282024
3. 24-08, Business Impact Estimate
4. Exhibit A Amended Building Height

Financial Impact:

unknown

6. **Alternative Action**

Make changes and move to a second hearing.

7. **Management Recommendations:**

Approval

8. **Recommended Approval:**

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

Created/Initiated - 4/29/2024
Approved - 4/29/2024
Approved - 4/30/2024
Final Approval - 4/30/2024

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 FEET TO 3 FEET 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 CROSS; AND 2) CHANGE BUILDING HEIGHT FROM 2 FEET TO 3 FEET FOR PROPERTIES THAT FRONT ON LAGON STREET, CRESANT STREET, FIRST, SECOND, THIRD AND FIFTH (EASE 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 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 24-08 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 6th day of May, 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



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

To: Town Council
From: Sarah Propst, Community Development
Date: May 6, 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. At the April 15, 2024 Town Council meeting, the Town Council approved the ordinance for second reading with no changes.

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 adopt the ordinance.

EXHIBIT

Exhibit A – Proposed Language



Business Impact Estimate

This form should be included in the agenda packet for the item under which the proposed ordinance is to be considered and must be posted on the [City's/Town's/Village's] website by the time notice of the proposed ordinance is published.

Proposed ordinance's title/reference:

Ordinance 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.

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 [City/Town/Village] is of the view that a business impact estimate is not required by state law¹ for the proposed ordinance, but the [City/Town/Village] 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;

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

- 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 [City/Town/Village] hereby publishes the following information:

1. Summary of the proposed ordinance (must include a statement of the public purpose, such as serving the public health, safety, morals and welfare):

The proposed ordinance amends the existing Section 34-675 to change allowable building stories from two stories to three stories with no change to the allowed measured height in feet.

2. An estimate of the direct economic impact of the proposed ordinance on private, for-profit businesses in the [City/Town/Village], 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 [City's/Town's/Village's] regulatory costs, including estimated revenues from any new charges or fees to cover such costs.

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

Ordinance 24-08 does not impose any new charge or fee on businesses.

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

The Town will not likely incur additional costs.

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

The Town estimates that a dozen private, for-profit businesses in the Town would potentially be impacted by Ordinance 24-08. The impact should be positive for the business.

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

[You may wish to include in this section the methodology or data used to prepare the Business Impact Estimate. For example: [City/Town/Village] staff solicited comments from businesses in the [City/Town/Village] as to the potential impact of the proposed ordinance by contacting the chamber of commerce, social media posting, direct mail or direct email, posting on [City/Town/Village] website, public workshop, etc. You may also wish to include efforts made to reduce the potential fiscal impact on businesses. You may also wish to state here that the proposed ordinance is a generally applicable ordinance that applies to all persons similarly situated (individuals as well as businesses) and, therefore, the proposed ordinance does not affect only businesses].

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.

1. **Request:**

Meeting Date: May 6, 2024

Second Reading and Final 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 FROM A MEMBER OF THE PUBLIC 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.

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 sole 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 approved by the LPA without any opposition raised by adjacent property owners or 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. The Town Council reviewed the draft ordinance on first reading on April 15, 2024 and did not request any additional changes to the draft ordinance. The ordinance was then scheduled for second reading and adoption on May 6, 2024. In response to a question raised, the required unanimous vote of the LPA may negate the need for an additional hearing in situations where staff has recommended denial.

Attachments:

1. Expedited Land Use Review Ordinance 24-06 (1) (2) ns reviewed 4302024
2. 24-06, business-impact-estimate-24-06

Financial Impact:

unknown

6. Alternative Action

Recommend denial.

7. Management Recommendations:

Adopt the ordinance.

8. Recommended Approval:

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

Created/Initiated - 4/29/2024
Approved - 4/30/2024
Approved - 4/30/2024
Final Approval - 4/30/2024

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 ANY MEMBER OF THE PUBLIC 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 6th day of May, 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 member of the public** 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 **by a member of the public**, 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.



Business Impact Estimate

This form should be included in the agenda packet for the item under which the proposed ordinance is to be considered and must be posted on the Town's website by the time notice of the proposed ordinance is published.

Proposed ordinance's title/reference:

Ordinance 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 AND EXTENSIONS, EXCEPT IF THE DECISION BY THE LPA IS NOT UNANIMOUS OR IF THE TOWN CLERK RECEIVES A REQUEST BY ANYONE FOR AN ADDITIONAL HEARING BEFORE THE TOWN COUNCIL WITHIN 10 DAYS AFTER THE LPA DECISION; A PUBLIC HEARING BEFORE THE TOWN COUNCIL IS REQUIRED FOR VARIANCES OR EXTENSIONS IF THE DECISION BY THE LPA IS NOT UNANIMOUS OR IF ANYONE REQUESTS SUCH HEARING WITHIN 10 DAYS AFTER THE LPA DECISION; PROVIDING FOR CODIFICATION, SEVERABILITY, SCRIVENER ERRORS, CONFLICTS OF LAW AND AN EFFECTIVE DATE.

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:

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

- a. Part II of Chapter 163, Florida Statutes, relating to growth policy, county and municipal planning, and land development regulation, including zoning, development orders, development agreements and development permits;
- b. Sections 190.005 and 190.046, Florida Statutes, regarding community development districts;
- c. Section 553.73, Florida Statutes, relating to the Florida Building Code; or
- d. Section 633.202, Florida Statutes, relating to the Florida Fire Prevention Code.

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

1. Summary of the proposed ordinance (must include a statement of the public purpose, such as serving the public health, safety, morals and welfare):

The proposed ordinance provides for an expedited process regarding non-controversial variances, extension, and satisfaction of previously imposed conditions.

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.

The direct economic impact of the proposed ordinance for private, for-profit business and residents is unknown; however, is believed to be beneficial in the recovery and rebuilding of the Town following Hurricane Ian.

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

Unknown

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

N/A

1. **Request:**

Meeting Date: May 6, 2024

Second Reading and Final 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.

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. The changes highlighted in blue have been added to the text of the ordinance to address the issue of the availability and sunseting of emergency temporary placement permits discussed at first reading on April 15, 2024.

Attachments:

1. 24-04, business-impact-estimate-24-04
2. Temporary Placement Application -11-7-2023
3. Ordinance 24-04, Emergency Temporary Uses (1) 4-30-2024

Financial Impact:

unknown

6. **Alternative Action**

7. **Management Recommendations:**

Approve.

8. **Recommended Approval:**

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

Created/Initiated - 4/29/2024
Approved - 4/30/2024
Approved - 4/30/2024
Final Approval - 4/30/2024



Business Impact Estimate

This form should be included in the agenda packet for the item under which the proposed ordinance is to be considered and must be posted on the Town's website by the time notice of the proposed ordinance is published.

Proposed ordinance's title/reference:

Ordinance 24-04 AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING AND RESTATING ORDINANCE 23-05 TO PERMIT A 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, SUNSETTING OF THIS ORDINANCE, AND PROVIDING FOR AN EFFECTIVE DATE.

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;

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

- b. Sections 190.005 and 190.046, Florida Statutes, regarding community development districts;
- c. Section 553.73, Florida Statutes, relating to the Florida Building Code; or
- d. Section 633.202, Florida Statutes, relating to the Florida Fire Prevention Code.

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

1. Summary of the proposed ordinance (must include a statement of the public purpose, such as serving the public health, safety, morals and welfare):

The proposed ordinance codifies existing criteria for emergency commercial temporary uses.

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.

The direct economic impact of the proposed ordinance is believed to be beneficial for private, for-profit business for a temporary period of time following a natural emergency.

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

Unknown

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

N/A



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

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 and restate 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 regulations is in the best interests of the health, safety, and welfare of the Town's business owners, residents, and visitors, which regulations shall be amended and restated as follows:

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

- ~~(1) — An emergency governmental use, manufactured home, mobile home, motor home, recreational vehicle, or other temporary unit, may be permitted on a limited basis by the issuance of a temporary placement permit (TPP) by the Town.~~
- ~~(2) — Unless otherwise provided in this Ordinance, an emergency governmental use, manufactured home, mobile home, motor home, recreational vehicle, or other temporary unit shall be removed from the site within thirty (30) days after issuance of a certificate of occupancy or certificate of use associated with the approved permit, or at the time of the expiration of~~

^{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.

~~the TPP, whichever is earlier. TPP shall not be used for the purpose of placing and operating a Short Term Rental.~~

~~A. A TPP may be granted as indicated below:~~

- ~~(i) Within any Commercial or Institutional Zoning District, a TPP may be issued for the purpose of providing an emergency governmental use to provide an essential governmental service adversely impacted due to adverse weather or other acts of God.~~
- ~~(ii) Within any Commercial, Institutional or Residential Zoning District, a TPP may be issued for the purposes of placing a manufactured home, mobile home, motor home, recreational vehicle, or other temporary unit for displaced owner-occupants or tenants if their existing living unit(s) has/have become uninhabitable due to adverse weather damage or other acts of God. Habitability of the existing residential unit(s) shall be determined by an inspection by the City building official, Florida certified building inspector, architect, or engineer, and subject to the following requirements and restrictions:~~
 - ~~(a) No more than one (1) manufactured home, mobile home, motor home, recreational vehicle, or other temporary unit shall be allowed per living unit, for single family and two-family homes. Additional units may only be allowed with approval of a waiver by the Town Council.~~
 - ~~(b) The TPP shall only be allowed while the damaged living unit is uninhabitable and in the process of repair or a replacement living unit is in the process of being constructed.~~
 - ~~(c) Placement of a manufactured home, mobile home, motor home, recreational vehicle, or other temporary unit on a site must meet all State requirements for tie-downs.~~

Mobile homes shall be installed by a licensed mobile home contractor and in accordance with requirements of Florida Statutes and the Florida Building Code.

- (d) — Only verified residents of Fort Myers Beach may be granted a TPP.
- (iii) — The TPP shall be issued in increments of six (6) months by review of the Town and shall not be issued for a period exceeding eighteen (18) months from the date of this ordinance adoption. The Town may, however, grant extensions to a TPP permit exceeding eighteen (18) months if a TPP permit holder demonstrates that a significant hardship exists. The Town Manager or designee shall decide if a hardship exists based upon evidence provided by the permit holder that they have exercised all due diligence in obtaining permits either for repair or replacement of the affected structure. The Town Manager may consider whether the applicant has had difficulties in completing insurance claims, obtaining an architect or engineer, obtaining construction materials, or obtaining a contractor, and if relevant, whether they have had difficulty in obtaining grants or loans to assist in repair or replacement of the affected structure.
- (iv) — The holder of the TPP shall apply for a building permit for the damaged or destroyed dwelling unit no later than six (6) months after the date of this ordinance adoption. The Town Manager or designee may, however, grant extensions to this deadline requirement based upon evidence provided by the property owner that they have exercised all due diligence in obtaining permits either for repair or replacement of the affected structure. The Town Manager may consider whether the applicant has had difficulties in completing insurance claims, obtaining an architect or engineer, obtaining construction materials, or obtaining a contractor, and if

relevant, whether they have had difficulty in obtaining grants or loans to assist in repair or replacement of the affected structure.

(v) ~~Noncompliance may result in revocation of the TPP.~~

(vi) ~~The occupants of the manufactured home, mobile home, motor home, recreational vehicle, or other temporary residential unit must comply with all mandatory hurricane evacuation requirements. Failure to do so may result in the revocation of the TPP.~~

3. ~~Submission Requirements:~~

A. ~~A completed TPP application; and~~

B. ~~Map or other documentation indicating the proposed location of the manufactured home, mobile home, motor home, recreational vehicle, or other temporary residential unit; and~~

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

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

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 upon adoption of a Resolution by the Town

Council announcing the availability of temporary emergency placement permits (ETPP) following a natural disaster or other emergency and submission of an application.

- (2) Unless otherwise provided in this Ordinance or resolution, 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 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:

- (vii) **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.
- (viii) **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:

- (e) 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.
- (f) 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.
- (g) 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.
- (h) Only verified residents of Fort Myers Beach may be granted an ETPP.
- (ix) **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.

- (x) **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.

(xi)

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.

1. **Request:**

Meeting Date: May 6, 2024

First Reading and Public Hearing on proposed Ordinance 24-13 entitled: ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING DIVISION 3 "UNSAFE BUILDING ABATEMENT CODE" OF ARTICLE I "PROPERTY MAINTENANCE CODES" OF CHAPTER 6 "MAINTENANCE CODES, BUILDING CODES AND COASTAL REGULATIONS" OF THE CODE OF ORDINANCES OF FORT MYERS BEACH, FLORIDA, TO CLARIFY EXISTING PROVISIONS RELATED TO NOTICE AND EXCEPTIONS; TO AUTHORIZE NOTIFICATION BY CONSTRUCTIVE SERVICE; TO INCLUDE ATTORNEY'S FEES AND COSTS AND NOTICE EXPENSES TO THE DEMOLITION LIEN AGAINST THE PROPERTY ON WHICH THE UNSAFE BUILDING WAS LOCATED, AND TO AUTHORIZE USE OF THE UNIFORM METHOD OF COLLECTION FOR COLLECTION OF LIENS; 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 20, 2024 at 9:00 AM.

Why the action is necessary:

The passage of the proposed ordinance is necessary to clarify the process of demolition of unsafe properties.

What the action accomplishes:

The proposed ordinance clarifies the steps required to qualify the properties as "unsafe" and fit for demolition, the method of serving notice of the proposed demolition on the property owners of such unsafe properties, and the appeal process, and entitles the town to collect any unpaid demolition costs through the Uniform Method of Collection.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Ordinance

4. **Submitter of Information:**

Frankie Kropacek, Operations & Compliance Director

5. **Background:**

Fort Myers Beach (the "Town") residences and businesses suffered significant losses as a result of the destructive Hurricane Ian in September 2022, rendering certain properties in the Town unsafe and necessitating a full demolition of such unsafe properties. The Town incorporates the 1985 Standard Unsafe Building Abatement Code into its Unsafe Building Abatement Code and provides procedures for the building official to follow if a structure is determined to be unsafe and requires demolition. The passage of the proposed ordinance will clarify the steps to be taken by the building official in determining whether a property is unsafe and subject to demolition and will ensure adequate notice is provided to the owners of such unsafe properties before any further steps are taken, pursuant to the due process requirements. Additionally, the passage of the proposed ordinance will allow the Town to collect any unpaid demolition costs that might be incurred by the town through the Uniform Method of Collection.

Attachments:

1. 24-13, Unsafe Building Code Amendment April 30 2024
2. 24-13, Business Impact Estimate - 24-13, revised 4.30.24

Financial Impact:

Unknown

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

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

Created/Initiated - 4/23/2024
Approved - 4/23/2024
Approved - 4/26/2024
Final Approval - 4/30/2024

ORDINANCE NO. 24-13

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING DIVISION 3 “UNSAFE BUILDING ABATEMENT CODE” OF ARTICLE I “PROPERTY MAINTENANCE CODES” OF CHAPTER 6 “MAINTENANCE CODES, BUILDING CODES AND COASTAL REGULATIONS” OF THE CODE OF ORDINANCES OF FORT MYERS BEACH, FLORIDA, TO CLARIFY EXISTING PROVISIONS RELATED TO NOTICE AND EXCEPTIONS; TO AUTHORIZE NOTIFICATION BY CONSTRUCTIVE SERVICE; TO INCLUDE ATTORNEY’S FEES AND COSTS AND NOTICE EXPENSES TO THE DEMOLITION LIEN AGAINST THE PROPERTY ON WHICH THE UNSAFE BUILDING WAS LOCATED, AND TO AUTHORIZE USE OF THE UNIFORM METHOD OF COLLECTION FOR COLLECTION OF LIENS; 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, on September 28, 2022, residences and businesses in the Town of Fort Myers Beach were destroyed by Hurricane Ian, resulting in the loss of lives, the displacement of lives and catastrophic financial losses; and

WHEREAS, although the Town, residents and businesses have engaged in recovery efforts to repair and rebuild structures in existence prior to Hurricane Ian, the Building Official has identified structures that have sustained significant damage and remain in an unsafe condition; and

WHEREAS, the Town’s “Unsafe Building Abatement Code” incorporates the 1985 Standard Unsafe Building Abatement Code to provide a procedure for the Building Official to follow if a structure is determined to be unsafe and requires demolition, with exceptions; and

WHEREAS, the Town desires to clarify existing language and include additional notice provisions in the existing “Unsafe Building Abatement Code” in the event a structure is determined to be unsafe and requires demolition; and

WHEREAS, because the Town desires to avoid burdening other property owners in the Town with the costs associated with the demolition of unsafe properties, the Town deems it appropriate to assess reasonable attorney’s fees and costs associated with the enforcement of the Unsafe Building Abatement Code and place a lien to cover such attorney’s fees and costs against

the property on which the unsafe building was located, in addition to the costs of all demolition and notice expenses related to such action by the Town; and

WHEREAS, to avoid unnecessary collection costs, the Town desires to also include and specifically authorize the use of the Uniform Method of Collection for collection of any unpaid demolition costs and related attorney's fees and costs and notice expenses related to such action by the Town; and

WHEREAS, on the ____ day of _____, 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 the Unsafe Building Abatement Code, 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 _____, 2024, 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 Division 3 "Unsafe Building Abatement Code" of Article I "Property Maintenance Codes" of Chapter 6 "Maintenance Codes, Building Codes and Coastal Regulations" of the Code of Ordinances of Fort Myers Beach, Florida, is hereby amended to read as follows:

DIVISION 3. - UNSAFE BUILDING ABATEMENT CODE

Sec. 6-36. - Adoption; amendments.

The following chapters and sections of the 1985 Standard Unsafe Building Abatement Code, as published by Southern Building Code Congress International, Inc., 900 Montclair Road, Birmingham, Alabama 35213-1206, ~~are~~ is hereby adopted by reference and made part of this article, with the exceptions and revisions set forth as follows: in Section 6-37.

Sec. 6-37. – Exceptions and revisions.

a) Section 105 of Chapter I, Administration: ~~is hereby amended as follows:~~

Section 105, relating to the board of adjustment and appeals, is deleted, and replaced by the procedures set forth for the delegation of authority to Lee County's Construction Board of Adjustment and Appeals found in division 2 of article II of this chapter. Any reference to the board of adjustment and appeal as may be in other Chapters shall be amended as provided herein by reference.

Chapter II, Definitions.

b) Sections 302.1.1(4) and 302.1.2-302.1.4 in Chapter III, Inspection and Notice of Noncompliance: ~~are hereby amended as follows:~~

302.1.1(4) A statement advising that any person having any legal interest in the property may appeal the notice by the Building Official to the Lee County Board of Adjustment and Appeals; and that such appeal shall be in writing ~~in the form specified in 401~~ and shall be filed with the Building Official within 30 days from the date of the notice in accordance with Division 2 of Article II of Chapter 6 of the Fort Myers Beach Code of Ordinances and that failure to appeal in the time specified will constitute a waiver of all rights to an administrative hearing.

302.1.2 The notice and all attachments thereto shall be served upon the property owner of record as identified on the records of the Lee County Property Appraiser and posted on the property ~~in a conspicuous location. A copy of the notice and all attachments thereto shall also be served on any person determined from official public records to have a legal interest in the property.~~ Failure of the building official to serve any person or entity ~~herein required to be served~~ other than the owner of record shall not invalidate any proceedings hereunder nor shall it relieve any other person or entity served from any obligation imposed on that person or entity ~~him~~.

302.1.3 The notice shall be served either personally by hand delivery by Town staff or a process server or by certified mail, postage prepaid, return receipt requested, to ~~each person at the address as it appears on the official public records. If addresses are not available on any person required to be served the notice, the notice~~ the owner of record at the address shown for the owner on the Lee County Property Appraiser's website. Notice shall also be addressed to such person ~~shall be~~ mailed to the address of the building or structure involved in the proceedings. The failure of any person or entity to receive notice, either actual or constructive, other than the owner of record, shall not invalidate any proceedings under this section. Service by certified or registered mail as herein described shall be effective on the date the notice was received as indicated on the return receipt.

302.1.4 Proof of service of the notice shall be by written affidavit ~~declaration~~ indicating the date, time and manner in which service was made, ~~and signed by the person served~~

~~on by the return receipt.~~ In the event service is not perfected by certified mailing or hand delivery, the property owner shall be subject to constructive service using the methods as provided in Chapter 49, Florida Statutes.

~~Chapter IV, Appeals.~~

~~Chapter V, Rules of Procedure for Hearing Appeals.~~

c) Chapter VI, Implementation: is hereby amended as follows:

601.2.2 Subsequent to posting the building, the building official may cause the building to be repaired to the extent required to render it safe or if the notice required demolition, to cause the building or structure to be demolished and all debris removed from the premise. The cost of repair or demolition, and all reasonable attorney's fees and costs, and costs of notices related thereto, and all collection costs and expenses and the administrative fee as provided hereinafter, shall constitute a lien on the property and shall be collected in a manner provided by law.

d) Chapter VII, Recovery of Cost of Repair or Demolition: is hereby amended as follows:

~~Exception:~~ If the building official proceeds to demolish the building or structure as set forth herein, the town council shall, by proper resolution, assess the entire cost of such demolition and removal, and all reasonable attorney's fees and costs, and costs of notices related thereto, and all collection costs and expenses plus an administrative fee in an amount as adopted by the town council by resolution, against the real property upon which such cost and fee was incurred, which assessment, when made, shall constitute a lien upon the property superior to all others except taxes. The lien shall be filed in the public land records of the county. The resolution of assessment and lien must indicate the nature of the assessment and lien, the lien amount, and an accurate description of the property affected. The lien becomes effective on the date of filing such notice of lien and shall bear interest from such date at the rate of ten percent per annum until paid. If the resulting lien remains unpaid ~~is not satisfied within two years after the date it is filed,~~ ~~then~~ the town may:

- (1) File suit to foreclose on the lien property as provided by law in suits to foreclose mortgages; or
- (2) Follow any other lawful process or procedure available for enforcement or collection of the lien, including but not limited to the Uniform Method of Collection in accordance with any general law of the state relating to the enforcement or collection of municipal liens.

Secs. 6-378—6-40. - Reserved.

Section 3. That the town council intends that the provisions of this ordinance be made a part of the Fort Myers Beach, Florida, 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, word, 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 on a roll call vote, the results were 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.



Business Impact Estimate

This form should be included in the agenda packet for the item under which the proposed ordinance is to be considered and must be posted on the Fort Myers Beach website by the time notice of the proposed ordinance is published.

Proposed ordinance's title/reference:

Ordinance 24-13 AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING DIVISION 3 "UNSAFE BUILDING ABATEMENT CODE" OF ARTICLE I "PROPERTY MAINTENANCE CODES" OF CHAPTER 6 "MAINTENANCE CODES, BUILDING CODES AND COASTAL REGULATIONS" OF THE CODE OF ORDINANCES OF FORT MYERS BEACH, FLORIDA, TO CLARIFY EXISTING PROVISIONS RELATED TO NOTICE AND EXCEPTIONS; TO AUTHORIZE NOTIFICATION BY CONSTRUCTIVE SERVICE; TO INCLUDE ATTORNEY'S FEES AND COSTS AND NOTICE EXPENSES TO THE DEMOLITION LIEN AGAINST THE PROPERTY ON WHICH THE UNSAFE BUILDING WAS LOCATED, AND TO AUTHORIZE USE OF THE UNIFORM METHOD OF COLLECTION FOR COLLECTION OF LIENS; PROVIDING FOR CODIFICATION, SEVERABILITY, SCRIVENER ERRORS, CONFLICTS OF LAW, AND AN EFFECTIVE DATE.

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 Fort Myers Beach is of the view that a business impact estimate is not required by state law¹ for the proposed ordinance, but the Fort Myers Beach 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:

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

- 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 Fort Myers Beach hereby publishes the following information:

1. Summary of the proposed ordinance (must include a statement of the public purpose, such as serving the public health, safety, morals and welfare):

The proposed ordinance amends the existing Division 3 of Article I of Chapter 6 of Code of Ordinances of Fort Myers Beach, Florida. The proposed ordinance serves the public health, safety, morals, and welfare as it clarifies the process of demolition of unsafe properties, following the destruction caused by Hurricane Ian in September 2022. The amendment will allow Fort Myers Beach to determine which properties qualify as “unsafe” properties, fit for demolition, and will clarify the notification and service requirements to the property owners before the demolition takes place. The proposed ordinance would further allow Fort Myers Beach to collect any unpaid demolition costs incurred through the Uniform Method of Collection.

2. An estimate of the direct economic impact of the proposed ordinance on private, for-profit businesses in the Fort Myers Beach, 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 Fort Myers Beach regulatory costs, including estimated revenues from any new charges or fees to cover such costs.

Unknown.

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

Unknown.

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

[You may wish to include in this section the methodology or data used to prepare the Business Impact Estimate. For example: Fort Myers Beach staff solicited comments from businesses in the Fort Myers Beach as to the potential impact of the proposed ordinance by contacting the chamber of commerce, social media posting, direct mail or direct email, posting on Fort Myers Beach website, public workshop, etc. You may also wish to include efforts made to reduce the potential fiscal impact on businesses. You may also wish to state here that the proposed ordinance is a generally applicable ordinance that applies to all persons similarly situated (individuals as well as businesses) and, therefore, the proposed ordinance does not affect only businesses].

Not applicable.

1. **Request:**

Meeting Date: May 6, 2024

Second Reading and Final 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.

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 designee, 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. The draft ordinance increases the Town Manager's authority for purchases and transfers responsibility from the Finance Director to the Town Manager. The final ordinance also includes authorization for the Town Manager to approve change orders to existing contracts within his purchasing authority. Changes made since first reading to the text of the draft ordinance are highlighted in blue.

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, Business Impact Estimate - Purchasing Policies
2. 24-11 Exhibit A - 2024 Procurement Ordinance Update (1) 4-30-2024 jf

3. 24-11, Purchasing Ordinance Amendments ns 4-30

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

Created/Initiated - 4/25/2024
Approved - 4/30/2024
Approved - 4/30/2024
Final Approval - 4/30/2024



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

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 ~~\$75,000~~ 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.*
- 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).
 - 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:
- The bidder acted in good faith in submitting the bid;
 - In preparing the bid there was an error of such magnitude that enforcement of the bid would work severe hardship upon the bidder;
 - The error was not the result of gross negligence or willful inattention on the part of the bidder;
 - The error was discovered and communicated to the town **finance department manager or designee** within eight business hours of bid opening, along with a written request for permission to withdraw the bid; and
 - 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). Change orders to existing contracts may be made in accordance with the small purchase procedures authorized in this section up to \$75,000. Any subsequent changes orders shall require approval by the town council.
 - (2) *Purchases over ~~\$4,000.00~~ \$10,000 and not greater than ~~\$25,000.00~~ \$75,000.* For smaller purchases of ~~\$4,000.00~~ \$10,000 and over, no less than three written quotations must be obtained, if available (e.g., not a sole source situation or change order). 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~~ \$5,000 and not greater than ~~\$4,000.00~~ \$10,000.* For purchases greater than ~~\$500.00~~ \$5,000 but less than ~~\$4,000.00~~ \$10,000 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~~ \$5,000 and under.* For purchases of ~~\$500.00~~ \$5,000 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~~ \$75,000.00 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~~ \$75,000.00 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~~ \$75,000.00 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 \$75,000.00** 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 \$75,000.00** 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 town manager or designee 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.

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 18th day of April, 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 Fort Myers News-Press on the 18th day of April, 2024, which is 10 days prior to the second reading of the proposed Ordinance as required by Section 166.041; and

WHEREAS, on the 6th day of May, 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 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 update and amend the Town's procurement ordinances.

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.

1. **Request:**

Meeting Date: May 6, 2024

Second Reading and Final 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.

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. No changes to the draft ordinance were requested by the town council following first reading.

Attachments:

1. 24-12, SOE Qualifying Date Change
2. 24-12, Business Impact Estimate for Elections
3. Interlocal Agreement w Fort Myers Beach exctd 12 28 23
4. SOE FMB Candidates

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

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 - 4/25/2024
Approved - 4/29/2024
Approved - 4/29/2024
Approved - 4/30/2024
Final Approval - 4/30/2024

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.



Business Impact Estimate

Proposed ordinance's title/reference:

Ordinance 24-12; Elections

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING 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.

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):

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 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 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.

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 24-12.

Ordinance 24-12 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

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

[Signature]
2nd Witness
Therette Feliciano
Printed Name

SUPERVISOR OF ELECTIONS

By: [Signature]
Print: TONNY DOYLE

Witnesses:

Donna Romilio
1st Witness
DONNA Romilio
Printed Name

[Signature]
2nd Witness
JASON FREEMAN
Printed Name

TOWN OF FORT MYERS BEACH

By: [Signature]
Print: Andrew Hyatt
Title: Town Manager

Attest:

By: [Signature]
Amy Baker, Town Clerk

Approved as to Form:

[Signature]
Vose Law Firm, LLP, Town Attorney



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!

1. **Request:**

Meeting Date: May 6, 2024

Review of White Sands Properties of Ft. Myers Beach, LLC's Verified Motion to Forgive or in the Alternative Mitigate Funds submitted by Steven A. Ramunni, Esq., on behalf of White Sands Properties of Ft. Myers Beach, LLC.

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

5. **Background:**

Code Enforcement Case No.s: CE14-0394: \$594,650.00 owed in fines and costs.
CE15-0167: \$594,650.00 owed in fines and costs.
CE17-0065: \$650.00 owed in fines and costs.

The property has changed ownership multiple times throughout the code enforcement cases. From around December 2, 2015, until around July 15, 2016, the owner of the Property was Absolute Best Rate Rentals LLC ("Absolute"). From around July 15, 2016, until around March 26, 2020, the owner of the Property was Joseph B. Orlandini ("Orlandini"). White Sands Properties of Ft. Myers Beach, LLC ("White Sands") obtained ownership of the Property on around March 26, 2020.

In July 2015, the Town issued a notice of violation to Absolute. In November 2015, the Town issued a second notice of violation to Absolute. In February the Town issued a notice of violation to Orlandini. All the Notices of Violations involved performing unpermitted work. Liens were filed against the property for the fines owed related to the above-listed violations. The daily fines accrued through September 28, 2022, which is the date that Hurricane Ian demolished the structure(s) on the property. The total fine is \$1,189,950.

On August 12, 2022, the Town filed a complaint against White Sands in Lee County Circuit Court to foreclose the three liens. When the Vose Firm began representing the Town, it decided to submit the liens to the Code Enforcement Special Magistrate to obtain authority to proceed with the foreclosures. On February 12, 2024, the Code Enforcement Special Magistrate filed an Order of Foreclosure Findings of Fact and Conclusion of Law, reaffirming that: the property was previously found in violation of Ft. Myers Beach's Code of Ordinances; due to the failure to come into compliance, daily fines accrued and valid code enforcement liens were filed against the property for the amount of the unpaid fines; White Sands acquired the property subject to the unpaid liens; no evidence was provided that the liens were ever paid, satisfied or released; and, the Town is authorized to proceed with the foreclosure lawsuit.

Currently, before the Council for consideration is White Sands's Motion to Forgive or in the Alternative Mitigate Fines. White Sands is asking the Council to reduce the lien(s) from \$1,189,950 to \$15,000, which is less than 1% of their value.

Section 2-432 of the Fort Myers Code of Ordinances outlines the procedure to obtain reduction

and/or release of code enforcement liens. After a cursory review of White Sands's Motion, it appears that the request for lien reduction complies with Section 2-432(a)(2), which sets forth the required contents of the request. As such, the Motion is facially valid. It must be noted, however, that White Sands has failed to pay the \$200 application fee as required by Section 2-432(a)(3). In addition, Section 2-432(a) (5), states generally that the Town Manager should deny the request for lien reduction if a property owner acquired the property after the code enforcement lien was recorded, because the lien should have been identified and satisfied by the property owner at the time of purchase of the property. Section 2-432 (a) (6) states, generally, that the Town Manager may submit the request to Council on appeal if any of the criteria have not been met. Here, the application fee has not been paid, and White Sands acquired the property after the recordation of the liens. As such, White Sands' Motion is properly placed on the Council's agenda as an appeal of the Town Manager's findings that White Sands motion has failed to meet the requirements of Section 2-432 (a) (3) and (5). In considering White Sands's Motion to Forgive or in the Alternative Mitigate Fines, the Council should weigh the following factors, as set forth in Section 2-432 (a) (7), which include:

- "a. The gravity of the violation(s);
- b. The amount of time it took the violator/property owner to come into compliance;
- c. The accrued amount of the code enforcement lien as compared to the market value of the property;
- d. Whether there is a prior-recorded mortgage on the property and, if so, whether such mortgage is in default and/or whether the principal amount of the mortgage is of such a magnitude that it would not be practical for the town to institute a lien foreclosure action;
- e. Any previous code violation(s) of applicant/owner;
- f. Consideration for the future or proposed use of the property for public purpose; and
- g. The number and status of all other properties owned by the applicant/owner in Lee County, Florida."

Under Sections 2-432 (a) (9) and (10), upon full consideration of the above criteria, the Town Council may reduce the amount of the liens, waive the full amount of the liens or continue the liens in their full amounts. Any reduced payment shall be made within 30-days, or the reduction becomes null and void and the original amount shall be due and payable.

White Sands provided a copy of a check to the Town in the amount of \$50,000, which it claims was proof of settlement of all or part of the liens; however, the Special Magistrate rejected this assertion because the check stated on its face that it was a "partial release" and it listed a different property address.

Attachments:

1. White Sand Mtn to Forgive Fines
2. Sec. 2_432. Procedure to obtain reduction and or release of a code enforcement lien

Financial Impact:

6. Alternative Action

7. Management Recommendations:

It is at the discretion of the Council whether to grant White Sands's Motion to Forgive or in the Alternative Mitigate Fines. Any decision should be made in accordance with the criteria outlined

in Section 2-432.

8. **Recommended Approval:**

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

Created/Initiated - 4/29/2024
Approved - 4/29/2024
Approved - 4/30/2024
Final Approval - 4/30/2024

**CODE COMPLIANCE SPECIAL MAGISTRATE
FOR
THE TOWN OF FORT MYERS BEACH, FLORIDA**

TOWN OF FORT MYERS BEACH, FLORIDA,
Petitioner,

Vs.

**CASE NOS. CE14-0394,
CE15-0167, CE17-0065**

WHITE SAND PROPERTIES OF FORT MYERS BEACH, LLC,
Respondent.

VERIFIED MOTION TO FORGIVE OR IN THE ALTERNATIVE MITIGATE FINES

COMES NOW, Respondent, WHITE SAND PROPERTIES OF FORT MYERS BEACH LLC, (White Sand"), by and through its undersigned attorney and pursuant to Fort Myers Beach Code of Ordinances, §2-432, requests that Town Council forgive or in the alternative mitigate the three Code Enforcement Fines herein, and in support would allege as follows:

1. The Magistrate, on February 22, 2024, entered Foreclosure Findings Of Fact, Conclusions Of Law And Orders in the three respective cases recited herein. See Exhibit "A".
2. Respondent requests a forgiveness as to all fines based upon the following:
 - A. Respondent would show that it was not the offending party in each of the matters resulting in violations for the parcel identified as 80 Avenue E, Ft. Myers Beach, Florida.
 - B. Respondent is the purchaser of the real property identified as 1560 I St and 80 Ave E, Fort Myers Beach, Florida.
 - C. In December, 2019, Respondent negotiated with then Town Manager, Roger Hernstead, what it believed a full and final release of the subject liens in anticipation of Respondent's purchase of 1560 I Street and 80 Avenue E, Ft. Myers Beach, Florida.
 - D. In fulfillment of White Sand's agreement with Fort Myers Beach, Respondent paid the sum of \$50,000.00 to Fort Myers Beach. See Exhibit "B" attached hereto.
 - E. Fort Myers Beach accepted White sands' Settlement Payment settlement by depositing said sum into one of its accounts. Subsequently, Roger

Hernstead advised the Respondent that the violator still owed the sum of 15,000.00 for his portion of the fine.

