



Fort Myers Beach Town Council

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

Amended Agenda

Monday, May 20, 2024

9:00 AM

ORDER OF BUSINESS

- I. CALL TO ORDER
- II. INVOCATION
- III. PLEDGE OF ALLEGIANCE
- IV. APPROVAL OF FINAL AGENDA
- V. PUBLIC COMMENT
- VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS
- VII. ADVISORY COMMITTEES ITEMS / REPORTS / APPOINTMENTS
- VIII. APPROVAL OF MINUTES
 - A. Draft Strategic Planning Session minutes - April 30, 2024
 - B. Draft Town Council minutes - May 6, 2024
 - C. Draft Management & Planning Session minutes - May 8, 2024
- IX. CONSENT AGENDA
 - A. Resolution 24-95; Florida Division of Historical Resources Grant
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AUTHORIZING THE TOWN MANAGER OR DESIGNEE TO APPLY FOR, EXECUTE UPON AWARD, AND ADMINISTER A GRANT FROM THE FLORIDA DIVISION OF HISTORICAL RESOURCES FOR FUNDS IN THE AMOUNT \$180,000 FOR REPLACEMENT OF COMPONENTS LOST DURING HURRICANE IAN; AUTHORIZING THE TOWN MANAGER OR DESIGNEE TO EXECUTE RELATED DOCUMENTS; AND PROVIDING AN EFFECTIVE DATE.
 - B. Rescheduling of Ordinance 24-13; Unsafe Structures
Due to advertising timelines, the second reading and final public hearing for 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. will need to be rescheduled to a date certain of Monday, June 3, 2024 at 9:00 AM.

X. ITEMS REMOVED FROM CONSENT AGENDA

XI. PUBLIC HEARINGS

A. Resolution 24-99; DCI20230197, 841 Estero Blvd

1st Reading and Public Hearing on proposed Ordinance 24-14 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING THE COMMERCIAL PLANNED DEVELOPMENT (CPD) ZONING FOR THE PROPERTY LOCATED AT 841 ESTERO BLVD. GENERALLY IDENTIFIED AS STRAP NUMBERS 24-46-23-W3-0050B.0010 FORT MYERS BEACH; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER’S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE. Open the first public hearing and schedule for second reading and final adoption on May 17, 2024 at 9:00 AM

B. Resolution 24-96; VAR20240084 6140 Court St

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING VARIANCE VAR20240084, REQUESTING A VARIANCE FROM LDC 34-1174(b). TO ALLOW A PICKLEBALL COURT, CLOSER TO STREET THAN THE PRINCIPAL BUILDING IN THE RS ZONING DISTRICT, FOR THE PROPERTY LOCATED AT 6140 COURT STREET; PROVIDING FOR CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER’S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

C. Resolution 24-97; SEZ20240069, 830 Estero Blvd

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING / APPROVING WITH CONDITIONS / DENYING SPECIAL EXCEPTION SEZ20240069 TO ALLOW FOR THE REPLACEMENT/REPAIR OF A SUN DECK, POOL PATIO, RETAINING WALL, AND FENCE IN THE ENVIRONMENTALLY CRITICAL (EC) ZONING DISTRICT, FOR THE PROPERTY LOCATED AT 830 ESTERO BOULEVARD; PROVIDING FOR SCRIVENER’S ERRORS, SEVERABILITY, AND AN EFFECTIVE DATE.

- D. Resolution 24-98; VAR20240088, 614 Estero Blvd

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING VAR20240088, A REQUEST FOR TWO VARIANCES FROM LDC TABLE 34-3 TO DECREASE REQUIRED STREET SETBACK BY 17 FEET 6 INCHES FROM THE REQUIRED 25 FEET, AND TO REDUCE THE REAR SETBACK BY 12 FEET 1 INCH FROM THE REQUIRED 20 FEET, IN THE RM ZONING DISTRICT, FOR THE PROPERTY LOCATED AT 614 ESTERO BLVD; AND PROVIDING FOR AN EFFECTIVE DATE

XII. ADMINISTRATIVE AGENDA

- A. Bid Protest Hearing, ITB-24-03-EN Estero Island Beach Nourishment and Hurricane Recovery Project

***documents added Resolve the Bid Protest for the Estero Island Beach Nourishment and Hurricane Recovery Project ITB-24-03-EN received from Callan Marine, Ltd**

- B. Resolution 24-99; ITB-24-03-EN Beach Nourishment Ahtna

***documents added A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS, FLORIDA, APPROVING AN AGREEMENT BETWEEN THE TOWN OF FORT MYERS BEACH AND AHTNA MARINE AND CONSTRUCTION, LLC TO COMPLETE THE ESTERO ISLAND BEACH NOURISHMENT AND HURRICANE RECOVERY PROJECT; AUTHORIZING THE TOWN MANAGER TO EXECUTE AN AGREEMENT AND EXPEND BUDGETED FUNDS ON BEHALF OF THE TOWN; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, AND AN EFFECTIVE DATE.**

XIII. FINAL PUBLIC COMMENT

XIV. TOWN MANAGER'S ITEMS

XV. TOWN ATTORNEY'S ITEMS

XVI. COUNCILMEMBERS ITEMS AND REPORTS

XVII. ADJOURNMENT

NOTE: THIS MEETING IS STREAMED LIVE ON FACEBOOK AND YOUTUBE.

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



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. 239-765-0202



Fort Myers Beach Town Council

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

Minutes

Monday, April 29, 2024

9:00 AM

ORDER OF BUSINESS

DRAFT

I. WELCOME AND INTRODUCTIONS (9:00 AM)

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

Town Manager Andy Hyatt talking about having a strategic plan. He explained that a strategic plan should be reviewed every three to five years and it was a living, breathing document that could change from year to year.

Angela Crist, Director of the Florida Institute of Government of the University of South Florida, described how a strategic plan was created to determine the town's goals, objectives and action items. She stated that meeting agenda items should reference strategic goals and budget decisions should be made based on their vision of the strategic plan. She utilized PowerPoint for the presentation. Slides included USF School of Public Affairs & USF Florida Institute of Government and Today's Agenda.

II. INDIVIDUAL ACTIVITY: MILESTONES AND SUCCESSES (9:10 AM)

Ms. Crist instructed council members to write one item per sticky note regarding people and events that made a difference in the history and success of Fort Myers Beach. She put the notes on a flip chart and grouped them into a timeline. She stated they had a huge opportunity to set the vision for where they wanted the town to go.

III. STATUS UPDATE: CURRENT WORK PLAN ACTIVITIES (9:25 AM)

Town Manager Hyatt reviewed the current work plan activities as noted on the slide. He indicated that it was crucial to get as prepared as they could by having policies in place for the next group to follow. He noted his philosophy was to leave it better than he found it and the need to be prepared for the unexpected. Ms.

Crist stated that visioning was the foundation of strategic planning and the strategic plan should be updated quarterly.

IV. BREAK (10:05 AM)**V. GROUP DISCUSSION: TREASURES OF FORT MYERS BEACH (10:15 AM)**

Ms. Crist asked council members what things should remain and not change in Fort Myers Beach. Topics mentioned were the sense of community, the water and protected areas around the island, a balance between tourism, residents, businesses and seasonal residents, the wide variety of socioeconomic populations, which created an interesting place to live and a welcoming and inclusive community. The treasure of the island was the balance of the four groups, but now businesses were suffering and people had to leave the island more often, which created more traffic.

VI. GROUP ACTIVITY: BEGINNING TO DEVELOP THE VISION (10:30 AM)

Ms. Crist asked council members to pretend it was 2034 and write an article about the town's accomplishments over the past ten years and what it was like to live there now. Council members broke into two groups, wrote their articles and read them out loud. Similarities between the two articles were identified and Ms. Crist asked them to point out the vision or desired future state. She suggested that the desired future state could be that they were the premier destination where tourists could become residents and live there forever. Council members discussed the town being unique, inclusive, diverse, and welcoming, with boutique hotels and funky bars like Key West, but not Key West. Vice Mayor Atterholt summed up the discussion with: experience everything that Florida has to offer on Fort Myers Beach.

VII. KEYS TO STRATEGIC DECISION MAKING (11:00 AM)

Ms. Crist referred to the slide concerning the Keys to Strategic Decision-Making and balancing strategic planning and action planning, along with strategic planning versus operational planning. She indicated they may know where they wanted to go, but the critical point was how to get there. What they might want to accomplish would depend on other things that were not under their control.

VIII. MAYOR AND COUNCIL: OPEN DISCUSSION (11:10 AM)

No discussion.

IX. PUBLIC COMMENT (11:25 AM)

Christy Thorton commented on what the town could look like in ten years. Mathew Thorton explained why he was running for County Commissioner for District 3 and what his plan was. He felt that a strategic plan and communication with the county and state were dire. He offered to help in any way he could.

X. NEXT STEPS (11:50 AM)

Ms. Crist displayed and described the strategic plan process for Tarpon Springs and Cape Coral.

She explained how she would create a scope of work based on the community's needs. Methods included online resident surveys, employee surveys and focus groups, community forums and key stakeholder interviews. She indicated that key stakeholder interviews were usually conducted first. Ms. Crist stated the timeline to complete the process should be nine to ten months, excluding implementation. She will produce a report based on discussions today and be in contact with Town Manager Hyatt. She thought they were in a good place and recommended they identify five action items over the next year. Council Member Woodson received support to add the topic to the next M&P. Ms. Crist ended with a quote from Robert Jordan, "The oak fought the wind and was broken. The willow bent when it must and survived."

XI. ADJOURN (12:00 PM)

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

The meeting was adjourned at 11:14 a.m.



Fort Myers Beach Town Council

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

Minutes

Monday, May 6, 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 items C-I pulled for discussion, seconded by Council Member Safford.
The motion carried unanimously.

V. PUBLIC COMMENT

Bill Veach, resident, commented on the comprehensive plan items and recommended that they open up the uses in the CB zoning districts but make them smaller. For example, a 5,000-square-foot footprint could have a small restaurant and a small shop instead of a 5,000-square-foot restaurant to serve the community better and reduce traffic demands. He also thought it made sense to give people a floor for residential accommodation consistent with the neighborhood zoning for owner-occupied housing, workforce housing or critical services.
Howie Hoffman thanked everyone for their help with senior softball.

VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Council Member King thanked ABC 7 and NBC 2 and its employees for cleaning up the beach at the end of April. He recognized the town manager for his first anniversary. He also thanked his wife for staying with him for 34 years.

Council Member Safford thanked the Chamber of Commerce and the community for their event last week.

Mayor Allers thanked the FMB Kiwanis for the picture donation.

Vice Mayor Atterholt and Council Member Woodson congratulated Council Member King on his anniversary.

VII. ADVISORY COMMITTEES ITEMS / REPORTS / APPOINTMENTS**A. Tidal Basin Update**

Deputy Director Jeremy Speaks stated that seven projects were obligated for a total of \$19.8 million. He thanked the town for their hard work and explained what obligated projects were. He noted that they also wanted to complete approximately 20 projects and \$1.5 million was awarded for CB planning. Seven hazard mitigation grants were submitted and six were under review. He added that five hazard mitigation grant applications for Hurricane Nicole were being worked on.

B. Marine & Environmental Resources Task Force

Jennifer Rusk, MERTF member, displayed and reviewed the Children's Activity Book. Lee County Visitor's Bureau requested copies to distribute along with other businesses. She thanked a list of people for helping with the project and commented that 10,000 would be printed. A consensus was reached to print the book.

VIII. APPROVAL OF MINUTES**A. Town Council - April 15, 2024**

Under Public Items, A. should read that Mayor Allers read the title of the resolution, not Council Member King.

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

The motion carried unanimously.

IX. CONSENT AGENDA

Council Member Woodson moved to approve the remainder of the consent agenda, seconded by Council Member Safford.

The motion carried unanimously.

- 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.

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

The motion carried unanimously.

- 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.

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

The motion carried unanimously.

- 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.

Mayor Allers read the title of the resolution. Operations & Compliance Director Frankie Kropacek reviewed the background of the request as stated on the blue sheet.

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

The motion carried unanimously.

- 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.

Mayor Allers read the title of the resolution. Operations & Compliance Director Frankie Kropacek reviewed the background of the request as stated on the blue sheet. He stated the Bay Oaks property would not be used for a debris pile.

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

The motion carried unanimously.

- 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.

Mayor Allers read the title of the resolution. Operations & Compliance Director Frankie Kropacek reviewed the background of the request as stated on the blue sheet.

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

The motion carried unanimously.

- 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.

Mayor Allers read the title of the resolution. Operations & Compliance Director Frankie Kropacek reviewed the background of the request as stated on the blue sheet.

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

The motion carried unanimously.

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.

Mayor Allers read the title of the resolution. Town Manager Hyatt reviewed the background of the request as stated on the blue sheet. He stated he would follow up with the county to replace the yield signs by the bridge.

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

The motion carried unanimously.

H. CDBG-DR Planning Subrecipient Agreement

Accept CDBG-DR Planning Funding award in the amount of up to \$1,575,000.00

Director Kropacek explained the award as stated on the blue sheet. Council Member King moved to approve the award, seconded by Council Member Woodson.

The motion carried unanimously.

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

Council Member Safford pointed out an error and noted that it referred to a map in the packet that did not exist. Director Kropacek explained the location of the structure and stated the errors would be corrected.

Council Member King moved to authorize, seconded by Council Member Safford.

The motion carried unanimously.

X. ITEMS REMOVED FROM CONSENT AGENDA

Items C-I were removed for discussion.

XI. PUBLIC HEARINGS

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

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.

Mayor Allers read the title of the resolution. No ex parte communications were disclosed. The applicant confirmed receipt of the agenda items and background materials.

Community Development Senior Planner Jason Smalley reviewed the background of the request as stated in the blue sheet. The LPA (Local Planning Agency) unanimously recommended approval with an additional condition and the applicant agreed. No objections from the neighbors were received.

Fred Drovdic from RVI Planning utilized PowerPoint for his presentation. Slides included a Location Map, Pre-lan Property Overview, Variance Requests, Site Plan, Variance Criteria and Conclusions.

No public comment.

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

The motion carried unanimously by roll call vote.

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.

Mayor Allers read the title of the resolution. No ex parte communications were disclosed. The applicant confirmed receipt of the agenda items and background materials.

Senior Planner Smalley reviewed the background of the request as stated on the blue sheet. Staff confirmed that this was a replacement in the existing footprint of what existed before the hurricane and the deviation from the 1978 CCCL (Coastal Construction Control Line) was minimal.

Dave Nusbaum, President of the Island Winds Condominium, stated that the landscape wall was in a common area and faced the Gulf of Mexico. The wall was 300 yards from the mean high watermark of the beach. The FDEP (Florida Department of Environmental Protection) issued a permit, and staff informed Mr. Nusbaum that they needed a special exception. He noted that the LPA recommended approval.

No public comment.

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

The motion carried unanimously by roll call vote.

- 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.

Attorney Jenna Persons-Mulicka represented the applicant and requested a continuance to a date uncertain of the small-scale map amendment until the CPD (Commercial Planned Development) was ready so they could present both at the same time.

Council Member Woodson moved to approve the requested continuance to a date uncertain, seconded by Council Member Safford.

The motion carried unanimously.

- 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.

Mayor Allers read the title of the ordinance.

Community Development Planner Sarah Propst stated that Ed Ng would present the plan. Vice Mayor Atterholt suggested that Planner Propst be involved in the presentation and she agreed. Council Member Safford requested that the Future Land Use Map be displayed on the screen during the discussion.

Mr. Ng stated that the nodes were distributed throughout the island to help alleviate traffic without intruding into neighborhoods. He indicated that the nodes would allow for different uses. Planner Propst added that the next step was to update the LDC (Land Development Code) and that zoning districts would be based on future land use districts, although existing zoning districts would still apply. She stated that once the comprehensive plan (comp plan) was adopted, she would present language for the CB (Commercial Boulevard) district that would expand some of the uses in that district. Mayor Allers clarified that the future land use amendment would not increase thresholds from what was in place today.

Planner Propst indicated that they could move forward with changes to the LDC before the comp plan was approved by the state and the CB language would come forward in June or August.

Mr. Ng noted that the wetland conservation change had to be reviewed by the state and it might be sent back.

Planner Propst described how the CB district would open up to allow most commercial uses but would be limited on square footage. She commented that they could make the medium residential language more specific to properties fronting Estero Blvd. and make it more explicit by the zoning district without encroaching in the neighborhoods.

Council Member Woodson questioned whether the marina in the Santini district was zoned pedestrian commercial. Planner Propst replied that it was an error and the intensity had to be changed to 2.5 FAR.

Changes to Times Square were designed to capture visitors and the hotel and motel rooms were based on FAR, not density. It was noted that the platted overlay language would have to be utilized. Mr. Ng reviewed the changes to the Civic Center mixed-use district and stated the density would have to be adjusted slightly with the overlay. The Center Island district was reviewed and the marina was kept as a separate use. The Arts and Theater district uses were addressed and offices would be added to retail and restaurants.

It was noted that the platted overlay would have to be used for all districts. Workforce housing was added because the state required it.

Planner Propst stated that height was corrected to three stories because the ground floor was counted. Motel densities were changed to transient densities with FAR. Mayor Allers questioned the verbiage of stories and why it mattered whether there were three stories instead of two as long as they met the 30 feet above base flood elevation requirement and all other code requirements. Planner Propst replied that the LPA did not want to remove the stories because, in the past, people were sneaking additional stories into the attic space. Town Attorney Vose noted that it would allow for more people in residential structures.

The Housing element was about maintaining existing residents to empower aging populations to remain independent in their homes. Mr. Ng indicated that an addition stating that new housing would be built to comply with the applicable Florida building code and FEMA standards was a requirement, along with other requirements from the state. He described micro-units and stated they wanted to limit those.

Most of the Coastal Management element was required and Mr. Ng reviewed the policies.

When possible, language to preserve and enhance view corridors to the beach was added to the Recreation & Open Space. Codifying pocket parks was discussed and Mr. Ng will change the language to "add, preserve and enhance view corridors." He added a monitoring objective policy to track the number of partnership agreements and to track and implement ADA (Americans with Disability Act) accessibility. The LPA recommended that the monitoring section be scaled back to open it up. The park availability LOS was changed to include transient visitors since they used the parks and amenities.

Mr. Ng listed items eliminated in the Transportation element over the years and questioned what they wanted to bring back into the discussion. Vice Mayor Atterholt suggested adding language regarding pedestrian walkovers as a public benefit for entities with property on both sides of Estero Blvd. He would like to add language about pedestrian railings on Estero Blvd. and consider it a public benefit for businesses. He requested that water taxis be added to water ferries, add language to prioritize entities that incentivize people not to rent a car from the airport and businesses that create a shuttle service the beach. Planner Propst stated that pedestrian overpasses were already in the plan and that she was concerned about the potential danger with pedestrian railings. Mr. Ng indicated that pedestrian overpasses could be expanded to include areas outside of Times Square. Vice Mayor Atterholt suggested that the town partner with water ferries to help reduce traffic congestion. Mr. Ng recommended that water transportation be used rather than ferries or taxis and provided language to include involvement by the town. He will also add language regarding incentives for people not to rent cars as a public benefit.

Planner Propst noted that the LPA deferred improvements to Estero Blvd. to the town council. Mayor Allers indicated that the town took over the landscaping responsibility on Estero Blvd. and they could install bushes to direct pedestrians. Mr. Ng indicated he would strike the first sentence in the parking section and Planner Propst provided alternate language.

Mr. Ng reviewed changes to the Historic Preservation element.

Mr. Ng stated that he normally did not include a Capital Improvements element when the town did not have an adopted CIP (Capital Improvements Program), but he thought it might be justified since the town was working on it. He made suggestions of what should be included in a CIP.

The LPA questioned whether a section of the Conservation element should be deleted and the town council agreed. Sections regarding protecting marine life and estuary habitats to protect endangered species will remain in the element. Planner Propst explained the language regarding dredging canals. Dates in the Intergovernmental Coordination element were updated, but no changes were made.