- F. Respondent believed that the negotiation agreement and payment to Fort Myers Beach had resolved or should have resolved the subject liens as to all property subsequently purchased by Respondent.
3. Respondent would request that the Town Council forgive the fines due to his good faith negotiations and payment to the Town and that it was not the offending party.
 4. In the alternative, Respondent would request a reduction of the fines and final payment of the sum of \$15,000.00 for the release of the liens on 80 Avenue E.
 5. Respondent would further allege that the correct compliance date (as to Respondent) should be effective as of December 12, 2019, the date of Respondent's payment to the Town. See Affidavits of Compliance attached as Composite Exhibit "C".

Wherefore, Respondent requests that the Court conduct a hearing herein and grant White Sand its requested relief.

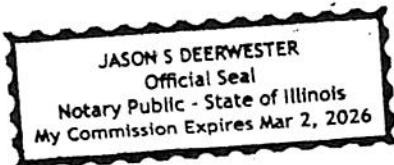
I understand that I am swearing or affirming under oath to the truthfulness of the claims made in this Motion To Forgive or in the alternative to Mitigate Fines and hereby state under oath and under penalties of perjury that the allegations of fact contained herein are true and correct.

WHITE SAND PROPERTIES OF FORT MYERS BEACH, LLC

By: [Signature]
JESSE SCHMID, Manager

Illinois
STATE OF ~~FLORIDA~~
COUNTY OF DeWitt

The foregoing instrument was acknowledged by me this 26 day of April, 2024, by JESSE SCHMID, who ☒ personally appeared or () appeared via online and ☒ is personally known to me or () presented the following identification



[Signature]
Notary Public
Print Name: Jason S. Deerwester

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of April 2024, this document was transmitted to the following via e-mail and U.S. mail to:

Amy Baker, Town Clerk
2525 Estero Blvd.
Fort Myers Beach, FL 33931
amy@fmbgov.com

Nancy Stuparich
Vose Law Firm LLP
324 W Morse Blvd.
Winter Park, FL 32789
nstuparich@voselaw.com

Respectfully Submitted:

/s/ Steven A. Ramunni
Steven A. Ramunni, P.A.
Attorney for Respondent
Florida Bar Number: 396702
P.O. Box 1118
LaBelle, FL 33975
Telephone: (863) 230-2268
E-Mail: steve@sramunnipa.com
E-Mail 2: kerensa@sramunnipa.com

EXHIBIT “A”

PARCEL #: 19-46-24-W4-0070A.0020
This Document Prepared By and Return To:
Town of Fort Myers Beach Code Enforcement Department
2525 Estero Blvd.
Fort Myers Beach, FL 33931

**CODE COMPLIANCE SPECIAL MAGISTRATE
FOR
THE TOWN OF FORT MYERS BEACH, FLORIDA**

TOWN OF FORT MYERS BEACH, FLORIDA,

Petitioner,

vs.

**CASE NOS. CE14-0394,
CE15-0167, CE17-0065**

WHITE SAND PROPERTIES OF FORT MYERS BEACH, LLC,

Respondent.

**FORECLOSURE FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER**

THIS CAUSE came on for public hearing on February 12, 2024, before the undersigned Special Magistrate for the Town of Fort Myers Beach, with the Respondent, White Sand Properties of Fort Myers Beach, LLC, by and through its designated representative, Steven A. Ramunni, P.A., for the purpose of adjudication of the Town's Request for Authorization to Foreclose, the liens recorded in the Official Records Book as Instrument Numbers 2016000076124, 2016000076125, and 2019000160404. Having considered the sworn testimony, evidence, and arguments presented, the Special Magistrate finds and orders as follows:

A. FINDINGS OF FACT:

1. The Respondent, White Sand Properties of Fort Myers Beach, LLC ("Respondent"), is the owner, lessee, responsible entity or otherwise in charge of or responsible for the subject property located at 80 Avenue E, Fort Myers Beach, FL, 33931 ("Property"), legally described as:

Lot 2, Block A, Crescent Beach Subdivision, according to the map or plat thereof recorded in Plat Book 4, Page 45, Public Records of Lee County, Florida.

2. The property was previously found in violation of the Town of Fort Myers Beach Code and Respondent's predecessor was ordered to bring the property into compliance within a specific amount of time given for compliance. The property was not brought into compliance during said time.
3. Due to the finding of a failure to comply, fines accrued and liens were filed for the fines against the property in violation and against all other property owned by Respondent's predecessor, both real and personal.
4. Subsequently, Respondent acquired the property at issue, subject to the liens.
5. Respondent did not present sufficient evidence that the liens were ever paid, satisfied, or otherwise released.
6. More than three months have passed since the lien was recorded on 4/12/2016 in the Official Records Book as Instrument Number 2016000076124.

More than three months have passed since the lien was recorded on 4/12/2016 in the Official Records Book as Instrument Number 2016000076125.

More than three months have passed since the lien was recorded on 7/9/2019 in the Official Records Book as Instrument Number 2019000160404.
7. Service is not at issue. Respondent was present at the hearing, having received notice of the hearing along with copies of the orders/liens on which foreclosure was requested, and did not have any objections related to service or notice. This case is therefore properly before the Special Magistrate.

B. CONCLUSION OF LAW:

1. The legal prerequisites for requesting authorization to foreclose the liens have been met.
2. Respondent has shown insufficient evidence to support any legal reason to prevent foreclosure or other action to collect the fines.

C. ORDER:

1. Based upon the forgoing Findings of Fact and Conclusions of Law, it is hereby ordered that the Special Magistrate authorizes the Town to foreclose the liens against White Sand Properties of Fort Myers Beach, LLC due to the unpaid liens filed more than three months ago on April 12, 2016, and July 9, 2019.

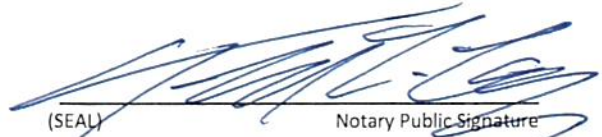
ORDERED this 12th day of February 2024, and executed this 27 day of February 2024.


Special Magistrate

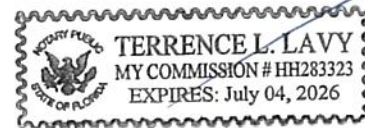
APPEAL: An aggrieved party may appeal an Order of the Special Magistrate of the Town of Fort Myers Beach to the Lee County Circuit Court. The appeal shall be limited to appellate review of the record created before the Special Magistrate. An appeal shall be filed within thirty (30) days of the execution of the Order to be appealed.

**STATE OF FLORIDA
COUNTY OF LEE**

The foregoing instrument was certified and subscribed before me by means of X physical presence OR _____ online notarization, this 27th day of February, 2024, by Monica Schmauckel, X who is personally known to me OR _____ who has produced _____ as identification.


(SEAL) Notary Public Signature

My Commission Expires:



CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that true and correct copy of the Order was sent by U.S. Mail on the 23 day of February, 2024 to:

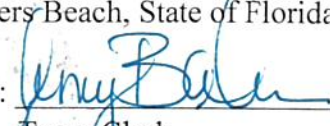
White Sand Properties of Fort Myers Beach, LLC
415 Palermo Cir.
Fort Myers Beach, FL 33931

Steven A. Ramunni- Reg. Agent for:
White Sand Properties of Fort Myers
Beach, LLC
110 N. Main St.
Labelle, FL 33935


Code Compliance Coordinator

I certify this document to a be true and correct copy of the original on file in Town Hall, Fort Myers Beach, State of Florida, County of Lee.

BY:


Town Clerk

Dated



EXHIBIT “B”



Account Number: 100056382
Capture Date: December 13, 2019
Item Number: 5250001234270
Posted Date: December 13, 2019
Posted Item Number: 600219
Serial Number: 2265
Amount: 50,000.00
BOFD Return RT: 067016325
BOFD Sequence: 461154912

SCHMIDY'S MACHINERY
5293 BUSINESS US 51
CLINTON IL 61727

	SCHMIDY'S MACHINERY COMPANY JESSE SCHMID 5293 BUSINESS US 51 CLINTON, IL 61727 (217) 935-2244 217-433-8978	DEWITT SAVINGS BANK 302 W MAIN ST CLINTON, IL 61727 70-7181/2711	2265
PAY TO THE ORDER OF	<i>Fifty thousand and 00/100</i>	DATE <i>12-12-19</i>	AMOUNT <i>\$50,000.00</i>
TOWN of Fort Myers Beach			
Partial Release for 1500 I street		 AUTHORIZED SIGNATURE	
⑈002265⑈			

Security Features Included Details on Back

PAY TO THE ORDER OF
FIRST FLORIDA INTEGRITY BANK
067016325
FOR DEPOSIT ONLY
TOWN OF FORT MYERS BEACH
OPERATING ACCT 1101066

**COMPOSITE
EXHIBIT “C”**



FMBgov.com

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

Instrument Prepared by and Return to:

Fort Myers Beach Code Enforcement

2731 Oak Street

Fort Myers Beach, Florida 33931

**TOWN OF FORT MYERS BEACH, FLORIDA
CODE ENFORCEMENT**

AFFIDAVIT OF COMPLIANCE

STATE OF FLORIDA)
COUNTY OF LEE)

BEFORE ME, the undersigned authority, personally appeared Thomas Yozzo, Code Enforcement Manager for the Town of Fort Myers Beach, FL, who after being duly sworn, deposes and says:

1. On the 3rd day of February, 2017, Orlandini, Joseph B (property owner) was found in violation of the Town of Fort Myers Beach Ordinance No. 105.1, (work without a permit) at the property located at 80 Avenue E, Fort Myers Beach, FL 33931 ("Subject Property") by virtue of a Code Enforcement Order by the Special Magistrate in CE Case No. CE17-0065, which was adjudicated on the 20th day of June, 2019.
2. The Order was recorded as Instrument No. 2019000160404 on the 9th day of July, 2019 in the public records of Lee County, Florida.

FORT MYERS BEACH ESTERO ISLAND

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



3. Orlandini, Joseph B was given 30 days to come into compliance with the Special Magistrate's Order, which was on or before the 26th day of July, 2017.

4. According to available records in possession of the Town of Fort Myers Beach, an inspection of the Subject Property was performed by a Code Enforcement Officer on the 4th day of April, 2024, and the Subject Property was found in compliance on the 28th day of September, 2022 due to Hurricane Ian and the property being Demoed.

5. No further action has been taken by the Town of Fort Myers Beach regarding this violation, which was corrected as stated above.

6. Code Enforcement Case No. CE17-0065 will be closed upon payment of \$650.00 lien in full.

7. I have personal knowledge of all these facts based on my review of records in possession of the Town of Fort Myers Beach, Florida.

FURTHER AFFIANT SAYETH NOT.

Signed on this 16 day of April, 2024.

Yozzo, Thomas W
Print Name

[Signature]
Code Enforcement Officer



FMBgov.com

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

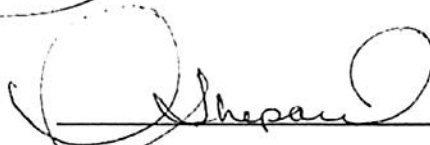
STATE OF FLORIDA

COUNTY OF LEE

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 16th day of April, 2024 by Thomas Vozzo, as _____, who is personally known to me or has produced _____ as identification.



ASHLEY SHEPARD
Commission # HH 253125
Expires April 14, 2026



Signature of Notary

Ashley Shepard

(Name typed, printed or stamped)

My Commission expires: April 14, 2026

FORT MYERS BEACH ESTERO ISLAND

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



Instrument Prepared by and Return to:

Town of Fort Myers Beach Code Enforcement

2731 Oak Street

Fort Myers Beach, Florida 33931

**TOWN OF FORT MYERS BEACH, FLORIDA
CODE ENFORCEMENT**

AFFIDAVIT OF COMPLIANCE

STATE OF FLORIDA)
COUNTY OF LEE)

BEFORE ME, the undersigned authority, personally appeared Thomas Yozzo, Code Enforcement Manager for the Town of Fort Myers Beach, FL, who after being duly sworn, deposes and says:

1. On the 24th day of February, 2016, ABSOLUTE BEST RATE RENTALS, LLC, (property owners) were found in violation of the Town of Fort Myers Beach Ordinance No. 105.1, (For work without the required permit. (remodel and construction of a stairwell)) at the property located at 80 Avenue E, Fort Myers Beach, FL 33931 ("Subject Property") by virtue of a Code Enforcement Order by the Special Magistrate in CE Case No. CE14-0394, which was adjudicated on the 28th day of March, 2016.

FORT MYERS BEACH ESTERO ISLAND

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



2. The Order was recorded as Instrument No. 2016000076125 on the 12th day of April, 2016 in the public records of Lee County, Florida.
3. ABSOLUTE BEST RATE RENTALS, LLC. was given 30 days to come into compliance with the Special Magistrate's Order, which was on or before the 25th day of March, 2016.
4. According to available records in possession of the Town of Fort Myers Beach, a desk inspection of the Subject Property was performed by a Code Enforcement Officer on the 4th day of April, 2024 and the Subject Property was found in compliance on the 28th day of September, 2022 due to hurricane Ian and the property being demoed.
5. No further action has been taken by the Town of Fort Myers Beach regarding this violation, which was corrected as stated above.
6. Code Enforcement Case No. CE14-0394 will be closed upon payment of \$594,650.00 lien in full.
7. I have personal knowledge of all these facts based on my review of records in possession of the Town of Fort Myers Beach, Florida.



FMBgov.com

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

FURTHER AFFIANT SAYETH NOT.

Signed on this 16 day of April, 2024.

Yozzo, Thomas W

Print Name

[Signature]

Signature

STATE OF FLORIDA

COUNTY OF LEE

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 16th day of April, 2024 by Thomas Yozzo, as identification, who is personally known to me or has produced _____ as



ASHLEY SHEPARD
Commission # HH 263125
Expires April 14, 2026

[Signature]

Signature of Notary

Ashley Shepard

(Name typed, printed or stamped)

My Commission expires: April 14, 2026

FMBgov.com

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

FORT MYERS BEACH ESTERO ISLAND

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



FMBgov.com

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

Instrument Prepared by and Return to:
Town of Fort Myers Beach Code Enforcement
2731 Oak Street
Fort Myers Beach, Florida 33931

TOWN OF FORT MYERS BEACH, FLORIDA
CODE ENFORCEMENT

AFFIDAVIT OF COMPLIANCE

STATE OF FLORIDA)
COUNTY OF LEE)

BEFORE ME, the undersigned authority, personally appeared Thomas Yozzo, Code Enforcement Manager for the Town of Fort Myers Beach, FL, who after being duly sworn, deposes and says:

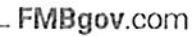
1. On the 24th day of February, 2016, ABSOLUTE BEST RATE RENTALS, LLC. (property owners) were found in violation of the Town of Fort Myers Beach Ordinance No. 103.5. (For maintaining of unsafe buildings, structures and/or service systems) at the property located at 80 Avenue E, Fort Myers Beach, FL 33931 ("Subject Property") by virtue of a Code Enforcement Order by the Special Magistrate in CE Case No. CE15-0167, which was adjudicated on the 28th day of March, 2016.

FORT MYERS BEACH ESTERO ISLAND

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



2. The Order was recorded as Instrument No. 2016000076124 on the 12th day of April, 2016 in the public records of Lee County, Florida.
3. ABSOLUTE BEST RATE RENTALS, LLC. was given 30 days to come into compliance with the Special Magistrate's Order, which was on or before the 25th day of March, 2016.
4. According to available records in possession of the Town of Fort Myers Beach, a desk inspection of the Subject Property was performed by a Code Enforcement Officer on the 4th day of April, 2024 and the Subject Property was found in compliance on the 28th day of September, 2022 due to hurricane Ian and the property being demoed.
5. No further action has been taken by the Town of Fort Myers Beach regarding this violation, which was corrected as stated above.
6. Code Enforcement Case No. CE15-0167 will be closed upon payment of \$594,650.00 lien in full.
7. I have personal knowledge of all these facts based on my review of records in possession of the Town of Fort Myers Beach, Florida.



Steven A. Ramunni

From: Paul Waters <paul@voselaw.com>
Sent: Tuesday, April 16, 2024 1:22 PM
To: Steven A. Ramunni; Chloe Berryman; Nancy Stuparich; Becky Vose
Subject: Fwd: Affidavits of Compliance
Attachments: CE17-0065_Affidafit of Compliance and payment amount_DB_20240416.pdf; CE14-0394_Affidafit of Compliance and payment amount_DB_20240416.pdf; CE15-0167_Affidafit of Compliance and payment amount_DB_20240416.pdf

Steve,

Attached are the affidavits from the Town, which have the dates of compliance and total fine amounts. Please let me know if you are willing to propose a reasonable settlement amount for the Town to consider. Otherwise, we must continue with the foreclosure litigation.

I'm free on Thursday or Friday if you'd like to discuss.

Paul Waters, Esq.

Partner

Vose Law Firm LLP

324 W. Morse Boulevard

Winter Park, Florida 32789

Phone: 407-645-3735

Cell: (904) 495-1054 (Preferred contact number)

Fax: 407-628-5670

email: paul@voselaw.com

web: www.voselaw.com

Toll-Free: 866-789-VOSE

London, UK: +44 (0)20 3355 1473

COUNSEL TO EXTRAORDINARY GOVERNMENTS, BUSINESSES & LEADERS WORLDWIDE SINCE

1973; LOCAL GOVERNMENT REPRESENTATION | BUSINESS LITIGATION | BUSINESS LAW | REAL ESTATE & DEVELOPMENT LAW

Sec. 2-432. - Procedure to obtain reduction and/or release of a code enforcement lien.

- (a) Where a certified copy of an order imposing a penalty or fine for a code enforcement violation has been recorded in the public records and has become a lien against the land and/or property of the violator/property owner, such violator/property owner may apply for a release of such lien as follows:
- (1) Upon full payment by the violator/property owner of the fine or penalty imposed as a result of a code enforcement action, the town manager or designee is hereby authorized to execute and record, at the property owner's expense, a release of lien.
 - (2) Upon request for a reduction or forgiveness of a fine or penalty that constitutes a lien resulting from a code enforcement action, the violator/property owner shall submit a written application to the town manager or designee. The application shall include the following:
 - a. A copy of the order imposing a lien upon the property;
 - b. The code enforcement case number;
 - c. The date upon which the violator/property owner brought the subject property into compliance with the requirements of the town Code;
 - d. The factual basis upon which the violator/property owner believes the application for reduction or forgiveness of the lien should be granted;
 - e. The specific terms upon which the violator/property owner believes a satisfaction or release of lien should be granted;
 - f. The reasons, if any, compliance was not accomplished by the violator/property owner prior to the time the order of lien was recorded;
 - g. The amount of the reduction in penalty or fine requested by the violator/property owner;
 - h. Information concerning any outstanding mortgages on the property, including the date such mortgage or mortgages were recorded and whether the mortgage or mortgages are currently in default;
 - i. All documents or other evidence that support the applicant's request for a reduction or forgiveness of the lien, which must be included with the application at the time of submittal; and
 - j. The application shall be executed under oath and sworn to in the presence of a notary public and delivered to the town manager designee.
 - (3) The violator/property owner shall submit, at the time of application, an application fee in the amount of \$200.00 to reimburse the town for its administrative costs associated with handling the application and recording the order imposing a penalty or fine and the requested release of lien. The application cost is non-refundable, without regard to the final disposition of the application for reduction, forgiveness and release of lien.
 - (4) Upon receipt of the application for release of lien and the payment provided above, the town manager, or designee, shall confirm through the code enforcement division that the violation which resulted in the order imposing the penalty or fine has been brought into full compliance.
 - (5) The town manager, or designee, shall then review and consider the status of the application for release of lien with respect to the following:
 - a. If a property owner acquired the property after the code enforcement lien was recorded, a waiver or reduction of lien may not be granted because the lien should have been identified and satisfied by the property owner at the time of purchase of the property.
 - b. If a title insurance policy was issued at the time the property was purchased and the title insurance policy failed to identify or consider the lien, a waiver or reduction in lien may not be granted. In such cases, the lien should have been discovered by the title insurer and providing a reduction or waiver would place the town in the position of indemnifying the title

insurer against its losses, which losses are the result of negligent examination of title by the title insurer.

- c. A request for waiver or reduction in lien may not be granted if the town council has previously reduced the amount of the lien. This statement applies whether or not the request is received from the original applicant for reduction or from a subsequent applicant who acquired the property.
- (6) If the town manager or designee determines that the request falls within any one of the above factual situations, the town manager or designee shall issue a written denial of the request for reduction or forgiveness. If the applicant desires to appeal the town manager's decision to the town council, the applicant may do so by filing a written appeal with the town manager stating the reason(s) why the town council should make an exception to its established guidelines and consider a reduction or forgiveness of the lien. Upon filing of a proper appeal, the town manager shall present the information to the town council at a regular meeting for their consideration and final determination.
 - (7) If the town manager or designee determines that the request does not fall within any of the above factual situations and therefore qualifies for possible reduction or forgiveness, the town manager or designee shall review the request further. The town manager or designee, in formulating a recommendation on whether to reduce the amount of the lien or forgive the lien entirely, shall consider the following factors:
 - a. The gravity of the violation(s);
 - b. The amount of time it took the violator/property owner to come into compliance;
 - c. The accrued amount of the code enforcement lien as compared to the market value of the property;
 - d. Whether there is a prior recorded mortgage on the property and, if so, whether such mortgage is in default and/or whether the principal amount of the mortgage is of such a magnitude that it would not be practical for the town to institute a lien foreclosure action;
 - e. Any previous code violation(s) of applicant/owner;
 - f. Consideration for the future or proposed use of the property for public purpose; and
 - g. The number and status of all other properties owned by the applicant/owner in Lee County, Florida.
 - (8) The town manager or designee shall place the application for satisfaction or release of lien upon the agenda of a regularly scheduled town council meeting. The town council may take action based solely upon the sworn application, recommendation of the town manager or designee and the applicant shall have opportunity to address the town council as to the factors he or she believes warrant reduction or waiver of lien in considering the application for satisfaction or release of lien.
 - (9) The town council may reduce the amount of the lien, waive the full amount of the lien or continue the lien in its full amount and may accept, modify or reject the recommendations of the town manager or designee.
 - (10) Town council approval of a reduction in the amount of the lien shall be contingent upon payment in full of the reduced amount within 30 days of the town council approval date. If the reduced amount is not paid in full within the 30-day period, the reduction shall be come null and void and the full amount of the lien shall be due and payable.
 - (11) When a lien is satisfied as a result of full payment, reduced payment or waiver as ordered by the town council, the town shall record the satisfaction/release of lien in the public records of Lee County, Florida and provide a copy to the property owner.

(Ord. No. 12-05, § 3, 6-18-2012)

1. Request:

Meeting Date: May 6, 2024

Award ITB-24-03-EN to Ahtna Marine and Construction, as the lowest responsive and responsible bidder, to complete the Estero Island Beach Nourishment and Hurricane Recovery Project, contingent and effective on the date the Lee County Board of County Commissioners approves the Interlocal Agreement with the Town for the "Estero Island Beach Nourishment Project," which was approved by Town Council on the 1st day of April 2024 in Resolution 24-15.

Why the action is necessary:

The Estero Island Beach Nourishment and Hurricane Recovery Project restores the Town's critically eroding beach utilizing high quality beach compatible sand to provide erosion control and storm damage reduction along approximately 6.5 miles of critically eroding gulf shoreline along Estero Island, Lee County. In addition, beach nourishment provides environmental protection and enhancement for threatened and endangered species including shorebirds and sea turtles through creation and maintenance of habitats, monitoring, and implementation of best management practices and safeguards during construction.

What the action accomplishes:

This action awards ITB-24-03-EN to Ahtna Marine and Construction's as the lowest responsive and responsible bidder to construct the Estero Island Beach Nourishment and Hurricane Recovery Project.

2. Agenda:

ADMINISTRATIVE AGENDA

3. Requirement/Purpose:

Other

4. Submitter of Information:

Chadd Chustz, Environmental
Projects Manager

5. Background:

The purpose of the Estero Island Beach Nourishment and Hurricane Recovery Project is to restore the Town's critically eroding beach, utilizing high quality beach compatible sand to provide erosion control and storm damage reduction along approximately 6.5 miles of critically eroding gulf shoreline along Estero Island, Lee County. In addition, beach nourishment provides environmental protection and enhancement for threatened and endangered species, including shorebirds and sea turtles, through creation and maintenance of habitats, monitoring, and implementation of the best management practices and safeguards during construction.

The Project has been in effect for several years. In December 2011, Lee County completed construction of the Estero Island Beach Restoration Project, including sand placement along the north segment of the island and the addition of a terminal groin on the northern end of the beach fill. The initial 2011 beach restoration project was constructed between April 2011 and December 2011. Approximately 403,000 cubic yards (CY) of sand were excavated and placed in the beach fill area between Bowditch Point (C-174A.5) and Crescent Park (R-181.5) The beach was constructed to a berm height of 2.9 feet NAVD88 over a shoreline distance of approximately 6,700 feet (1.3 miles). All dredging was conducted in the Matanzas Pass Ebb Shoal Borrow Area located in the Gulf of Mexico approximately 1.4 miles southwest of the Project area. In addition, a terminal groin was constructed at Bowditch Point with approximately 3,630 tons of limestone rock for a length of 240 feet with a maximum crest width of approximately 12.7 feet.

In 2020, the Town of Fort Myers Beach took over the local sponsorship for beach renourishment

projects from the County. The Town contracted with Coastal Engineering Consultants to conduct a project performance assessment (CEC, 2020). The initial project was proposed to renourish the previously constructed North Segment between Bowditch Point (C-174A.5) and Crescent Park (R-181.5), plus the Central Segment from Margaritaville Resort (R-182) to Lanark St (R-198). The additional Central Segment was initially included in the County's 2011 project, but was dropped due to lack of beachfront property owner participation.

In 2020 and 2021, the Island was impacted by multiple tropical storms and hurricanes, most notably Tropical Storm Eta (2020) and Hurricane Elsa (2021). Multiple beachfront property owners located primarily in the south segment, which has never been restored, requested the Town include them in their beach management program. In response, the Town expanded the Project to include the southern shoreline segment between Creciente Condo (~ R-203) and Sun Caper Condo (~ R-207).

In 2022, Hurricane Ian devastated Fort Myers Beach and eroded approximately 220,000 cubic yards of sand from the beaches of Estero Island. The Town applied to FEMA for Category B public assistance to build a berm on the "natural beach" from Margaritaville Resort (R-182) to Island's End Condo (R-210). In addition, the Town applied for Category G public assistance to replace the 56,845 CY of sand eroded from the North Segment. The Category G public assistance was added to the scope of the Estero Island Beach Nourishment Project, adding Hurricane Recovery to the Project.

Both State and Federal Permitting applications were pending prior to Hurricane Ian. In early 2023, the Florida Department of Environmental Protection issued a Joint Coastal Permit and Submerged Lands Authorization, which expires in January 2038. The permit was modified to authorize a one-time placement of approximately 15,000 cubic yards of beach compatible material above Mean High Water (MHW) on the southern end of Estero Island (R209 to R-210) to offset the observed storm loss in this section of the island, which has not been restored previously. In addition, a second offshore burrow area was added to the project scope to provide ample sand resources for future renourishment projects. The US Army Corps Permit for the Renourishment Project was not issued until November 15, 2023, delaying the Town's ability to seek a contractor to complete the Project.

Once all permits were in hand authorizing the Project, an invitation to bid for completion of the Project on November 17, 2023. Bids were to be received and opened on January 2, 2024. Coastal Engineering Consultants issued a Bid Review Summary shortly thereafter recommending rejection of all responses received as over the budget amount for the Project. The Town Council agreed with the recommendation and directed staff to rebid the Project.

Per Section 2-480 of the Town code: (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:

- a. All bids exceed the estimated or budgeted amount.
- b. The specifications contain an error which causes confusion and misunderstanding among bidders.
- c. The item(s) 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.

Per 119.071(1)(b)3 F.S.:3, if an agency rejects all bids, proposals, or replies submitted in response to a competitive solicitation and the agency concurrently provides notice of its intent to reissue the competitive solicitation, the rejected bids, proposals, or replies remain exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the agency provides notice of an intended decision concerning the reissued competitive solicitation or until

the agency withdraws the reissued competitive solicitation.

On March 15, 2024, the bid for the Project was reissued. Three responses were received and reviewed by the Town's consultant. The consultant recommended acceptance the response from Ahtna Marine and Construction as the lowest responsive and responsible bidder. An intent to award the bid to Ahtna was issued on April 26, 2024 and the matter was placed on the Town Council agenda for May 6, 2024 for award.

Shorebird breeding season dates for this project area are February 15 through September 1. The FDEP Permit conditions prohibit construction in the Critical Wildlife Area between March 1 and November 1 for Sea Turtle and Shorebird nesting. This creates a very tight window of less than 3 months for the contractor to construct the Southern Segment of the Project.

Per Section 2-480 of the Town code: (12) All bids will be awarded by Town as soon as practical after the bids are opened. Bids shall be awarded to the lowest responsive and responsible 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.

Ahtna's bid did not include an option for a discounted cost in their bid to provide for 24 hour trucking. The bid protest period concluded on May 1, 2024. The Lee County BoCC will review the ILA with the Town on May 7th, 2024.

Attachments:

1. Consultant Recommendation
2. 24504 Estero Island Beach Bid Tabulation 20240425
3. Review of Successful Bidder Costs
4. Resolution - ILA with Lee County re funding for Beach Renouishment
5. AHTNAH - FMB_003 Official Bid Form
6. CALLAN - FMB_003 Official Bid Form
7. WEEKS - FMB_003 Official Bid Form

Financial Impact:

See Constal Engineering Consultants Professional Opinion of Probable Construction Cost.

6. Alternative Action

Do not award ITB-24-03-EN to Ahtna Marine and Construction as the lowest responsive and responsible bidder to construct the Estero Island Beach Nourishment and Hurricane Recovery Project

7. Management Recommendations:

Award ITB-24-03-EN to Ahtna Marine and Construction as the lowest responsive and responsible bidder to construct the Estero Island Beach Nourishment and Hurricane Recovery Project, contingent on Lee County Board of County Commissioners approval of the Interlocal Agreement for the "Estero Island Beach Nourishment Project," which was approved by Town Council Resolution 24-15.

8. Recommended Approval:

Chadd Chustz, Environmental Projects Manager

Created/Initiated - 4/29/2024

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

Approved - 4/29/2024
Approved - 4/29/2024
Approved - 4/30/2024
Final Approval - 4/30/2024

April 24, 2024

Chadd Chustz
Environmental Project Manager
Town of Fort Myers Beach
2525 Estero Boulevard
Fort Myers Beach, Florida 33931

via email: Chadd@fmbgov.com

**Re: Estero Island Beach Nourishment and Hurricane Recovery Project
Bid Review Summary, Bid No. ITB-24-03-EN
CEC File No. 24.504**

Dear Chadd:

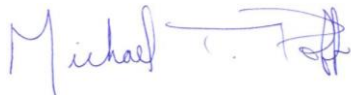
Pursuant to the Town's request and within our contracted scope, CEC reviewed the apparent low bid as you provided to us. This bid was submitted by Ahtna Marine and Construction Company, LLC (Ahtna) and our review was to determine if they meet the requirements for the above referenced Project based on the criteria within the Bid Documents. As such, CEC reviewed the submitted bid forms and attachments which included qualifications, plant and equipment schedule, resumes, and work histories.

Based upon our review of the bid submittal, it is our opinion Ahtna should have sufficient capacity and experience to construct this Project within the construction time window. Ahtna has successfully completed numerous beach nourishment and dredging projects of a similar complexity and magnitude in Florida.

Therefore, our recommendation of contract award is to Ahtna.

We appreciate the opportunity to be of service. If you have any questions, please do not hesitate to call me at (239) 643-2324, extension 126 or via email at mpoff@cecifl.com.

Respectfully submitted,
COASTAL ENGINEERING CONSULTANTS, INC.



Michael T. Poff, P.E.
President

ESTERO ISLAND BEACH NOURISHMENT ENGINEER'S FINAL OPINION OF PROBABLE CONSTRUCTION COST						
Item	Description	Unit	Quantity	Unit Price	Extended Price	Subtotals
C-1	Mobilization	LS	1	\$8,740,000	\$8,740,000.00	\$8,740,000.00
C-2	Beach Fill	CY	946,000			
C-2A	North-Central		630,000	\$16.95	\$10,678,500.00	
C-2B	South		316,000	\$17.45	\$5,514,200.00	\$16,192,700.00
C-3	Environmental Protection	LS	1	\$66,000	\$66,000.00	\$66,000.00
C-4	Endangered Species Observations (Hopper)	Days	0	\$0.00	\$0.00	\$0.00
C-5	Relocation Trawling (Hopper)	Days	0	\$0.00	\$0.00	\$0.00
C-6	Shorebird Protection	Days	90	\$550	\$49,500.00	\$49,500.00
C-7	Submerged Sediment Pipeline Monitoring	Surveys	4	\$11,000	\$44,000.00	\$44,000.00
C-8	Turbidity Monitoring	LS	1	\$92,300	\$92,300.00	\$92,300.00
CEC File No. 24.504					TOTAL	\$25,184,500.00
April 25, 2024					UNIT RATE	\$26.62



AHTNA MARINE AND CONSTRUCTION CO		
Unit Price	Extended Price	Subtotals
\$4,317,851	\$4,317,851.12	\$4,317,851.12
\$17.04	\$10,735,200.00	
\$19.75	\$6,241,000.00	\$16,976,200.00
\$57,550	\$57,550.00	\$57,550.00
\$0.00	\$0.00	\$0.00
\$0.00	\$0.00	\$0.00
\$550	\$49,500.00	\$49,500.00
\$8,800	\$35,200.00	\$35,200.00
\$286,084	\$286,083.97	\$286,083.97
	TOTAL	\$21,722,385.09
	UNIT RATE	\$22.96

CALLAN MARINE		
Unit Price	Extended Price	Subtotals
\$14,777,000	\$14,777,000.00	\$14,777,000.00
\$22.50	\$14,175,000.00	
\$22.50	\$7,110,000.00	\$21,285,000.00
\$250,000	\$250,000.00	\$250,000.00
\$0.00	\$0.00	\$0.00
\$0.00	\$0.00	\$0.00
\$5,100	\$459,000.00	\$459,000.00
\$30,000	\$120,000.00	\$120,000.00
\$300,000	\$300,000.00	\$300,000.00
	TOTAL	\$37,191,000.00
	UNIT RATE	\$39.31

WEEKS MARINE		
Unit Price	Extended Price	Subtotals
\$11,750,000	\$11,750,000.00	\$11,750,000.00
\$28.25	\$17,797,500.00	
\$28.25	\$8,927,000.00	\$26,724,500.00
\$20,000	\$20,000.00	\$20,000.00
\$0.00	\$0.00	\$0.00
\$0.00	\$0.00	\$0.00
\$1,000	\$90,000.00	\$90,000.00
\$7,500	\$30,000.00	\$30,000.00
\$175,000	\$175,000.00	\$175,000.00
	TOTAL	\$38,789,500.00
	UNIT RATE	\$41.00

ESTERO ISLAND BEACH NOURISHMENT						
AHTNA BID			APRIL 23, 2024			
Item	Description	Unit	Quantity	Unit Price	Extended Price	Subtotals
C-1	Mobilization	LS	1	\$4,317,851	\$4,317,851.12	
	North FEMA		0.06009		\$259,459.03	
	North Non-FEMA		0.24012		\$1,036,809.17	
	Central		0.36575		\$1,579,256.33	
	South		0.33404		\$1,442,326.59	\$4,317,851.12
C-2	Beach Fill	CY	946,000			
C-2A	North-Central		630,000	\$17.04	\$10,735,200.00	
	North FEMA		56,845		\$968,638.80	
	North Non-FEMA		227,155		\$3,870,721.20	
	Central		346,000		\$5,895,840.00	\$10,735,200.00
C-2B	South		316,000	\$19.75	\$6,241,000.00	\$6,241,000.00
C-3	Environmental Protection	LS	1	\$57,550	\$57,550.00	
	North FEMA		0.06009		\$3,458.17	
	North Non-FEMA		0.24012		\$13,819.00	
	Central		0.36575		\$21,048.94	
	South		0.33404		\$19,223.89	\$57,550.00
C-4	Endangered Species Observations (Hopper)	Days	0	\$0	\$0	
	North FEMA		0.06009		\$0.00	
	North Non-FEMA		0.24012		\$0.00	
	Central		0.36575		\$0.00	
	South		0.33404		\$0.00	\$0.00
C-5	Relocation Trawling (Hopper)	Days	0	\$0	\$0	
	North FEMA		0.06009		\$0.00	
	North Non-FEMA		0.24012		\$0.00	
	Central		0.36575		\$0.00	
	South		0.33404		\$0.00	\$0.00
C-6	Shorebird Protection	Days	90	\$550	\$49,500.00	
	North FEMA		0.06009		\$2,974.45	
	North Non-FEMA		0.24012		\$11,886.02	
	Central		0.36575		\$18,104.65	
	South		0.33404		\$16,534.88	\$49,500.00
C-7	Submerged Sediment Pipeline Monitoring	Surveys	4	\$8,800	\$35,200.00	
	North FEMA		0.06009		\$2,115.16	
	North Non-FEMA		0.24012		\$8,452.28	
	Central		0.36575		\$12,874.42	
	South		0.33404		\$11,758.14	\$35,200.00
C-8	Turbidity Monitoring	LS	1	\$286,084	\$286,083.97	
	North FEMA		0.06009		\$17,190.74	
	North Non-FEMA		0.24012		\$68,694.93	
	Central		0.36575		\$104,635.36	
	South		0.33404		\$95,562.93	\$286,083.97
CEC File No. 24.504					TOTAL	\$21,722,385.09
April 24, 2024					CHECK	\$21,722,385.09



			ENTITY	FEMA (90% CAT G)	FDEM (10% CAT G)	FDEM (GRANT)	FDEP	COUNTY (TDC)	TOWN	CHECK
NORTH FEMA TOTAL		PERCENT	PERCENT	90.00%	10.00%	0.00%	0.00%	0.00%	0.00%	
VOLUME (CY)	56,845	6.009%								
COST (\$)	\$1,253,836.36	5.772%	AMOUNT	\$1,128,452.72	\$125,383.64	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
COST / CY	\$22.06									
GRANT	\$1,408,050.00									
DIFFERENCE	\$154,213.64									
NORTH NON-FEMA TOTAL			PERCENT	0.00%	0.00%	0.00%	41.70%	43.20%	15.10%	
VOLUME (CY)	227,155	24.012%								
COST (\$)	\$5,010,382.59	23.066%	AMOUNT	\$0.00	\$0.00	\$0.00	\$2,089,329.54	\$2,164,485.28	\$756,567.77	\$0.00
COST / CY	\$22.06									
NORTH TOTAL										
VOLUME (CY)	284,000	30.021%								
COST (\$)	\$6,264,218.95	28.838%	AMOUNT	\$1,128,452.72	\$125,383.64	\$0.00	\$2,089,329.54	\$2,164,485.28	\$756,567.77	\$0.00
COST / CY	\$22.06									
CENTRAL TOTAL			PERCENT	0.00%	0.00%	0.00%	41.70%	43.20%	15.10%	
VOLUME (CY)	346,000	36.575%								
COST (\$)	\$7,631,759.71	35.133%	AMOUNT	\$0.00	\$0.00	\$0.00	\$3,182,443.80	\$3,296,920.19	\$1,152,395.72	\$0.00
COST / CY	\$22.06									
SOUTH TOTAL			PERCENT	0.00%	0.00%	0.00%	100.00%	0.00%	0.00%	
VOLUME (CY)	316,000	33.404%								
COST (\$)	\$7,826,406.44	36.029%	AMOUNT	\$0.00	\$0.00	\$0.00	\$7,826,406.44	\$0.00	\$0.00	\$0.00
COST / CY	\$24.77									
			TOTAL	\$1,128,452.72	\$125,383.64	\$0.00	\$13,098,179.77	\$5,461,405.47	\$1,908,963.49	\$0.00
				FEMA (90% CAT G)	FDEM (10% CAT G)	FDEM (GRANT)	FDEP	COUNTY (TDC)	TOWN	

RESOLUTION NUMBER 24-15

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 RENOURISHMENT PROJECT 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 Florida Interlocal Cooperation Act of 1969, Section 163.01, Florida Statutes, encourages and empowers local governments to cooperate with one another on matters of mutual interest and advantage, and enter into agreements between the local governments on matters of mutual interest; and,

WHEREAS, beach erosion is a threat to the economy and general welfare of the visitors and residents of both the Town and County; and,

WHEREAS, both the Town and the County are responsible to properly manage, protect, and maintain beaches fronting on the Gulf of Mexico from erosion through beach restoration and nourishment projects as part of their governmental duties; and,

WHEREAS, certain beaches of Estero Island have been designated by the State of Florida as critically eroded; and,

WHEREAS, the Town desires to continue to implement beach maintenance, erosion control and nourishment of certain Estero Island beaches to afford continued protection to upland property and enhance the tourist economy in the Town as well as the County and Southwest Florida; and

WHEREAS, it is in the mutual interest of the Town and the County to cooperate in completing projects related to beach maintenance, erosion control, and nourishment of Estero Island beaches; and

WHEREAS, the Town and the County have previously entered into agreement to do so and to date have successfully completed all obligations from prior maintenance and nourishment agreements; and

WHEREAS, for these reasons, the Town and the County believe it is in the interest of the public health, safety and welfare to continue to cooperate in completing beach maintenance, mitigating erosion, and nourishment on Estero Island beaches in order to improve the protection of upland development and infrastructure, the tourist economy, recreational interests, and wildlife habitat.

WHEREAS, the Town Council has determined it is in the best interest of the Town to approve the requested Interlocal Agreement between the Town and Lee County to construct Estero Island Beach Renourishment Project.

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 Interlocal Agreement between the Town and Lee County for the construction of the Estero Island Beach Renourishment Project. A copy of the Interlocal Agreement is attached hereto as Attachment "A".

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

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

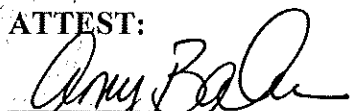
ADOPTED this 1st day of April 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL



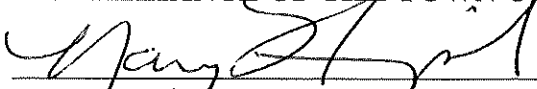
Dan Allers, Mayor

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 1st day of April 2024.

**INTERLOCAL AGREEMENT by and between
LEE COUNTY and the TOWN OF FORT MYERS BEACH**

THIS AGREEMENT is made and entered into this 1st day of April 2024, by and between the TOWN OF FORT MYERS BEACH, a Florida municipal corporation, hereinafter referred to as the “Town”, and the Board of County Commissioners of LEE COUNTY, a political subdivision of the State of Florida, hereinafter referred to as the “County”.

WHEREAS, the Florida Interlocal Cooperation Act of 1969, Section 163.01, Florida Statutes, encourages and empowers local governments to cooperate with one another on matters of mutual interest and advantage, and enter into agreements between the local governments on matters of mutual interest; and,

WHEREAS, beach erosion is a threat to the economy and general welfare of the visitors and residents of both the Town and County; and,

WHEREAS, certain beaches of Estero Island have been designated by the State of Florida as critically eroded; and,

WHEREAS, the Town desires to continue to implement beach maintenance, erosion control and nourishment of certain Estero Island beaches to afford continued protection to upland property and enhance the tourist economy in the Town as well as the County and Southwest Florida; and

WHEREAS, it is in the mutual interest of the Town and the County to cooperate in completing projects related to beach maintenance, erosion control, and nourishment of Estero Island beaches; and

WHEREAS, for these reasons, the Town and the County believe it is in the interest of the public health, safety and welfare to cooperate in mitigating erosion on Estero Island beaches in order to improve the protection of upland development and infrastructure, the tourist economy, recreational interests, and wildlife habitat.

NOW THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, the Town and the County agree as follows:

SECTION ONE

INCORPORATION OF RECITALS

The Recitals as set forth above are incorporated into the terms of this Agreement.

SECTION TWO

PURPOSE

The purpose of this agreement is to reduce to writing the parties’ agreement to a method for allocation of costs and responsibilities for “The Estero Island Beach Nourishment Project”, hereinafter referred to as the “Project”. This Agreement shall supersede and replace in its entirety

the June 22, 2010, Interlocal Agreement between the County and the Town for Estero Island Beach Restoration. The parties acknowledge and agree that all terms and conditions of the June 22, 2010, Interlocal Agreement have been satisfied.

SECTION THREE

PROJECT SCOPE

The parties agree the scope of the Project shall include the necessary design, permitting, engineering, construction, project management, and environmental protection and monitoring required by state and federal permits for the Estero Island shoreline extending from R175 at the northern end of Estero Island to R198 ("the North-Central Project Segment"), and from R203 to R207 ("the South Project Segment"). The scope of the Project includes post-construction maintenance and monitoring for a period of seven years, unless a shorter time is required or permitted by state or federal permits for the Project. For the purpose of this Agreement, maintenance includes additional fill placement as authorized by Project permits to address erosion hot spots that develop prior to the next scheduled nourishment subject to the Cost Allocations and Cancellation provisions herein. The Project shall be constructed in accordance with applicable local, state and federal rules, regulations, and permits.

SECTION FOUR

COUNTY OBLIGATIONS

The County agrees to:

- a) Cooperate with the Town and Town Contractors as necessary to facilitate state funding applications, design, permitting, and implementation of the Project.
- b) Maintain any public access and parking under the County's control used to qualify for state cost sharing.
- c) Cooperate with the Town in coordinating overlapping monitoring or maintenance areas to eliminate duplication of effort associated with the completion of post-construction maintenance and monitoring for a period of seven years unless a shorter time is required or permitted by the state and federal permits for the Project. Maintenance responsibilities under this Agreement will be limited to tilling and scarp removal required by permits for the Project.
- d) Not object to the Town's desire to be able to commence construction activities 24 hours a day, every day of the year in order to maximize construction efficiency and reduce construction costs.
- e) Allow the Town the use of County owned properties adjacent to the Project for Town Contractors and equipment for the purpose of reasonable staging, beach access, and construction. Reasonable staging and access shall be subject to prior written approval by the County Manager or designee, the terms and conditions of which shall be binding on the Town and Town Contractors as necessary to protect the County's interests.
- f) Provide funding for the Project based on an allocation of costs in accordance with Section Six of this Agreement. The County will not be responsible for providing payment in any form for expenses for experimental technologies, LiDAR, aerial oblique photography, surveys not required by the Florida Department of Environmental Protection (hereinafter DEP) approved physical monitoring plan, economic studies and benefits analysis, fines, penalties, interest, and work completed on private properties not authorized by a signed construction easement.

SECTION FIVE

TOWN OBLIGATIONS

The Town agrees to:

- a) Monitor the Project area as required by permits and provide the results of the monitoring to the County concurrent with submittal to permitting agencies.
- b) Apply for all necessary permits for the Project.
- c) Seek state cost sharing to help reduce overall costs to the Town and County and provide the County with copies of all funding applications and agreements within thirty (30) days of execution.
- d) Prepare detailed plans and specifications for the Project including provision that any County property used for staging and beach access, including use of parking areas for Town Contractors, construction and equipment, is left in conditions equal to or better than before it was used for the Project. This will include protection of natural resources and construction of dunes on County Parks where requested by the County.
- e) Maintain any public access and parking under the Town's control used to qualify for state cost sharing.
- f) Acquire all easements necessary to complete the Project and provide a detailed list to the County.
- g) Provide copies of Project technical reports to the County at the same time provided to DEP.
- h) Provide funding for the Project based on an allocation of costs in accordance with Section Six of this Agreement.
- i) Keep books, records, documents and other evidence pertaining to costs and expenses incurred for the construction to the extent and in such detail as will properly reflect total Project costs and funding of the Project. The Town will make available at its office at reasonable times, such books, records, documents and other evidence for inspection and audit by authorized County representatives for a minimum of seven years after completion of construction of the Project.
- j) The Town or its agents will act as Project sponsor and manager.
- k) Notify the County of the final completion of Project monitoring tasks required by state and federal permits within thirty (30) days of completion of each task.
- l) The Town may, at its sole option and discretion, coordinate regionally with other eligible government entities when it is in the best interests of the Town and County, particularly in sharing resources for cost savings purposes.

SECTION SIX

COST ALLOCATIONS

The Parties agree to share in the eligible costs for the Project in accordance with the following:

- a) The cost allocation between the Town and County will be based on total eligible Project costs as defined herein and documented by the Town pursuant to Section Four (f) and Section Five (i) above.
- b) Operational expenses including staff time of Town and County personnel are not considered Project expenses for the purposes of this Agreement.
- c) The County will pay a share of eligible Project costs including those incurred prior to the date of this Agreement but only those on or after April 24, 2023, and listed on

Exhibit A. The Town will invoice no more than once per month and the schedule for payments will be as follows:

- i. For eligible expenses incurred prior to the date of execution of this Agreement, payment will be made by the County within thirty (30) days of receiving a detailed invoice from the Town including adequate documentation of the scope of work and proof of payment for eligible Project costs. Completed DEP reports as described in Section Five (g) above and including copies of supporting documentation will satisfy this requirement.
 - ii. The County will advance a sum to the Town equal to ninety percent (90%) of the County share estimated from the bid documents for sand placement. The County will make payment to the Town within thirty (30) days of receiving a notice from the Town including their approved bid and executed contract. Upon receipt of a detailed invoice, notification from the Town that the sand placement has been completed, and accounting documentation, the County will pay the balance of funds due for completed sand placement within thirty (30) days.
 - iii. For eligible expenses other than the sand placement incurred after the date of execution of this Agreement, payment will be made by the County within thirty (30) days of receiving a detailed invoice from the Town including adequate documentation of the scope of work and proof of payment. This includes costs for permit required post-construction monitoring and maintenance.
- d) The payment amounts will be calculated using the cost sharing methods described as follows:
- i. Pursuant to Sections 161.091 - 161.161, F.S., the DEP provides financial assistance to eligible governmental entities for beach erosion control and inlet management activities under the Florida Beach Management Funding Assistance Program. Any State funding provided through the DEP is typically based on criteria described in Chapter 62B-36, Florida Administrative Code but may also include hurricane recovery funding. The total state funding is known as the State Share.
 - ii. Project funding provided by entities other than the DEP Beach Management Funding Assistance Program, County or Town shall collectively be referred to as Grant Funding. This may include but is not limited to Project funding from the Florida Division of Emergency Management (FDEM) and the Federal Emergency Management Agency (FEMA).
 - iii. The costs remaining after deduction of the State Share shall be known as the Local Share. In accordance with Section 5c above, the Town will seek Grant Funding to reduce the overall Local Share. Any such funding will apply to the Town Share first, with any balance applied to the County Share.
 - iv. The distribution of the Local Share has been determined based on a prior Benefit Analysis. The Benefit Analysis determined that 12.4% of the benefits are for storm protection, and 87.6% of the benefits are for recreation.
 - v. The County owns approximately 1954 linear feet or 8.1% of the Estero Island North-Central Project Segment shoreline primarily at Bowditch Point, Lynn Hall, and Crescent Beach Parks and will pay the proportional storm protection cost for those facilities equal to 1.0% of the Local Share (i.e., $12.4\% \times 8.1\% \times \text{Local Share}$).

- vi. The North-Central Project Segment shoreline is 83.4% publicly accessible as defined by DEP for construction. Accordingly, a portion of the Local Share attributable to recreation will be paid by the County equal to 73.1% of the Local Share (i.e., 87.6% x 83.4% x Local Share).
- vii. The South Project Segment is State owned as defined by DEP for beach funding purposes. As such construction costs for the South Project Segment are paid 100% by the State and not part of the Local Share.
- viii. For Post-construction monitoring costs, the Project shoreline is 86.0% publicly accessible as defined by DEP. Accordingly, a portion of the Local Share attributable to recreation will be paid by the County equal to 75.3% of the Local Share (i.e., 87.6% x 86.0% x Local Share) for permit required post-construction monitoring costs of the North-Central and South Segments.
- ix. The total County Share will be the sum of the County North-Central storm protection share (Section 6(d)v), the County North-Central recreation share (Section 6(d)vi), and post-construction monitoring expenses cost shared in accordance with Section 6(d)viii. All other expenses and financial obligations are the sole responsibility of the Town.

SECTION SEVEN

HOLD HARMLESS

Each party shall be liable for its own actions, negligence and, to the extent permitted by law, Town shall indemnify, defend and hold harmless the County against any actions, claims for damages arising out of Town's negligence in connection with this Agreement, and County shall indemnify, defend and hold harmless the Town against any actions, claims for damages arising out of County's negligence in connection with this Agreement. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Florida Statutes, Section 768.28, nor shall the same be construed to constitute agreement by either party to indemnify the other party for such other party's negligent, willful or intentional acts or omissions.

SECTION EIGHT

CANCELLATION

- a) Prior to award of the construction contract, the Town shall provide the County with the estimated maximum County contribution under the terms of this Agreement. In the event that the County's maximum contribution is estimated to exceed \$9,200,000, the terms of this Agreement will become null and void unless the County and Town mutually agree in writing to proceed with the Project. The written Agreement to proceed must provide the maximum County contribution prior to award of the construction contract. The Town hereby agrees not to award a contract or incur any costs attributable to the County until such time as the County agrees to proceed. The Town will be responsible for all costs incurred without prior approval to proceed from the County.
- b) If the Agreement is canceled, any conditions necessitated by a permit will continue in full force and effect.
- c) The breach of a material obligation of this Agreement shall be grounds for immediate cancellation of this Agreement by the non-breaching party. The non-breaching party must provide the party in default with 30 days, from the date of notice of the default, to cure said

default. If the breach is not curable, the non-breaching party may terminate the Agreement without waiting 30-days and seek any remedies available under Florida law.

SECTION NINE **AMENDMENT TO AGREEMENT**

This Interlocal Agreement may only be amended as provided for herein, with the express consent of both Parties and executed with the same formality and dignities as this original Agreement.

SECTION TEN **INTERPRETATION OF AGREEMENT**

This Interlocal Agreement shall be construed and interpreted pursuant to Florida law. Venue for any disputes between the Parties arising under this Interlocal Agreement shall be the Twentieth Judicial Circuit Court, in and for Lee County, Florida.

SECTION ELEVEN **INTEGRATION OF DOCUMENT**

This Agreement, including any incorporated exhibits or amendments, constitutes the entire Agreement between the Parties and shall supersede and control over any or all prior Agreements or understandings, either written or oral, relating to the matters herein.

SECTION TWELVE **NOTICE PROVISIONS**

All notices or demands are deemed to have been given or made when delivered in person or delivered by certified or registered mail, return receipt requested, postage prepaid, United States mail, and addressed to the respective Parties as follows:

Mayor
Town of Fort Myers Beach
2523 Estero Boulevard
Fort Myers Beach, Florida 33931

Chair, Board of County Commissioners
Lee County
Post Office Box 398
Fort Myers, Florida 33902

SECTION THIRTEEN **EFFECTIVE DATE**

This Agreement will be effective on the last date signed by the County acting through its Board of County Commissioners or the Town acting through the Town Council.

SECTION FOURTEEN **TERM**

This Agreement shall commence upon execution and continue from year to year uninterrupted and shall terminate upon reimbursement of eligible costs associated with the last date of the monitoring required for the Project under the Project's state and federal permits. The rights and obligations of

each party that arise prior to the expiration of the term shall survive any expiration of the term of this Agreement.

SECTION FIFTEEN

SEVERABILITY

Should any portion of this Agreement be found invalid by a court of law, the remaining portions of this Agreement shall remain in effect insofar as they can reasonably be severed from the invalid portion.

SECTION SIXTEEN

ATTORNEY'S FEES AND COSTS

If either Party brings or commences legal action or proceeding to enforce the terms of this Agreement, the Parties agree that each will pay for its own costs and expenses of litigation, including reasonable attorneys' fees. In the event of a dispute and prior to litigation, the parties agree to consider alternative dispute resolution opportunities, include but not limited to mediation. Should the Parties agree to mediation, the Parties agree to equally divide the costs of the mediation.

SECTION SEVENTEEN

MISCELLANEOUS

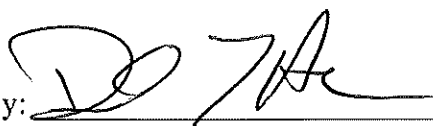
1. The Parties represent that they have full authority to enter into and execute this Agreement.
2. The terms and conditions of this Agreement shall extend to and bind the successors and assigns of the County and the Town.
3. The drafting of this Agreement has been a joint endeavor between the Parties and shall not, solely as a matter of judicial construction, be interpreted more strictly against one Party than the other.
4. Except as otherwise provided for herein, neither Party shall be liable to the other for either consequential or special damages of any kind whatsoever, including, but not limited to, lost revenues, or any other damages of any kind relating to this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused these presents to be executed on the day and year first written above.

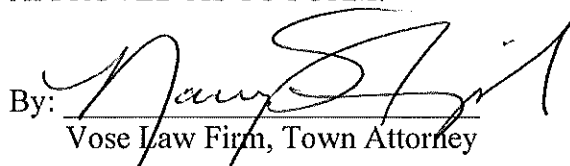
ATTEST:

Town of Fort Myers Beach

By: 
Amy Baker, Town Clerk

By: 
Dan Allers, Mayor

APPROVED AS TO FORM:

By: 
Vose Law Firm, Town Attorney

ATTEST:
KEVIN C. KARNES, CLERK

BOARD OF COUNTY COMMISSIONERS
LEE COUNTY,

BY: _____
DEPUTY CLERK

CHAIR

APPROVED AS TO FORM FOR THE
RELIANCE OF LEE COUNTY ONLY

BY: _____
Office of the County Attorney

Exhibit A

Project Expenses incurred prior to Agreement execution but after April 24, 2023, total approximately \$47,120.00 for activities including:

- a) \$47,120.00: 2023 Annual Monitoring of Estero Island; Update Bid Plans with Current Survey Data; Coastal Engineering Consultants STA #16.



TOWN of FORT MYERS BEACH

BID NO. ITB-24-03-EN

PART D

FMB:003 - OFFICIAL BID FORM

(1 of 5 Pages)

FOR

**ESTERO ISLAND BEACH NOURISHMENT AND
HURRICANE RECOVERY PROJECT**

ITB-24-03-EN

Bids are to be submitted by

April 15, 2024 @ 2:00 P.M. LOCAL TIME

to:

**TOWN OF FORT MYERS BEACH
VIA DEMANDSTAR.COM**

BID OPENING:

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

APRIL 15, 2024 at 2:15 P.M. LOCAL TIME

BIDDER: Ahtna Marine and Construction Company, LLC
(Individual or Firm Name)



TOWN of FORT MYERS BEACH

BID NO. ITB-24-03-EN

PART D
FMB:003 - OFFICIAL BID FORM
(2 of 5 Pages)

APRIL 15, 2024
(DATE)

2:00 P.M. LOCAL TIME
(TIME)

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

1. **ATTENTION: BIDS WILL ONLY BE CONSIDERED FROM THOSE BIDDERS WHO HAVE OBTAINED THESE CONTRACT DOCUMENTS DIRECTLY FROM THE TOWN OR DEMANDSTAR.**
2. **The Undersigned, hereinafter called "BIDDER", is familiar with the local conditions, nature and extent of the work, attended the mandatory pre-bid meeting, examined carefully the sample Agreement Form, General Conditions, Supplementary Conditions, Plans and Specifications and other Contract Documents, and fulfilled their requirements as well as the bonding requirements herein, proposes to furnish all labor, materials, equipment and other items, facilities and services for the proper execution and completion of the:**

ESTERO ISLAND BEACH NOURISHMENT AND HURRICANE RECOVERY PROJECT
ITB-24-03-EN

in full accordance with the drawings and specifications prepared in accordance with the Town's advertisement for Bids, Instruction to BIDDERS, Contract and all other documents related thereto on file with TOWN, and if awarded the contract, to complete the said work within the time limits specified for the following bid price:



**SCHEDULE OF VALUES
TOWN OF FORT MYERS BEACH
ESTERO ISLAND BEACH NOURISHMENT AND HURRICANE RECOVERY PROJECT**

ITEMS	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	COST
1	Mobilization	1	LS	\$4,317,851.12	\$4,317,851.12
2	Dredge and Fill			N/A	
2A	Dredge and Fill (North-Central)	630,000 (Estimated)	CY	\$17.04	\$10,735,200.00
2B	Dredge and Fill (South)	316,000 (Estimated)	CY	\$19.75	\$6,241,000.00
3	Environmental Protection	1	LS	\$57,550.00	\$57,550.00
4	Endangered Species Observers (Hopper Dredging)	120 (Estimated)	Days	N/A	
5	Relocation Trawling (Hopper Dredging)	120 (Estimated)	Days	N/A	
6	Shorebird Protection	90 (Estimated)	Days	\$550.00	\$49,500.00
7	Submerged Sediment Pipeline Monitoring	4	Surveys	\$8,800.00	\$35,200.00
8	Turbidity Monitoring	1	LS	\$286,083.97	\$286,083.97
		Base Bid Total			
9	South Segment 24-Hour per Day Trucking (Deduct)	XXXXX	CY	N/A	XXXXX

Total Base Bid Amount \$21,722,385.09

Written: Twenty one million seven hundred and twenty two thousand three hundred and eighty five dollars and nine cents.



3. The BIDDER hereby agrees that:

- (a) The above proposal shall remain in full force and effect for a period of 90 calendar days after the time of the opening of this proposal and it shall not be revoked, withdrawn or canceled within that time frame, except that the TOWN may in its sole discretion, release any Bid and return the Bid security prior to that date. Once the BIDDER has been notified that its bid has been awarded by the Town of Fort Myers Beach, within the above time frame the price proposed as submitted shall constitute the contract price and a formal contract for that amount shall be executed within the time frames established by these documents.
- (b) In the event the award is made to this BIDDER, the BIDDER will enter into a formal written agreement with the TOWN in accordance with the accepted bid, will execute the contract contained within these documents, and provide a Public Construction Bond from a Surety in good standing with the Florida Department of State who is licensed to do business in Florida and acceptable to the OWNER. The Public Construction Bond shall be in the amount of one hundred percent (100%) of the accepted bid amount. The BIDDER shall, at the time the Contract is executed, submit the required Certificates of Insurance. The BIDDER further agrees that in the event of the BIDDER'S default of a breach of any of the agreements of this proposal, the bid security shall be forfeited.
- (c) In the event of any conflict between the Invitation to Bid and Ordinance 17-01, the provisions of the ordinance will prevail. A copy of ordinance 17-01 is available on the TOWN'S website.



TOWN of FORT MYERS BEACH
PART D
FMB:003 - OFFICIAL BID FORM
(4 of 5 Pages)

BID NO. ITB-24-03-EN

4. Acknowledgment is hereby made of receipt of the following Addenda issued during the bidding period.

Addendum No. 1 Dated: 03/19/2024

Addendum No. 2 Dated 04/08/2024

Addendum No. 3 Dated: 04/16/2024

Addendum No. 4 Dated 04/23/2024

5. If awarded this contract, the BIDDER agrees to complete the work covered by this contract as follows:

- (a) Substantially complete in 180 consecutive calendar days from date of Official Notice to Proceed.
- (b) Final completion in 195 consecutive calendar days from the date of Official Notice to Proceed.

6. Neither the undersigned nor any other person, firm or corporation named herein, nor anyone else to the knowledge of the undersigned, have themselves solicited or employed anyone else to solicit favorable action for this proposal by the TOWN, also that no head of any department or employee therein, or any officer of Fort Myers Beach, Florida is directly interested therein.

This proposal is genuine and not collusive or a sham; the person, firm or corporation named herein has not colluded, conspired, connived or agreed directly or indirectly with any BIDDER or person, firm or corporation, to put in a sham proposal, or that such other person, firm or corporation, shall refrain from bidding, and has not in any manner, directly or indirectly, sought by agreement or collusion, or communication or conference with any person, firm or corporation, to fix the unit prices of said proposal or proposals of any other BIDDER, or to secure any advantage against the TOWN or any person, firm or corporation interested in the proposed contract; all statements contained in the proposal or proposals described above are true; and further, neither the undersigned, nor the person, firm or corporation named herein, has directly or indirectly submitted said proposal or the contents thereto, to any association or to any member or agent thereof.



PART D
FMB:003 - OFFICIAL BID FORM
(5 of 5 Pages)

7. The below signed BIDDER agrees to comply with all applicable provisions as set forth in the Anti-Discrimination requirements included as part of the General Conditions of this document. The BIDDER further agrees to hold harmless, defend and indemnify the TOWN and its agents for any losses, including attorney's fees, incurred as a result of its failure to abide by the applicable Anti-Discrimination laws.

Wesley Gammons
(Name of License Holder)

CGC1534282
(State Certificate No.)

24-00059220 24-00059221
Business Tax Receipt No. (Specify jurisdiction)

M19000007325
(State Registration No.)

In witness whereof, the BIDDER has hereunto set its signature and affixed its seal this
22 day of April, 2024.

Wesley Gammons
By: Printed

[Signature]
By: Signature

TITLE: Vice President

Ahtna Marine and Construction Company, LLC
Company Name

444 W Boynton Beach Blvd E.

Mailing Address

Boynton Beach, FL 33435

City, State, and Zip

Wesley Gammons
Contact Person

wgammons@ahtna.net

E-mail / Contact Person

954-568-0007

Telephone Number

954-943-8550

Fax Number

ATTEST.

[Signature]
Secretary

(Seal)



TOWN of FORT MYERS BEACH

BID NO. ITB-24-03-EN

PART D

FMB:003 - OFFICIAL BID FORM

(1 of 5 Pages)

FOR

**ESTERO ISLAND BEACH NOURISHMENT AND
HURRICANE RECOVERY PROJECT**

ITB-24-03-EN

Bids are to be submitted by

April 15, 2024 @ 2:00 P.M. LOCAL TIME

to:

**TOWN OF FORT MYERS BEACH
VIA DEMANDSTAR.COM**

BID OPENING:

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

APRIL 15, 2024 at 2:15 P.M. LOCAL TIME

BIDDER: Callan Marine, Ltd.
(Individual or Firm Name)



PART D
FMB:003 - OFFICIAL BID FORM
(2 of 5 Pages)

APRIL 15, 2024
(DATE)

2:00 P.M. LOCAL TIME
(TIME)

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

1. ATTENTION: BIDS WILL ONLY BE CONSIDERED FROM THOSE BIDDERS WHO HAVE OBTAINED THESE CONTRACT DOCUMENTS DIRECTLY FROM THE TOWN OR DEMANDSTAR.
2. The Undersigned, hereinafter called "BIDDER", is familiar with the local conditions, nature and extent of the work, attended the mandatory pre-bid meeting, examined carefully the sample Agreement Form, General Conditions, Supplementary Conditions, Plans and Specifications and other Contract Documents, and fulfilled their requirements as well as the bonding requirements herein, proposes to furnish all labor, materials, equipment and other items, facilities and services for the proper execution and completion of the:

ESTERO ISLAND BEACH NOURISHMENT AND HURRICANE RECOVERY PROJECT
ITB-24-03-EN

in full accordance with the drawings and specifications prepared in accordance with the Town's advertisement for Bids, Instruction to BIDDERS, Contract and all other documents related thereto on file with TOWN, and if awarded the contract, to complete the said work within the time limits specified for the following bid price:



SCHEDULE OF VALUES
TOWN OF FORT MYERS BEACH
ESTERO ISLAND BEACH NOURISHMENT AND HURRICANE RECOVERY PROJECT

ITEMS	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	COST
1	Mobilization	1	LS	\$14,777,000.00	\$14,777,000.00
2	Dredge and Fill				
2A	Dredge and Fill (North-Central)	630,000 (Estimated)	CY	\$22.50	\$14,175,000.00
2B	Dredge and Fill (South)	316,000 (Estimated)	CY	\$22.50	\$7,110,000.00
3	Environmental Protection	1	LS	\$250,000.00	\$250,000.00
4	Endangered Species Observers (Hopper Dredging)	120 (Estimated)	Days	\$0.00	\$0.00
5	Relocation Trawling (Hopper Dredging)	120 (Estimated)	Days	\$0.00	\$0.00
6	Shorebird Protection	90 (Estimated)	Days	\$5,100.00	\$459,000.00
7	Submerged Sediment Pipeline Monitoring	4	Surveys	\$30,000.00	\$120,000.00
8	Turbidity Monitoring	1	LS	\$300,000.00	\$300,000.00
		Base Bid Total \$37,191,000.00			
9	South Segment 24-Hour per Day Trucking (Deduct)	XXXXX	CY	\$9.00 Additional	XXXXX

Total Base Bid Amount

Written: Thirty Seven Million One Hundred Ninety One Thousand Dollars



3. The BIDDER hereby agrees that:

- (a) The above proposal shall remain in full force and effect for a period of 90 calendar days after the time of the opening of this proposal and it shall not be revoked, withdrawn or canceled within that time frame, except that the TOWN may in its sole discretion, release any Bid and return the Bid security prior to that date. Once the BIDDER has been notified that its bid has been awarded by the Town of Fort Myers Beach, within the above time frame the price proposed as submitted shall constitute the contract price and a formal contract for that amount shall be executed within the time frames established by these documents.
- (b) In the event the award is made to this BIDDER, the BIDDER will enter into a formal written agreement with the TOWN in accordance with the accepted bid, will execute the contract contained within these documents, and provide a Public Construction Bond from a Surety in good standing with the Florida Department of State who is licensed to do business in Florida and acceptable to the OWNER. The Public Construction Bond shall be in the amount of one hundred percent (100%) of the accepted bid amount. The BIDDER shall, at the time the Contract is executed, submit the required Certificates of Insurance. The BIDDER further agrees that in the event of the BIDDER'S default of a breach of any of the agreements of this proposal, the bid security shall be forfeited.
- (c) In the event of any conflict between the Invitation to Bid and Ordinance 17-01, the provisions of the ordinance will prevail. A copy of ordinance 17-01 is available on the TOWN'S website.