Mr. Ng reviewed updates in the Utilities element. Vice Mayor Atterholt described a micro-grid pilot program and questioned whether a goal could be added to seek state and federal funds for the program. Mr. Ng agreed it was a worthy goal and suggested adding a new policy.

There were no changes in the Property Rights element.

The Community Design element was reviewed and Mr. Ng pointed out new policies.

Public comment:

James Ink, resident, indicated that the FAR for marinas was listed as 1.0 and should be 1.5. Concerns Mr. Ink had were already changed.

Cathy Shultz, resident, noted that the LPA unanimously recommended keeping the 1999 language as it was and rejected changes to Bowditch in the recreation and open spaces element. She stated that Lee County purchased the property to save it from commercial development and preserve its natural flavor. She described wildlife on the property and did not support changing the element. She thanked the town council for their hard work. The town council agreed to keep the 1999 language.

Public comment closed.

Mr. Ng explained that the comp plan would be transmitted to the state for their review before it came back for a second reading, which could take up to two months.

Mayor Allers moved to approve the first reading for transmittal as amended through the discussion today, seconded by Council Member Safford.

The motion carried unanimously by roll call vote.

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.

Mayor Allers read the title of the ordinance.

Planner Propst stated the ordinance language corrected a code issue. No public comments.

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

The motion carried unanimously by roll call vote.

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.

Mayor Allers read the title of the ordinance.

Town Attorney Vose explained the title change as stated on the blue sheet. No public comment.

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

The motion carried unanimously by roll call vote.

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.

Mayor Allers read the title of the ordinance.

Town Attorney Vose reviewed the background of the request as stated in the blue sheet. Mayor Allers pointed out an inconsistency and questioned why a sunset clause was not included. Town Attorney Vose suggested drafting a resolution for the sunset clause and referencing it in the ordinance. The town council agreed.

No public comment.

Mayor Allers moved to approve the ordinance with amendments, seconded by Council Member Woodson.

The motion carried unanimously by roll call vote.

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.

Mayor Allers read the title of the ordinance.

Town Attorney Vose reviewed the background of the request as stated in the blue sheet and described the corrections made.

No public comment.

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

The motion carried unanimously by roll call vote.

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.

Mayor Allers read the title of the ordinance.

Town Manager Hyatt noted that this was to help expedite things and it lined up with FDEM (Florida Department of Emergency Management) new requirements.

No public comment.

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

The motion carried unanimously by roll call vote.

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.

Mayor Allers read the title of 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

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.

Council Member Safford revealed that he had to recuse himself from this item and would submit a form to the Town Clerk.

Attorney Steve Ramunni represented the applicant and reviewed previous negotiations with the town. He stated the applicant paid \$50,000.00 to the town for the lien on a property. Mr. Orlandini was part of the agreement but did not fulfill his portion of \$15,000.00 and White Sands requested forgiveness or payment of the \$15,000.00 to settle. The cashed check was included in the document, but that was the extent of the paper trail. Attorney Ramunni stated that he had not been involved in the case until recently.

Town Attorney Vose explained the details of the case.

Jessie Schmid, owner of the property, explained the negotiations with Mr. Orlandini and the former town manager, Roger Hernstadt. Mr. Schmidt purchased many of Mr. Orlandini's encumbered properties. He described the mess with several properties and stated he could not do anything until the liens were released. He explained that the violations started because of work without a permit to replace stair treads and pavers. Mr. Schmidt bought the property and removed the stairs and pavers. He met with Mr. Hernstadt to resolve it and was told he owed \$65,000.00 even though he had already paid \$50,000.00. Mr. Hernstadt refused to give him a copy of the signed agreement because he said the fines were in Mr. Orlandini's name. Attorney Ramunni explained why it took so long to come before the town council. Mr. Schmidt stated he had a \$1.5 million judgment filed against Mr. Orlandini and has not received a penny. He did not think he needed a permit to mitigate the violation and acknowledged he did not inform the town. Mr. Ramunni stated that Mr. Schmidt was not the violator, even though some details were missed. Mr. Schmidt commented that he purchased five properties from Mr. Orlandini, but they sat vacant because the structures were a mess.

Vice Mayor Atterholt noted that he had the same conversations with Mr. Schmidt 2^{1/2} years ago and Mr. Schmidt commented that he had emailed the requested timeline along with other emails.

Town Attorney Vose requested a shade meeting during the next council meeting to discuss the case. Mr. Schmidt wanted to resolve it today. Attorney Ramunni repeated the fact that Mr. Schmidt was not the violator. Discussion was held regarding the amount of the fine.

Council Member King moved to approve a settlement at \$247,000.00, seconded by Council Member Woodson.

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

- 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.

Environmental Projects Manager Chadd Chustz reviewed the project and indicated that Ahtna was the lowest responsive bidder. Town Attorney Vose stated there was a bid protest and they have not received a bond. She noted that they could legally move forward because it was necessary for the health, safety and welfare of the town due to the upcoming hurricane season.

Vice Mayor Atterholt moved to approve the award subject to approval by the county of the interlocal agreement and resolution of the bid protest, seconded by Council Member Woodson.

The motion carried unanimously by roll call vote.

- 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.

Mayor Allers read the title of the resolution.

Finance Director Joe Onzick reviewed the reason for the transfer and noted it was a retroactive accounting transaction. He revealed that the loan would be extended to ten years and there was a possibility that it would be forgiven in the future.

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

The motion passed unanimously by roll call vote.

- 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.

Director Onzick indicated that the updated agreement would allow the town to invoice the county for their share of expenses incurred in the Tier I project, which included repair, replacement or relocation of the sewer lines.

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

The motion carried unanimously by roll call vote.

XIII. FINAL PUBLIC COMMENT

Leah Greg, resident, was concerned about losing the FEMA insurance discount because a home was allowed to be built on grade before plans were submitted to the town. A stop work order was issued but later rescinded and the code enforcement officer involved was fired. She claimed documents on the town's portal appeared to be falsified and were being sent to FEMA. She stated she met with town officials months ago and shared details regarding the home. She indicated that no one from the town would communicate with her, so she presented the information publicly. She commented that the supervising contractor involved was not licensed in FL, although he represented himself as a licensed contractor.

XIV. TOWN MANAGER'S ITEMS

Town Manager Hyatt indicated that a comprehensive emergency management plan was being drafted and a drill would occur sometime in July or August. The streetlight project should start toward the end of June or first of July. Underground preparations for the conduit will be completed before each delivery. The first delivery of poles will occur on August 9, 2024, the second on September 13, 2024, and the last on October 11, 2024.

He noted that the strategic plan was being worked on, a meeting with FEMA was scheduled for tomorrow regarding the floodplain program, staffing levels were being filled and the new Harbormaster was scheduled to start next week.

XV. TOWN ATTORNEY'S ITEMS

No items.

XVI. COUNCILMEMBERS ITEMS AND REPORTS

No items.

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

Town Manager Hyatt reviewed their wins over the year and he looked forward to next year.

Council Member King thanked the town manager for where they were today. Vice Mayor Atterholt stated the culture shift under the town manager's leadership was tremendous. The way he delegated his authority demonstrated humility and servant leadership. He encouraged the town manager to begin to more aggressively lead and make smaller decisions without worrying about the town council. He was thankful that the town manager was there and thankful for the team he established.

Council Member Woodson agreed that it was time for the town manager to take the next steps and his team was phenomenal. She felt that the whole team had a great relationship and the town manager spearheaded that. She noted that he did a great job.

Council Member Safford commented as a citizen and was impressed. He referred to the success of the Bayside Park Concert Series and stated the town wanted an engaged leader with a vision. He appreciated his attitude and felt they were headed in the right direction.

Mayor Allers felt the same as the others and shared how they were attached at the hip for the first six months. He noted the town manager picked up things quickly and was aware of the vision and where they wanted to go. He brought up his communication skills and encouraged him to pick up the ball and run, knowing that he had the town council's support. He looked forward to next year.

XVII. ADJOURNMENT

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

The meeting was adjourned at 3:09 p.m.

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

LAST NAME—FIRST NAME—MIDDLE NAME SAFFORD - SCOTT - M	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE TOWN COUNCIL
MAILING ADDRESS 189 Sebal Dr.	THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF: ☒ CITY ☐ COUNTY ☐ OTHER LOCAL AGENCY
CITY COUNTY Ft. Myers Beach Lee	NAME OF POLITICAL SUBDIVISION:
DATE ON WHICH VOTE OCCURRED May 6, 2024	MY POSITION IS: ☐ ELECTIVE ☒ APPOINTIVE

WHO MUST FILE FORM 8B

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

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

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

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

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

* * * * *

ELECTED OFFICERS:

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

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

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

* * * * *

APPOINTED OFFICERS:

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

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

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

APPOINTED OFFICERS (continued)

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

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

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

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, SCOTT M. SAFFORD, hereby disclose that on May 6, 20 24 :

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

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

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

White Sands was a customer of mine. I also managed one of the properties in question.

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

5/6/24
Date Filed

Scott M. Safford
Signature

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



Fort Myers Beach Management & Planning Session

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

Minutes

Wednesday, May 8, 2024

9:00 AM

ORDER OF BUSINESS

DRAFT

I. CALL TO ORDER

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

II. PLEDGE OF ALLEGIANCE

III. ITEMS FOR DISCUSSION

A. Permitting

Per Council's request, a discussion on Permitting Dynamics Operations & Compliance Director Frankie Kropacek described one-stop shopping for permits and noted that a permit manager and seven permit techs were on board to assist customers. A negotiation letter was sent to an applicant for the new planner position. Code officers would all be state-certified and more boots would be on the ground to educate the public. Director Kropacek would like to revisit the upgraded Trakit software because it communicates better with LEEPA (Lee County Property Appraiser) and would still work with the current system. Mayor Allers suggested that information in the permit porthole be expanded to more than one line to help homeowners follow the process. Director Kropacek will make the change. Mayor Allers suggested creating short videos on permitting once a week to help the public understand the process. Council Member Safford questioned how long it was taking to issue permits. Director Kropacek stated that permits were being issued in two weeks. Mayor Allers described how antiquated the process was for demo permits before it was changed. He would like a monthly report on permits, which Director Kropacek will provide. Director Kropacek noted that there were about 150 new home starts last month. In April, there were 296 new permits, with 13 of those for single-family homes and over 1,950 inspections.