PART D

FMB:003 - OFFICIAL BID FORM

(4 of 5 Pages)

4. Acknowledgment is hereby made of receipt of the following Addenda issued during the bidding period.

Addendum No. 1 Dated: 03/19/2024Addendum No. 2 Dated 04/08/2024Addendum No. 3 Dated: 04/11/2024Addendum No. 4 Dated 04/16/2024

5. If awarded this contract, the BIDDER agrees to complete the work covered by this contract as follows:
- (a) Substantially complete in 180 consecutive calendar days from date of Official Notice to Proceed.
 - (b) Final completion in 195 consecutive calendar days from the date of Official Notice to Proceed.
6. Neither the undersigned nor any other person, firm or corporation named herein, nor anyone else to the knowledge of the undersigned, have themselves solicited or employed anyone else to solicit favorable action for this proposal by the TOWN, also that no head of any department or employee therein, or any officer of Fort Myers Beach, Florida is directly interested therein.

This proposal is genuine and not collusive or a sham; the person, firm or corporation named herein has not colluded, conspired, connived or agreed directly or indirectly with any BIDDER or person, firm or corporation, to put in a sham proposal, or that such other person, firm or corporation, shall refrain from bidding, and has not in any manner, directly or indirectly, sought by agreement or collusion, or communication or conference with any person, firm or corporation, to fix the unit prices of said proposal or proposals of any other BIDDER, or to secure any advantage against the TOWN or any person, firm or corporation interested in the proposed contract; all statements contained in the proposal or proposals described above are true; and further, neither the undersigned, nor the person, firm or corporation named herein, has directly or indirectly submitted said proposal or the contents thereto, to any association or to any member or agent thereof.



PART D
FMB:003 - OFFICIAL BID FORM
(5 of 5 Pages)

7. The below signed BIDDER agrees to comply with all applicable provisions as set forth in the Anti-Discrimination requirements included as part of the General Conditions of this document. The BIDDER further agrees to hold harmless, defend and indemnify the TOWN and its agents for any losses, including attorney's fees, incurred as a result of its failure to abide by the applicable Anti-Discrimination laws.

Matthew Sitka

(Name of License Holder)

CGC1521311

(State Certificate No.)

Business Tax Receipt No. (Specify jurisdiction)

W19000060094

(State Registration No.)

In witness whereof, the BIDDER has hereunto set its signature and affixed its seal this
22nd day of April, 2024.

Frank J. Belesimo

By: Printed

By: Signature

TITLE: Executive Vice President
Callan Marine, Ltd.

Company Name

6800 Harborside Drive

Mailing Address

Galveston, Texas, 77554

City, State, and Zip

Jordan Guy

Contact Person

jguy@callanmarineltd.com

E-mail / Contact Person

(409) 762-0124

Telephone Number

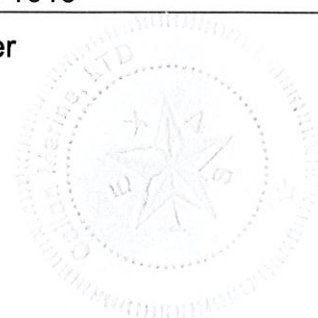
(409) 762-1916

Fax Number

ATTEST:

Secretary

(Seal)



CERTIFICATE OF PARTNERSHIP RESOLUTION

I, JOHN R. SULLIVAN, Chief Executive Officer of CALLAN MARINE LTD., a limited partnership organized and existing under the laws of the State of Texas and having its principal place of business at 6800 Harborside, Galveston, Texas 77554 (the "Partnership"), hereby certify that the following is a true copy of the Resolution adopted by the Partnership at a duly-noticed meeting convened and held on March 04, 2024, and that such Resolution is now in full force and effect and is in accordance with the provisions of the governing documents of the Partnership:

BE IT RESOLVED that the following persons, in their respective capacities indicated below, are hereby authorized and empowered to sign any and all documents necessary for the for the transaction of business by or on behalf of the Partnership, including without limitation entering into contracts, maintaining bank accounts in the Partnership's name, and such further and other acts as the following persons deem in the best interest of the Company:

<u>NAME</u>	<u>CAPACITY</u>
John R. Sullivan	Chief Executive Officer
Frank J. Belesimo	Executive Vice President
Matt Sitka	Chief Financial Officer
Todd P. Sullivan	Vice-President
William W. Sullivan	Vice President/Secretary

BE IT FURTHER RESOLVED, that all actions taken by any officer of the Partnership listed above with any of the transactions contemplated by these Resolutions are hereby authorized, approved, ratified and confirmed in all respects.

BE IT FURTHER RESOLVED, that WILLIAM W. SULLIVAN, as Vice President and Secretary of the Partnership, is duly-authorized and directed to certify to any interested party that these Resolutions have been duly adopted, are in full force and effect, and are in accordance with the provisions of the governing documents of the Partnership.

I further certify that: (i) the Partnership is duly organized and existing under the laws of the State of Texas, and (ii) has the power to take the actions called for by the foregoing Resolutions.

Signature and Attestation Following

Signature page to Certificate of Partnership Resolution

EXECUTED on this 4th day of March 2024.

CALLAN MARINE LTD.
a Texas limited partnership



By: John R. Sullivan
Its: Chief Executive Officer

ATTESTATION:

The foregoing Resolutions represent the duly-authorized acts of CALLAN MARINE LTD. taken in accordance with its governing documents.

CALLAN MARINE LTD.



By: William W. Sullivan
Its: Vice President and Secretary



PART D

BIDDER SUBMITTAL CHECKLIST

THIS CHECKLIST IS MERELY A GUIDE TO ASSIST THE BIDDER IN PREPARING A COMPLETED BID SUBMITTAL

IMPORTANT: Please read carefully and follow each item.

Please check off each of the following items as the necessary action is completed:

- ☒ 1. No. FMB:003 Official Bid Form, pg. D-2, insert firm name at the bottom of the page
- ☒ 2. Signed copy of each addendum, if any.
- ☒ 3. No. FMB:003 Official Bid Form, pg. D-3, insert Project Cost and any Alternates (if required)
- ☒ 4. No. FMB:003 Official Bid Form, pg. D-5, all addenda issued, if any, have been acknowledged. (*If a replacement proposal bid form or bid schedule page was issued with any addenda, replacement page is used for submitting a bid)
- ☒ 5. No. FMB:003 Official Bid Form, pg. D-5, substantial and final completion days inserted (if required)
- ☒ 6. No. FMB:003 Official Bid Form, pg. D-6, has been properly signed with the corporate seal (if applicable). Attested to by the Secretary.
- ☒ 7. No. FMB:001 Bid Bond/Cashier's Check/Certified Check have been submitted with the bid in the amount indicated. Note: Any cashier's or certified check must be received by the TOWN by the due date and time.
- ☒ 8. No. FMB:003 Official Bid Form, Bid Schedules & Disk (if applicable), have been properly completed, unit price extensions and totals have been checked for accuracy
- ☒ 9. Any other submittals required in Part B, "Legal Notice to BIDDERS, Paragraph 3. Submittal of Bids."
- ☒ 10. Erasures or other changes made to the bid have been initialed by the person signing the bid
- ☒ 11. No. FMB:004 Contractor's Qualification Questionnaire (properly completed, signed and notarized)
- ☒ 12. No. FMB:005 Schedule D, DBE Participation form; completed and signed or good faith documentation. (when applicable)
- ☒ 13. Proof of a "Good Faith Effort" in attempting to obtain DBE's for this project. (If subcontractors will be used and no DBE's are listed on Schedule D.) (when applicable)
- ☒ 14. No. FMB:019 Public Entities Crime Form
- ☒ 15. No. FMB:021 Non-Collusion Affidavit
- ☒ 16. No. FMB:022 Trench Safety Affidavit (when applicable)
- ☒ 17. No. FMB:023 Material Manufacturers
- ☒ 18. No. FMB:024 List of Sub-Contractors
- ☒ 19. No. FMB:025 Plant and Equipment Schedule
- ☒ 20. No. FMB:100 Affidavit Certification Immigration Laws (Signed and notarized)



TOWN of FORT MYERS BEACH
PART D
FMB:003 - OFFICIAL BID FORM
(1 of 5 Pages)

BID NO. ITB-24-03-EN

FOR

ESTERO ISLAND BEACH NOURISHMENT AND
HURRICANE RECOVERY PROJECT

ITB-24-03-EN

Bids are to be submitted by
APRIL 23, 2024 @ 10:30 A.M.
~~April 15, 2024 @ 2:00 P.M. LOCAL TIME~~

to:

**TOWN OF FORT MYERS BEACH
VIA DEMANDSTAR.COM**

BID OPENING:

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

APRIL 23, 2024 @ 10:35 A.M.
~~APRIL 15, 2024 at 2:15 P.M. LOCAL TIME~~

BIDDER: Weeks Marine, Inc.
(Individual or Firm Name)



PART D
FMB:003 - OFFICIAL BID FORM
(2 of 5 Pages)

~~APRIL 23, 2024~~ *SW*

~~APRIL 15, 2024~~

(DATE)

~~10:30 A.M.~~ *SW*

~~2:00 P.M. LOCAL TIME~~

(TIME)

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

1. ATTENTION: BIDS WILL ONLY BE CONSIDERED FROM THOSE BIDDERS WHO HAVE OBTAINED THESE CONTRACT DOCUMENTS DIRECTLY FROM THE TOWN OR DEMANDSTAR.
2. The Undersigned, hereinafter called "BIDDER", is familiar with the local conditions, nature and extent of the work, attended the mandatory pre-bid meeting, examined carefully the sample Agreement Form, General Conditions, Supplementary Conditions, Plans and Specifications and other Contract Documents, and fulfilled their requirements as well as the bonding requirements herein, proposes to furnish all labor, materials, equipment and other items, facilities and services for the proper execution and completion of the:

ESTERO ISLAND BEACH NOURISHMENT AND HURRICANE RECOVERY PROJECT
ITB-24-03-EN

in full accordance with the drawings and specifications prepared in accordance with the Town's advertisement for Bids, Instruction to BIDDERS, Contract and all other documents related thereto on file with TOWN, and if awarded the contract, to complete the said work within the time limits specified for the following bid price:



**SCHEDULE OF VALUES
TOWN OF FORT MYERS BEACH
ESTERO ISLAND BEACH NOURISHMENT AND HURRICANE RECOVERY PROJECT**

ITEMS	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	COST
1	Mobilization	1	LS	\$11,750,000.00	\$11,750,000.00
2	Dredge and Fill				
2A	Dredge and Fill (North-Central)	630,000 (Estimated)	CY	\$28.25	\$17,797,500.00
2B	Dredge and Fill (South)	316,000 (Estimated)	CY	\$28.25	\$8,927,000.00
3	Environmental Protection	1	LS	\$20,000.00	\$20,000.00
4	Endangered Species Observers (Hopper Dredging)	120 (Estimated)	Days	\$0.00	\$0.00
5	Relocation Trawling (Hopper Dredging)	120 (Estimated)	Days	\$0.00	\$0.00
6	Shorebird Protection	90 (Estimated)	Days	\$1,000.00	\$90,000.00
7	Submerged Sediment Pipeline Monitoring	4	Surveys	\$7,500.00	\$30,000.00
8	Turbidity Monitoring	1	LS	\$175,000.00	\$175,000.00
		Base Bid Total			\$38,789,500.00
9	South Segment 24-Hour per Day Trucking (Deduct)	XXXXXX	CY	\$0.00	XXXXXX

Total Base Bid Amount

Written: Thirty-eight million seven hundred eighty-nine thousand, five hundred dollars and zero cents



3. The BIDDER hereby agrees that:
- (a) The above proposal shall remain in full force and effect for a period of 90 calendar days after the time of the opening of this proposal and it shall not be revoked, withdrawn or canceled within that time frame, except that the TOWN may in its sole discretion, release any Bid and return the Bid security prior to that date. Once the BIDDER has been notified that its bid has been awarded by the Town of Fort Myers Beach, within the above time frame the price proposed as submitted shall constitute the contract price and a formal contract for that amount shall be executed within the time frames established by these documents.
 - (b) In the event the award is made to this BIDDER, the BIDDER will enter into a formal written agreement with the TOWN in accordance with the accepted bid, will execute the contract contained within these documents, and provide a Public Construction Bond from a Surety in good standing with the Florida Department of State who is licensed to do business in Florida and acceptable to the OWNER. The Public Construction Bond shall be in the amount of one hundred percent (100%) of the accepted bid amount. The BIDDER shall, at the time the Contract is executed, submit the required Certificates of Insurance. The BIDDER further agrees that in the event of the BIDDER'S default of a breach of any of the agreements of this proposal, the bid security shall be forfeited.
 - (c) In the event of any conflict between the Invitation to Bid and Ordinance 17-01, the provisions of the ordinance will prevail. A copy of ordinance 17-01 is available on the TOWN'S website.



PART D

FMB:003 - OFFICIAL BID FORM

(4 of 5 Pages)

4. Acknowledgment is hereby made of receipt of the following Addenda issued during the bidding period.

Addendum No. No. 1 Dated: 3/19/24Addendum No. No. 2 Dated 4/8/23Addendum No. No. 3 Dated: 4/11/24Addendum No. No. 4 Dated 4/16/23

5. If awarded this contract, the BIDDER agrees to complete the work covered by this contract as follows:

- (a) Substantially complete in 150 consecutive calendar days from date of Official Notice to Proceed.
- (b) Final completion in 180 consecutive calendar days from the date of Official Notice to Proceed.

6. Neither the undersigned nor any other person, firm or corporation named herein, nor anyone else to the knowledge of the undersigned, have themselves solicited or employed anyone else to solicit favorable action for this proposal by the TOWN, also that no head of any department or employee therein, or any officer of Fort Myers Beach, Florida is directly interested therein.

This proposal is genuine and not collusive or a sham; the person, firm or corporation named herein has not colluded, conspired, connived or agreed directly or indirectly with any BIDDER or person, firm or corporation, to put in a sham proposal, or that such other person, firm or corporation, shall refrain from bidding, and has not in any manner, directly or indirectly, sought by agreement or collusion, or communication or conference with any person, firm or corporation, to fix the unit prices of said proposal or proposals of any other BIDDER, or to secure any advantage against the TOWN or any person, firm or corporation interested in the proposed contract; all statements contained in the proposal or proposals described above are true; and further, neither the undersigned, nor the person, firm or corporation named herein, has directly or indirectly submitted said proposal or the contents thereto, to any association or to any member or agent thereof.



PART D
FMB:003 - OFFICIAL BID FORM
(5 of 5 Pages)

7. The below signed BIDDER agrees to comply with all applicable provisions as set forth in the Anti-Discrimination requirements included as part of the General Conditions of this document. The BIDDER further agrees to hold harmless, defend and indemnify the TOWN and its agents for any losses, including attorney's fees, incurred as a result of its failure to abide by the applicable Anti-Discrimination laws.

Nicholas Patsy Salce, II
(Name of License Holder)

CGC1522040
(State Certificate No.)

Business Tax Receipt No. (Specify jurisdiction)

(State Registration No.)

In witness whereof, the BIDDER has hereunto set its signature and affixed its seal this
23rd day of April, 2024.

Timothy J. Weckwerth
By: Printed

Timothy J. Weckwerth
By: Signature

TITLE: Vice President

Weeks Marine, Inc.

Company Name

304 Gaille Drive

Mailing Address

Covington, LA 70433

City, State, and Zip

Charles Broussard, Jr.

Contact Person

CRBroussard@WeeksMarine.com

E-mail / Contact Person

(985) 875-2500

Telephone Number

(985) 875-2575

Fax Number

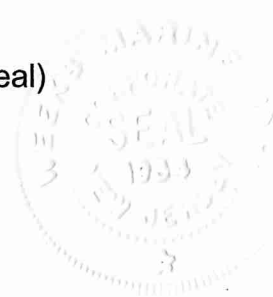
ATTEST:

Guy Guidry
Secretary Assistant Secretary

Corporate Address:
4 Commerce Drive
Cranford, NJ 07016

State of Incorporation: New Jersey

(Seal)



1. **Request:**

Meeting Date: May 6, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AUTHORIZING THE TRANSFER OF \$3,085,209 FROM THE BRIDGE LOAN FUND TO REPLENISH GENERAL FUND CASH THAT WAS DEPLETED AS A RESULT OF THE REVENUE LOST IN FISCAL YEAR 2023 DUE TO THE ECONOMIC IMPACT OF HURRICANE IAN, AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

The action is necessary since any transfer between funds requires approval by Town Council, and the transfer is necessary now in order to ensure that the Town does not end Fiscal Year 2023 with an extremely low balance in the General Fund cash account, and we are running out of time to make such an adjustment before the audit is completed and the financial statements are finalized.

What the action accomplishes:

This action reimburses the lost revenue in the General Fund for Fiscal Year 2023 by transferring an equivalent amount from the Bridge Loan Fund to the General Fund and allocating it across the departments in the General Fund proportionate to each department's share of lost revenue.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Joe Onzick, Finance Director

5. **Background:**

The finance director has calculated the amount of General Fund revenue lost during Fiscal Year 2023 as a result of the economic impact of Hurricane Ian by comparing the actual revenue collected in Fiscal 2023 to the actual revenue collected in Fiscal Year 2022 and excluding any revenue line items that are not applicable to the comparison, with the difference being the lost revenue. The total lost revenue is \$3,085,209. Since the bridge loan that was awarded to the Town by the state in June of 2023 was based on an estimate of lost revenue, and since the bridge loan may only be used to fund operations, it is deemed reasonable to fund the lost revenue with a transfer from the Bridge Loan Fund. Therefore, this resolution authorizes the transfer of \$3,085,209 from the Bridge Loan to the General Fund, and to allocate the transfer from the Bridge Loan Fund to each department proportionate to its share of lost revenue. This transfer of cash will also replenish the General Fund cash account that was depleted as a result of the lost revenue. If the Town were to receive the appropriation for lost revenue from the state, at whatever point the Town receives the appropriation, it could be used to fund the lost revenue rather than the bridge loan.

Attachments:

1. 24-80, Authorizing DEO Bridge Loan to Fund FY23 Lost Revenue
2. FY23 Lost Revenue Calc (Compared to FY22 Actual)

Financial Impact:

This resolution will transfer \$3,085,209 from the Bridge Loan to the General Fund to reimburse the General Fund for the revenue lost in Fiscal Year 2023 due to the economic impact of Hurricane Ian and replenish the cash balance that was impacted by the same.

6. Alternative Action

The alternative is to not approve the transfer and allow the Fiscal Year 2023 to end with an extremely low cash balance in the General Fund.

7. Management Recommendations:

Staff recommends approval of this transfer.

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 - 4/18/2024
Approved - 4/18/2024
Approved - 4/22/2024
Approved - 4/29/2024
Final Approval - 4/30/2024

RESOLUTION NUMBER 24-80

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AUTHORIZING THE TRANSFER OF \$3,085,209 FROM THE BRIDGE LOAN FUND TO REPLENISH GENERAL FUND CASH THAT WAS DEPLETED AS A RESULT OF THE REVENUE LOST IN FISCAL YEAR 2023 DUE TO THE ECONOMIC IMPACT OF HURRICANE IAN, 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 (“Town”) empowers the Town to adopt, amend, or appeal such ordinances and resolutions as may be required for the proper governing of the Town; and

WHEREAS, the Town received a loan of \$11,900,000 from the Department of Economic Opportunity to fund operations in lieu of the revenue lost due to the economic impact of Hurricane Ian; and

WHEREAS, the Town subsequently included a transfer of \$3,471,122 from the Bridge Loan Fund for General Government Services in the Fiscal Year 2023-2024 budget that was approved by Resolution 23-117 on September 25, 2023 as a result of the amount of lost revenue estimated for Fiscal Year 2024 at that time; and

WHEREAS, \$8,428,878 of the Bridge Loan remains available; and

WHEREAS, the Finance Director of the Town of Fort Myers Beach has calculated the amount of lost revenue for Fiscal Year 2023 to be \$3,085,209; and

WHEREAS, the fiscal impact of the lost revenue has depleted the available cash balance of the General Fund as measured at 9/30/2023.

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. The Town Council authorizes the transfer of \$3,085,209 from the Bridge Loan Fund to the General Fund as of 9/30/2023 to replenish the cash balance of the General Fund that was depleted because of the revenue lost due to the economic impact of Hurricane Ian.

Section 3. The following accounting transaction is hereby authorized:

Date	Account	Description	Amount
9/30/2023	10.16.513.38122	Gen Fund: Finance-Tfr In from Bridge Loan	(949,943)
9/30/2023	10.17.529.38122	Gen Fund: Short Term Rentals-Tfr In from Bridge Loan	(148,385)
9/30/2023	10.20.515.38122	Gen Fund: Community Dev. -Tfr In from Bridge Loan	(104,651)
9/30/2023	10.21.524.38122	Gen Fund: Code Enforcement-Tfr In from Bridge Loan	(12,779)
9/30/2023	10.30.541.38122	Gen Fund: Public Works Admin-Tfr In from Bridge Loan	(3,923)
9/30/2023	10.31.541.38122	Gen Fund: Public Works Maint-Tfr In from Bridge Loan	(8,671)
9/30/2023	10.32.541.38122	Gen Fund: Times Square-Tfr In from Bridge Loan	(590)
9/30/2023	10.34.545.38122	Gen Fund: Parking-Tfr In from Bridge Loan	(1,385,701)
9/30/2023	10.36.543.38122	Gen Fund: Mooring Field-Tfr In from Bridge Loan	(237,304)
9/30/2023	10.50.572.38122	Gen Fund: Bay Oaks Rec Ctr-Tfr In from Bridge Loan	(62,867)
9/30/2023	10.51.572.38122	Gen Fund: Bay Oaks Pool-Tfr In from Bridge Loan	(64,408)
9/30/2023	10.70.573.38122	Gen Fund: Mound House-Tfr In from Bridge Loan	(105,862)
9/30/2023	10.71.573.38122	Gen Fund: Newton Park-Tfr In from Bridge Loan	(125)
9/30/2023	10.10101	Gen Fund: Cash FFI - Operating	3,085,209
9/30/2023	35.10101	Bridge Loan: Cash FFI - Operating	(3,085,209)
9/30/2023	35.19.519.59801	Bridge Loan: Transfer Out to General Fund	3,085,209

Section 4. This resolution is effective immediately upon adoption.

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 6th day of May 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 Attorneys

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

Preliminary - Unadjusted, Unaudited

Town of Fort Myers Beach

General Fund Statement of Revenue & Expenditures FY23 Actual vs. FY22 Actual

Lost Revenue Calculation by Department

Description	Dept	Object	Impacted by Hurricane	FY22 Actual	FY23 Actual	FY23 Act - FY22 Act	FY23 Act - FY22 Act If Impacted by Hurricane
						Variance	
Ad Valorem Taxes	16	31100	N	3,571,341.05	4,381,828.74	810,487.69	0.00
Public Service Tax	16	31410	Y	1,050,567.06	464,432.75	(586,134.31)	(586,134.31)
Gas Utility Tax	16	31440	Y	14,984.15	4,471.32	(10,512.83)	(10,512.83)
State Communications Services Tax	16	31510	Y	564,172.32	342,859.25	(221,313.07)	(221,313.07)
Local Business Tax	16	31600	Y	2,961.37	3,148.82	187.45	187.45
Solid Waste Franchise	16	32370	Y	130,513.07	113,261.57	(17,251.50)	(17,251.50)
State Revenue Sharing Proceeds	16	33512	Y	256,875.92	242,110.09	(14,765.83)	(14,765.83)
Mobile Home License	16	33514	Y	16,444.64	6,572.79	(9,871.85)	(9,871.85)
Alcoholic Beverages License	16	33515	Y	25,181.69	20,590.58	(4,591.11)	(4,591.11)
Half Cent Sales Tax	16	33518	Y	739,758.65	633,962.29	(105,796.36)	(105,796.36)
Administrative Charge	16	34130	N/A	240,000.00	220,000.00	(20,000.00)	0.00
Other Fines & Forfeiture	16	35910	Y	2,770.47	126,867.46	124,096.99	124,096.99
Interest Income	16	36110	N/A	(34,556.45)	776,729.22	811,285.67	0.00
Donations (Non-Specific)	16	36600	N/A	2,250.00	2,470.00	220.00	0.00
Miscellaneous	16	36900	Y	100,760.57	11,642.73	(89,117.84)	(89,117.84)
Misc Claims / Premium Reimb	16	36901	N/A	49,865.81	54,116.90	4,251.09	0.00
Other Misc. Revenue	16	36902	Y	16,347.04	1,474.32	(14,872.72)	(14,872.72)
Insurance Claims	16	36920	N/A	1,029.14	726.40	(302.74)	0.00
16 Total for Finance							(949,942.98)
New Short Term Rental	17	34193	Y	226,485.00	77,600.00	(148,885.00)	(148,885.00)
Right of Way	17	34194	Y	0.00	500.00	500.00	500.00
Insurance Claims	17	36920	N/A	900.00	0.00	(900.00)	0.00
17 Total for Short Term Rentals							(148,385.00)
Interest Income	19	36110	N/A	908.53	0.00	(908.53)	0.00
19 Total for General Department							0.00
Permit Fees	20	32200	Y	200.00	7,660.00	7,460.00	7,460.00
Other Licenses & Permits	20	32220	Y	21,420.00	25,125.00	3,705.00	3,705.00
Zoning Fees	20	32900	Y	4,300.00	11,300.00	7,000.00	7,000.00
Administrative Charge	20	34130	N/A	81,311.93	186,199.69	104,887.76	0.00
Right of Way	20	34194	Y	114,404.21	(4,335.11)	(118,739.32)	(118,739.32)
Merchandise	20	36001	Y	2,727.32	0.00	(2,727.32)	(2,727.32)
Street Performers License	20	36700	Y	1,125.00	450.00	(675.00)	(675.00)
Miscellaneous	20	36900	Y	849.99	126.10	(723.89)	(723.89)
Other Misc. Revenue	20	36902	Y	0.00	50.00	50.00	50.00
Insurance Claims	20	36920	N/A	50.00	0.00	(50.00)	0.00
20 Total for Community Development							(104,650.53)
Lien Searches	21	34191	Y	25,275.00	24,221.50	(1,053.50)	(1,053.50)
Registration Fees	21	34192	Y	35.00	0.00	(35.00)	(35.00)
Code Enforcement Fees	21	35410	Y	22,750.00	11,060.00	(11,690.00)	(11,690.00)
Insurance Claims	21	36920	N/A	105.00	0.00	(105.00)	0.00
21 Total for Code Enforcement							(12,778.50)
Plans Review Fee	30	32210	Y	10,150.50	6,227.50	(3,923.00)	(3,923.00)
30 Total for Public Works Admin							(3,923.00)
Special Events Permits	31	32940	Y	1,098.88	0.00	(1,098.88)	(1,098.88)
Merchandise	31	36001	Y	766.60	0.00	(766.60)	(766.60)
Miscellaneous	31	36900	Y	820.69	0.00	(820.69)	(820.69)
Other Misc. Revenue	31	36902	Y	5,985.00	0.00	(5,985.00)	(5,985.00)
31 Total for Public Works Maintenance							(8,671.17)
Miscellaneous	32	36900	Y	1,050.00	460.00	(590.00)	(590.00)
32 Total for Times Square							(590.00)

Preliminary - Unadjusted, Unaudited

Town of Fort Myers Beach

General Fund Statement of Revenue & Expenditures FY23 Actual vs. FY22 Actual

Lost Revenue Calculation by Department

Description	Dept	Object	Impacted	FY22 Actual	FY23 Actual	FY23 Act -	FY23 Act -
			by			FY22 Act	FY22 Act If
			Hurricane			Variance	Impacted by
							Hurricane
WCIND Grant - Law Enforcement	33	33420	N/A	9,680.00	3,920.00	(5,760.00)	0.00
Gain/Loss on Sale of Investment	33	36140	N/A	0.00	(500.00)	(500.00)	0.00
33 Total for Maritime							0.00
Special Events Permits	34	32940	Y	2,700.00	760.00	(1,940.00)	(1,940.00)
Parking Facilities Revenue	34	34450	Y	2,128,928.88	642,260.50	(1,486,668.38)	(1,486,668.38)
Parking Permits	34	34451	Y	0.00	13,297.00	13,297.00	13,297.00
Parking Violations	34	34452	Y	0.00	89,610.06	89,610.06	89,610.06
Interest Income	34	36110	N/A	0.00	1,729.75	1,729.75	0.00
Gain/Loss on Sale of Investment	34	36140	N/A	9,000.00	(95.00)	(9,095.00)	0.00
34 Total for Parking							(1,385,701.32)
FDEP Grant	36	33436	N/A	131,290.90	4,538.92	(126,751.98)	0.00
Harborage User Fees	36	34420	Y	244,935.07	16,000.87	(228,934.20)	(228,934.20)
Pump Out Services	36	34425	Y	1,821.39	590.00	(1,231.39)	(1,231.39)
Parking Permits	36	34451	Y	5,966.82	60.00	(5,906.82)	(5,906.82)
Merchandise	36	36001	Y	1,176.22	0.00	(1,176.22)	(1,176.22)
Miscellaneous	36	36900	Y	55.38	0.00	(55.38)	(55.38)
Refunds & Reimbursements	36	36904	N/A	0.00	6,807.00	6,807.00	0.00
36 Total for Mooring Field							(237,304.01)
Pool Revenue	50	34720	Y	1.27	0.00	(1.27)	(1.27)
BORC Revenue	50	34750	Y	80,282.95	17,417.50	(62,865.45)	(62,865.45)
Gain/Loss on Sale of Investment	50	36140	N/A	0.00	(200.00)	(200.00)	0.00
BORC Donations	50	36603	N/A	2,000.00	9,090.00	7,090.00	0.00
Scholarships	50	36606	N/A	1,500.00	0.00	(1,500.00)	0.00
Insurance Claims	50	36920	N/A	762.50	0.00	(762.50)	0.00
50 Total for Bay Oaks Recreational Center							(62,866.72)
Pool Revenue	51	34720	Y	64,408.00	0.00	(64,408.00)	(64,408.00)
Gain/Loss on Sale of Investment	51	36140	N/A	0.00	(200.00)	(200.00)	0.00
Donations (Non-Specific)	51	36600	N/A	50.00	0.00	(50.00)	0.00
Insurance Claims	51	36920	N/A	246.00	0.00	(246.00)	0.00
51 Total for Bay Oaks Pool							(64,408.00)
Mound House Programs & Tours	70	34710	Y	38,672.91	1,442.00	(37,230.91)	(37,230.91)
Mound House Admissions	70	34733	Y	39,183.45	3,361.00	(35,822.45)	(35,822.45)
Mound House Memberships	70	34734	Y	11,160.00	1,545.00	(9,615.00)	(9,615.00)
BORC Revenue	70	34750	Y	1.23	0.00	(1.23)	(1.23)
Merchandise	70	36001	Y	31,815.46	6,362.57	(25,452.89)	(25,452.89)
Gain/Loss on Sale of Investment	70	36140	N/A	0.00	(866.97)	(866.97)	0.00
Mound House Rentals	70	36201	Y	925.00	4,035.00	3,110.00	3,110.00
Mound House Donations	70	36602	N/A	4,925.75	11,843.30	6,917.55	0.00
Scholarships	70	36606	N/A	1,500.00	0.00	(1,500.00)	0.00
Miscellaneous	70	36900	Y	849.99	0.00	(849.99)	(849.99)
Insurance Claims	70	36920	N/A	23,617.76	0.00	(23,617.76)	0.00
70 Total for Mound House							(105,862.47)
Newton Park Rentals	71	36200	Y	125.00	0.00	(125.00)	(125.00)
71 Total for Newton Park							(125.00)
Donations (Non-Specific)	72	36600	N/A	0	9,700.00	9,700.00	0.00
72 Total for Beach Management							0.00
Total Revenues / (Lost Revenue)				10,111,567.08	8,596,418.41	(1,515,148.67)	(3,085,208.70)

1. **Request:**

Meeting Date: May 6, 2024

Motion to Approve the Seventh Amendment to the Interlocal Agreement between Lee county and the Town of Fort Myers Beach for a Utility Relocation Project within the Corporate Limites of the Town of Fort Myers Beach.

Why the action is necessary:

The action is necessary in order to obtain reimbursement from the County for the cost of replacing the wastewater lines displaced by the Tier 1 Stormwater Project.

What the action accomplishes:

The action allows the Town to invoice the County for the cost of replacing wastewater lines displaced by the Tier 1 Stormwater project so that the Town does not have to bear that expense.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

Mark Ashton, Public
Works/Utilities Director

5. **Background:**

An Interlocal Agreement (ILA) between Lee County and the Town of Fort Myers Beach was originally approved December 17, 2013 regarding the coordinated effort between the Town and the County to replace potable water lines, wastewater lines, and stormwater conveyances within the corporate limits of the Town, and their respective responsibilities and obligations related to such improvements. Specific details regarding the location of the improvements and their associated costs have been updated along the way through 6 amendments to this agreement.

The purpose of this seventh amendment is to incorporate into the agreement the County's construction costs associated with the wastewater line replacements and relocations related to the Town's Tier 1 Stormwater Project, in accordance with the Engineers Estimate of Probable Cost (EOPC), from which is derived a not-to-exceed limit of \$825,297.94.

Attachments:

1. ILA - Amendment 7 for Utility Relocation Project
2. ILA - Utility Relocation Project - EXECUTED
3. ILA - Amendment 1 for Utility Relocation Project
4. ILA - Amendment 2 for Utility Relocation Project - EXECUTED
5. ILA - Amendment 3 for Utility Relocation Project - EXECUTED
6. ILA - Amendment 4 for Utility Relocation Project - EXECUTED
7. ILA - Amendment 5 for Utility Relocation Project- EXECUTED
8. ILA - Amendment 6 for Utility Relocation Project

Financial Impact:

The estimated not-to-exceed cost based on the engineer's estimate of probable cost is \$825,297.94. If the amendment to the ILA is not approved, the Town would bear the burden of this additional cost.

6. **Alternative Action**

Do not approve the Amendment to the Interlocal Agreement

7. Management Recommendations:

Management recommends approval of this amendment to the ILA.

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 - 4/30/2024
Approved - 4/30/2024
Approved - 4/30/2024
Approved - 5/1/2024
Final Approval - 5/1/2024

SEVENTH AMENDMENT
INTERLOCAL AGREEMENT BETWEEN LEE COUNTY AND THE TOWN OF
FORT MYERS BEACH FOR A UTILITY RELOCATION PROJECT WITHIN THE CORPORATE
LIMITS OF THE TOWN OF FORT MYERS BEACH

THIS SEVENTH AMENDMENT TO THE INTERLOCAL AGREEMENT BETWEEN LEE COUNTY AND THE TOWN OF FORT MYERS BEACH (Seventh Amendment) is entered into on this _____ day of _____ 2024, by and between LEE COUNTY, FLORIDA, a charter county and political subdivision of the State of Florida, (hereinafter called "County"), and the TOWN OF FORT MYERS BEACH, a Florida municipal corporation, acting by and through its Town Council (hereinafter called "Town").

WITNESSETH:

WHEREAS, on December 17, 2013, the County and the Town entered into that certain INTERLOCAL AGREEMENT BETWEEN LEE COUNTY AND THE TOWN OF FORT MYERS BEACH FOR A UTILITY RELOCATION PROJECT WITHIN THE CORPORATE LIMITS OF THE TOWN OF FORT MYERS BEACH relating to certain underground utility improvements proposed by the Town and the County in the same affected areas within the corporate limits of the Town (hereinafter the "Agreement"); and

WHEREAS, the County and the Town entered into the Agreement in order to work jointly pursuant to a design-build contract to construct the improvements; and

WHEREAS, the County agrees to fund the associated cost of adjustment of wastewater lines and manholes due to conflicts created by the "Fort Myers Beach Stormwater Repairs" or "Tier 1" project; and

WHEREAS, the construction cost associated with the wastewater lines and manhole relocation adjustments would be reimbursed in accordance with a schedule of values and an Engineers Estimate of Probable Cost (EOPC) to be included in the "Fort Myers Beach Stormwater Repairs" or "Tier 1" and would be incorporated into the Agreement through the approval and execution of an Amendment to the Agreement; and

WHEREAS, the "Fort Myers Beach Stormwater Repairs" or "Tier 1" EOPC which is attached to this Seventh Amendment as Exhibit A, is intended to comply with the requirements of the Agreement and amends that Agreement by establishing the County's construction cost associated with the wastewater lines and manhole adjustments, that are reimbursable to the Town in the not to exceed amount of \$825,297.94 and shall be reconciled to all true and actual costs; and

WHEREAS, the not to exceed amount shall represent the full estimated cost including all applicable general conditions; and

WHEREAS, All true and actual costs will be reconciled and the percentage of General Conditions shall be adjusted according to the true and actual construction costs as a percentage of the overall project costs; and

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants, conditions and obligations herein contained, the parties agree as follows:

SECTION I. INCORPORATION OF RECITALS

The Recitals as set forth above are incorporated into this Seventh

Amendment as if set out herein at length.

SECTION II. AMENDMENT

The Agreement is hereby amended as follows:

1. The County agrees to fund the associated cost of installation or relocation of wastewater lines and manholes due to conflicts created by the "Fort Myers Beach Stormwater Repairs" or "Tier 1" project which the County deems the improvements or relocations are necessary. The County will only be responsible for the expense of wastewater improvements or relocations and manhole relocations that are reimbursable to the Town within the areas of the project, set forth in Exhibit B, in the not to exceed amount of \$825,297.94. All cost shall be true, actual, and reconciled prior to payment.
2. Fort Myers Beach Stormwater Repairs or Tier 1 projects in Amendment Seven shall supersede all Tier 1 side streets mentioned in Amendment Six, adopted May 3, 2021, and shall consist of the following side streets: Estrella Drive, Bahia Via, Williams Drive, Albatross Street, Fairview Blvd., Clearview Blvd., Sunview Blvd., Palmview Blvd., Shell Mound Blvd., Madison Court, Andre Mar Drive, Mandalay Road, Gulfview Ave., Mid Island Drive, Bayland Road, Seminole Way, Sterling Ave., and Pepita Steet.
3. If reimbursements are issued before the project's completion, they will be subject to a five percent (5%) retainage, meaning a portion will be held back until all costs, including but not limited to shared expenses are accurately calculated and settled via true-up.
4. All other provisions of the Agreement shall remain unchanged.

SECTION III. EFFECTIVE DATE

This Seventh Amendment shall be effective on the last date that it is signed by the Chair or Vice-chair of the Board of County Commissioners of the County or the Mayor or Vice Mayor of the Town.

IN WITNESS WHEREOF, the parties hereunto have executed this Seventh Amendment to the Agreement on the dates specified below.

ATTEST: KEVIN C. KARNES
CLERK OF CIRCUIT COURT

ATTEST: TOWN OF FORT MYERS
BEACH

By: _____
Deputy Clerk

By: _____
Clerk, Town of Fort Myers Beach

Date: _____

Date: _____

APPROVED AS TO FORM:

By: _____
Dan Allers, Mayor

By: _____
Town Attorney

Date: _____

Date: _____

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY FLORIDA

By: _____
Mike Greenwell, Chair

Date: _____

APPROVED AS TO FORM:

By: _____
Office of the County Attorney

Date: _____

 LEE COUNTY
SOUTHWEST FLORIDA
BOARD OF COUNTY COMMISSIONERS

Telephone (239) 533-2236
Facsimile (239) 485-2106

John E. Manning
District One

Cecil L. Pendergrass
District Two

Larry Kiker
District Three

Brian Hamman
District Four

Frank Mann
District Five

Roger Desjarlais
County Manager

Richard Wm. Wesch
County Attorney

Donna Marie Collins
Chief County Hearing
Examiner

VIA HARD COPY

January 6, 2014

Derek Bargmann, Contracts Manager
Town of Fort Myers Beach
2523 Estero Boulevard
Fort Myers Beach, FL 33931

Re: Interlocal Agreement Between Lee County and the Town of Fort
Myers Beach for a Utility Relocation Project
LU-12-08-1689.K.

Dear Mr. Bargmann:

Please find attached a fully executed original Interlocal Agreement
that was adopted by the Lee County Board of County Commissioners on
December 17, 2013 for your records.

Sincerely,



Michael D. Jacob
Managing Assistant County Attorney

MDJ:tlb
Attachment

cc via hard copy: Pam Keyes, Director, Utilities

S:\LU\MDJ\Letters\Ltr transmitting ILA with Town of FMB, Utility Relocation Project.docx

P.O. Box 398, Fort Myers, Florida 33902-0398 (239) 533-2111
Internet address <http://www.lee-county.com>
AN EQUAL OPPORTUNITY AFFIRMATIVE ACTION EMPLOYER

TOWN OF
FORT MYERS BEACH

JAN 07 2014

RECEIVED BY

Interlocal Agreement between Lee County and the Town of Fort Myers
Beach for a Utility Relocation Project within the corporate limits of the
Town of Fort Myers Beach.

December 17

This Interlocal Agreement has been entered into on ____, 2013, by and between the Lee County Board of County Commissioners, a Charter County, (hereinafter referred to as County), and the Town of Fort Myers Beach, a Florida municipal corporation, acting by and through its Town Council (hereinafter referred to as Town), collectively "The Parties".

Recitals

Whereas, the Florida Legislature has enacted the Florida Interlocal Cooperation Act of 1969 so that local governmental units can make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage thereby providing services and facilities that will accord best with geographic, economic, population and other factors that influence the needs and development of local communities; and

Whereas, the Town has identified, through its Water Distribution System Evaluation Report and its Basin Based Neighborhood Flood Mitigation and Stormwater Quality Improvement Project, a desired replacement of certain potable water and stormwater infrastructure located within the corporate limits of the Town; and

Whereas, the Town has identified and funded certain improvements to the potable water and stormwater utilities located within the corporate limits of the Town; and

Whereas, the Town has programmed the rehabilitation of its island wide potable water system to be phased over a five to seven year period, and may also include stormwater infrastructure improvements in conjunction with the potable water line replacement; and

Whereas, these improvements contemplate the replacement of certain potable water lines and installation of stormwater conveyances that may have the effect of displacing County wastewater lines in the vicinity of Estero Boulevard; and

A13a
12-17-13

Whereas, the County desires to replace certain aging wastewater lines at the same time as the Town replaces its potable water and stormwater infrastructure; and

Whereas, the Town and the County wish to coordinate the replacement of the utility infrastructure in the affected areas; and

Whereas, the County has budgeted funds in fiscal year 12/13 and will continue to fund, in future fiscal years as may be necessary, the design and installation of wastewater line replacement/relocation necessary within the corporate limits of the Town; and

Whereas, it is the intent of the Parties that the County will fund the replacement/relocation of wastewater lines and connections made necessary by the Town's public works improvements related to water and stormwater; and

Whereas, the Parties mutually desire to enter into an Agreement that identifies their respective responsibilities and obligations related to the water, stormwater and wastewater line improvements contemplated for Town roads adjacent to and along Estero Boulevard.

Now therefore, in consideration of the mutual covenants, terms, and provisions herein the Parties agree as follows:

1. Recitals. The Recitals set forth above are incorporated into this Agreement as findings of fact.
2. Purpose. The purpose of this Agreement is to outline the respective rights and responsibilities of the County and Town relative to the replacement/relocation of wastewater lines along Town roads adjacent to, and including, Estero Boulevard and water line and stormwater improvements by the Town.
3. Project Area. The geographic area covered by this Agreement is defined as the Project and is depicted by the map attached hereto as Exhibit A, and in particular, Town roads located adjacent to, and including, Estero Boulevard and identified by name on Exhibit B.

4. Project Management. The Town has selected a design-build firm through the Town's procurement process that will design and construct the water, stormwater and wastewater utilities within the project boundary. The Town will serve as the project manager with the primary responsibility for permitting, procurement, management and engineering supervision of the design-build contractor and construction work relating to the potable water, stormwater and wastewater improvements within the project area.
5. Design Standards for Wastewater Lines. The Parties agree that the design and construction of the wastewater line relocation/replacement will be performed in compliance with the Lee County Utilities Design Manual. The County's designated project manager will participate in the design-build of the wastewater improvements to the extent provided in this Agreement. In addition, County Utilities' staff will have the opportunity to review the wastewater design plans at design intervals established by the Town's design-build contract and prior to construction. At each interval, the County will have 15 calendar days from receipt to provide comment.
6. Cooperation in Management and Oversight. County agrees to cooperate and provide staff assistance and oversight upon the request of the Town as well as cooperate as necessary in the management and oversight of the project. The County will have unrestricted access to construction sites to inspect construction progress and accomplish any required maintenance of existing wastewater lines.
7. Scheduling of Improvements. The Town agrees to be responsible for scheduling the County wastewater line improvements in a coordinated manner with the Town's proposed construction of water and stormwater improvements.
8. Design-Build Contract Costs. The County agrees to fund the associated cost of wastewater line replacement/relocation as desired or made necessary by the water and storm water utility improvements planned by the Town. The Town's design-build contract(s) will provide guaranteed maximum prices (GMPs), separating out, for each phase, the anticipated County portion for design and construction. The County's funds, including any amount established by County as a contingency, will be deposited with the Town for

each phase and only released for payment to the design-builder upon Lee County Utilities Director's written authorization.

The County agrees to reimburse the Town for the design of the wastewater line at each design interval established by the Town's design-build contract(s). Reimbursement will be issued based upon verified engineering invoices and progress summaries provided to the County. Payment for permitting fees for the replacement/relocation of wastewater lines will be the responsibility of the County. The design scope of services and fee schedule are made part of this Agreement and attached as Exhibit C^{*1}. The County agrees to reimburse the Town for the construction costs associated with the wastewater line replacement/relocation in accordance with a schedule of values to be included in the design-build contract(s) and made part of this Agreement and attached as Exhibit D*. Requests for reimbursement will include the schedule of values with current and total line item quantities and sufficient supporting invoices and documentation. The sufficiency of the documentation will be determined by County, who may seek additional information as the circumstances require. Upon receipt of all necessary information, the County will have 14 calendar days to respond to the Town's request for reimbursement.

9. Changes in Scope. The Town agrees to furnish County with copies of all proposed changes in scope pertaining to and affecting County's wastewater line improvements within the project area. The County agrees to review and respond to the Town within 14 calendar days after receiving, in writing, the proposed change in scope. If a proposed change in scope results in the need for additional funds, the funds will be reimbursed using the design-build GMP contingency established and funded by County, upon County staff authorization. If the proposed change in scope exceeds the GMP contingency, additional time will be necessary to obtain Board of County Commissioners' review and approval. When time permits, the Parties agree to meet and discuss alternatives to proposed changes in scope. The Parties agree that the County must approve/authorize changes directly pertaining to the County's wastewater line improvements prior to the commencement of work contemplated by the change.

¹ *Exhibits C and D will be added in future amendments to this agreement

10. Verification of Design and Permitting Costs. Design and permitting costs eligible for reimbursement by County include, but are not limited to, engineering, surveys, permit fees, permit and compliance with all regulatory agencies having jurisdiction over the replacement or relocation of the existing wastewater lines, and compliance with the permitting requirements of the Town of Fort Myers Beach (if required). Costs must be verified by a licensed engineer and approved by Lee County Utilities prior to payment.
11. Ownership of Wastewater Line Improvements. Upon completion and acceptance of the work, the County agrees to take title, own, maintain and control the wastewater line improvements within the rights-of-way. The Town will furnish to the County, in a form acceptable to the County, record drawings of the wastewater line improvements.
12. Dispute Resolution. As a condition precedent to termination of this Agreement by a Party or to either Party filing suit for breach of this Agreement, the Party terminating or filing suit must first notify the other Party in writing of the nature of the dispute and seek in good faith to resolve the dispute through negotiation. If the Parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party who is acceptable to both Parties. The Parties will each pay fifty percent (50%) of all costs for the services provided by such third party as such costs are incurred. The existence of a dispute will not excuse the Parties from performance pursuant to this Agreement. This remedy will be supplemental to other remedies available by law.
13. Applicable Law. This Interlocal Agreement will be construed in accordance with the Laws of the State of Florida. Venue for actions under this Agreement is in Lee County. The prevailing party will be entitled to recover attorney's fees and costs in any litigation arising hereunder.
14. No Joint Liability. The Parties agree that this Agreement will not be interpreted to establish joint liability among the Parties acting pursuant to the terms of the Agreement. Each party agrees to be responsible for and bear its own costs in defending claims or litigation arising out of this Agreement.

Nothing in this Agreement will be construed or intended to waive the protections of sovereign immunity.

15. Notices. Notices or demands under this Interlocal Agreement will be deemed given by the noticing Party and received by the noticed party:
- Upon hand delivery to the noticed party at the address provided below; or
 - Three days after deposit of the notice with the United States Mail, certified mail, returned receipt requested, properly addressed to the noticed party at the addresses provided below:

As to the County:

Lee County Attorney
Lee County Attorney's Office
2115 Second Street, 6th Floor, PO Box 398
Fort Myers, FL 33902-0398

With a copy to:

Director, Lee County Department of Utilities
1500 Monroe Street, PO Box 398
Fort Myers, FL 33902-0398

As to Town:

Town Manager
Town of Fort Myers Beach
2523 Estero Boulevard
Fort Myers Beach, FL 33931

With a copy to:

Town Attorney
Fowler White, PA
PO Box 1567
Fort Myers, FL 33901

16. Termination. In recognition of certain industry standard uncertainties inherent in the Project and the estimated cost projections herein, this Agreement may be terminated upon the mutual consent of all parties, should satisfactory Project completion become unfeasible due to the need for increased additional funding for reasons which are unavoidable through the exercise of due diligence and beyond the lawful control of the parties. Prior to termination, the parties agree to coordinate with and discuss between

themselves and make a good faith effort to reasonably resolve the outstanding funding and completion issues.

In the event of termination pursuant to the paragraph above, County will fully compensate Town for all authorized and accepted work performed through the termination date.

17. Entire Agreement, Modification. This Agreement including all its exhibits, constitutes the entire Agreement between the Parties. Modifications to this Agreement will be accomplished by documents entitled "Amendment No. to the Interlocal Agreement between Lee County and the Town of Fort Myers Beach for a Utility Relocation Project located within the corporate limits of the Town" and must be executed with the same formality as the Agreement and filed with the Lee County Clerk of Court.
18. Effective Date. This Agreement will be effective following filing the fully executed Agreement with the Lee County Clerk of Court in accordance with Section 163.01(11), F.S.

ATTEST:
LINDA DOGGETT, CLERK

BY: 
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: 

Approved as to form by:


County Attorney's Office

ATTEST:
TOWN OF FORT MYERS BEACH, CLERK

BY: 
Town Clerk

TOWN OF FORT MYERS BEACH
TOWN COUNCIL

BY: 

Approved as to form by:

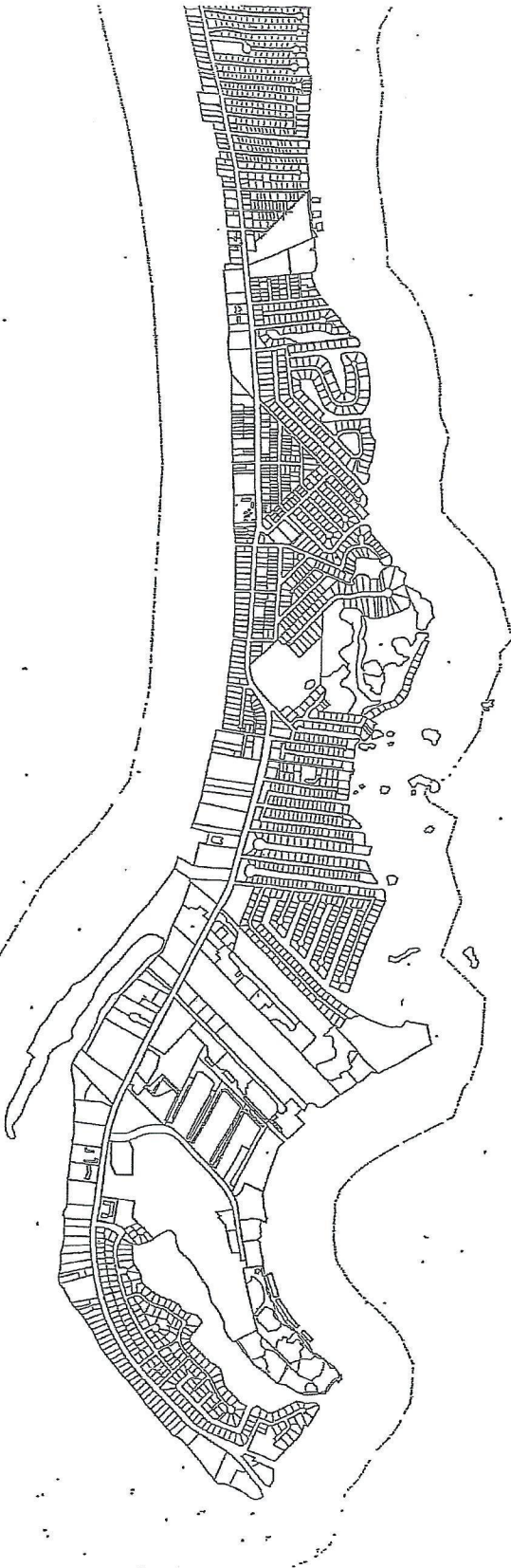

Marilyn Miller, Town Attorney

Exhibits:

- A: Sketch (map reflecting areas within the scope of the sewer line replacement project)
- B: List of Side Streets off Estero Boulevard subject to the contemplated sewer line relocation/replacement project.
- C: Design Scope of Services and Fee Reimbursement Schedule*²
- D: Construction Cost Schedule of Values*²

² *Exhibits C and D will be added in future amendments to this agreement

Town of Fort Myers Beach
Town Road Names
EXHIBIT "A"



**Town of Fort Myers Beach
Town Road Names
EXHIBIT "B"**

ABERDEEN AVE	EASY ST	OAK RIDGE AVE
ALBATROSS ST	EGRET ST	OAK ST
ALVA DR	ESTERO BLVD	OHIO AVE
ANCHORAGE ST	ESTRELLITA DR	OLD SAN CARLOS
ANDRE MAR DR	EUCALYPTUS CT	OLD SAN CARLOS BLVD
AVENIDA CARITA	FAIRVIEW BLVD	OSTEGO DR
AVENIDA PESCADORA	FAIRWEATHER LN	PALERMO CIR
AVENUE A	FALKIRK ST	PALM AVE
AVENUE C	FIFTH AVE	PALMETTO ST
AVENUE E	FIRST ST	PALMVIEW BLVD
BAHIA VIA	FLAMINGO ST	PEARL ST
BAY BEACH LN	FOURTH ST	PEPITA ST
BAY MAR DR	GLENVIEW MANOR DR	POMPANO ST
BAY RD	GULF BEACH RD	PRIMO DR
BAY VILLAGE DR	GULF CT	RANDY LN
BAYLAND RD	GULF DR	REDFISH RD
BAYSIDE RD	GULF ISLAND DR	RHODE ISLAND PLACE
BAYVIEW AVE	GULFVIEW AVE	SABAL DR
BAYVIEW BLVD	HARBOR CT	SAND DOLLAR LN
BAYVIEW DR	HERCULES DR	SANDERS DR
BONITA ST	HIBISCUS DR	SANTOS RD
BUCCANEER DR	IBIS ST	SCHOOL ST
BUCCANEER LAGOON ST	INDIAN BAYOU DR	SEAHORSE LN
CANAL ST	ISLAND PINES WAY	SEAVIEW ST
CARITA AVE	JEFFERSON CT	SECOND ST
CARLOS CIR	JEFFERSON ST	SEMINOLE WAY
CAROLINA AVE	KEY WEST CT	SHELBY LN
CENTER ST	LAGOON LN	SHELL MOUND BLVD
CHAPEL ST	LAGOON RD	ST PETERS DR
CLEARVIEW BLVD	LAGOON ST	STARFISH CIR
COCONUT DR	LANARK AVE	STERLING AVE
COMPASS LN	LAUDER ST	STRANDVIEW AVE
CONNECTICUT ST	LAZY WAY	SUNVIEW BLVD
COQUINA RD	LENELL RD	TARPON RD
CORAL RD	LEWIS ST	THIRD ST
CORTEZ WAY	LITTLE CARLOS LN	TROPICAL SHORES WAY
COTTAGE AVE	LOVERS LN	VIRGINIA AVE
COURT ST	MADERA RD	VOORHIS ST
CRESCENT ST	MADISON CT	WASHINGTON AVE
CURLEW ST	MANDALAY RD	WASHINGTON CT
DAKOTA AVE	MANGO ST	WIDGEON TER
DEEP PASSAGE LN	MID ISLAND DR	WILLIAMS DR
DELMAR AVE	MIRAMAR ST	
DOLPHIN LN	MOUND RD	
DONORA BLVD	NANCY LN	
DRIFTWOOD LN	NATUREVIEW CT	
DUNDEE RD	NODDYTERN DR	

1. Requested Motion: Motion to approve the First Amendment to the Interlocal Agreement Between Lee County and the Town of Fort Myers Beach for a Utility Relocation Project within the Corporate Limits of the Town of Fort Myers Beach

Meeting Date: 2/18/14

Why the action is necessary: Amendments to an Interlocal Agreement must be approved by Town Council

What the action accomplishes: Approves the First Amendment to the Interlocal Agreement

2. Agenda:

☐ Consent
☒ Administrative

3. Requirement/Purpose:

☐ Resolution
☐ Ordinance
☒ Other

4. Submitter of Information:

☐ Council
☐ Town Staff
☒ Town Attorney

5. Background: On December 17, 2013, Lee County approved the Interlocal Agreement between Lee County and the Town of Fort Myers Beach. The interlocal agreement contemplates an amendment to incorporate the design scope of services and fee schedule for the first phase of the project. This First Amendment incorporates the design scope of services and fee schedule and includes the cost of the design services that are attributable to the work that will be performed to replace some of the County's wastewater lines that are in need of replacement and will be replaced at the same time the Town's contractor is replacing the potable water lines. The reimbursable amount to the Town for the wastewater line replacement for phase one is \$21,222.00.

6. Alternative Action: Decline to approve the First Amendment to the Interlocal Agreement.

7. Management Recommendations: Approve the First Amendment to the Interlocal Agreement.

8. Recommended Approval:

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Parks & Recreation Director	Town Clerk
						

9. Council Action:

☐ Approved ☐ Denied ☐ Deferred ☐ Other

FIRST AMENDMENT
INTERLOCAL AGREEMENT BETWEEN LEE COUNTY AND THE TOWN OF
FORT MYERS BEACH FOR A UTILITY RELOCATION PROJECT WITHIN THE
CORPORATE LIMITS OF THE TOWN OF FORT MYERS BEACH

THIS FIRST AMENDMENT TO THE INTERLOCAL AGREEMENT BETWEEN LEE COUNTY AND THE TOWN OF FORT MYERS BEACH (First Amendment) is entered into on this ____ day of _____, 2014, by and between LEE COUNTY, FLORIDA, a charter county and political subdivision of the State of Florida, (hereinafter called "County"), and the TOWN OF FORT MYERS BEACH, a Florida municipal corporation, acting by and through its Town Council (hereinafter called "Town").

WITNESSETH:

WHEREAS, on December 17, 2013, the County and the Town entered into that certain INTERLOCAL AGREEMENT BETWEEN LEE COUNTY AND THE TOWN OF FORT MYERS BEACH FOR A UTILITY RELOCATION PROJECT WITHIN THE CORPORATE LIMITS OF THE TOWN OF FORT MYERS BEACH relating to certain underground utility improvements proposed by the Town and the County in the same affected areas within the corporate limits of the Town (hereinafter the "Agreement"); and

WHEREAS, the County and the Town entered into the Agreement in order to work jointly pursuant to a design-build contract to construct the improvements; and

WHEREAS, the County has budgeted funds for the design and installation of wastewater line replacement/relocation in those areas the County deems necessary and will only be responsible for the expense of wastewater improvements that comply with the Lee County Utilities Design Manual and that have been authorized by the County; and

WHEREAS, paragraph 8 of the Agreement contemplates, and the parties agreed that, once available, the design scope of services and fee schedule would be identified and included as "Exhibit C" to the Agreement and would be incorporated into the Agreement through the approval and execution of an Amendment to the Agreement; and

WHEREAS, "Exhibit C" which is attached to this First Amendment is intended to comply with the requirements of the Agreement and amends that Agreement by establishing the County's design costs for Phase One of Three, that are reimbursable to the Town in the lump sum amount of \$21,222.00.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants, conditions and obligations herein contained, the parties agree as follows:

SECTION I. INCORPORATION OF RECITALS

The Recitals as set forth above are incorporated into this First Amendment as if set out herein at length.

SECTION II. AMENDMENT

The Agreement is hereby amended as follows:

1. The attached "Exhibit C" is hereby incorporated as part of the Agreement. Reference to "Exhibit C" throughout the Agreement shall mean the "Exhibit C" attached to this First Amendment.
2. All other provisions of the Agreement shall remain unchanged.

SECTION III. EFFECTIVE DATE

This First Amendment shall be effective on the last date that it is signed by the Chair or Vice-chair of the Board of County Commissioners of the County of the Mayor or Vice Mayor of the Town.

IN WITNESS WHEREOF, the parties hereunto have executed this First Amendment to the Agreement on the dates specified below.

ATTEST: LINDA DOGGETT, CLERK

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Chair

Date: _____

Approved as to form by:

County Attorney's Office

ATTEST: MICHELLE MAYHER,
TOWN CLERK

TOWN OF FORT MYERS BEACH

By: _____
Alan Mandel, Mayor

Date: _____

Approved as to form:

FOWLER WHITE BOGGS
Town Attorney

By: _____

EXHIBIT C - (DESIGN COSTS)

SCOPE OF SERVICES FOR PHASE ONE OF THREE PHASES FOR THE RFQ-13-02 PHASE ONE WATER DISTRIBUTION SYSTEM IMPROVEMENTS

PROPOSED TEAM

Town of Fort Myers Beach – Owner (hereinafter the “TOWN”)

Mitchell & Stark Const. Co. Inc. (M&S) – Prime Construction (hereinafter “the FIRM”)

Johnson Engineering (JED) – Engineering, Survey & CEI Sub-Consultant (hereinafter “SUB-CONSULTANT”)

Cella Molnar & Associates (CMA) – Public Awareness Sub-Consultant

PROJECT BACKGROUND:

This project includes the replacement of the existing potable water distribution system with an upgraded system that meets current water service and fire protection standards of residential areas in the TOWN, as well as improvements to the storm water conveyance system for the Basin Based Neighborhood. The project includes three (3) areas: Bay Beach lane, Laguna Shores and the Basin Based Neighborhood. The streets included in each area are outlined in Table 1 below.

Bay Beach Lane and Laguna Shores

Under this contract/phase the Bay Beach Lane and Laguna Shores areas will include all the necessary professional services required to provide 60% level construction plans. The 60% construction plans will be used to generate a Guaranteed Maximum Price (GMP) for the construction of the new potable water system for these areas. Professional fees associated with generating the final construction plans, permitting and construction administration for the potable water system for these areas will also be included in the GMP.

Basin Based Neighborhood

This contract/phase includes the 100% final design and permitting for both potable water and storm drain improvements within this area. The project grant includes all eighteen (18) roads within the basin area however only six (6) of the roads have been designed and permitted. Under this contract the final plans for both potable water and drainage improvements within this area will be accelerated for the six (6) permitted roads in order to meet the drainage grant deadline of April 2014. SUB-CONSULTANT will prepare final construction plans for both potable water and drainage for the other twelve (12) roads. Every effort will be made to accelerate these twelve (12) roads as well but depending on design schedule, permitting requirements and grant acceptance these roads may not be completed by the April 2014 grant deadline. This contract/phase also includes generating a Guaranteed Maximum Price (GMP) for the construction of the new potable water system and storm drain improvements for all roads within the Basin Based Neighborhood. Due to grant timing, the GMP for the six (6) roads may be prepared separate from the remaining twelve (12).

Table 1 identifies the roads and proposed improvements for the project:

Table 1 – Roads & Improvements.

PHASE 1 WATER DISTRIBUTION SYSTEM IMPROVEMENTS		
AREA 1 - BAY BEACH LANE		
<i>Alignment</i>	<i>Drainage Grant Funded (Linear Feet)</i>	<i>Water Main (Linear Feet)</i>
Bay Beach Lane	n/a	4,800
Subtotal:	n/a	4,800

AREA 2 - LAGUNA SHORES		
<i>Alignment</i>	<i>Drainage Grant Funded (Linear Feet)</i>	<i>Water Main (Linear Feet)</i>
Buccaneer Drive	n/a	2,520
Lagoon Road	n/a	2,440
Tarpon Road	n/a	610
Redfish Road	n/a	640
Lagoon Vista Street	n/a	400
Starfish Circle	n/a	180
Seahorse Lane	n/a	165
Sand dollar Lane	n/a	240
Estrallita Drive	n/a	1,220
Little Carlos Lane	n/a	350
Subtotal:	n/a	8,765

AREA 3 - BASIN BASED NEIGHBORHOOD		
<i>Alignment</i>	<i>Drainage Grant Funded (Linear Feet)</i>	<i>Water Main (Linear Feet)</i>
Tropical Shores	193 (permitted)	1,740
Chapel Street	not permitted	580
Mango Street	598 (permitted)	1,660
Fairweather Lane	186 (permitted)	1,500
Delmar Avenue	462 (permitted)	1,500
Pearl Street	383 (permitted)	1,460
Virginia Avenue	not permitted	1,360
Ohio Avenue	not permitted	1,220
Bayview Drive	not permitted	350
Miramar Street (Bay side)	permitted	1,200
Ostego Drive	not permitted	700
Carolina Avenue	not permitted	1,200
Avenue E	not permitted	180
Miramar Street (Gulf Side)	not permitted	200
Palm Avenue	not permitted	280
Mango Street (Gulf side)	not permitted	300
Cottage Avenue	not permitted	500
Chapel Street (Gulf side)	not permitted	240
Subtotal:	1,822	16,170

--	--	--

TASK INDEX

- 1.0 Project Management
- 2.0 Water Main Design Services (Bay Beach Lane & Laguna Shores)
- 3.0 Water Main & Storm Drain Design (Basin Based Neighborhood)
- 4.0 Design Services (Lee County Utilities Wastewater)
- 5.0 Surveying Services and Subsurface Utility Engineering
- 6.0 Sketch & Descriptions
- 7.0 Permitting Assistance
- 8.0 Reimbursable
- 9.0 Public Awareness

TASK 1.0 – PROJECT MANAGEMENT

SUB-CONSULTANT will provide the following project management services:

- Initial Kick-Off Meeting – The SUB-CONSULTANT will attend an initial kick-off meeting with FIRM and the TOWN to review project objectives and standards for completing the work. SUB-CONSULTANT will prepare a written meeting memorandum summarizing the discussion and project action plan.
- Project Timeline/Staffing Plan – SUB-CONSULTANT will assist with the preparation of an initial project timeline for submittal to the TOWN at the Initial Kick-Off Meeting. The SUB-CONSULTANT will update the schedule throughout the duration of the project and provide a copy of the updated schedule to the TOWN at each monthly progress meeting. SUB-CONSULTANT will provide schedules in Microsoft Projects format.
- Design Team Meetings – SUB-CONSULTANT will attend up to six (6) design-team meetings during the design phase of this project. Meetings with TOWN staff to review design plans and generate suggestions and comments for incorporation into the design at 60% and 90% completion shall be considered part of this service. If less meetings are needed an appropriate credit will be given.

M&S will provide the following Project Management services:

- Attend meetings, provide input into schedules, and review schedules.

TASK 2.0 – WATER MAIN DESIGN SERVICES (BAY BEACH LANE & LAGUNA SHORES)

SUB-CONSULTANT will provide the following services:

SUB-CONSULTANT shall furnish design services necessary for the preparation of construction plans and specifications for water system improvements in accordance with the TOWN specifications that are in effect on the date that the TOWN approves the AGREEMENT. This task will include preparing 60% construction plans to assist with the formulation of the Guaranteed Maximum Price (GMP). Final design, permitting and construction administration for these improvements will be included in the GMP.

- Coordinate with Other Utilities – SUB-CONSULTANT will contact electric, telephone, cable, gas, and traffic signal service providers to request copies of existing facility record drawings and maps. SUB-CONSULTANT will provide a copy of the information received to the TOWN. Additionally, SUB-CONSULTANT will provide 60% design plans to other utility providers for feedback regarding possible conflicts with proposed facilities.

- Perform field reconnaissance with FIRM staff by walking the entire project to determine most feasible alignment.
- 60% Construction Plans – SUB-CONSULTANT will prepare 60% construction plans for water main improvements along Bay Beach Lane & within Laguna Shores. The 60% construction plans will include a cover sheet, general notes sheet, location map sheet, plan and profile views, and standard detail sheet(s). The plans shall depict existing topographical features; existing utilities; existing rights-of-way, property boundaries, and easement lines; and shall contain the following:
 - Plan and profile view of the proposed water main alignment at 1" = 40' horizontal and 1" = 4' vertical.
 - Proposed water main details.

M&S will provide the following Project Management services:

- Attend meetings, provide input into location & design of utilities, review design for constructability and value engineering.

TASK 3.0 – WATER MAIN & STORM DRAIN DESIGN (BASIN BASED NEIGHBORHOOD)

The SUB-CONSULTANT will provide the following services:

This task applies to the improvements within the Basin Based Neighborhood. This task includes the accelerated 100% final design of the potable water main and storm drain improvements for the six (6) permitted roads. This task also includes evaluating drainage options on the twelve (12) remaining roads, coordinating with The Division of Emergency Management for inclusion of these roads in the grant, and 100% final design for the potable water and storm drain systems for these roads. This task will include the following:

Task 3.1 – Evaluate Drainage Options and Coordinate with the Division of Emergency Management (12 basin roads “not permitted”)

- SUB-CONSULTANT will perform one site visit to review existing drainage.
- SUB-CONSULTANT will preliminarily review up to three (3) alternatives for drainage improvements to the streets listed for this task. Three (3) alternatives will be reviewed for each road. The review will include drainage design calculations and a conceptual plan with only enough detail to provide a preliminary cost estimate for each alternative. The analysis will be presented to the TOWN for their review and selection of preferred alternative. In addition, water quality improvement potential will be reviewed with the chosen alternative. SUB-CONSULTANT will also coordinate with The Division of Emergency Management to discuss the possible inclusion of these roads in the grant.