Director Kropacek encouraged people to contact him if they had problems with contractors or builders, but the town would not recommend contractors or businesses. Town Attorney Stuparich stated that licensed contractors were required to have their license numbers on their trucks. Director Kropacek added that the town's website was being updated and streamlined with concise information.

Vice Mayor Atterholt questioned whether they could create a dashboard of permitting data on the website. Director Kropacek replied that he would add that information. Mayor Allers requested that residential and commercial be separate on the dashboard.

Permitting Supervisor Andrew Garry introduced himself and noted he was hired in permitting about five years ago. He stated the most significant improvement in the process was having plan reviews in-house.

Owner/builders asked the most questions and took more time to review the process. Supervisor Garry advised them to email or visit his office if they had a lot of questions. Town Manager Hyatt stated that emails were preferable to create a paper trail for FEMA. Supervisor Garry indicated that incomplete applications were the most common mistakes. He added that commercial property owner/builders were restricted to \$75,000.00 of repair. He suggested that people read the permit application documents before starting and call his office with questions.

B. Impact Fees

Proposal for Impact Fee study

Director Kropacek noted that planners Jason Green and Sarah Propst provided a report on impact fees. He explained that impact fees allowed the town to ensure work was correctly done and provided an example of the difference between existing commercial and new developments. Town Manager Hyatt stated that an impact fee study had to be updated every five years to prevent challenges in court. Town Attorney Stuparich added that the study was critical to establishing a good impact program. Vice Mayor Atterholt requested a breakdown of the impact fees for Lee County, the fire department and other entities. Director Kropacek will provide the information, which will be included in the next agenda. Mayor Allers clarified that the building fund would fund the study.

C. FMB Priorities

Per Council's request, a discussion about setting priorities for the Town over the next year.

Town Manager Hyatt suggested they schedule a follow-up to the strategic planning to establish goals by the end of the month or the beginning of June. He indicated they had to compare the town to other beach communities and needed to be more goal-oriented than task-oriented to get there faster.

D. Bicycle / Pedestrian Plan

Per Council's request, a discussion regarding the Town's bicycle ordinance and a discussion regarding an island bike/walk path.

Mayor Allers noted the 2017 MPO (Metropolitan Planning Organization) study was in the packet and included some good information. He indicated that he received emails regarding people who needed e-bikes for various reasons and they rode on the sidewalks because they did not feel safe in the bike lane or on the road. Now, they fear getting ticketed for riding on the sidewalk because of the ordinance. He thought they should not create a policy based on bad actors because most people would do the right thing. He questioned why one could not ride a bike on the beach and was open to changing the policy. Council Member Safford stated that people had to go with the traffic flow, and when they did not feel safe riding bikes, they would drive or go somewhere else. Mayor Allers added that some walkers felt unsafe on the sidewalks.

Council Member King questioned whether they could gather data for a year and revisit the policy. According to the LCSO (Lee County Sheriff's Office), setting speed limits was not feasible. Vice Mayor Atterholt questioned whether they could require bikers to get off their bikes when they pass walkers on the sidewalk. Town Attorney Stuparich stated that some of the requirements in the town's ordinance were in Florida statutes and could not be changed. Mayor Allers supported Vice Mayor Atterholt's suggestion.

Council Member Safford noted that he had not heard anyone complain about incidents with e-bikes on the beach. Town Attorney Stuparich will research whether they can mandate a forced stop on sidewalks. Vice Mayor Atterholt felt they needed to be very careful on the beach because of the relaxed vibe. Mayor Allers stated that education was essential and the enforcement had to have some teeth to help the LCSO.

Vice Mayor Atterholt thought they needed a strategy for next season to be more engaged in monitoring and enforcing the ordinance. Mayor Allers questioned whether they wanted to task the Public Safety Committee (PSC) to research programs. Town Attorney Stuparich noted that volunteers could provide education and advice, not enforcement. Town Manager Hyatt stated that he wanted to revive the CERT (Citizen Emergency Response Team) training through the state.

Vice Mayor Atterholt questioned whether bike rental businesses could be required to include additional information in their waivers. Town Attorney Stuparich will research the topic. Mayor Allers described markings on the sidewalks that directed bikers and pedestrians and mentioned discussing implementation with the county. Council Member Woodson pointed out that some people had challenges stopping their bikes before passing people on the sidewalk. Vice Mayor Atterholt described two different ways to stop.

Council Member Woodson described creating additional paths on the bay side to avoid Estero Blvd. Mayor Allers referred to the map on page 41 and stated that now was the time to create a new path. Director Kropacek indicated that a discussion was held earlier with a group through the R2P2 program and they were working on a plan to present to the town in June.

Mayor Allers referred to page 167 and felt they could quickly implement secured bike storage. He referred to page 63 and TDC (Tourist Development Council) funding to create advertising videos for education. He indicated that other grants were also available. He felt that financial incentives to encourage employers to provide bike parking for employees was a good idea.

E. CRA

Per Council's request, a discussion regarding CRA.

Mayor Allers felt that having three CRAs (Community Redevelopment Agency) made sense. He explained that it took blighted areas that allowed the town to increase the taxes, so when a CRA is set up, whatever increase in that tax base is, comes back to the town to work in areas within the CRA. It would allow them to take the funding from the tax increase and put it in three sections of the island to enable them to help improve the island for specific items within that section.

Town Attorney Stuparich explained that the CRA was designated as a dependent special district and was a local governmental entity. There were requirements to satisfy and the first was to determine whether the area was viewed as a blighted or slum area. The statutory definition of blighted contained several conditions and she felt that the current state of the beach and lack of affordable housing would qualify. She noted the county would have to concur and the town would have to have a discussion with them before moving forward. If they agree, a resolution or interlocal with the county would have to be drafted. The next stop would be to conduct a study from a planning and data perspective to confirm that information and conditions supported the definition of a blighted area. Town Attorney Stuparich noted that the study would cost money, so they should talk to the county first. A CRA board would have to be created with town council members and two additional members could be added. The board would develop a plan and the county would have to approve it. Then, a trust fund would be created to hold the money to be spent annually or build it up for a larger project.

Town Attorney Stuparich indicated that Lee County had a CRA in 1990 for Estero and San Carlos Islands but rescinded it in 2006 due to lack of money. She suggested that the previous CRA be reviewed and built on. She explained that a TIF (Tax Income and Financing) district was part of the CRA. When the boundary lines of the CRA are established, a baseline of the ad valorem revenue from that particular area is determined. As properties are redeveloped, it begins to increase, and that increment is what goes into the trust fund to be spent specifically in that area. She stated there was a lot of flexibility that they could do in the CRA. Council Member Safford noted that Lee Ford and Teresa Brown could provide valuable information about Fort Myers' CRAs. Consensus was reached to begin talks with Lee County and Mayor Allers will initiate contact. Town Attorney Stuparich will continue to research and work on documents.

F. Estero Blvd Landscaping**Per Council's request, a discussion regarding Estero Boulevard Landscaping and the Estero Island Garden Club**

A discussion was held regarding the landscape on Estero Blvd. before the hurricane. Perennial peanuts were planted up to Publix, but they required a lot of maintenance and did not look nice. Director Kropacek stated that Projects Manager Chustz submitted paperwork for grants through Tree City USA to replace the Royal Palms on North Estero Blvd. Public Works & Utility Director Mark Ashton suggested that the Garden Club be involved and agreed with promoting homeowners to take care of the area in front of their homes. He noted that a water truck could take care of watering once a week. Town Manager Hyatt will work on a plan.

IV. AGENDA MANAGEMENT

A. May 2024

Add a discussion regarding monthly versus weekly rentals.

Add a discussion concerning the requirements of being a voter or property owner to participate in committees.

Add a discussion and presentation regarding building a structure for workforce housing and businesses on the town hall property.

Add a discussion about coastal protection systems.

V. ADJOURNMENT

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

The meeting was adjourned at 11:35 a.m.

1. **Request:**

Meeting Date: May 20, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AUTHORIZING THE TOWN MANAGER OR DESIGNEE TO APPLY FOR, EXECUTE UPON AWARD, AND ADMINISTER A GRANT FROM THE FLORIDA DIVISION OF HISTORICAL RESOURCES FOR FUNDS IN THE AMOUNT \$180,000 FOR REPLACEMENT OF COMPONENTS LOST DURING HURRICANE IAN; AUTHORIZING THE TOWN MANAGER OR DESIGNEE TO EXECUTE RELATED DOCUMENTS; AND PROVIDING AN EFFECTIVE DATE.

Why the action is necessary:

To authorize Town Manager or Designee to apply, execute upon award, and administer this grant.

What the action accomplishes:

This would provide the Town with additional funding when replacing electrical components in Mound House lost during Hurricane Ian.

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Jeff Hauge, Culture, Parks &
Recreation Director, Joe Onzick,
Finance Director

5. **Background:**

The Town is seeking approval from Town Council to authorize The Town Manager or designer to apply for, execute upon award, and administer a grant from the Florida Division of Historical Resources for replacement of electrical components lost during Hurricane Ian. This application is due on 6/3/24, Town staff is working diligently in compiling all required documentation.

This grant cycle will begin on July 1, 2024 and continue until June 30, 2026.

The Special Category Grant provides funding to aid Florida history museums in exhibit work, including research of exhibit content, exhibit design, fabrication, and installation. This grant project will be used to repair and replace the destroyed exhibit "Stories Beneath Our Feet" located inside the Mound House's so-called "underground museum". While the "underground museum's" exposed archaeological resources survived with moderate damage and is structurally sound, the exhibit components that interpreted the space and the importance of the site's history and archeology were destroyed by storm surge flooding during Hurricane Ian on September 28, 2022.

The grant project will see the improvement of the space's interpretation with updated archaeological information, increased access with bilingual English-Spanish components, tribal consultation/collaboration, and interactive elements.

The total amount requesting for this grant is \$180,000. This is a 50/50 match, meaning the Town will be matching with \$90,000 and this will be included during FY24-25 budget.

If this deadline is missed, Town staff will continue to seek funding during next year's cycle.

Attachments:

1. Final 24-94; MH grant- FL DIVISION OF HISTORICAL RESOURCES ns

Financial Impact:

Total amount being requested: \$180,000.
Town to match funding with \$90,000 (50%).

6. Alternative Action

7. Management Recommendations:

8. Recommended Approval:

Flor Lemmer, Grants/Payroll Coordinator
Joe Onzick, Finance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 5/10/2024
Approved - 5/10/2024
Approved - 5/14/2024
Approved - 5/15/2024
Final Approval - 5/15/2024

RESOLUTION NO. 24-94

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AUTHORIZING THE TOWN MANAGER OR DESIGNEE TO APPLY FOR, EXECUTE UPON AWARD, AND ADMINISTER A GRANT FROM THE FLORIDA DIVISION OF HISTORICAL RESOURCES FOR FUNDS IN THE AMOUNT \$180,000 FOR REPLACEMENT OF COMPONENTS LOST DURING HURRICANE IAN; AUTHORIZING THE TOWN MANAGER OR DESIGNEE TO EXECUTE RELATED DOCUMENTS; AND PROVIDING AN EFFECTIVE DATE

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

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

WHEREAS, the Town has an opportunity to apply for grant funding from the Florida Division of Historical Resources (“Grant”) for replacement of electrical components in The Mound House lost during Hurricane Ian (“Project”); and

WHEREAS, the Town will commit \$90,000 in funds to complete the match requirement, which funding will be requested in the 2024-2025 Fiscal Year Budget for the Project; and

WHEREAS, the Town desires to apply for the Grant in the amount of up to \$ 180,000 to provide the Town with funds to complete the Project; and

WHEREAS, to apply for the Grant, a Resolution of the Town is required designating a “Liaison Agent,” and authorizing the Liaison Agent to apply for and administer the Grant on behalf of the Town; and

WHEREAS, the Town desires to designate the Town Manager or designee as Liaison Agent and authorize the Town Manager or designee, to apply for, execute, and administer the Grant on behalf of the Town; and

WHEREAS, applying for the grant is in the best interest of the residents of the Town.

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

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

Section 2. The Town Council hereby designates the Town Manager or designee as Liaison Agent and authorizes the Town Manager or designee to apply for the Grant in the amount of up to \$180,000 and upon award administer the grant on behalf of the Town, to be used for electrical components in The Mound House lost during Hurricane Ian.

Section 3. The Town Council authorizes the budgeting of \$90,000.00 in matching funds for the grant.

Section 4. This Resolution shall take effect immediately upon its adoption.

THE FOREGOING RESOLUTION was adopted by the Town Council upon a motion by Council Member _____ and seconded by Council Member _____, and upon being put to a vote, the result was as follows:

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

ADOPTED this 20th 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, LLP, Town Attorney

1. **Request:**

Meeting Date: May 20, 2024

Due to advertising timelines, the second reading and final public hearing for 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. will need to be rescheduled to a date certain of Monday, June 3, 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:**

CONSENT AGENDA

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:**

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

Created/Initiated - 5/10/2024
Approved - 5/14/2024
Approved - 5/14/2024
Final Approval - 5/14/2024

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 20, 2024

1st Reading and Public Hearing on proposed Ordinance 24-14 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING THE COMMERCIAL PLANNED DEVELOPMENT (CPD) ZONING FOR THE PROPERTY LOCATED AT 841 ESTERO BLVD. GENERALLY IDENTIFIED AS STRAP NUMBERS 24-46-23-W3-0050B.0010 FORT MYERS BEACH; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE. Open the first public hearing and schedule for second reading and final adoption on May 17, 2024 at 9:00 AM

Why the action is necessary:

The convenience store use is an allowed use in the Downtown zoning district, however, this request contains several deviations from the code therefore a CPD is being requested. The Town Council approves or denies CPD requests.

What the action accomplishes:

Approval of the CPD allows the redevelopment of the site, with a convenience store.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Ordinance

4. **Submitter of Information:**

Sarah Propst, Community
Development, Planning
Manager

5. **Background:**

The applicant for 841 Estero Blvd, is requesting a rezoning from Downtown zoning to Commercial Planned Development for the redevelopment of a 3,500 square foot convenience store. The proposed development will have an entrance on Estero Blvd, an entrance on Lagoon Street, and a dumpster enclosure accessed directly from Lagoon Street. The site previously contained a 7-Eleven convenience store approximately 1,950 square feet in size.

Attachments:

1. 24-14, DCI20230197 - 841 Estero 7-Eleven ns
2. TC staff report
3. Exhibit A MCP
4. Exhibit B Schedule of Uses and List of Deviations
5. Exhibit C LPA and TC Postcards
6. Exhibit D Application
7. business-impact-estimate-24-14

Financial Impact:

unknown

6. **Alternative Action**

Recommend denial

7. **Management Recommendations:**

Approve with conditions

8. **Recommended Approval:**

Kendra Rosa, Zoning Coordinator

Frankie Kropacek, Operations & Compliance Director

nancy stuparich, Town Attorney

Amy Baker, Town Clerk

Andy Hyatt, Town Manager

Created/Initiated - 5/13/2024

Approved - 5/13/2024

Approved - 5/14/2024

Approved - 5/15/2024

Final Approval - 5/15/2024

ORDINANCE 24-14

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING A REQUEST TO REZONE THE PROPERTY LOCATED AT 841 ESTERO BLVD. GENERALLY IDENTIFIED AS STRAP NUMBERS 24-46-23-W3-0050B.0010 FORT MYERS BEACH, FROM DOWNTOWN TO COMMERCIAL PLANNED DEVELOPMENT (CPD) ZONING FOR A CONVENIENCE STORE; PROVIDING FOR OTHER 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, Southland Corporation and The Neighborhood Company, owner and agents for the property owner, located at 841 Estero Blvd., parcels generally identified as STRAP numbers 24-46-23-W3-0050B.0010 in the Town of Fort Myers Beach, filed applications to rezone the property from the Downtown Zoning District to CPD with Master Concept Plan (MCP) with certain deviations to the Land Development Code (LDC) in order to develop a convenience store ; and

WHEREAS, the subject property is a single parcel located in the Pedestrian Commercial Future Land Use Category of the Comprehensive Plan of the Town of Fort Myers Beach; and

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on April 30, 2024; and

WHEREAS, at the April 30, 2024 public hearing 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, as required by Town Land Development Code (LDC) sec. 34-85; and

WHEREAS, at the April 30, 2024 public hearing the LPA found that the request was consistent with the comprehensive plan and in compliance with the requirements of the LDC and voted to recommend approval with conditions of the rezoning by a 5-0 vote, with 1 member abstaining and 1 member absent; and

WHEREAS, on May 20, 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 Fort Myers Beach Land Development Code (LDC) Section 34-85; and

WHEREAS, the Town Council voted to have a second reading of the proposed Ordinance and a public hearing on this matter was advertised in The News-Press 10 days prior to 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, the documents in the record, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34- 85; and

WHEREAS, a Business Impact Estimate has been prepared and published on the Town's website when the adoption hearing advertisement was published; and

WHEREAS, Exhibit A provides the approved Master Concept Plan (MCP), which future development should be substantially in compliance with; and

WHEREAS, Exhibit B is the schedule of uses, conditions of approval, and approved deviations for this CPD, to be used during the permitting process; and

WHEREAS, the Town Council finds that this request to rezone the property from the Downtown Zoning District to CPD with MCP with the deviations to the Land Development Code (LDC) in order to develop a convenience store described below, is unique and does not establish a precedent for future deviation requests:

Deviation #1

Deviation from LDC Section 34-706(d) which requires that when properties are fronting on Estero Boulevard, existing driveway and parking spaces shall be relocated from Estero Boulevard to secondary streets, and new driveways shall connect only to secondary streets, except where these requirements would prohibit all reasonable access to a property. The deviation would allow driveways to remain connecting to Estero Boulevard and Lagoon Street.

Deviation #2

Deviation from the driveway separation requirements of LDC Section 10-285 along Estero Boulevard and Lagoon Street. The deviation would allow driveway separations along Estero Boulevard to be a minimum of approximately 80 feet and a minimum of approximately 60 feet along Lagoon Street.

Deviation #3

Deviation from parking lot location requirements of LDC Section 34-706(a) to allow a parking lot to be located primarily fronting Estero Blvd.

Deviation #4

Relief from LDC Section 34-2020(d)(2)i.1. which requires a minimum of four spaces per 1,000 square feet of total floor area or 14 parking spaces for the proposed maximum 3,500 square feet of convenience store total floor area. The deviation would allow for a reduction in the minimum required parking spaces to 8 parking spaces.

Deviation #5

Relief from LDC Section 34-1744(b)(4)d, which requires that for sites where the location and configuration of existing structures and vehicle use areas prevent the placement of refuse containers outside the front yard, fences and/or walls erected for the sole purpose of providing reasonable screening of refuse containers located in a front yard may exceed 48 inches in height, but must not exceed six feet in height. The deviation would allow the refuse container screening (enclosure) to be a maximum of seven (7) feet, six (6) inches in height.

WHEREAS, the Town Council made the following formal findings before making final decisions on the eight requested deviations from "by-right" requirements of the Land Development Code (see LDC 34-216):

- a. Each item enhances the achievement of the objectives of the planned development; and
- b. The general intent of this chapter to protect the public health, safety and welfare will be preserved and promoted; and
- c. Each deviation operates to the benefit, or at least not to the detriment, of the public interest; and
- d. Each deviation is consistent with the Fort Myers Beach Comprehensive Plan.

WHEREAS, the Town Council considered all relevant factors and made the following formal findings before making its final decision on the requested rezone to a Commercial Planned Development (See LDC 34-85 and 34-216):

- a. Minor ambiguities were resolved through the deviation process.
- b. The previous development on the subject property was destroyed by Ian and adoption of the rezoning with deviations ameliorates longstanding design issues on the site due to the lot's odd shape and orientation.
- c. The rezoning would carry out the policies and requirements of the Comprehensive Plan and Land Development Code.
- d. The Town Council carefully considered the testimony of the applicant, the recommendations of staff and of the local planning agency, and testimony from the public.
- e. The rezoning would be consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses in the Comprehensive Plan.
- f. The rezoning would meet or exceed all performance and locational standards set forth for the proposed use.
- g. Urban services are available and adequate to serve the proposed use.
- h. The rezoning would protect, conserve, or preserve environmentally critical areas and natural resources.