Task 3.2 - Water Main Design

- Coordinate with Other Utilities – SUB-CONSULTANT will contact electric, telephone, cable, gas, and traffic signal service providers to request copies of existing facility record drawings and maps. SUB-CONSULTANT will provide a copy of the information received to the TOWN. Additionally, SUB-CONSULTANT will provide 60% design plans to other utility providers for feedback regarding possible conflicts with proposed facilities.
- Perform field reconnaissance with FIRM staff by walking the entire project to determine most feasible alignment.
- 90% Construction Plans – SUB-CONSULTANT will prepare 90% construction plans for water main within the Basin Based Neighborhood. The 90% construction plans will include a cover sheet, general notes sheet, location map sheet, plan and profile views, and standard detail sheet(s). The plans shall depict existing topographical features; existing utilities; existing rights-of-way, property boundaries, and easement lines; and shall contain the following:
 - Plan and profile view of the proposed water main alignment at 1" = 40' horizontal and 1" = 4' vertical.

- Proposed water main details.
- Maintenance of traffic (MOT) plans.
- Storm water pollution prevention plan (SWP3).
- Utility Notification – SUB-CONSULTANT will transmit two (2) copies of the 90% plans to utility service providers (electric, telephone, CATV, gas) for review and comment.
- 100% Construction Plans – SUB-CONSULTANT will revise plans to incorporate permit conditions, as appropriate from Agencies. SUB-CONSULTANT will submit three (3) sets of hardcopy printouts (11"x17") to TOWN for review purposes. Upon acceptance by the TOWN, SUB-CONSULTANT will submit final construction plans in electronic format (AutoCAD DWG and Adobe PDF).

Task 3.3 - Storm Drain Design/Plan Adoption (6 permitted basin area roads)

This task includes reviewing the existing storm drainage construction plans and redesigning or adopting the previously permitted six (6) roads within the Basin Neighborhood Area. The six (6) roads include Tropical Shores, Mango Street, Fairweather Lane, Delmar Avenue, Pearl Street and Miramar Street (Bay Side). This task includes the following:

- Review previous storm drainage plans and design report for the Basin Neighborhood Area as previously prepared by a third-party consultant.
- Attend meeting with TOWN to discuss the previously prepared storm drainage plans and the Town's expectations for drainage improvements in the Basin Neighborhood Area.
- Prepare to adopt the plans pursuant to Chapter 61G15-27 of the Florida Administrative Code (F.A.C.) by performing the following:
 - Perform calculations as required to demonstrate SUB- Consultant's re-creation of the existing storm drainage design for the purpose of adoption. Those portions proposed for redesign will not require adoption; they will have calculations and associated documentation performed.
 - Provide necessary documentation as the successor engineer to demonstrate the reworking of the entire storm drainage design process. This task includes review of the previous storm drainage model and engineering design. Redrawing of the adopted storm drainage design is not necessary per the F.A.C.
 - Accept professional responsibility for adoption of the previous storm drainage design as Engineer of Record.
 - Upon acceptance of adopted storm drainage design, notify the original professional design engineer by certified mail to the last known address of the SUB- Consultant's intention to use or reuse the original professional engineer's work.
- Provide storm drainage design for drainage improvements on Miramar Street (Gulf side) to carry storm water across Estero Boulevard to possible outfalls on Virginia or Ohio Street.
- Provide additional storm drainage design on Pearl and Delmar Street to extend proposed 18" pipes approximately 200-300 linear feet to the north.

Task 3.4 – Storm Water Design (12 basin roads "not permitted")

This task will include evaluating and designing the storm drainage improvements along the twelve (12) Basin Based Neighborhood roads that are included in the grant funding but not currently permitted. Depending on design schedule, permitting and grant acceptance these roads may or may not be included in the first construction phase to meet the grant deadline of April 2014. SUB-CONSULTANT shall furnish design services necessary for storm water drainage design and obtain permits for the following streets:

Chapel Street

Avenue E

Virginia Avenue
Ohio Avenue
Bayview Drive
Ostego Drive
Carolina Avenue

Miramar Street (Gulf & Bay Side)
Palm Avenue
Mango Street (Gulf Side)
Cottage Avenue
Chapel Street (Gulf Side)

- **60% Construction Plans**

- SUB-CONSULTANT will perform one site visit to review existing drainage.
- SUB-CONSULTANT will preliminarily review up to three (3) alternatives for drainage improvements to the streets listed for this task. Three (3) alternatives will be reviewed for each road. The review will include drainage design calculations and a conceptual plan with only enough detail to provide a preliminary cost estimate for each alternative. The analysis will be presented to TOWN for their review and selection of preferred alternative. In addition, water quality improvement potential will be reviewed with the chosen alternative.
- SUB-CONSULTANT will prepare the preliminary surface water management design and calculations for the preferred alternative.
- SUB-CONSULTANT will incorporate the preliminary drainage design for the preferred alternative into the 60% construction plans.

- **Final Drainage Design Phase**

- SUB-CONSULTANT will prepare the final surface water management design and calculations for the preferred alternative to submit with the permit application.
- SUB-CONSULTANT will incorporate the final drainage design for the preferred alternative into the 90% and final construction plans and project specifications.
- SUB-CONSULTANT will respond to Request for Additional Information. The request for information may be a formal RAI or an informal email/phone call.

M&S will provide the following Project Management services:

Attend meetings, provide input into location & design of utilities, review design for constructability and value engineering.

TASK 4.0 – WASTEWATER DESIGN SERVICES (LEE COUNTY UTILITIES)

The SUB-CONSULTANT will provide the following services:

SUB-CONSULTANT will develop 60% construction plans to assist with the formulation of the Guaranteed Maximum Price (GMP) for wastewater force main improvements for Lee County Utilities (LCU). Per discussions with LCU, it is anticipated at this time that replacement of approximately 810 linear feet of force main along Ohio Street and Tropical Shores will be necessary. Final design and permitting for these improvements will be included in the GMP.

- Coordinate with LCU regarding wastewater collection and transmission system improvements along the water main construction corridor.
- 60% Design Plans – SUB-CONSULTANT will prepare 60% design plans for the relocation of wastewater force main along Ohio Street and Tropical Shores. The 60% construction plans will include a cover sheet, general notes sheet, location map sheet, plan and profile views, and standard detail sheet(s). The plans shall depict existing topographical features; existing utilities; existing rights-of-way, property boundaries, and easement lines; and shall contain the following:

- Plan and profile view of the Lee County wastewater facilities alignment at 1" = 40' horizontal and 1" = 4' vertical, unless otherwise agreed to in writing. Where rights of way exceed plan view limits for plan & profile sheets, separate plan view sheets and profile view sheets may be incorporated in the plan set.
- Proposed wastewater force main details.
- Utility Notification – SUB-CONSULTANT will transmit two (2) copies of the 60% plans to utility service providers (electric, telephone, CATV, gas) for review and comment.

M&S will provide the following Project Management services:

Attend meetings, provide input into location & design of utilities, review design for constructability and value engineering.

TASK 5.0 – SURVEYING SERVICES & SUBSURFACE UTILITY ENGINEERING

The SUB-CONSULTANT will provide the following services:

The SUB-CONSULTANT shall perform and provide a Topographic Survey of the design route for the proposed water main along the roads as outlined in the table located in Section 1. The survey will be from right-of-way to right-of-way on all 29 roads along the project corridor. The SUB-CONSULTANT shall perform miscellaneous land surveys necessary for the project as determined during the design stage. A minimum of two (2) permanent project control points will be established with elevations based on the North American Vertical Datum of 1988 (NAVD 88) and horizontal coordinates referenced to the State Plane Coordinate System, Florida West Zone, North American Datum of 1983 (2007 adjustment) (NAD83/NA2011). This survey will be prepared in accordance with Chapter 472.027, Florida Statutes.

- Route Survey – The SUB-CONSULTANT will field survey existing conditions, including cross-sections at 100' stations along rights-of-way within the project limits. Topographic data will extend from right of way to right-of-way for all 29 roads. Additional topographical data will be obtained to ensure proper design for existing services. In addition to the cross-sections, the SUB-CONSULTANT shall provide comprehensive locations of existing driveways, mailboxes, aboveground utilities, culvert crossings, etc. SUB-CONSULTANT shall call Sunshine One to have the existing utilities marked within the project area and will locate the marked utilities. SUB-CONSULTANT shall prepare a base map of the right-of-way, elevations obtained, visible and marked underground utilities, easements and existing improvements along project corridor.
- Subsurface Utility Engineering (SUE) – SUB-CONSULTANT will provide the following services as they relate to SUE:
 - Based on preliminary design work and review of field conditions, the SUB-CONSULTANT will determine the most useful locations for the subsurface utility investigations. This scope budgets for one (1) trench along each road for a total of approximately 29 trenches. All trenches will be within natural ground or under pavement or concrete that will be removed and repaired by FIRM. The trenches will be a maximum of six (6) feet deep. Excavations will be performed using air vacuum and water pressure equipment that is non-destructive to existing facilities.
 - SUB-CONSULTANT will mark locations of the excavated underground utilities with laths on natural ground.
 - SUB-CONSULTANT will field-locate underground utility lines within the trenches using traditional and GPS surveying methods and plot the utilities in relationship to existing above ground improvements. SUB-CONSULTANT will obtain the depths, locations, sizes, types (if possible), and materials of the excavated utility lines.
- SUB-CONSULTANT will repair natural ground only within the limits of original cuts. FIRM will be responsible for any pavement or concrete repairs.

M&S will provide the following Project Management services:

Attend meetings, review survey, and make repairs pavement or concrete repairs due to field-locating.

TASK 6.0 - SKETCH & DESCRIPTIONS

The SUB-CONSULTANT will prepare up to five (5) Sketch & Descriptions for proposed utility easements, if required.

TASK 7.0 - PERMITTING ASSISTANCE

The SUB-CONSULTANT will provide the following services:

The SUB-CONSULTANT will be responsible for preparing and submitting all required applications and supporting information necessary to assist the TOWN with obtaining all reviews, approvals, and permits, with respect to the Consultant's design, drawings, and specifications required by any regulatory agency having authority over this project. All permit fees will be paid for by the TOWN. This will include the following permits:

- Fort Myers Beach/ Lee County LDO (Basin Based Neighborhood)
- Lee County Health Department Potable Water Permit (Basin Based Neighborhood)
- Environmental Resource Permit (ERP) General Modification for Construction Operation
- South Florida Water Management District (SFWMD) Permitting (Entire Project):
 - SFWMD Short-term Dewatering Permit – SUB-CONSULTANT will assist the TOWN with obtaining a short-term dewatering permit for construction/installation of underground utilities for the Fort Myers Beach utility installation project, if the results of Groundwater Sampling indicate the project will require a permit from the SFWMD.
 - SUB-CONSULTANT will prepare required SFWMD forms and exhibits, evaluate potential impacts to existing legal users of the Water Table aquifer and wetlands, prepare a report of potential pollution sources, estimate volumes of dewatering effluent, prepare a dewatering plan and schedule, prepare a turbidity monitoring plan (if necessary), and prepare exhibits of temporary retention areas and recharge trenches (if necessary). SUB-CONSULTANT will coordinate with the TOWN to prepare a feasible dewatering plan to meet SFWMD regulatory requirements and take into account site constraints and the construction schedule. SUB-CONSULTANT will respond to RAIs and informal requests for information from the SFWMD during the review period, if required. SUB-CONSULTANT will coordinate with FIRM and the TOWN as required to develop dewatering plan. The TOWN is responsible for all SFWMD permit processing fees.
 - SFWMD Master Dewatering Permit - SUB-CONSULTANT will assist TOWN in obtaining a Master SFWMD dewatering permit for the all anticipated phases of the utility installation project to allow pumpage in excess of 10 mgd with a 5-year permit duration. The application/dewatering plan will be based on that used for SFWMD short-term dewatering permit described under above Task and will include conceptual dewatering plans for subsequent phases of utility installation. SUB-CONSULTANT will revise required SFWMD forms, dewatering plan and exhibits, and estimates of dewatering effluent volumes as necessary. SUB-CONSULTANT will respond to request for additional information from the SFWMD if required. SUB-CONSULTANT will coordinate with FIRM/TOWN (in Ft. Myers) as required to develop dewatering plan. TOWN is responsible for all SFWMD permit processing fees (estimated \$1,800.00-\$4,000.00 contingent upon volume of pumpage required). This scope of services does not include updates to the master dewatering permit required prior to commencing work in future phases.

- FDEP Generic Permit for Discharge of Produced Groundwater - SUB-CONSULTANT will perform groundwater sampling at two (2) locations representative of the extents of the project site to determine whether the site qualifies for use of the FDEP Generic Permit for the Discharge of Produced Groundwater from Any Non-Contaminated Site Activity. The project will qualify for the FDEP generic permit if the site meets the screening values for the parameters listed in Table 1 of 62-621.300(2), F.A.C., with the exception of total organic carbon (TOC), which can qualify for a variance. SUB-CONSULTANT will construct small test pits at the two (2) specified locations selected in conjunction with FIRM and/or TOWN and pump groundwater from the pits to obtain water quality samples for analysis. SUB-CONSULTANT will send samples to a NELAC-certified laboratory for analysis of chloride concentration and the parameters listed in Table 1 of 62-621.300(2). SUB-CONSULTANT will review the lab results and determine what subsequent permitting action may be required based on the results.
- SUB-CONSULTANT will assist TOWN in obtaining a generic dewatering permit from the FDEP for the project listed above if the water quality results obtained meet the criteria listed in 62-621.300(2), F.A.C. SUB-CONSULTANT will prepare figures, text and other items typically required of an application submittal for a Notice of Intent (NOI) for an exemption from the TOC requirement due to high naturally occurring values. SUB-CONSULTANT will respond to questions from the FDEP and attend meetings, as required. TOWN is responsible for any FDEP application fees.
- Coastal Construction Control Line (CCCL) Permitting: (Entire Project):
 - Option A: Although the work associated with this project is confined to existing, developed rights-of-way, several of the rights-of-way are located seaward of the established 1991 Coastal Construction Control Line. Per phone conversation with Jennifer Cowart of the Florida Department of Environmental Protection (DEP) on July 15, 2013, the temporary excavation required for the installation/replacement of the water lines in these areas should qualify for a Minor Field Permit.

The SUB-CONSULTANT will prepare and e-submit to the DEP the following information in support of the Minor Field Permit: project plans showing the temporary excavation seaward of the CCCL, a written description of the project, and letter outlining the applicant and/or applicant's agent information. SUB-CONSULTANT will meet DEP representative onsite for field review, as necessary. Ms. Cowart further indicated that as long as no work is proposed on the beach and work will not require construction lighting shining towards the water at night, no additional review for sea turtle impacts should be required. As no nighttime or beach work is anticipated, additional review for sea turtle nesting impacts is not required for this option.
 - Option B: Should the project design result in new, permanent excavation seaward of the CCCL that would no longer allow for the Minor Field Permit, it will be necessary to apply for a General Permit from the DEP, which requires specific permitting and survey requirements in accordance with Rules 62B-33.008-33.0081 F.A.C.

M&S will provide the following Project Management services:

Attend meetings, provide input into the dewatering design and review permitting.

TASK 8.0 – REIMBURSABLES

SUB-CONSULTANT, M&S, CMA will provide deliverables that will include, but is not limited to the following: courier and express delivery charges, reproduction of plans and reports, photography, field supplies and costs of other materials and/or equipment specifically used for and solely applicable to this project.

TASK 9.0-PUBLIC AWARENESS

Cella Monar & Associates (CMA) will provide the following services:

CMA will coordinate with project team, prepare public information plan, prepare project mailing list, prepare project newsletter and coordinate with Town mailing the newsletter, develop project website and maintain website for six months. For the Basin Base Neighborhood Preconstruction Public Meeting CMA will secure meeting site, prepare and distribute neighborhood meeting cards, prepare property owner and site address mailing list, prepare public meeting handouts, and attend public meeting. For Basin Base Neighborhood Preconstruction Activities CMA will prepare media release, prepare initial notice, prepare preconstruction cards and document concerns from Public.

M&S will provide the following Public Awareness services:

Attend meetings, provide input into the public awareness plan, review the public awareness plan and review all materials produced by CMA.

FEE SUMMARY

FOR RFQ-13-02 PHASE ONE WATER DISTRIBUTION SYSTEM IMPROVEMENTS

TASK NUMBER	TASK	AMOUNT
1.00	Project Management	\$37,410.00
2.00	Water Main Design Services (Bay Beach Lane & Laguna Shores)	\$96,700.00
3.00	Water Main & Storm Drain Design (Basin Based Neighborhood)	\$238,040.00
4.00	Design Services (Lee County Utilities Wastewater)	\$21,222.00
5.00	Surveying Services and Subsurface Utility Engineering	\$249,715.00
6.00	Sketch & Descriptions	\$3,505.00
7.00	Permitting Assistance	\$67,774.00
8.00	Reimbursable	\$6,500.00
9.00	Public Awareness	35,746.61
	TOTAL FEE	\$756,612.61

TEAM FEE SUMMARY BREAKDOWN								
FOR PHASE ONE OF THREE FOR RFQ-13-02 PHASE ONE WATER DISTRIBUTION SYSTEM IMPROVEMENT								
TASK	ITEM	M&S AMOUNT	M&S FEE TYPE	JEI AMOUNT	JEI FEE TYPE	CMA AMOUNT	CMA FEE TYPE	CONTRACTOR FEE
1	Project Management	\$9,690.00	T&M	25,200.00	LS			\$2,520.00
2	Water Main Design Services (Bay Beach Lane, & Laguna Shores)	\$12,000.00	T&M	77,000.00	LS			\$7,700.00
3	Water Main & Storm Drain Design (Basin Based Neighborhood)	\$17,050.00	T&M	200,900.00	LS			\$20,090.00
4	Design Services (Lee County Utilities Wastewater)	\$3,600.00	T&M	16,020.00	LS			\$1,602.00
5	Surveying Services and Subsurface Utility Engineering	\$47,700.00	T&M/Each	183,650.00	LS			\$18,365.00
6	Sketch & Descriptions	\$150.00	T&M	3,050.00	T&M			\$305.00
7	Permitting Assistance	\$1,950.00	T&M	59,840.00	T&M			\$5,984.00
8	Reimbursables	\$1,000.00	T&M	5,000.00	T&M			\$500.00
9	Public Awareness	\$1,200.00	T&M	0.00		\$31,406.01		\$3,140.60
	TOTAL	\$84,340.00		570,660.00		\$31,406.01		\$60,206.60
	Total Fee for Phase One of Three for RFQ 13-02 Phase One Water Distribution System Improvement	\$756,612.61						

SECOND AMENDMENT
INTERLOCAL AGREEMENT BETWEEN LEE COUNTY AND THE TOWN OF
FORT MYERS BEACH FOR A UTILITY RELOCATION PROJECT WITHIN THE
CORPORATE LIMITS OF THE TOWN OF FORT MYERS BEACH

THIS SECOND AMENDMENT TO THE INTERLOCAL AGREEMENT BETWEEN LEE COUNTY AND THE TOWN OF FORT MYERS BEACH (Second Amendment) is entered into on this 18 day of August, 2014, by and between LEE COUNTY, FLORIDA, a charter county and political subdivision of the State of Florida, (hereinafter called "County"), and the TOWN OF FORT MYERS BEACH, a Florida municipal corporation, acting by and through its Town Council (hereinafter called "Town").

WITNESSETH:

WHEREAS, on December 17, 2013, the County and the Town entered into that certain INTERLOCAL AGREEMENT BETWEEN LEE COUNTY AND THE TOWN OF FORT MYERS BEACH FOR A UTILITY RELOCATION PROJECT WITHIN THE CORPORATE LIMITS OF THE TOWN OF FORT MYERS BEACH relating to certain underground utility improvements proposed by the Town and the County in the same affected areas within the corporate limits of the Town (hereinafter the "Agreement"); and

WHEREAS, the County and the Town entered into the Agreement in order to work jointly pursuant to a design-build contract to construct the improvements; and

WHEREAS, the County has budgeted funds for the design and installation of wastewater line replacement/relocation in those areas the County deems necessary and will only be responsible for the expense of wastewater improvements that comply with the Lee County Utilities Design Manual and that have been authorized by the County; and

WHEREAS, paragraph 8 of the Agreement contemplates, and the parties agreed that, once available, the construction costs associated with the wastewater line replacement/relocation would be identified and included as "Exhibit D" to the Agreement and would be incorporated into the Agreement through the approval and execution of an Amendment to the Agreement; and

WHEREAS, "Exhibit D" which is attached to this Second Amendment is intended to comply with the requirements of the Agreement and amends that Agreement by establishing the County's construction cost associated with the wastewater line replacement/relocation for Phase One of Three, that are reimbursable to the Town in the lump sum amount of \$24,000.00.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants, conditions and obligations herein contained, the parties agree as follows:

SECTION I. INCORPORATION OF RECITALS

The Recitals as set forth above are incorporated into this Second Amendment as if set out herein at length.

Item 32
1-6-15

SECTION II. AMENDMENT

The Agreement is hereby amended as follows:

1. The attached "Exhibit D" is hereby incorporated as part of the Agreement. Reference to "Exhibit D" throughout the Agreement shall mean the "Exhibit D" attached to this Second Amendment.
2. All other provisions of the Agreement shall remain unchanged.

SECTION III. EFFECTIVE DATE

This Second Amendment shall be effective on the last date that it is signed by the Chair or Vice-chair of the Board of County Commissioners of the County of the Mayor or Vice Mayor of the Town.

IN WITNESS WHEREOF, the parties hereunto have executed this Second Amendment to the Agreement on the dates specified below.

ATTEST: LINDA DOGGETT, CLERK

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: *Loyce Townsend*
Deputy Clerk

By: *Brian Hama*
Chair

Date: 01-06-2015

Approved as to form for the reliance of
Lee County only

[Signature]
County Attorney's Office

ATTEST: MICHELLE MAYHER,
TOWN CLERK

TOWN OF FORT MYERS BEACH

Michelle Mayher

By: *[Signature]*
Anita Cereceda, Mayor

Date: Aug 18, 2014

Approved as to form:

BUCHANAN, INGERSOLL & ROONEY |
FOWLER WHITE BOGGS
Town Attorney

By: *[Signature]*



CAUTION
D

PROJECT NAME: RFG-19-02-PW DESIGN BUILD SERVICES FOR PHASE1 WATER DISTRIBUTION SYSTEM IMPROVEMENTS									
DESCRIPTION	ORIGINAL QUANTITY	UNIT	UNIT PRICE	CURRENT CONTRACT	PREVIOUS QUANTITY	PREVIOUS AMOUNT	CURRENT QUANTITY	CURRENT AMOUNT	TOTAL QUANTITY
PROJECT MANAGEMENT	1	TEAM	\$8,690.00	\$8,690.00	0.68	\$8,720.00	0.128339	\$1,260.00	0.82
WATER MAIN DESIGN/SERVICE BAY BEACH & LAGUNA MIS	1	TEAM	\$12,000.00	\$12,000.00	0.21	\$2,560.00	0.00	\$3,600.00	0.21
WATER MAIN & STORM DESIGN BASIN BASE NEIGHBORHOOD MIS	1	TEAM	\$17,050.00	\$17,050.00	0.88	\$14,980.00	0.00	\$7,000.00	0.88
DESIGN/SERVICE LEE COUNTY MIS	1	TEAM	\$3,600.00	\$3,600.00	0.00	\$0.00	0.00	\$0.00	0.00
SURVEY SERVICES AND SUE MIS	1	TEAM	\$34,200.00	\$49,200.00	0.01	\$800.00	0.01	\$600.00	0.01
SKETCH AND DESCRIPTIONS MIS	1	TEAM	\$1,500.00	\$1,500.00	0.00	\$0.00	0.00	\$0.00	0.00
PERMITTING ASSISTANCE MIS	1	TEAM	\$1,800.00	\$1,800.00	0.25	\$450.00	0.17	\$300.00	0.42
RECURSABLES MIS	1	TEAM	\$4,000.00	\$4,000.00	0.00	\$0.00	0.00	\$0.00	0.00
PUBLIC AWARENESS MIS	1	TEAM	\$1,200.00	\$1,200.00	0.38	\$450.00	0.98	\$1,080.00	1.25
JOB BILLINGS WITH MIS FEE	1	TEAM	\$27,720.00	\$27,720.00	0.69	\$18,726.00	0.15	\$4,155.00	0.84
PROJECT MANAGEMENT	1	TEAM	\$84,700.00	\$84,700.00	0.20	\$16,940.00	0.40	\$33,880.00	0.60
WATER MAIN DESIGN/SERVICE BAY BEACH & LAGUNA MIS	1	TEAM	\$220,890.00	\$220,890.00	0.85	\$187,841.50	0.10	\$22,090.00	0.95
DESIGN/SERVICE LEE COUNTY MIS	1	TEAM	\$17,622.00	\$17,622.00	0.00	\$0.00	0.00	\$0.00	0.00
SURVEY SERVICES AND SUE MIS	1	TEAM	\$18,832.50	\$18,832.50	0.90	\$170,848.25	0.10	\$18,832.50	1.00
SKETCH AND DESCRIPTIONS MIS	1	TEAM	\$3,355.00	\$3,355.00	1.00	\$3,355.00	0.00	\$0.00	1.00
PERMITTING ASSISTANCE MIS	1	TEAM	\$58,824.00	\$58,824.00	0.42	\$27,742.25	0.02	\$1,889.50	0.45
RECURSABLES MIS	1	TEAM	\$5,500.00	\$5,500.00	0.12	\$3,553.40	0.36238	\$1,933.64	0.12
PUBLIC AWARENESS MIS	1	TEAM	\$0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	0.00
JOB BILLINGS WITH MIS FEE	1	TEAM	\$94,854.95	\$94,854.95	1.00	\$34,054.95	0.00	\$0.00	1.00
PUBLIC AWARENESS ONLY	1	TEAM	\$0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	0.00
TOTAL PROJECT FOR AMENDMENT ONE/NETWORK				\$743,085.46		\$405,693.13		\$38,853.53	\$578,545.51
AMENDMENT TWO WORK									
JOB BILLINGS	1	TEAM	\$8,000.00	\$8,000.00	0.00	\$0.00	0.30	\$1,800.00	0.30
4.1 PUBLIC INFORMATION PROGRAM	1	TEAM	\$300.00	\$300.00	0.00	\$0.00	0.00	\$0.00	0.00
4.2 TELEPHONE HOTLINE & EMAIL HOTLINE	1	TEAM	\$2,400.00	\$2,400.00	0.00	\$0.00	0.00	\$0.00	0.00
4.3 COORDINATION MEETINGS	1	TEAM	\$300.00	\$300.00	0.00	\$0.00	0.00	\$0.00	0.00
4.4 NOTIFICATIONS TO EX. BUSINESSES & RESIDENCES	1	TEAM	\$300.00	\$300.00	0.00	\$0.00	0.00	\$0.00	0.00
4.5 INTERUPTION OF SERVICE NOTIFICATIONS	1	TEAM	\$1,000.00	\$1,000.00	0.00	\$0.00	0.00	\$0.00	0.00
Project Recurables	1	TEAM	\$0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	0.00
JOB BILLINGS WITH MIS FEE	1	TEAM	\$16,280.00	\$16,280.00	0.67	\$10,607.60	0.13	\$2,116.40	0.80
SURVEY/RECORD DRAWINGS	1	TEAM	\$32,747.00	\$32,747.00	0.28	\$0,075.00	0.28	\$0,185.00	0.56
CONSTRUCTION ADMINISTRATION AND FINAL CERTIFICATION	1	TEAM	\$1,100.00	\$1,100.00	0.00	\$0.00	0.00	\$0.00	0.00
RECURSABLES	1	TEAM	\$0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	0.00
GMA BILLINGS WITH MIS FEE	1	TEAM	\$265,496.33	\$265,496.33	0.00	\$0.00	0.00	\$0.00	0.00
CONSTRUCTION	1	TEAM	\$0.00	\$0.00	0.21	\$56,780.47	0.07670150	\$19,597.55	0.25
STORM DRAINAGE	1	TEAM	\$0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	0.00
STORM DRAINAGE	1	TEAM	\$0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	0.00
24 INCH RCP	557	LF	\$87.16	\$48,548.12	0.00	\$0.00	26.00	\$2,282.56	104.00
18 INCH RCP	208	LF	\$39.67	\$8,114.08	0.00	\$3,081.78	0.00	\$0.00	0.00
12 INCH RCP	777	LF	\$43.25	\$33,695.25	1.87	\$81,997.75	0.00	\$0.00	1.87
30 INCH RCP	1844	LF	\$57.05	\$105,255.62	1.48	\$84,450.95	665.00	\$38,186.52	2,149.00
30 INCH RCP	1823	LF	\$70.50	\$128,617.50	494.00	\$348,482.00	0.00	\$0.00	494.00
1 INLET	6	EA	\$5,540.00	\$33,240.00	6.00	\$36,240.00	0.00	\$0.00	6.00
1 INLET	18	EA	\$3,240.00	\$58,320.00	16.00	\$51,840.00	1.00	\$3,240.00	17.00
460 STORMCEPTOR	9	EA	\$3,240.00	\$29,160.00	0.00	\$0.00	2.00	\$6,480.00	2.00
460 STORMCEPTOR	1	EA	\$50,130.00	\$50,130.00	1.00	\$50,130.00	1.00	\$50,130.00	2.00
7200 STORMCEPTOR	3	EA	\$22,270.00	\$66,810.00	2.00	\$44,540.00	0.00	\$0.00	2.00
INLET PROTECTION 402	1	EA	\$110,000.00	\$110,000.00	0.00	\$0.00	0.00	\$0.00	0.00
GRAVE INLET SKIMMERS	15	EA	\$1,000.00	\$15,000.00	0.00	\$0.00	0.00	\$0.00	0.00
REMOVE EX. INLET	2	EA	\$1,600.00	\$3,200.00	0.00	\$0.00	2.00	\$3,200.00	2.00
ESTIMATE NO. 191042									

Blue Sheet No. 20140809	Lee County Board Of County Commissioners Agenda Item Report Meeting Date: 1/6/2015	Item No. 32
-----------------------------------	---	--------------------

TITLE:

Second Amendment to Agreement with Town of Fort Myers Beach for the Utility Relocation Project

ACTION REQUESTED:

Authorize the Chair, on behalf of the BoCC, to execute the proposed second amendment to the Interlocal Agreement with the Town of Fort Myers Beach to work cooperatively on the "Utility Relocation Project within the corporate limits of the Town of Fort Myers Beach" to make the most efficient use of the design-build services under contract with the Town of Fort Myers Beach, where both the Town and Lee County have utility infrastructure in the same geographic location. This Second Amendment, presented to the Board of County Commissioners as "Exhibit D", includes the reimbursable costs due to the Town of Fort Myers Beach for the replacement of wastewater laterals in the Phase I utility replacement area. The reimbursable amount, determined by the Town, for the wastewater line replacement for phase one is \$24,000.00.

FUNDING:

\$24,000; Enterprise Fund; Included in Budget

There is a current budget of \$150,000 in the FY 14/15 Utilities CIP Budget. The proposed FY 14/15 carryover amount is \$1,011,394. Once carryovers are approved by the BOCC, the total FY 14/15 CIP budget for this project will be \$1,161,394, with a project balance of \$960,589 available for Improvements to Estero Boulevard. Total project cost is estimated to be \$8,350,000 and is phased over a 10-year period.

Utilities Capital Improvements; Capital Projects, Estero Blvd. Force Main Relocation
20732648730.506510

WHAT ACTION ACCOMPLISHES:

Allows LCU to reimburse the Town of Fort Myers Beach the cost to relocate or replace wastewater lines due to conflicts with the Town's project. This Second Amendment, presented as "Exhibit D", includes the reimbursable costs due to the Town of Fort Myers Beach in the amount of \$24,000.00.

MANAGEMENT RECOMMENDATION:

Approval.

Requirement/Purpose: (specify)	Request Initiated
☐ Statute	Commissioner: All
☐ Ordinance	Department: UTILITIES
☐ Admin Code	Division: No Divisions
☒ Other 2nd Amendment	By: Pam Keyes

Background:

An alternative action would be not to approve the Second Amendment to the Interlocal Agreement.

(CONT'D.)

Required Review:					
Pam Keyes	Michael Jacob	Emma Wolf	Mike Figueroa	Peter Winton	Doug Meurer
UTILITIES	County Attorney	Budget Analyst	Risk	Budget Services	Public Works Director

APPROVED: 1/06/15, CLOSED-OUT: 1/16/15

BS 20140809-UTL

The Town of Fort Myers Beach has programmed for rehabilitation of its island-wide potable water system over a five to seven-year period. The Town of Fort Myers Beach has also identified areas of stormwater system improvements. Lee County Utilities identified potential wastewater system conflicts or needed replacement areas within the project limits. Lee County's impacted facilities are on side streets along Estero Boulevard, connecting to the existing force main within the Estero Boulevard right-of-way.

Attachments:

1. Copy of original Interlocal Agreement w/Exhibits A & B
2. Copy of Town of Fort Myers Beach Design-Build Agreement
3. Original Second Amendment w/Exhibit D

LM/SDG, 12-12-14

LEE COUNTY BOCC MINUTES OF 010615R
(EXCERPT)

UTILITIES:

32. Second Amendment to Agreement with Town of Fort Myers Beach for the Utility Relocation Project (\$24,000; Enterprise Fund; Included in Budget)

Allows LCU to reimburse the Town of Fort Myers Beach the cost to relocate or replace wastewater lines due to conflicts with the Town's project. This Second Amendment, presented as "Exhibit D", includes the reimbursable costs due to the Town of Fort Myers Beach in the amount of \$24,000.00. (#20140809-UTILITIES)

Commissioner Kiker moved approval, seconded by Commissioner Manning, called and carried.

IMPORTANT NOTE:

There is NO First Amendment to Agreement.

Amendment #1 was disregarded since there were no County related design charges resulting from that phase, so there was no need to take to the BOCC.

Interlocal Agreement between Lee County and the Town of Fort Myers
Beach for a Utility Relocation Project within the corporate limits of the
Town of Fort Myers Beach.

December 17

This Interlocal Agreement has been entered into on ____, 2013, by and between the Lee County Board of County Commissioners, a Charter County, (hereinafter referred to as County), and the Town of Fort Myers Beach, a Florida municipal corporation, acting by and through its Town Council (hereinafter referred to as Town), collectively "The Parties".