- i. The rezoning would be compatible with existing and planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
- j. The rezoning would not place an undue burden upon existing transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.
- k. The rezoning, with the mitigating factors volunteered by the applicant and the special conditions imposed by the Town Council, is consistent with the Fort Myers Beach Comprehensive Plan, Land Development Code, and other applicable town ordinances or codes.
- l. The proposed use or mix of uses is appropriate at the subject location.
- m. Sufficient safeguards to the public interest are provided by the recommended special conditions to the master concept plan and by other applicable regulations.
- n. All recommended special conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development.

WHEREAS, the Town Council finds that this application to approve Ordinance 24-02 which is, consistent with the Town of Fort Myers Beach Comprehensive Plan and LDC; and

WHEREAS, with conditions and deviations contained herein, the Town Council finds this rezoning request to be in the best interest of the public's health, safety, and welfare.

NOW, THEREFORE, IT IS HEREBY 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 request to approve Town of Fort Myers Beach's Ordinance No. 24-05 and the conditions of approval for the commercial planned development zoning, **does/ does not** meet the requirements of the Town Comprehensive Plan and LDC. Therefore, based upon the recommendations, testimony, and evidence presented by the Applicant, Town staff, and interested parties, the Town Council **DENY/ APPROVE/ APPROVE WITH CONDITIONS** the requested application. **[IF DENIED, THE REASONS FOR DENIAL SHOULD BE STATED]**

Section 3. Town Ordinance 24-14 is adopted and approved as provided in the schedule of uses and conditions of approval for the Property's CPD as set forth in Exhibit B as shown on the Master Concept Plan, both of which are attached hereto and incorporated herein by this reference.

Section 4. 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 5. 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 6. 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 7. This Ordinance will take effect immediately upon adoption by the Town Council.

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

DULY PASSED AND ADOPTED on this ____ day of June 2024.

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

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 June 2024.

Attachments:

A – Master Concept Plan (MCP)

B – Schedule of Uses, Conditions of Approval and Deviation



Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT STAFF REPORT

TYPE OF CASE: Commercial Planned Development

CASE NUMBER: DCI Rezoning, 20230197

CASE NAME: 841 Estero Blvd, rezone the property from Downtown Zoning to Commercial Planned Development for the redevelopment of a convenience store.

**1st TOWN COUNCIL
HEARING DATE:** May 20, 2024, at 9 AM

**LPA
HEARING DATE:** April 30, 2024, at 9 AM

**STAFF
RECOMMENDATION:** Approve with conditions

**PREPARED/
SUBMITTED BY:** Sarah Propst, AICP, PMP/ Jason Green, AICP, CFM

I. APPLICATION SUMMARY

Applicant/Owner: The Neighborhood Company/ Southland Corporation

Request: The applicant is requesting to rezone the property from Downtown Zoning to Commercial Planned Development for the redevelopment of a convenience store.

Subject property: See attached site plan

Physical Address: 841 Estero Blvd

STRAP #: 24-46-23-W3-0050B.0010

FLU: Pedestrian Commercial

Zoning: Downtown

Adjacent zoning and land uses:

North:	Residential Conservation/ Single Family
South:	Community Facility /Lynn Hall Memorial Park
East:	Downtown zoning / Commercial
West:	Downtown zoning/ single-family

II. BACKGROUND AND ANALYSIS

Background:

The Neighborhood Company, applicant for 841 Estero Blvd, is requesting a rezoning from Downtown zoning to Commercial Planned Development for the redevelopment of a 3,500 square foot retail/ convenience store with no fuel pumps and a FAR of 0.35 F. The proposed development will have an entrance on Estero Blvd and one point of egress from Lagoon St with a separate access to a dumpster enclosure at the east of the property. The site previously contained a 7-Eleven convenience store with no fueling locations.

The Downtown zoning district permits convenience store use by right as a small-scale retail store. However, the Applicant would need to request several variances for the proposed plan and therefore the applicant is requesting to rezone the property to CPD. Five deviations are requested from the land development code requirements.

Analysis:

A convenience store has been located at 841 Estero Blvd for many years. The previous convenience store was approximately 1,950 square feet in size and appears to have provided ten compliant parking spaces for the use, with no fueling location. The curb cuts did not comply with the Town's Road design requirements and very little landscaping was provided. The previous building did not meet current flood requirements.

The property has the Future Land Use designation of Pedestrian Commercial which allows a maximum of 2.5 FAR. The proposed convenience store is 3,500 square feet with 0.35 FAR and will provide eight parking spaces with no fuel pumps. The code requires four parking spaces per 1,000 square feet of retail, which would require 14 parking spaces. The applicant is proposing bike racks, which decreases the number of required spaces by one. With the reduction of one parking space, the Applicant is requesting a deviation for reduction in parking spaces by five spaces. The proposed site will provide landscaping and compliant curb cut widths. The proposed building will meet all building regulations and will be designed to be FEMA compliant with dry floodproofing.

Four deviations from the Land Development Code are requested. Those are listed below and include the applicant's justification as well as a staff comment.

Requested Deviations:

- 1) Relief from LDC Section 34-706(d) which requires that when properties are fronting on Estero Boulevard, existing driveway and parking spaces shall be relocated from Estero Boulevard to secondary streets, and new driveways shall connect only to secondary streets, except where these requirements would prohibit all reasonable access to a property. The deviation would allow driveways connecting to Estero Boulevard and Lagoon Street.**

Applicant Justification: In order to redevelop the property with the desired commercial convenience store use, the site design must take into consideration that a portion of the property is located within the VE flood zone (El 13) along with being designed to meet the intent of the design standards of the town. The prior site configuration provided for existing access points (driveways) both onto Estero Boulevard (Primary Street) and Lagoon Street (Secondary Street), it is necessary to continue to allow access points from Estero Boulevard and Lagoon Street so that vehicular flow can be maintained without requiring vehicles to back out onto any street right-of-way. Convenience stores rely heavily on customer vehicular traffic and truck deliveries, which require appropriately designed and safe traffic movement. The design has been improved to enhance functionality and safety by reducing the need for vehicles having to back directly onto Estero Boulevard, thus providing reasonable access to the property and while improving the functionality of the site. The granting of this deviation does not negatively impact the health, safety, and welfare of the community.

Staff Comment: With the proposed layout and the small size of the site an entrance on both roads will allow for fewer conflicts with entering and exiting traffic. The proposed deviation, therefore, seems appropriate in this instance due to the corner location and the small size of the parcel.

- 2) Relief from the driveway separation requirements of LDC Section 10-285 along Estero Boulevard and Lagoon Street. The deviation would allow driveway separations along Estero Boulevard to be a minimum of approximately 80 feet and a minimum of approximately 60 feet along Lagoon Street.**

Applicant Justification: The proposed accessways onto Estero Boulevard and Palermo Circle existed prior to Hurricane Ian and the destruction of the existing convenience store use. Relocation of the existing accessways to meet the distance separation from all surrounding street intersections or other accessways is impossible. Due to the unique configuration of the subject property and the need to manage vehicular traffic and create pedestrian connectivity to the site, the proposed site layout as detailed on the Master Concept Plan requires both accessways from Estero Boulevard and Lagoon Street Circle to remain. The two accessways were non-conforming in terms of their location and overall width. Both accessways, pursuant to requested Deviation #1, will be reduced in width. This will improve safe traffic circulation to and from the adjacent roadways. As detailed on the MCP, the proposed configuration decreases the width of the accessways, allows

for direct pedestrian access from the Estero Boulevard sidewalk system and will increase the distance separation on Lagoon Street from all surrounding street intersections and accessways, thus working toward achieving general consistency of the intent of LDC Section 10-285 to provide as much connection separation while keeping the proposed redevelopment feasible. The granting of this deviation does not negatively impact the health, safety and welfare of the community.

Staff Comment: The subject property is a corner lot. LDC Section 10-285 requires a driveway separation of 250 feet for major streets like Estero Blvd and 125 feet for local streets like Lagoon Street. The site is approximately 100 feet wide and 113 feet deep, therefore, making it impossible to comply with the requirement of LDC Section 10-285. The proposed deviation seems appropriate in this instance as the Applicant is proposing to use the existing accessways and willing to reduce the width of the curb cuts to achieve accessways with higher compliance to the Town's code.

3) Relief from parking lot location requirements of LDC Section 34-706(a) to allow a parking lot to be located primarily fronting Estero Blvd.

Applicant Justification: Due to the devastation caused by Hurricane Ian and the need to redevelop the property to bring back the desired commercial convenience store use to the Town, reconfiguration of the site is necessary. The site is located within the Downtown zoning district, on the corner of Estero Blvd. and Lagoon Street and adjacent to property owned by others. LDC Sec. 34-953 states that request for a rezoning to Commercial Planned Development (CPD) zoning district requires that the building placement, size, design, and all other property development regulations, such as parking, shall be the same as for the CB zoning district, which means that off-street parking lots shall be placed in side or rear yards. The redeveloped site design must consider that a portion of the property is located within the Zone VE (El 13) while meeting the intent of the off-street parking and building placement design location standards desired by the town. The proposed configuration positions the off-street parking relatively in the same location as it was prior to Hurricane Ian but with an improved layout. With these site constraints, context of convenience store use, and redevelopment opportunities based on impacts of Hurricane Ian, the ability to locate the parking lot out of the front and side yard of the building is not feasible.

As evidenced through the previously existing site layout, the reconfiguration of the parking layout, and the addition of bicycle parking as indicated on the proposed MCP, the granting of this deviation to allow the off street parking lot to be located on the Estero Boulevard side of the property addresses the unique site configuration limitations, and does not negatively impact the health, safety and welfare of the community.

Staff Comment: As mentioned earlier, the subject property is a corner lot and the Applicant plans to use the existing accessways for the convenience store, which would only be possible if the parking is in the front along Estero Blvd. Being in Downtown zoning district, several neighboring properties have parking facing Estero and Town's staff does not anticipate any adverse impacts

with approval of this deviation.

- 4) Relief from LDC Section 34-2020(d)(2)i.1. which requires a minimum of four spaces per 1,000 square feet of total floor area or 14 parking spaces for the proposed maximum 3,500 square feet of convenience store total floor area. The deviation would allow for a reduction in the minimum required parking spaces to 8 parking spaces.**

Applicant Justification: Parking requirements for a convenience store are a minimum of four spaces per 1,000 square feet, which equates to a total of 14 vehicle parking spaces required for the proposed maximum 3,500 square foot convenience store. The site is located within an area of the town (Downtown zoning district) considered a “park-once” district and allows for a reduction of required vehicle parking by a multiplier of 67%. Through this multiplier, the required number of vehicle parking spaces would be reduced by 5 spaces for a total of 9 spaces.

However, LDC Sec. 34-953 states that requests for a rezoning to a Commercial Planned Development (CPD) zoning district requires building placement, size, design, and all other property development regulations, such as parking, shall be the same as for the CB zoning district. Following this requirement means the proposed convenience store is required to revert to providing a minimum of 14 vehicle parking spaces. This is counterproductive to the desired “park-once” intent the town is seeking for this area. Reverting to the CB requirements results in the applicant’s inability to apply the parking reduction multiplier and burdens the site with excessive off-street parking in this more urbanized area of the town.

The applicant desires to meet the intent of being within the Downtown “park-once” district by seeking a reduction in the number of off-street vehicle spaces from 14 to 8. Due to the configuration and constraints of the subject property, the need to manage vehicular traffic and pedestrian connectivity to the site, and the need to support the proposed convenience store use results in the need to maintain a minimum of 8 parking spaces as shown on the MCP. The applicant also sees the benefit of and wants to promote the use of alternative modes of transportation to their development. The applicant is accomplishing this by designating an area for at least 1 bicycle rack able to hold 4 bicycles. As stated in LDC Sec. 34-2020(c), commercial buildings may eliminate one required vehicle parking space by providing and maintaining a bicycle rack able to hold four bicycles. Thus, providing the bicycle rack further supports and allows for the overall required parking to be 8 vehicle spaces.

The requested deviation to allow for the reduction to a minimum of 8 vehicle parking spaces for a convenience store is consistent with the intent to reduce off-street parking impacts as allowed within the Downtown zoning district, provides areas for additional bicycle parking, addresses the unique site configuration limitations, and does not negatively impact the health, safety and welfare of the community.

Staff Comment: Town's LDC requires 14 parking spaces for the proposed 3,500 square feet convenience store. The applicant is proposing at least one, four-space bike racks, which reduces the number of required spaces by one. With this reduction, the Applicant is requesting a deviation of five parking spaces to allow 8 parking spaces including one ADA parking for the store.

The proposed use has existed in this location with ten parking spaces previously and the Town's staff anticipates no adverse impacts with approval of the requested deviation due to its compatibility with neighboring properties in the Downtown zoning district.

- 5) Relief from LDC Section 34-1744(b)(4)d, which requires that for sites where the location and configuration of existing structures and vehicle use areas prevent the placement of refuse containers outside the front yard, fences and/or walls erected for the sole purpose of providing reasonable screening of refuse containers located in a front yard may exceed 48 inches in height, but must not exceed six feet in height. The deviation would allow the refuse container screening (enclosure) to be a maximum of seven (7) feet , six (6) inches in height.**

Applicant Justification: This deviation request is a result of the Town Council's previous request to allow the height of the proposed dumpster enclosure to be increased beyond six feet in height, to allow for a maximum of 7 foot, 6 inch tall enclosure. The deviation will help alleviate the concern of refuse and recyclable materials and containers being visible from adjacent properties.

Staff Comment: This deviation does not cause any nuisance or harm and was a request of the Town Council previously and seems applicable in this instance.

Neighborhood Compatibility:

The previously existing residential and commercial properties in the area were destroyed by Hurricane Ian. This convenience store use has been in existence in this area for many years and is not likely to have an adverse impact on the neighborhood.

Findings and Conclusions:

LDC Sec. 34-85(b) and (c) and 34-216(2) sets forth the required considerations and findings for the approval of a rezoning.

(b) Considerations. In reaching its decision, the town council shall consider the following, whenever applicable:

(1) Whether there exists an error or ambiguity which must be corrected.

Staff response: No errors or ambiguities exist.

(2) Whether there exist changed or changing conditions which make approval of the request appropriate.

Staff response: The previous structure was destroyed by Hurricane Ian and redevelopment of the site makes the requests appropriate.

(3) The impact of a proposed change on the intent of this chapter.

Staff response: No impact on the intent of this chapter will occur.

(4) The testimony of any applicant.

(5) The recommendation of staff and of the local planning agency.

(6) The testimony of the public.

(7) Whether the request is consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses as set forth in the Fort Myers Beach Comprehensive Plan.

Staff response: The proposed development is in compliance with the intensity of the district. The use is permitted use by right in Downtown zoning. The proposed site development will be more compliant with the site development requirements than the previous development. Additionally, the new structure will be designed to current building and flood requirements which is supported by the comprehensive plan.

(8) Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.

Staff response: The proposed development will meet performance standards set forth in 34-2031. There are no special location standards for convenience stores.

(9) Whether urban services are, or will be, available and adequate to serve a proposed land use change.

Staff response: The urban services exist in this location.

(10) Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.

Staff response: The request will have no impact on environmentally critical areas and natural resources.

(11) Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.

Staff response: The proposed use has been in existence in this location for many years. It is not anticipated to have any detrimental impact on existing or planned uses.

(12) Whether the location of the request places an undue burden upon existing transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.

Staff response: This use in this location will not place an additional burden on the transportation network or other facilities and services.

(13) For planned development rezonings, see [§ 34-216](#) for additional considerations.

(c) Findings. Before granting any rezoning, the town council shall find that the requested zoning district complies with:

(1) The Fort Myers Beach Comprehensive Plan.

Staff response: The proposed use and requested deviations for the CPD comply with the Comprehensive Plan.

(2) This chapter.

Staff response: The proposed use complies with this chapter except in regard to the deviations.

(3) Any other applicable town ordinances or codes.

Staff response: The proposed request complies with the town ordinances and codes, except in regard to the deviations.

(4) For planned development rezonings, see [§ 34-216](#) of this chapter for additional findings.

a. The proposed use or mix of uses is appropriate at the subject location;

Staff response: A convenience store is permitted use by right in Downtown zoning district. The proposed use has existed in this location without creating a nuisance.

b. Sufficient safeguards to the public interest are provided by the recommended special conditions to the concept plan or by other applicable regulations;

Staff response: Sufficient safeguards are provided for the public interest.

c. All recommended special conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development;

Staff response: All conditions are related to the impacts on the public interest.

d. The proposed use meets all specific requirements of the comprehensive plan that are relevant to the requested planned development, such as the following:

1. Policies 4-B-4 and 4-C-3 on commercial uses in the "mixed residential" category.

Staff response: Not applicable.

2. Policies 4-B-5 and 4-C-3 on commercial rezonings in the "boulevard" category.

Staff response: Not applicable.

3. Policy 4-C-4 on building heights taller than the standard height limit.

Staff response: The proposed structure will be a single-story building.

4. Policy 4-C-8 on density transfers.

Staff response: Not applicable.

5. Policy 4-E-1 on pre-disaster build back.

Staff response: Not applicable.

6. Policy 7-J-2 on traffic impact analyses and potential design improvements that could offset traffic impacts.

Staff response: The proposed development has a similar use to the previous development and as reflected in the traffic study, no adverse impact on traffic is anticipated.

Findings for Deviation Requests:

Per Sec. 34-216(4) all deviations must be approved, approved with modification, or rejected based upon a finding that:

a. Each item enhances the achievement of the objectives of the planned development; and

Staff response: The requested deviations allow the development of the site and are primarily due to the site being a corner lot.

b. The general intent of this chapter to protect the public health, safety and welfare will be preserved and promoted; and

Staff response: The proposed deviations preserve public health.

c. Each deviation operates to the benefit, or at least not to the detriment, of the public interest; and

Staff response: The deviations are not a detriment to the public interest.

d. Each deviation is consistent with the Fort Myers Beach Comprehensive Plan.

Staff response: The deviations are consistent with the comprehensive plan.

III. RECOMMENDATION

Staff finds that the CPD with deviations meets the criteria set forth in Sec. 34-85(b) and (c) and 34-216(2) of the LDC and recommends approval of DCI20230197 with the attached conditions.

At the LPA hearing on April 30th the request was unanimously recommended for approval with one member abstaining and one member absent. They requested that the deviation for the increased dumpster height also be included.

IV. CONDITIONS OF APPROVAL

1. A local development order is required prior to any development of the site, in accordance with this planned development approval.
2. All state and local permits, including but not limited to right of way and stormwater permits, must be applied for and received prior to site development.
3. All signage and landscaping must meet the Vehicle Visibility at Intersection requirements found in Sec. 34-3131

Staff Report Exhibits:

A – Master Concept Plan

B – Schedule of Uses and List of Deviations

C – Postcards to Adjacent Properties

D – Application

OPEN SPACE		
	MINIMUM REQUIRED	PROVIDED
PERCENTAGE	0%	17.00%
AREA	0 AC	0.039 AC

Exhibit B Schedule of Uses, Conditions, and List of Deviations

Schedule of Use

Retail store, small to include:

Convenience stores, no fuel pumps (open 24 hours/7 days)

Conditions

- 1) A local development order is required prior to any development of the site, in accordance with this planned development approval.
- 2) All state and local permits, including but not limited to right of way and stormwater permits, must be applied for and received prior to site development.
- 3) All signage and landscaping must meet the Vehicle Visibility at Intersection requirements found in Sec. 34-3131

List of Deviations

- 1) Relief from LDC Section 34-706(d) which requires that when properties are fronting on Estero Boulevard, existing driveway and parking spaces shall be relocated from Estero Boulevard to secondary streets, and new driveways shall connect only to secondary streets, except where these requirements would prohibit all reasonable access to a property. The deviation would allow driveways connecting to Estero Boulevard and Lagoon Street.
- 2) Relief from the driveway separation requirements of LDC Section 10-285 along Estero Boulevard and Lagoon Street. The deviation would allow driveway separations along Estero Boulevard to be a minimum of approximately 80 feet and a minimum of approximately 60 feet along Lagoon Street.
- 3) Relief from parking lot location requirements of LDC Section 34-706(a) to allow a parking lot to be located primarily fronting Estero Blvd.
- 4) Relief from LDC Section 34-2020(d)(2)i.1. which requires a minimum of four spaces per 1,000 square feet of total floor area or 14 parking spaces for the proposed maximum 3,500 square feet of convenience store total floor area. The deviation would allow for a reduction in the minimum required parking spaces to 8 parking spaces.