Recitals

Whereas, the Florida Legislature has enacted the Florida Interlocal Cooperation Act of 1969 so that local governmental units can make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage thereby providing services and facilities that will accord best with geographic, economic, population and other factors that influence the needs and development of local communities; and

Whereas, the Town has identified, through its Water Distribution System Evaluation Report and its Basin Based Neighborhood Flood Mitigation and Stormwater Quality Improvement Project, a desired replacement of certain potable water and stormwater infrastructure located within the corporate limits of the Town; and

Whereas, the Town has identified and funded certain improvements to the potable water and stormwater utilities located within the corporate limits of the Town; and

Whereas, the Town has programmed the rehabilitation of its island wide potable water system to be phased over a five to seven year period, and may also include stormwater infrastructure improvements in conjunction with the potable water line replacement; and

Whereas, these improvements contemplate the replacement of certain potable water lines and installation of stormwater conveyances that may have the effect of displacing County wastewater lines in the vicinity of Estero Boulevard; and

A13a
12-17-13

Whereas, the County desires to replace certain aging wastewater lines at the same time as the Town replaces its potable water and stormwater infrastructure; and

Whereas, the Town and the County wish to coordinate the replacement of the utility infrastructure in the affected areas; and

Whereas, the County has budgeted funds in fiscal year 12/13 and will continue to fund, in future fiscal years as may be necessary, the design and installation of wastewater line replacement/relocation necessary within the corporate limits of the Town; and

Whereas, it is the intent of the Parties that the County will fund the replacement/relocation of wastewater lines and connections made necessary by the Town's public works improvements related to water and stormwater; and

Whereas, the Parties mutually desire to enter into an Agreement that identifies their respective responsibilities and obligations related to the water, stormwater and wastewater line improvements contemplated for Town roads adjacent to and along Estero Boulevard.

Now therefore, in consideration of the mutual covenants, terms, and provisions herein the Parties agree as follows:

1. Recitals. The Recitals set forth above are incorporated into this Agreement as findings of fact.
2. Purpose. The purpose of this Agreement is to outline the respective rights and responsibilities of the County and Town relative to the replacement/relocation of wastewater lines along Town roads adjacent to, and including, Estero Boulevard and water line and stormwater improvements by the Town.
3. Project Area. The geographic area covered by this Agreement is defined as the Project and is depicted by the map attached hereto as Exhibit A, and in particular, Town roads located adjacent to, and including, Estero Boulevard and identified by name on Exhibit B.

4. Project Management. The Town has selected a design-build firm through the Town's procurement process that will design and construct the water, stormwater and wastewater utilities within the project boundary. The Town will serve as the project manager with the primary responsibility for permitting, procurement, management and engineering supervision of the design-build contractor and construction work relating to the potable water, stormwater and wastewater improvements within the project area.
5. Design Standards for Wastewater Lines. The Parties agree that the design and construction of the wastewater line relocation/replacement will be performed in compliance with the Lee County Utilities Design Manual. The County's designated project manager will participate in the design-build of the wastewater improvements to the extent provided in this Agreement. In addition, County Utilities' staff will have the opportunity to review the wastewater design plans at design intervals established by the Town's design-build contract and prior to construction. At each interval, the County will have 15 calendar days from receipt to provide comment.
6. Cooperation in Management and Oversight. County agrees to cooperate and provide staff assistance and oversight upon the request of the Town as well as cooperate as necessary in the management and oversight of the project. The County will have unrestricted access to construction sites to inspect construction progress and accomplish any required maintenance of existing wastewater lines.
7. Scheduling of Improvements. The Town agrees to be responsible for scheduling the County wastewater line improvements in a coordinated manner with the Town's proposed construction of water and stormwater improvements.
8. Design-Build Contract Costs. The County agrees to fund the associated cost of wastewater line replacement/relocation as desired or made necessary by the water and storm water utility improvements planned by the Town. The Town's design-build contract(s) will provide guaranteed maximum prices (GMPs), separating out, for each phase, the anticipated County portion for design and construction. The County's funds, including any amount established by County as a contingency, will be deposited with the Town for

each phase and only released for payment to the design-builder upon Lee County Utilities Director's written authorization.

The County agrees to reimburse the Town for the design of the wastewater line at each design interval established by the Town's design-build contract(s). Reimbursement will be issued based upon verified engineering invoices and progress summaries provided to the County. Payment for permitting fees for the replacement/relocation of wastewater lines will be the responsibility of the County. The design scope of services and fee schedule are made part of this Agreement and attached as Exhibit C¹. The County agrees to reimburse the Town for the construction costs associated with the wastewater line replacement/relocation in accordance with a schedule of values to be included in the design-build contract(s) and made part of this Agreement and attached as Exhibit D*. Requests for reimbursement will include the schedule of values with current and total line item quantities and sufficient supporting invoices and documentation. The sufficiency of the documentation will be determined by County, who may seek additional information as the circumstances require. Upon receipt of all necessary information, the County will have 14 calendar days to respond to the Town's request for reimbursement.

9. Changes in Scope. The Town agrees to furnish County with copies of all proposed changes in scope pertaining to and affecting County's wastewater line improvements within the project area. The County agrees to review and respond to the Town within 14 calendar days after receiving, in writing, the proposed change in scope. If a proposed change in scope results in the need for additional funds, the funds will be reimbursed using the design-build GMP contingency established and funded by County, upon County staff authorization. If the proposed change in scope exceeds the GMP contingency, additional time will be necessary to obtain Board of County Commissioners' review and approval. When time permits, the Parties agree to meet and discuss alternatives to proposed changes in scope. The Parties agree that the County must approve/authorize changes directly pertaining to the County's wastewater line improvements prior to the commencement of work contemplated by the change.

¹ *Exhibits C and D will be added in future amendments to this agreement

10. Verification of Design and Permitting Costs. Design and permitting costs eligible for reimbursement by County include, but are not limited to, engineering, surveys, permit fees, permit and compliance with all regulatory agencies having jurisdiction over the replacement or relocation of the existing wastewater lines, and compliance with the permitting requirements of the Town of Fort Myers Beach (if required). Costs must be verified by a licensed engineer and approved by Lee County Utilities prior to payment.
11. Ownership of Wastewater Line Improvements. Upon completion and acceptance of the work, the County agrees to take title, own, maintain and control the wastewater line improvements within the rights-of-way. The Town will furnish to the County, in a form acceptable to the County, record drawings of the wastewater line improvements.
12. Dispute Resolution. As a condition precedent to termination of this Agreement by a Party or to either Party filing suit for breach of this Agreement, the Party terminating or filing suit must first notify the other Party in writing of the nature of the dispute and seek in good faith to resolve the dispute through negotiation. If the Parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party who is acceptable to both Parties. The Parties will each pay fifty percent (50%) of all costs for the services provided by such third party as such costs are incurred. The existence of a dispute will not excuse the Parties from performance pursuant to this Agreement. This remedy will be supplemental to other remedies available by law.
13. Applicable Law. This Interlocal Agreement will be construed in accordance with the Laws of the State of Florida. Venue for actions under this Agreement is in Lee County. The prevailing party will be entitled to recover attorney's fees and costs in any litigation arising hereunder.
14. No Joint Liability. The Parties agree that this Agreement will not be interpreted to establish joint liability among the Parties acting pursuant to the terms of the Agreement. Each party agrees to be responsible for and bear its own costs in defending claims or litigation arising out of this Agreement.

Nothing in this Agreement will be construed or intended to waive the protections of sovereign immunity.

15. Notices. Notices or demands under this Interlocal Agreement will be deemed given by the noticing Party and received by the noticed party:
- Upon hand delivery to the noticed party at the address provided below; or
 - Three days after deposit of the notice with the United States Mail, certified mail, returned receipt requested, properly addressed to the noticed party at the addresses provided below:

As to the County:

Lee County Attorney
Lee County Attorney's Office
2115 Second Street, 6th Floor, PO Box 398
Fort Myers, FL 33902-0398

With a copy to:

Director, Lee County Department of Utilities
1500 Monroe Street, PO Box 398
Fort Myers, FL 33902-0398

As to Town:

Town Manager
Town of Fort Myers Beach
2523 Estero Boulevard
Fort Myers Beach, FL 33931

With a copy to:

Town Attorney
Fowler White, PA
PO Box 1567
Fort Myers, FL 33901

16. Termination. In recognition of certain industry standard uncertainties inherent in the Project and the estimated cost projections herein, this Agreement may be terminated upon the mutual consent of all parties, should satisfactory Project completion become unfeasible due to the need for increased additional funding for reasons which are unavoidable through the exercise of due diligence and beyond the lawful control of the parties. Prior to termination, the parties agree to coordinate with and discuss between

themselves and make a good faith effort to reasonably resolve the outstanding funding and completion issues.

In the event of termination pursuant to the paragraph above, County will fully compensate Town for all authorized and accepted work performed through the termination date.

17. Entire Agreement, Modification. This Agreement including all its exhibits, constitutes the entire Agreement between the Parties. Modifications to this Agreement will be accomplished by documents entitled "Amendment No. to the Interlocal Agreement between Lee County and the Town of Fort Myers Beach for a Utility Relocation Project located within the corporate limits of the Town" and must be executed with the same formality as the Agreement and filed with the Lee County Clerk of Court.
18. Effective Date. This Agreement will be effective following filing the fully executed Agreement with the Lee County Clerk of Court in accordance with Section 163.01(11), F.S.

ATTEST:
LINDA DOGGETT, CLERK

BY: *B. W. H. H.*
Deputy Clerk



BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: *B. W. H. H.*

Approved as to form by:

R. O. F.
County Attorney's Office

ATTEST:
TOWN OF FORT MYERS BEACH, CLERK

BY: *Michael Napier*
Town Clerk

TOWN OF FORT MYERS BEACH
TOWN COUNCIL

BY: *Alan Mendel*

Approved as to form by:

Marilyn Miller
Marilyn Miller Town Attorney

Exhibits:

- A: Sketch (map reflecting areas within the scope of the sewer line replacement project)
- B: List of Side Streets off Estero Boulevard subject to the contemplated sewer line relocation/replacement project.

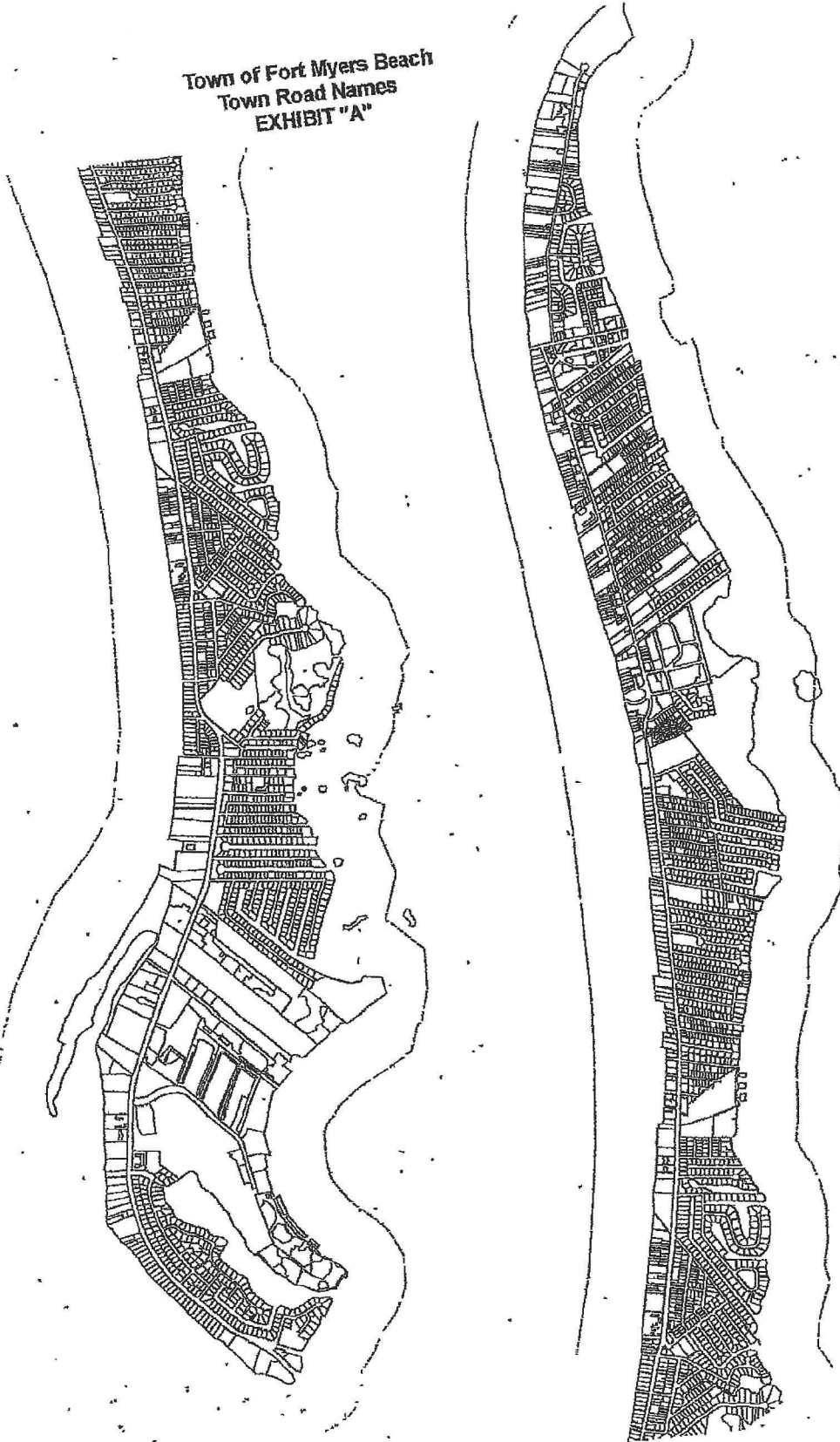
=====

C: Design Scope of Services and Fee Reimbursement Schedule*² (Future Amendment No. 1)
NEVER EXECUTED

D: Construction Cost Schedule of Values*² (Future Amendment No. 2)

² *Exhibits C and D will be added in future amendments to this agreement

Town of Fort Myers Beach
Town Road Names
EXHIBIT "A"



**Town of Fort Myers Beach
Town Road Names
EXHIBIT "B"**

ABERDEEN AVE	EASY ST	OAK RIDGE AVE
ALBATROSS ST	EGRET ST	OAK ST
ALVA DR	ESTERO BLVD	OHIO AVE
ANCHORAGE ST	ESTRELLITA DR	OLD SAN CARLOS
ANDRE MAR DR	EUCALYPTUS CT	OLD SAN CARLOS BLVD
AVENIDA CARITA	FAIRVIEW BLVD	OSTEGO DR
AVENIDA PESCADORA	FAIRWEATHER LN	PALERMO CIR
AVENUE A	FALKIRK ST	PALM AVE
AVENUE C	FIFTH AVE	PALMETTO ST
AVENUE E	FIRST ST	PALMVIEW BLVD
BAHIA VIA	FLAMINGO ST	PEARL ST
BAY BEACH LN	FOURTH ST	PEPITA ST
BAY MAR DR	GLENVIEW MANOR DR	POMPANO ST
BAY RD	GULF BEACH RD	PRIMO DR
BAY VILLAGE DR	GULF CT	RANDY LN
BAYLAND RD	GULF DR	REDFISH RD
BAYSIDE RD	GULF ISLAND DR	RHODE ISLAND PLACE
BAYVIEW AVE	GULFVIEW AVE	SABAL DR
BAYVIEW BLVD	HARBOR CT	SAND DOLLAR LN
BAYVIEW DR	HERCULES DR	SANDERS DR
BONITA ST	HIBISCUS DR	SANTOS RD
BUCCANEER DR	IBIS ST	SCHOOL ST
BUCCANEER LAGOON ST	INDIAN BAYOU DR	SEAHORSE LN
CANAL ST	ISLAND PINES WAY	SEAVIEW ST
CARITA AVE	JEFFERSON CT	SECOND ST
CARLOS CIR	JEFFERSON ST	SEMINOLE WAY
CAROLINA AVE	KEY WEST CT	SHELBY LN
CENTER ST	LAGOON LN	SHELL MOUND BLVD
CHAPEL ST	LAGOON RD	ST PETERS DR
CLEARVIEW BLVD	LAGOON ST	STARFISH CIR
COCONUT DR	LANARK AVE	STERLING AVE
COMPASS LN	LAUDER ST	STRANDVIEW AVE
CONNECTICUT ST	LAZY WAY	SUNVIEW BLVD
COQUINA RD	LENELL RD	TARPON RD
CORAL RD	LEWIS ST	THIRD ST
CORTEZ WAY	LITTLE CARLOS LN	TROPICAL SHORES WAY
COTTAGE AVE	LOVERS LN	VIRGINIA AVE
COURT ST	MADERA RD	VOORHIS ST
CRESCENT ST	MADISON CT	WASHINGTON AVE
CURLEW ST	MANDALAY RD	WASHINGTON CT
DAKOTA AVE	MANGO ST	WIDGEON TER
DEEP PASSAGE LN	MID ISLAND DR	WILLIAMS DR
DELMAR AVE	MIRAMAR ST	
DOLPHIN LN	MOUND RD	
DONORA BLVD	NANCY LN	
DRIFTWOOD LN	NATUREVIEW CT	
DUNDEE RD	NODDYTERN DR	

NOTES: EXHIBIT C = FUTURE AMENDMENT 1 (DISREGARDED AS THERE WERE NO COUNTY RELATED DESIGN CHARGES .
RESULTING FROM THAT PHASE)

EXHIBIT D = FUTURE AMENDMENT 2

THIRD AMENDMENT
INTERLOCAL AGREEMENT BETWEEN LEE COUNTY AND THE TOWN OF
FORT MYERS BEACH FOR A UTILITY RELOCATION PROJECT WITHIN THE CORPORATE
LIMITS OF THE TOWN OF FORT MYERS BEACH

THIS THIRD AMENDMENT TO THE INTERLOCAL AGREEMENT BETWEEN LEE COUNTY AND THE TOWN OF FORT MYERS BEACH (Third Amendment) is entered into on this 22 day of May, 2017, by and between LEE COUNTY, FLORIDA, a charter county and political subdivision of the State of Florida, (hereinafter called "County"), and the TOWN OF FORT MYERS BEACH, a Florida municipal corporation, acting by and through its Town Council (hereinafter called "Town").

WITNESSETH:

WHEREAS, on December 17, 2013, the County and the Town entered into that certain INTERLOCAL AGREEMENT BETWEEN LEE COUNTY AND THE TOWN OF FORT MYERS BEACH FOR A UTILITY RELOCATION PROJECT WITHIN THE CORPORATE LIMITS OF THE TOWN OF FORT MYERS BEACH relating to certain underground utility improvements proposed by the Town and the County in the same affected areas within the corporate limits of the Town (hereinafter the "Agreement"); and

WHEREAS, the County and the Town entered into the Agreement in order to work jointly pursuant to a design-build contract to construct the improvements; and

WHEREAS, the County agrees to fund the associated cost of adjustment of wastewater lines due to conflicts created by the anticipated North Estero Blvd. Sides Street Phase II Water Main and Storm improvements for Bay Road, Eucalyptus Ct, Jefferson St, Hercules Drive, Bayview Ave, Donora Blvd, Connecticut Street and Hercules Drive; and

WHEREAS, the construction cost associated with the wastewater lines adjustments would be reimbursed in accordance with a schedule of values to be included as "Estero Blvd. Sides Street WM and Storm Improvements Phase II - Sanitary Sewer Adjustments Cost Opinion" to the Agreement and would be incorporated into the Agreement through the approval and execution of an Amendment to the Agreement; and

WHEREAS, the "Estero Blvd. Sides Street WM and Storm Improvements Phase II - Sanitary Sewer Adjustments Cost Opinion" which is attached to this Third Amendment is intended to comply with the requirements of the Agreement and amends that Agreement by establishing the County's construction cost associated with the wastewater lines adjustments for Phase Two of Three, that are reimbursable to the Town in the lump sum amount of \$681,636.00.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants, conditions and obligations herein contained, the parties agree as follows:

SECTION I. INCORPORATION OF RECITALS

The Recitals as set forth above are incorporated into this Third Amendment as if set out herein at length.

SECTION II. AMENDMENT

The Agreement is hereby amended as follows:

1. The County agrees to fund the associated cost of installation of wastewater lines adjustments due to conflicts created by the anticipated North Estero Blvd. Sides Street Phase II Water Main and Storm improvements for Bay Road, Eucalyptus Ct, Jefferson St, Hercules Drive, Bayview Ave, Donora Blvd, Connecticut Street and Hercules Drive, areas which the County deems improvement necessary and will only be responsible for the expense of wastewater improvements within those areas that are reimbursable to the Town in the lump sum amount of \$681,636.00.
2. All other provisions of the Agreement shall remain unchanged.

SECTION III. EFFECTIVE DATE

This Third Amendment shall be effective on the last date that it is signed by the Chair or Vice-chair of the Board of County Commissioners of the County of the Mayor or Vice Mayor of the Town.

IN WITNESS WHEREOF, the parties hereunto have executed this Third Amendment to the Agreement on the dates specified below.

ATTEST: LINDA DOGGETT, CLERK

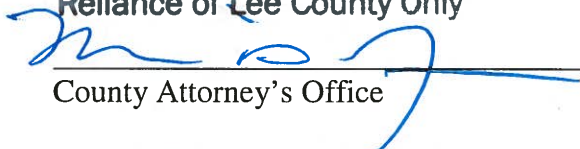
By: 
Deputy Clerk

Date: 05-25-2017

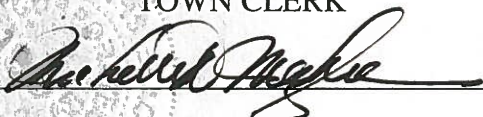
BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: 
Chair

Approved as to Form for the
Reliance of Lee County Only


County Attorney's Office

ATTEST: MICHELLE MAYHER,
TOWN CLERK

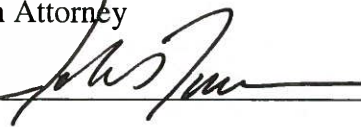


Date: May 22, 2017

TOWN OF FORT MYERS BEACH

By: 
Dennis C. Boback, Mayor

Approved as to form:
PETERSON LAW GROUP
Town Attorney

By: 

Lee County Utilities
Estero Blvd. Sides Street WM and Storm Improvements Phase II - Sanitary Sewer Adjustments
Cost Opinion

DDAI No. 15-0094

Sanitary Sewer Adjustments					
Pay Item	Description	Unit	Qty	Unit Cost	Total Cost
EUCALYPTUS COURT					
1000-10	Sewer Service Adjustment	EA	9	\$1,500.00	\$13,500.00
1000-20	Conflict Structure	EA	2	\$23,820.00	\$47,640.00
1000-30	Adjust Manholes Ring and Cover	EA	3	\$530.00	\$1,590.00
1000-40	Cleanouts	EA	18	\$700.00	\$12,600.00
JEFFERSON STREET					
1000-10	Sewer Service Adjustment	EA	11	\$1,500.00	\$16,500.00
1000-20	Conflict Structure	EA	2	\$23,820.00	\$47,640.00
1000-30	Adjust Manholes Ring and Cover	EA	3	\$530.00	\$1,590.00
1000-40	Cleanouts	EA	21	\$700.00	\$14,700.00
HERCULES DRIVE					
1000-10	Sewer Service Adjustment	EA	11	\$1,500.00	\$16,500.00
1000-20	Conflict Structure	EA	1	\$23,820.00	\$23,820.00
1000-30	Adjust Manholes Ring and Cover	EA	3	\$530.00	\$1,590.00
1000-40	Cleanouts	EA	22	\$700.00	\$15,400.00
BAYVIEW AVENUE					
1000-10	Sewer Service Adjustment	EA	9	\$1,500.00	\$13,500.00
1000-20	Conflict Structure	EA	1	\$23,820.00	\$23,820.00
1000-30	Adjust Manholes Ring and Cover	EA	3	\$530.00	\$1,590.00
1000-40	Cleanouts	EA	19	\$700.00	\$13,300.00
CONNECTICUT STREET**					
1000-10	Sewer Service Adjustment	EA	9	\$1,500.00	\$13,500.00
1000-20	Conflict Structure	EA	2	\$23,820.00	\$47,640.00
1000-30	Adjust Manholes Ring and Cover	EA	6	\$530.00	\$3,180.00
1000-40	Cleanouts	EA	18	\$700.00	\$12,600.00
BAYMAR DRIVE**					
1000-10	Sewer Service Adjustment	EA	14	\$1,500.00	\$21,000.00
1000-20	Conflict Structure	EA	1	\$23,820.00	\$23,820.00
1000-30	Adjust Manholes Ring and Cover	EA	3	\$530.00	\$1,590.00
1000-40	Cleanouts	EA	28	\$700.00	\$19,600.00
DONORA BOULEVARD.**					
1000-10	Sewer Service Adjustment	EA	27	\$1,500.00	\$40,500.00
1000-20	Conflict Structure	EA	2	\$23,820.00	\$47,640.00
1000-30	Adjust Manholes Ring and Cover	EA	9	\$530.00	\$4,770.00
1000-40	Cleanouts	EA	37	\$700.00	\$14,700.00
BAY STREET**					
1000-10	Sewer Service Adjustment	EA	9	\$1,500.00	\$13,500.00
1000-20	Conflict Structure	EA	1	\$23,820.00	\$23,820.00
1000-30	Adjust Manholes Ring and Cover	EA	3	\$530.00	\$1,590.00
1000-40	Cleanouts	EA	19	\$700.00	\$13,300.00
TOTAL UTILITIES SUB TOTAL					\$568,030.00
CONTINGENCY (20%)					\$113,606.00
TOTAL COST					\$681,636.00

** STORM SYSTEM AND WATER MAIN ARE YET TO BE DESIGNED BY TETRA TECH.

THE COST OPINION ON BAY STREET WAS COMPLETED BY ESTIMATING THE COST OF THE MOST SIMILAR STREET ON THIS PROJECT.

THE COST OPINION DOES NOT INCLUDE MOT, MOBILIZATION, EROSION CONTROL OR RESTORATION COST. PRICE INCLUDED IN TETRA TECH BID PRICES.

ITEM PRICES ARE BASED ON MITCHELL & STARK PRICES TO THE TOWN OF FORT MYERS BEACH AND CHRISTEL PRICES TO LEE COUNTY.

A CLEANOUT WAS ASSUMED FOR EVERY SEWER LATERAL SERVICE

David Douglas Associates Inc.
1821 Victoria Avenue • Fort Myers, FL 33901
Ph: (239) 337-3330
Business License No. 7568

2/14/2017

Page 1 of 1

SEWER LATERAL UTILITY CONFLICT MATRIX									
Manhole Number	CROSSING #	STATION	SIDE	EXISTING FACILITY	PROPOSED FACILITY	RECOMMENDATION	Contractor's Plan	Unit Price	
EUCALYPTUS COURT									
37-116	MH1-1	0+51	LT	SERVICE LATERAL	30" SD	ADJUST SEWER LATERAL	Adjust Sewer	\$1,500.00	
	MH1-2	1+38	RT	SERVICE LATERAL	8" WM	DEFLECT/MOVE WM	None	\$0.00	
	MH1-3	1+70	LT	SERVICE LATERAL	30" SD	ADJUST SEWER LATERAL	Adjust Sewer	\$1,500.00	
	MH1-4	2+25	RT	SERVICE LATERAL	8" WM	DEFLECT/MOVE WM	None	\$0.00	
	MH1-5	2+49	LT	SERVICE LATERAL	30" SD	RELOCATE STORM	Adjust Sewer	\$1,500.00	
	MH1-6	3+06	RT	SERVICE LATERAL	8" WM	DEFLECT/MOVE WM	None	\$0.00	
	MH1-7	3+61	LT	SERVICE LATERAL	30" SD	ADJUST SEWER LATERAL	Adjust Sewer	\$1,500.00	
	MH1-8	3+61	RT	SERVICE LATERAL	8" WM	DEFLECT/MOVE WM	None	\$0.00	
37-125	MH3-1	0+08	RT	SERVICE LATERAL	8" WM	DEFLECT/MOVE WM	None	\$0.00	
	MH3-2	0+08	LT	SERVICE LATERAL	30" SD	ADJUST SEWER LATERAL	Adjust Sewer	\$1,500.00	
	MH3-3	0+79	LT	SERVICE LATERAL	30" SD	ADJUST SEWER LATERAL	Adjust Sewer	\$1,500.00	
	MH3-4	0+86	RT	SERVICE LATERAL	8" WM	DEFLECT/MOVE WM	None	\$0.00	
	MH3-5	1+26	RT	SERVICE LATERAL	8" WM	DEFLECT/MOVE WM	None	\$0.00	
	MH3-6	1+85	RT	SERVICE LATERAL	8" WM/EC SD 10/15" SD	RELOCATE STORM/MOVE OR DEFLECT WM	None	\$0.00	
	MH3-7	2+00	LT	SERVICE LATERAL	30" SD	ADJUST SEWER LATERAL	Adjust Sewer	\$1,500.00	
	MH3-8	2+18	LT	SERVICE LATERAL	30" SD	ADJUST SEWER LATERAL	Adjust Sewer	\$1,500.00	
	MH3-9	2+73	LT	SERVICE LATERAL	EC-SD 12	RELOCATE STRUCTURE	Adjust Sewer	\$1,500.00	
	MH3-10	2+86	RT	SERVICE LATERAL	NONE	NONE	None	\$0.00	
NA	CS1-1	158+30	NA	SANITARY SEWER MAIN	30" SD	CONFLICT BOX	CONFLICT BOX	\$23,820.00	

Pay Item #	Description	Unit	Quantity	Unit Cost	Total Cost
1000-10	Sewer Service Adjustment	EA	9	\$1,500.00	\$13,500.00
1000-20	Conflict Structure	EA	2	\$23,820.00	\$47,640.00
1000-30	Adjust Manholes Ring and Cover	EA	3	\$530.00	\$1,590.00
1000-40	Cleanouts	EA	18	\$700.00	\$12,600.00
Total					\$75,330.00

ONE CONFLICT STRUCTURE WAS ADDED AS A CONTINGENCY

SEWER LATERAL UTILITY CONFLICT MATRIX							
Manhole Number	Crossing #	Station	Side	Existing Facility	Proposed Facility	Recommendation	Contractor's Plan
JEFFERSON STREET							
37-142	MH1-1	1+26	RT	SERVICE LATERAL	8" WM	DEFLECT/MOVE WM	None
	MH1-2	1+44	LT	SERVICE LATERAL	30" SD	ADJUST SEWER LATERAL	Adjust Sewer
	MH1-3	1+72	RT	SERVICE LATERAL	8" WM	DEFLECT/MOVE WM	None
	MH1-4	2+15	RT	SERVICE LATERAL	8" WM	DEFLECT/MOVE WM	None
	MH1-5	2+15	LT	SERVICE LATERAL	30" SD	ADJUST SEWER LATERAL	Adjust Sewer
	MH1-6	2+91	LT	SERVICE LATERAL	30" SD	ADJUST SEWER LATERAL	Adjust Sewer
	MH1-7	2+95	RT	SERVICE LATERAL	8" WM	DEFLECT/MOVE WM	None
37-141	MH2-1	0+57	LT	SERVICE LATERAL	30" SD/JS-SD 4/15" SD	RELOCATE STORM FACILITIES	Adjust Sewer
	MH2-2	1+02	RT	SERVICE LATERAL	8" WM	DEFLECT/MOVE WM	None
	MH2-3	1+20	LT	SERVICE LATERAL	30" SD	ADJUST SEWER LATERAL	Adjust Sewer
	MH2-4	1+73	LT	SERVICE LATERAL	30" SD	ADJUST SEWER LATERAL	Adjust Sewer
	MH2-5	1+79	RT	SERVICE LATERAL	8" WM	DEFLECT/MOVE WM	None
	MH2-6	2+37	LT	SERVICE LATERAL	30" SD	ADJUST SEWER LATERAL	Adjust Sewer
	MH2-7	2+71	LT	SERVICE LATERAL	30" SD	ADJUST SEWER LATERAL	Adjust Sewer
37-140	MH3-1	0+10	RT	SERVICE LATERAL	8" WM	DEFLECT/MOVE WM	None
	MH3-2	0+41	LT	SERVICE LATERAL	30" SD	ADJUST SEWER LATERAL	Adjust Sewer
	MH3-3	0+46	RT	SERVICE LATERAL	8" WM	DEFLECT/MOVE WM	None
	MH3-4	0+77	RT	SERVICE LATERAL	8" WM	DEFLECT/MOVE WM	None
	MH3-5	1+03	LT	SERVICE LATERAL	30" SD	ADJUST SEWER LATERAL	Adjust Sewer
	MH3-6	1+54	RT	SERVICE LATERAL	8" WM	DEFLECT/MOVE WM	None
	MH3-7	2+03	LT	SERVICE LATERAL	30" SD	ADJUST SEWER LATERAL	Adjust Sewer
NA	CS2-1	1+59+35	NA	SANITARY SEWER MAIN	30" SD	CONFLICT BOX	Conflict Box
							\$23,820.00

Pay Item #	Description	Unit	Quantity	Unit Cost	Sub Total
1000-10	Sewer Service Adjustment	EA	11	\$1,500.00	\$16,500.00
1000-20	Conflict Structure	EA	2	\$23,820.00	\$47,640.00
1000-30	Adjust Manholes Ring and Cover	EA	3	\$530.00	\$1,590.00
1000-40	Cleanouts	EA	21	\$700.00	\$14,700.00
Total					\$80,430.00

ONE CONFLICT STRUCTURE WAS ADDED AS A CONTINGENCY

SEWER LATERAL UTILITY CONFLICT MATRIX							
Manhole Number	Crossing #	Station	Side	Existing Facility	Proposed Facility	Recommendation	Contractor's Plan
HERCULES DRIVE							
36-102	MH1-1	0+75	LT	SERVICE LATERAL	30" SD	CONFLICT BOX	Adjust Sewer
	MH1-2	1+27	RT	SERVICE LATERAL	8" WM	DEFLECT/MOVE WM	None
	MH1-3	1+40	LT	SERVICE LATERAL	30" SD	ADJUST SEWER LATERAL	Adjust Sewer
	MH1-4	1+93	RT	SERVICE LATERAL	8" WM	DEFLECT/MOVE WM	None
	MH1-5	2+65	RT	SERVICE LATERAL	8" WM	DEFLECT/MOVE WM	None
	MH1-6	2+70	LT	SERVICE LATERAL	30" SD	ADJUST SEWER LATERAL	Adjust Sewer
	MH1-7	3+12	RT	SERVICE LATERAL	8" WM	DEFLECT/MOVE WM	None
36-122	MH2-1	0+19	LT	SERVICE LATERAL	30" SD	ADJUST SEWER LATERAL	Adjust Sewer
	MH2-2	0+46	RT	SERVICE LATERAL	8" WM	DEFLECT/MOVE WM	None
	MH2-3	0+92	LT	SERVICE LATERAL	30" SD/HD-SD 9/15" SD	RELOCATE STORM FACILITIES	Adjust Sewer
	MH2-4	1+49	RT	SERVICE LATERAL	8" WM	DEFLECT/MOVE WM	None
	MH2-5	2+11	RT	SERVICE LATERAL	8" WM/HD-SD 12/15" SD	RELOCATE STORM FACILITIES	None
	MH2-6	2+21	LT	SERVICE LATERAL	30" SD	ADJUST SEWER LATERAL	Adjust Sewer
	MH2-7	2+69	LT	SERVICE LATERAL	30" SD	ADJUST SEWER LATERAL	Adjust Sewer
36-123	MH3-1	0+05	RT	SERVICE LATERAL	8" WM	DEFLECT/MOVE WM	None
	MH3-2	0+76	LT	SERVICE LATERAL	30" SD	ADJUST SEWER LATERAL	Adjust Sewer
	MH3-3	0+87	RT	SERVICE LATERAL	8" WM	DEFLECT/MOVE WM	None
	MH3-4	1+35	LT	SERVICE LATERAL	30" SD	ADJUST SEWER LATERAL	Adjust Sewer
	MH3-5	1+78	RT	SERVICE LATERAL	8" WM	DEFLECT/MOVE WM	None
	MH3-6	1+97	LT	SERVICE LATERAL	HD-SD 17	RELOCATE STORM FACILITIES	Adjust Sewer
	MH3-7	2+85	LT	SERVICE LATERAL	30" SD	ADJUST SEWER LATERAL	Adjust Sewer
	MH3-8	3+33	RT	SERVICE LATERAL	NONE	NONE	None

Pay Item #	Description	Unit	Quantity	Unit Cost	Sub Total
1000-10	Sewer Service Adjustment	EA	11	\$1,500.00	\$16,500.00
1000-20	Conflict Structure	EA	1	\$23,820.00	\$23,820.00
1000-30	Adjust Manholes Ring and Cover	EA	3	\$530.00	\$1,590.00
1000-40	Cleanouts	EA	22	\$700.00	\$15,400.00
Total					\$57,310.00

ONE CONFLICT STRUCTURE WAS ADDED AS A CONTINGENCY

SEWER LATERAL UTILITY CONFLICT MATRIX								
Manhole Number	Crossing #	Station	Side	Existing Facility	Proposed Facility	RECOMMENDATION	Contractor's Plan	Unit Price
BAYVIEW AVENUE								
36-104	MH1-1	0+80	LT	SERVICE LATERAL	30" SD	ADJUST SEWER LATERAL	Adjust Sewer	\$1,500.00
	MH1-2	0+91	RT	SERVICE LATERAL	8" WM	DEFLECT/MOVE WM	None	\$0.00
	MH1-3	1+61	RT	SERVICE LATERAL	8" WM	DEFLECT/MOVE WM	None	\$0.00
	MH1-4	1+96	LT	SERVICE LATERAL	30" SD	ADJUST SEWER LATERAL	Adjust Sewer	\$1,500.00
	MH1-5	3+01	LT	SERVICE LATERAL	30" SD	ADJUST SEWER LATERAL	Adjust Sewer	\$1,500.00
	MH1-6	3+08	RT	SERVICE LATERAL	8" WM	DEFLECT/MOVE WM	None	\$0.00
36-115	MH2-1	0+21	RT	SERVICE LATERAL	8" WM	DEFLECT/MOVE WM	None	\$0.00
	MH2-2	0+27	LT	SERVICE LATERAL	30" SD	ADJUST SEWER LATERAL	Adjust Sewer	\$1,500.00
	MH2-3	1+58	RT	SERVICE LATERAL	8" WM	DEFLECT/MOVE WM	None	\$0.00
	MH2-4	1+88	LT	SERVICE LATERAL	30" SD	ADJUST SEWER LATERAL	Adjust Sewer	\$1,500.00
	MH2-5	2+12	LT	SERVICE LATERAL	30" SD	ADJUST SEWER LATERAL	Adjust Sewer	\$1,500.00
	MH2-6	2+90	RT	SERVICE LATERAL	8" WM	DEFLECT/MOVE WM	None	\$0.00
36-116	MH3-1	0+09	RT	SERVICE LATERAL	8" WM	DEFLECT/MOVE WM	None	\$0.00
	MH3-2	0+47	LT	SERVICE LATERAL	30" SD	ADJUST SEWER LATERAL	Adjust Sewer	\$1,500.00
	MH3-3	0+53	RT	SERVICE LATERAL	8" WM	DEFLECT/MOVE WM	None	\$0.00
	MH3-4	1+66	RT	SERVICE LATERAL	8" WM	DEFLECT/MOVE WM	None	\$0.00
	MH3-5	1+66	LT	SERVICE LATERAL	30" SD	ADJUST SEWER LATERAL	Adjust Sewer	\$1,500.00
	MH3-6	2+40	LT	SERVICE LATERAL	30" SD	ADJUST SEWER LATERAL	Adjust Sewer	\$1,500.00
	MH3-7	2+56	RT	SERVICE LATERAL	8" WM	NONE	None	\$0.00

Pay Item #	Description	Unit	Quantity	Unit Cost	Total Cost
1000-10	Sewer Service Adjustment	EA	9	\$1,500.00	\$13,500.00
1000-20	Conflict Structure	EA	1	\$23,820.00	\$23,820.00
1000-30	Adjust Manholes Ring and Cover	EA	3	\$530.00	\$1,590.00
1000-40	Cleanouts	EA	19	\$700.00	\$13,300.00
Total					\$52,210.00

ONE CONFLICT STRUCTURE WAS ADDED AS A CONTINGENCY

SEWER LATERAL UTILITY CONFLICT MATRIX								
Manhole Number	CROSSING #	STATION	SIDE	EXISTING FACILITY	PROPOSED FACILITY	RECOMMENDATION	Contractor's Plan	Unit Price
CONNECTICUT STREET**								
37-134	MH1-1		O LT	SERVICE LATERAL	30" SD	ADJUST SEWER LATERAL	Adjust Sewer	\$1,500.00
	MH1-2		O RT	SERVICE LATERAL	8" WM	DEFLECT/MOVE WM	None	\$0.00
	MH1-3		O LT	SERVICE LATERAL	30" SD	ADJUST SEWER LATERAL	Adjust Sewer	\$1,500.00
	MH1-4		O RT	SERVICE LATERAL	8" WM	DEFLECT/MOVE WM	None	\$0.00
	MH1-5		O LT	SERVICE LATERAL	30" SD	ADJUST SEWER LATERAL	Adjust Sewer	\$1,500.00
	MH1-6		O RT	SERVICE LATERAL	8" WM	DEFLECT/MOVE WM	None	\$0.00
37-133	MH2-1		O LT	SERVICE LATERAL	30" SD	ADJUST SEWER LATERAL	Adjust Sewer	\$1,500.00
	MH2-2		O LT	SERVICE LATERAL	30" SD	ADJUST SEWER LATERAL	Adjust Sewer	\$1,500.00
	MH2-3		O RT	SERVICE LATERAL	8" WM	DEFLECT/MOVE WM	None	\$0.00
	MH2-4		O LT	SERVICE LATERAL	30" SD	ADJUST SEWER LATERAL	Adjust Sewer	\$1,500.00
	MH2-5		O RT	SERVICE LATERAL	8" WM	DEFLECT/MOVE WM	None	\$0.00
	MH2-6		O LT	SERVICE LATERAL	30" SD	ADJUST SEWER LATERAL	Adjust Sewer	\$1,500.00
37-132	MH3-1		O LT	SERVICE LATERAL	30" SD	ADJUST SEWER LATERAL	Adjust Sewer	\$1,500.00
	MH3-2		O RT	SERVICE LATERAL	8" WM	DEFLECT/MOVE WM	None	\$0.00
	MH3-3		O RT	SERVICE LATERAL	8" WM	DEFLECT/MOVE WM	None	\$0.00
	MH3-4		O LT	SERVICE LATERAL	30" SD	ADJUST SEWER LATERAL	Adjust Sewer	\$1,500.00
	MH3-5		O RT	SERVICE LATERAL	8" WM	DEFLECT/MOVE WM	None	\$0.00
	MH3-6		O RT	SERVICE LATERAL	8" WM	DEFLECT/MOVE WM	None	\$0.00
NA	CS3-1	TBD	NA	SANITARY SEWER MAIN	30" SD	CONFLICT BOX	Conflict Box	\$23,820.00

Pay Item #	Description	Unit	Quantity	Unit Cost	Total Cost
1000-10	Sewer Service Adjustment	EA	9	\$1,500.00	\$13,500.00
1000-20	Conflict Structure	EA	2	\$23,820.00	\$47,640.00
1000-30	Adjust Manholes Ring and Cover	EA	6	\$530.00	\$3,180.00
1000-40	Cleanouts	EA	18	\$700.00	\$12,600.00
Total					\$76,920.00

ONE CONFLICT STRUCTURE WAS ADDED AS A CONTINGENCY

IT WAS ASSUMED THE STORMWATER SYSTEM EXTENDS FROM ESTERO BLVD. TO SHELL MOUND AVE. NO SEWER LATERALS WERE ASSUMED TO CONFLICT PAST SHELL MOUND AVE.

STORMWATER SYSTEM WAS ASSUMED TO RUN ON THE LEFT SIDE OF THE ALIGNMENT OF THE STREET.

SEWER LATERAL UTILITY CONFLICT MATRIX								
Manhole Number	CROSSING #	STATION	SIDE	EXISTING FACILITY	PROPOSED FACILITY	RECOMMENDATION	Contractor's Plan	Unit Price
BAYMAR DRIVE**								
36-141	MH1-1	0 LT		SERVICE LATERAL	30" SD	ADJUST SEWER LATERAL	Adjust Sewer	\$1,500.00
	MH1-2	0 RT		SERVICE LATERAL	8" WM	DEFLECT/MOVE WM	None	\$0.00
	MH1-3	0 RT		SERVICE LATERAL	8" WM	DEFLECT/MOVE WM	None	\$0.00
	MH1-4	0 LT		SERVICE LATERAL	30" SD	ADJUST SEWER LATERAL	Adjust Sewer	\$1,500.00
	MH1-5	0 RT		SERVICE LATERAL	8" WM	DEFLECT/MOVE WM	None	\$0.00
	MH1-6	0 LT		SERVICE LATERAL	30" SD	ADJUST SEWER LATERAL	Adjust Sewer	\$1,500.00
	MH1-7	0 RT		SERVICE LATERAL	8" WM	DEFLECT/MOVE WM	None	\$0.00
	MH1-8	0 LT		SERVICE LATERAL	30" SD	ADJUST SEWER LATERAL	Adjust Sewer	\$1,500.00
	MH1-9	0 RT		SERVICE LATERAL	8" WM	DEFLECT/MOVE WM	None	\$0.00
	MH2-1	0 LT		SERVICE LATERAL	30" SD	ADJUST SEWER LATERAL	Adjust Sewer	\$1,500.00
36-146	MH2-2	0 RT		SERVICE LATERAL	8" WM	DEFLECT/MOVE WM	None	\$0.00
	MH2-3	0 LT		SERVICE LATERAL	30" SD	ADJUST SEWER LATERAL	Adjust Sewer	\$1,500.00
	MH2-4	0 RT		SERVICE LATERAL	8" WM	DEFLECT/MOVE WM	None	\$0.00
	MH2-5	0 LT		SERVICE LATERAL	30" SD	ADJUST SEWER LATERAL	Adjust Sewer	\$1,500.00
	MH2-6	0 RT		SERVICE LATERAL	8" WM	DEFLECT/MOVE WM	None	\$0.00
	MH2-7	0 LT		SERVICE LATERAL	30" SD	ADJUST SEWER LATERAL	Adjust Sewer	\$1,500.00
	MH2-8	0 RT		SERVICE LATERAL	8" WM	DEFLECT/MOVE WM	None	\$0.00
	MH2-9	0 LT		SERVICE LATERAL	30" SD	ADJUST SEWER LATERAL	Adjust Sewer	\$1,500.00
	MH3-1	0 RT		SERVICE LATERAL	8" WM	DEFLECT/MOVE WM	None	\$0.00
	MH3-2	0 LT		SERVICE LATERAL	30" SD	ADJUST SEWER LATERAL	Adjust Sewer	\$1,500.00
36-147	MH3-3	0 RT		SERVICE LATERAL	8" WM	DEFLECT/MOVE WM	None	\$0.00
	MH3-4	0 LT		SERVICE LATERAL	30" SD	ADJUST SEWER LATERAL	Adjust Sewer	\$1,500.00
	MH3-5	0 LT		SERVICE LATERAL	30" SD	ADJUST SEWER LATERAL	Adjust Sewer	\$1,500.00
	MH3-6	0 RT		SERVICE LATERAL	8" WM	DEFLECT/MOVE WM	None	\$0.00
	MH3-7	0 RT		SERVICE LATERAL	8" WM	DEFLECT/MOVE WM	None	\$0.00
	MH3-8	0 LT		SERVICE LATERAL	30" SD	ADJUST SEWER LATERAL	Adjust Sewer	\$1,500.00
	MH3-9	0 LT		SERVICE LATERAL	30" SD	ADJUST SEWER LATERAL	Adjust Sewer	\$1,500.00
	MH3-10	0 RT		SERVICE LATERAL	8" WM	DEFLECT/MOVE WM	None	\$0.00

Pay Item #	Description	Unit	Quantity	Unit Cost	Sub Total
1000-10	Sewer Service Adjustment	EA	14	\$1,500.00	\$21,000.00
1000-20	Conflict Structure	EA	1	\$23,820.00	\$23,820.00
1000-30	Adjust Manholes Ring and Cover	EA	3	\$530.00	\$1,590.00
1000-40	Cleanouts	EA	28	\$700.00	\$19,600.00
Total					\$66,010.00

ONE CONFLICT STRUCTURE WAS ADDED AS A CONTINGENCY
STORMWATER SYSTEM WAS ASSUMED TO RUN ON THE LEFT SIDE OF THE ALIGNMENT OF THE STREET.

SEWER LATERAL UTILITY CONFLICT MATRIX								
Manhole Number	CROSSING #	STATION	SIDE	EXISTING FACILITY	PROPOSED FACILITY	RECOMMENDATION	Contractor's Plan	Unit Price
DONORA BOULEVARD. **								
NA	CS4-1	TBD	NA	SANITARY SEWER MAIN	30" SD	CONFLICT BOX	Conflict Box	\$23,820.00
	MH1-1	0	RT	SERVICE LATERAL	8" WM	DEFLECT/MOVE WM	None	\$0.00
	MH1-2	0	LT	SERVICE LATERAL	30" SD	ADJUST SEWER LATERAL	Adjust Sewer	\$1,500.00
	MH1-3	0	RT	SERVICE LATERAL	8" WM	DEFLECT/MOVE WM	None	\$0.00
	MH1-4	0	LT	SERVICE LATERAL	30" SD	ADJUST SEWER LATERAL	Adjust Sewer	\$1,500.00
37-110	MH2-1	0	LT	SERVICE LATERAL	30" SD	ADJUST SEWER LATERAL	Adjust Sewer	\$1,500.00
37-101	MH3-1	0	RT	SERVICE LATERAL	8" WM	DEFLECT/MOVE WM	None	\$0.00
	MH3-2	0	LT	SERVICE LATERAL	30" SD	ADJUST SEWER LATERAL	Adjust Sewer	\$1,500.00
	MH3-3	0	RT	SERVICE LATERAL	8" WM	DEFLECT/MOVE WM	None	\$0.00
	MH3-4	0	LT	SERVICE LATERAL	30" SD	ADJUST SEWER LATERAL	Adjust Sewer	\$1,500.00
	MH3-5	0	RT	SERVICE LATERAL	8" WM	DEFLECT/MOVE WM	None	\$0.00
	MH3-6	0	LT	SERVICE LATERAL	30" SD	ADJUST SEWER LATERAL	Adjust Sewer	\$1,500.00
	MH3-7	0	RT	SERVICE LATERAL	8" WM	DEFLECT/MOVE WM	None	\$0.00
	MH3-8	0	LT	SERVICE LATERAL	30" SD	ADJUST SEWER LATERAL	Adjust Sewer	\$1,500.00
	MH4-1	0	LT	SERVICE LATERAL	30" SD	ADJUST SEWER LATERAL	Adjust Sewer	\$1,500.00
	MH4-2	0	RT	SERVICE LATERAL	8" WM	DEFLECT/MOVE WM	None	\$0.00
	MH4-3	0	LT	SERVICE LATERAL	30" SD	ADJUST SEWER LATERAL	Adjust Sewer	\$1,500.00
	MH4-4	0	RT	SERVICE LATERAL	8" WM	DEFLECT/MOVE WM	None	\$0.00
	MH4-5	0	LT	SERVICE LATERAL	30" SD	ADJUST SEWER LATERAL	Adjust Sewer	\$1,500.00
	MH4-6	0	RT	SERVICE LATERAL	8" WM	DEFLECT/MOVE WM	None	\$0.00
	MH4-7	0	RT	SERVICE LATERAL	8" WM	DEFLECT/MOVE WM	None	\$0.00
	MH4-8	0	LT	SERVICE LATERAL	30" SD	ADJUST SEWER LATERAL	Adjust Sewer	\$1,500.00

Pay Item #	Description	Unit	Quantity	Unit Cost	Sub Total
1000-10	Sewer Service Adjustment	EA	27	\$1,500.00	\$40,500.00
1000-20	Conflict Structure	EA	2	\$23,820.00	\$47,640.00
1000-30	Adjust Manholes Ring and Cover	EA	9	\$530.00	\$4,770.00
1000-40	Cleanouts	EA	24	\$700.00	\$14,700.00
Total					\$107,610.00

ONE CONFLICT STRUCTURE WAS ADDED AS A CONTINGENCY

STORMWATER SYSTEM WAS ASSUMED TO RUN ON THE LEFT SIDE OF THE ALIGNMENT OF THE STREET.

AS-BUILT PROVIDED WERE NOT COMPLETE FOR DONORA BLVD, A SERVICE WAS ASSUMED FOR EACH HOUSE WHERE AS-BUILT WAS UNAVAILABLE.

FOURTH AMENDMENT
INTERLOCAL AGREEMENT BETWEEN LEE COUNTY AND THE TOWN OF
FORT MYERS BEACH FOR A UTILITY RELOCATION PROJECT WITHIN THE CORPORATE
LIMITS OF THE TOWN OF FORT MYERS BEACH

THIS FOURTH AMENDMENT TO THE INTERLOCAL AGREEMENT BETWEEN LEE COUNTY AND THE TOWN OF FORT MYERS BEACH (Fourth Amendment) is entered into on this 15th day of April 2019, by and between LEE COUNTY, FLORIDA, a charter county and political subdivision of the State of Florida, (hereinafter called "County"), and the TOWN OF FORT MYERS BEACH, a Florida municipal corporation, acting by and through its Town Council (hereinafter called "Town").

WITNESSETH:

WHEREAS, on December 17, 2013, the County and the Town entered into that certain INTERLOCAL AGREEMENT BETWEEN LEE COUNTY AND THE TOWN OF FORT MYERS BEACH FOR A UTILITY RELOCATION PROJECT WITHIN THE CORPORATE LIMITS OF THE TOWN OF FORT MYERS BEACH relating to certain underground utility improvements proposed by the Town and the County in the same affected areas within the corporate limits of the Town (hereinafter the "Agreement"); and

WHEREAS, the County and the Town entered into the Agreement in order to work jointly pursuant to a design-build contract to construct the improvements; and

WHEREAS, the County agrees to fund the associated cost of adjustment of wastewater lines due to conflicts created by the anticipated North Estero Blvd. Sides Street Phase III Water Main and Storm improvements for Madera Road, Glenview Manor, Williams Drive, Dakota Avenue, Lazy Way, Easy Street, Aberdeen Avenue, Mound Road, Driftwood Lane, Lewis Street, Dundee Road, Palmetto Street, and Lauder Street; and

WHEREAS, the construction cost associated with the wastewater lines adjustments would be reimbursed in accordance with a schedule of values to be included as "Estero Blvd. Sides Street WM and Storm Improvements Phase III - Sanitary Sewer Adjustments Cost Opinion" to the Agreement and would be incorporated into the Agreement through the approval and execution of an Amendment to the Agreement; and

WHEREAS, the "Estero Blvd. Sides Street WM and Storm Improvements Phase III - Sanitary Sewer Adjustments Cost Opinion" which is attached to this Fourth Amendment is intended to comply with the requirements of the Agreement and amends that Agreement by establishing the County's construction cost associated with the wastewater lines adjustments for Phase Three of Three, that are reimbursable to the Town in the lump sum amount of \$336,038.20.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants, conditions and obligations herein contained, the parties agree as follows:

SECTION I. INCORPORATION OF RECITALS

The Recitals as set forth above are incorporated herein.

SECTION II. AMENDMENT

The Agreement is hereby amended as follows:

1. The County agrees to fund the associated cost of installation of wastewater lines adjustments due to conflicts created by the anticipated North Estero Blvd. Sides Street Phase III Water Main and Storm improvements for Madera Road, Glenview Manor, Williams Drive, Dakota Avenue, Lazy Way, Easy Street, Aberdeen Avenue, Mound Road, Driftwood Lane, Lewis Street, Dundee Road, Palmetto Street, and Lauder Street, areas which the County deems improvement necessary and will only be responsible for the expense of wastewater improvements within those areas that are reimbursable to the Town in the lump sum amount of \$336,038.20.
2. All other provisions of the Agreement shall remain unchanged.

SECTION III. EFFECTIVE DATE

This Fourth Amendment shall be effective on the last date that it is signed by the Chair or Vice-chair of the Board of County Commissioners of the County of the Mayor or Vice Mayor of the Town.

IN WITNESS WHEREOF, the parties hereunto have executed this Fourth Amendment to the Agreement on the dates specified below.

ATTEST: LINDA DOGGETT
CLERK OF THE COURTS

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY FLORIDA

By: *Theresa King*
Deputy Clerk

Date: 12/13/19



By: *Brian Hamman*

Brian Hamman, Chair

ATTEST: TOWN OF FORT MYERS BEACH

By: *Michael Maher*
Clerk, Town of Fort Myers Beach

Date: 4-18-19

By: *Anita Cereceda*
Anita Cereceda, Mayor

Date: 4/16/19

Approved as to Form for the
Reliance of Lee County Only

Clemens
Office of the County Attorney

APPROVED AS TO FORM:

By: *[Signature]*
Town Attorney

FIFTH AMENDMENT

INTERLOCAL AGREEMENT BETWEEN LEE COUNTY AND THE TOWN OF
FORT MYERS BEACH FOR A UTILITY RELOCATION PROJECT WITHIN THE CORPORATE
LIMITS OF THE TOWN OF FORT MYERS BEACH

THIS FIFTH AMENDMENT TO THE INTERLOCAL AGREEMENT BETWEEN LEE COUNTY AND THE TOWN OF FORT MYERS BEACH (Fifth Amendment) is entered into on this 4th day of May 2020, by and between LEE COUNTY, FLORIDA, a charter county and political subdivision of the State of Florida, (hereinafter called "County"), and the TOWN OF FORT MYERS BEACH, a Florida municipal corporation, acting by and through its Town Council (hereinafter called "Town").

WITNESSETH:

WHEREAS, on December 17, 2013, the County and the Town entered into that certain INTERLOCAL AGREEMENT BETWEEN LEE COUNTY AND THE TOWN OF FORT MYERS BEACH FOR A UTILITY RELOCATION PROJECT WITHIN THE CORPORATE LIMITS OF THE TOWN OF FORT MYERS BEACH relating to certain underground utility improvements proposed by the Town and the County in the same affected areas within the corporate limits of the Town (hereinafter the "Agreement"); and

WHEREAS, the County and the Town entered into the Agreement in order to work jointly pursuant to a design-build contract to construct the improvements; and

WHEREAS, the County agrees to fund the associated cost of adjustment of wastewater lines due to conflicts created by the anticipated North Estero Blvd. Sides Street Phase IV Water Main and Storm improvements for Lagoon Road, Redfish Road, Tarpon Road, and Lenell Road; and

WHEREAS, the construction cost associated with the wastewater lines adjustments would be reimbursed in accordance with a schedule of values to be included as "Estero Blvd. Sides Street WM and Storm Improvements Phase IV - Sanitary Sewer Adjustments Cost Opinion" to the Agreement and would be incorporated into the Agreement through the approval and execution of an Amendment to the Agreement; and

WHEREAS, the "Estero Blvd. Sides Street WM and Storm Improvements Phase IV - Sanitary Sewer Adjustments Cost Opinion" which is attached to this Fifth Amendment is intended to comply with the requirements of the Agreement and amends that Agreement by establishing the County's construction cost associated with the wastewater lines adjustments for Phase Four of Four, that are reimbursable to the Town in the not to exceed amount of \$223,494.50.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants, conditions and obligations herein contained, the parties agree as follows:

SECTION I. INCORPORATION OF RECITALS

C19
06/06/20R

The Recitals as set forth above are incorporated into this Fifth Amendment as if set out herein at length.

SECTION II. AMENDMENT

The Agreement is hereby amended as follows:

1. The County agrees to fund the associated cost of installation of wastewater line adjustments due to conflicts created by the anticipated North Estero Blvd. Sides Street Phase IV Water Main and Storm improvements for Lagoon Road, Redfish Road, Tarpon Road, and Lenell Road areas in which the County deems improvement necessary. The County will only be responsible for the expense of wastewater improvements that are reimbursable to the Town within those areas in the not to exceed amount of \$223,494.50.

2. All other provisions of the Agreement shall remain unchanged.

SECTION III. EFFECTIVE DATE

This Fifth Amendment shall be effective on the last date that it is signed by the Chair or Vice-chair of the Board of County Commissioners of the County of the Mayor or Vice Mayor of the Town.

IN WITNESS WHEREOF, the parties hereunto have executed this Fifth Amendment to the Agreement on the dates specified below.

ATTEST: LINDA DOGGETT
CLERK OF THE COURTS

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY FLORIDA

By: Joyce Townsend
Deputy Clerk

By: Brian Hamman
Brian Hamman, Chair

Date: June 16, 2020

ATTEST: TOWN OF FORT MYERS BEACH

By: Michelle Mayher
Michelle Mayher, Clerk, Town of Fort Myers Beach

APPROVED AS TO FORM
By: Chamonde L. H.
Office of the County Attorney

Date: May 11, 2020

By: Raymond P. Murphy
Raymond P. Murphy, Mayor

APPROVED AS TO FORM:

Date: 5/8/2020

By: [Signature]
Town Attorney

Lee County Utilities
Estero Blvd. - Side Streets Drainage Outfall Seg. 5 and 6
Cost Opinion

DDAI No. 15-0094

Sanitary Sewer Adjustments					
Pay Item	Description	Unit	Qty	Unit Cost	Total Cost
LAGOON ROAD					
1000-10	Sewer Service Adjustment	EA	28	\$1,920.00	\$53,760.00
1000-20	Conflict Structure	EA	3	\$17,689.70	\$53,069.10
1000-30	Adjust Manholes Ring and Cover	EA	7	\$530.00	\$3,710.00
1000-40	Cleanouts	EA	28	\$340.00	\$9,520.00
TOTAL:					\$120,059.10
REDFISH ROAD					
1000-10	Sewer Service Adjustment	EA	5	\$1,920.00	\$9,600.00
1000-20	Conflict Structure	EA	0	\$17,689.70	\$0.00
1000-30	Adjust Manholes Ring and Cover	EA	3	\$530.00	\$1,590.00
1000-40	Cleanouts	EA	5	\$340.00	\$1,700.00
TOTAL:					\$12,890.00
TARPON ROAD					
1000-10	Sewer Service Adjustment	EA	4	\$1,920.00	\$7,680.00
1000-20	Conflict Structure	EA	1	\$17,689.70	\$17,689.70
1000-30	Adjust Manholes Ring and Cover	EA	4	\$530.00	\$2,120.00
1000-40	Cleanouts	EA	4	\$340.00	\$1,360.00
TOTAL:					\$28,849.70
LENELL ROAD					
1000-10	Sewer Service Adjustment	EA	3	\$1,920.00	\$5,760.00
1000-20	Conflict Structure	EA	1	\$17,689.70	\$17,689.70
1000-30	Adjust Manholes Ring and Cover	EA	3	\$530.00	\$1,590.00
1000-40	Cleanouts	EA	3	\$340.00	\$1,020.00
1000-50	4" Force Main (FM) (Est. 640 LF)	EA	1	\$35,636.00	\$35,636.00
TOTAL:					\$61,695.70
ADDITIONAL/CONTINGENCY ITEMS					
1000-10	Sewer Service Adjustment	EA	0	\$1,920.00	\$0.00
1000-20	Conflict Structure	EA	0	\$17,689.70	\$0.00
1000-30	Adjust Manholes	EA	0	\$530.00	\$0.00
1000-40	Cleanouts	EA	0	\$340.00	\$0.00
TOTAL:					\$0.00
TOTAL COST					\$223,494.50

1. THE COST OPINION IS BASED ON TETRA TECH SIDE STREET PLANS (DATED JULY 2019) CROSS REFERENCED WITH THE LCU ASBUILTS AND GOOGLE EARTH FOR UPDATED PARCEL INFO.
2. TETRA TECH PLANS ARE MISSING ELEVATION DATA FOR EXISTING SANITARY SEWER STRUCTURES SO NOT ALL CONFLICTS COULD BE VERIFIED/LOCATED.
3. THE COST OPINION DOES NOT INCLUDE MOT, MOBILIZATION, EROSION CONTROL OR RESTORATION COST.
4. ITEM PRICES ARE BASED ON MITCHELL& STARK PRICES TO THE TOWN OF FORT MYERS BEACH AND 4-INCH FM DIRECTIONAL BORE ESTIMATE FOR LENELL.
5. SEWER SERVICE ADJUSTMENTS ARE COUNTED AT EACH PROPOSED STORM SEWER CROSSING.

David Douglas Associates Inc.
1821 Victoria Avenue • Fort Myers, FL 33901
Ph: (239) 337-3330
Business License No. 7568

2/17/2020

Page 1 of 1

SIXTH AMENDMENT
INTERLOCAL AGREEMENT BETWEEN LEE COUNTY AND THE TOWN OF
FORT MYERS BEACH FOR A UTILITY RELOCATION PROJECT WITHIN THE CORPORATE
LIMITS OF THE TOWN OF FORT MYERS BEACH

THIS SIXTH AMENDMENT TO THE INTERLOCAL AGREEMENT BETWEEN LEE COUNTY AND THE TOWN OF FORT MYERS BEACH (Sixth Amendment) is entered into on this 3 day of May 2021, by and between LEE COUNTY, FLORIDA, a charter county and political subdivision of the State of Florida, (hereinafter called "County"), and the TOWN OF FORT MYERS BEACH, a Florida municipal corporation, acting by and through its Town Council (hereinafter called "Town").

WITNESSETH:

WHEREAS, on December 17, 2013, the County and the Town entered into that certain INTERLOCAL AGREEMENT BETWEEN LEE COUNTY AND THE TOWN OF FORT MYERS BEACH FOR A UTILITY RELOCATION PROJECT WITHIN THE CORPORATE LIMITS OF THE TOWN OF FORT MYERS BEACH relating to certain underground utility improvements proposed by the Town and the County in the same affected areas within the corporate limits of the Town (hereinafter the "Agreement"); and

WHEREAS, the County and the Town entered into the Agreement in order to work jointly pursuant to a design-build contract to construct the improvements; and

WHEREAS, the County agrees to fund the associated cost of adjustment of wastewater lines due to conflicts created by the anticipated North Estero Blvd. Phase 2 Side Streets Water Main and Storm Improvements for Matanzas Street, Matanzas Court, Carlos Circle, Lagoon Street, Primo Drive, Palermo Circle, Santos Road, Fifth Street, First Street, Harbor Court, Bonita Street, Second Street, Third Street, Crescent Street; and the Tier 1 Side Streets Water and Storm Improvements for Shellmound, Boulevard, Madison Court, Andre Mar Drive, Mandalay Road, Coconut Drive, Gulfview Avenue, Bayland Road, Williams Drive, Estrellita Drive, and Fairview Boulevard; and

WHEREAS, the construction cost associated with the wastewater lines adjustments would be reimbursed in accordance with a schedule of values to be included as "Town of Fort Myers Beach Water and Stormwater Improvements Sanitary Sewer Adjustments Cost Opinion" to the Agreement and would be incorporated into the Agreement through the approval and execution of an Amendment to the Agreement; and

WHEREAS, the "Town of Fort Myers Beach Water and Stormwater Improvements Sanitary Sewer Adjustments Cost Opinion" which is attached to this Sixth Amendment is intended to comply with the requirements of the Agreement and amends that Agreement by establishing the County's construction cost associated with the wastewater lines adjustments, that are reimbursable to the Town in the not to exceed amount of \$701,305.00.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants, conditions and obligations herein contained, the parties agree as follows:

SECTION I. INCORPORATION OF RECITALS

The Recitals as set forth above are incorporated into this Sixth Amendment as if set out herein at length.

SECTION II. AMENDMENT

The Agreement is hereby amended as follows:

1. The County agrees to fund the associated cost of installation of wastewater line adjustments due to conflicts created by the anticipated North Estero Blvd. Phase 2 Side Streets Water Main and Storm Improvements for Matanzas Street, Matanzas Court, Carlos Circle, Lagoon Street, Primo Drive, Palermo Circle, Santos Road, Fifth Street, First Street, Harbor Court, Bonita Street, Second Street, Third Street, Crescent Street; and the Tier 1 Side Streets Water and Storm Improvements for Shellmound, Boulevard, Madison Court, Andre Mar Drive, Mandalay Road, Coconut Drive, Gulfview Avenue, Bayland Road, Williams Drive, Estrellita Drive, and Fairview Boulevard areas in which the County deems improvement necessary. The County will only be responsible for the expense of wastewater improvements that are reimbursable to the Town within those areas in the not to exceed amount of \$701,305.00.
2. All other provisions of the Agreement shall remain unchanged.

SECTION III. EFFECTIVE DATE

This Sixth Amendment shall be effective on the last date that it is signed by the Chair or Vice-chair of the Board of County Commissioners of the County of the Mayor or Vice Mayor of the Town.

IN WITNESS WHEREOF, the parties hereunto have executed this Sixth Amendment to the Agreement on the dates specified below.

ATTEST: LINDA DOGGETT
CLERK OF THE COURTS

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY FLORIDA

By: _____
Deputy Clerk

By: _____
Kevin Ruane, Chair

Date: _____

ATTEST: TOWN OF FORT MYERS BEACH

APPROVED AS TO FORM:

By: *Amy Bale*
Clerk, Town of Fort Myers Beach

By: _____
Office of the County Attorney

Date: *May 6, 2021*

By: *Raymond P. Murphy*
Raymond P. Murphy, Mayor

APPROVED AS TO FORM:

Date: *May 6, 2021*

By: *[Signature]*
Town Attorney

1. **Request:**

Yearly review of Town Manager.

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

COUNCILMEMBERS ITEMS AND
REPORTS

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

Talissa Oliveira, HR Manager

5. **Background:**

Per Resolution No. 23-36, The Town Council shall meet to review and evaluate the performance of the Town Manager annually.

Attachments:

1. Town Manager Performance Evaluation 2024

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

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

Created/Initiated - 4/25/2024
Approved - 4/26/2024
Approved - 4/29/2024
Final Approval - 4/30/2024

Town Manager Performance Evaluation					
Elected Official Scores					
Town Manager Performance Category	Dan Allers, Mayor	Jim Atterholt, Vice Mayor	John King, Council Member	Karen Woodson, Council Member	Scott Safford, Council Member
Individual Characteristics	4.8	5	5	5	5
Professional Skills & Status	4.8	5	5	5	5
Elected Officials Relations	5	5	5	5	5
Policy Execution	4.4	4.6	5	5	4.4
Reporting	4.6	4.8	5	5	5
Citizen Relations	4.8	5	5	5	4.8
Staffing	5	5	5	5	4.8
Supervision	5	5	5	4.6	5
Fiscal Management	5	5	5	5	5
Community	4.8	5	5	5	5
Ovaerall Score (Average):	4.82	4.94	5	4.96	4.9