Town of Fort Myers Beach
Community Development Services - Planning Division
2731 Oak St,
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 30, 2024, and Town Council May 20, 2024

CASE: DCI20230197

ADDRESS: 841 Estero Blvd

APPLICANT: The Neighborhood Company

REQUEST: A request to rezone 841 Estero Blvd from Downtown to Commercial Planned Development (CPD) to allow the redevelopment of a convenience store.

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
2731 Oak St,
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 30, 2024, and Town Council May 20, 2024

CASE: DCI20230197

ADDRESS: 841 Estero Blvd

APPLICANT: The Neighborhood Company

REQUEST: A request to rezone 841 Estero Blvd from Downtown to Commercial Planned Development (CPD) to allow the redevelopment of a convenience store.

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
2731 Oak St,
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 30, 2024, and Town Council May 20, 2024

CASE: DCI20230197

ADDRESS: 841 Estero Blvd

APPLICANT: The Neighborhood Company

REQUEST: A request to rezone 841 Estero Blvd from Downtown to Commercial Planned Development (CPD) to allow the redevelopment of a convenience store.

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
2731 Oak St,
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 30, 2024, and Town Council May 20, 2024

CASE: DCI20230197

ADDRESS: 841 Estero Blvd

APPLICANT: The Neighborhood Company

REQUEST: A request to rezone 841 Estero Blvd from Downtown to Commercial Planned Development (CPD) to allow the redevelopment of a convenience store.

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»



September 20, 2023

Town of Fort Myers Beach
Community Development Department
2525 Estero Blvd.
Ft Myers Beach, FL 33931

**Subject: 841 Estero Blvd. Commercial Planned Development (CPD) – Submittal #1
Rezone from Downtown to Commercial Planned Development**

Intake Team:

The Neighborhood Company is pleased to submit on behalf of our client, J.R. Evans Engineering, P.A. an Application for a Planned Development associated with the subject property located at 841 Estero Blvd., Ft Myers Beach, FL 33931. The proposed request is to seek the following:

- Rezoning of the subject property to allow flexibility to redevelop the subject property and rebuild a convenience store.

Please find attached the following items consistent with application submittal checklist:

1. Application Filing Fee;
2. Application for Public Hearing:
 - Disclosure of Interest Affidavit & Authorization Form;
 - Letter of Authorization;
 - Exhibit 6-1 – STRAP # and Legal Description (Platted Lots)
 - Exhibit 6-2 – Boundary Survey;
 - Exhibit 6-3 – Area Location Map;
 - Exhibit 6-6 – List of Surrounding Property Owners within 500’;
 - Exhibit 6-7– Map Surrounding Property Owners within 500’; and
 - Mailing Labels Surrounding Property Owners within 500’;
3. Planned Development Zoning - Supplement PH-D:
 - a) Narrative:
 - Background & Request
 - Proposed Use/Development
 - Location, Site Design, & Compatibility
 - Supplement PH-D Section A: Comprehensive Plan Amendments
 - Supplement PH-D Section B: Phasing of Construction
 - Supplement PH-D Section C: Comp Plan Compliance
 - Supplement PH-D Section D: Design Standards Compliance
 - Supplement PH-D Section E: Decision-making Compliance
 - Conclusion



- b) Schedule of Deviations and Justifications;
- c) Master Concept Plan;
- d) Architectural Elevations & Renderings; and
- e) Schedule of Uses.

We look forward to your review and are available to answer questions related to this application.

Sincerely,

The Neighborhood Company

Kenrick Gallander, AICP
Vice President, Partner

Attachments: Application Submittal Requirements (listed above)

cc: 7-Eleven Inc.
Creighton Construction & Management
Elizabeth Fountain
Daniel Mumford
File: #230031.01.03



**841 Estero Blvd. (7-Eleven) Commercial Planned Development (CPD)
Planned Development Rezone**

Filing Fee

Town Fee Schedule 2022:

- PD Rezone = \$8,000

TOTAL: \$8,000



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: 841 Estero Blvd., Ft Myers Beach, FL 33931

STRAP Number: 24-46-23-W3-0050B.0010

Applicant: The Neighborhood Company Phone: 850-803-5621

Contact Name: Kenrick S. Gallander, AICP Phone: _____

Email: kg@theneighborhood.company Fax: _____

Current Zoning District: Downtown

Future Land Use Map (FLUM) Category: Pedestrian Commercial

FLUM Density Range: 6 du/ac 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*: The Neighborhood Company Phone: 850-803-5621

**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: 5618 Whispering Willow Way, Fort Myers, FL 33908

Email: kg@theneighborhood.company Fax: _____

Contact Name: Kenrick Gallander Phone: 850-803-5621



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: Kenrick Gallander, AICP Phone: 850-803-5621
Address: 5618 Whispering Willow Way, Ft Myers, FL 33908
Email: kg@theneighborhood.company Fax: _____

D. Other Agent(s). Please list the names of all Authorized Agents (attach extra sheets if necessary)

Name: Elizabeth Fountain, P.E. Phone: 239-405-9148
Address: 9961 Interstate Commerce Dr. #230, Fort Myers, FL 33913
Email: Elizabeth@jrevansengineering.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 Downtown 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

7-Eleven Inc

Name of Entity (corporation, partnership, LLP, LLC, etc)

Grant Distel

Signature

Grant Distel

Typed or Printed Name

SR. Director Development

Title

9/11/2023

Date

STATE OF FL COUNTY OF LEE

The foregoing instrument was certified and subscribed before me by means of ☒ physical presence OR ☐ online notarization, this 11th day of September, 2023, by GRANT DISTEL, ☒ who is personally known to me OR ☐ who has produced _____ as identification.



Kelli J Frost

Notary Public Signature

PART VI- Property Information

A. Legal Description:

STRAP: 24-46-23-W3-0050B.0010

Property Address: 841 Estero Blvd., Ft Myers Beach, 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 6-1.

☒ Yes. Property identified in subdivision: Island Shores

Book: 9 Page: 25 Unit: 2 Block: B Lot(s): 1-4

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) 100.07 per Survey feet

Depth (please provide an average width if irregular in shape) 99.75 per Survey feet

Frontage on street: 100' Estero Blvd. & 99.57' Lagoon St. feet. Frontage on waterbody: N/A feet

Total land area: 0.23+/- AC or 10,000 SF+/- per Survey ☒ acres ☒ square feet

D. General Location of Subject Property (from Sky Bridge or Big Carlos Pass Bridge):

The site is south of the Matanzas Pass Bridge turn right onto Fifth Street,
continue onto Estero Blvd. and the location is on the north west corner of
Estero Blvd. and Lagoon St.

☒ 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

☐ Mixed Residential

☐ Boulevard

☒ Pedestrian Commercial

☐ Marina

☐ Recreation

☐ Wetlands

☐ Platted Overlay



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

EXPLANATORY NOTES

Please do not print, copy and submit these instructions

Please submit required applications, supplemental information, exhibits and documents to zoningpermits@fmbgov.com.

Application fees are set by resolution of the Town Council of the Town of Fort Myers Beach and must be paid before any materials submitted will be considered an application.

The applicant is responsible for the accuracy and completeness of this application. Time delays or additional expenses necessitated by submitting inaccurate or incomplete information will be the responsibility of the applicant. Decisions regarding requests to waive submittal requirements are at the discretion of the Community Development Director and may not be appealed.

All information submitted with the application becomes a part of the public record and will be a permanent part of the file.

All attachments and exhibits must be legible, suitable for recording, and of a size that will fit or conveniently fold into a letter size (8 ½ by 11) folder.

Explanatory Notes – Part I

- A. Applicant's name: The applicant may be the landowner or an authorized agent.
- B. Relationship of applicant to property: Indicate if the applicant is the property owner, and if so, the type of ownership. If the applicant is not the owner of the property, indicate the relationship of the applicant to the owner and submit a notarized authorization from the owner(s) to the applicant.
- C. Agent's name: If the applicant will have others representing him/her in processing the application, indicate name, address, and phone number.
- D. Other agents: Provide contact information for any other agents that may be involved in the request.

Explanatory Notes – Part II

Indicate the requested action.

Explanatory Notes – Part III

If waiver of any application requirement has been approved by the Community Development Director, attach a copy of the approval. Please request waivers prior to applying. Exhibit 3-1

Explanatory Notes – Part IV

- A. If the property owner is an individual or husband and wife, check the box and provide the information.



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

Explanatory Notes – Part V

- A. If there are multiple property owners exhibit 5-1, complete the disclosure form and include the names and mailing addresses of all persons or entities having an ownership interest in the property, including the names of all stockholders and trust beneficiaries. Disclosure is not required of any entity whose interests are solely equity interests that are regularly traded on an established securities market in the United States or another country.
- B. If more than one parcel is involved, submit a list of all property owners and their mailing addresses. Provide a map keyed to the list of property owners showing their interests. The applicant is responsible for the accuracy of the list and map Exhibit 5-2
- C. Where the property is a condominium or timeshare condominium, the application must be initiated by both the condominium association and no less than 75% of the total number of unit owners. To verify ownership, the list of property owners must be identified by unit number and/or timeshare period as applicable, along with proof that the owners who did not join in the application were given actual written notice of the application by the applicants, who must verify the list and the notice by sworn affidavit. Attach this affidavit as Exhibit 5-3.
- D. In addition, a letter of opinion from an attorney licensed to practice law in the State of Florida addressing the considerations in LDC Section 34-201(a)(1)b.3. must be attached as Exhibit 5-4.

Explanatory Notes – Part VI

- A. Include the street address of the subject property. List STRAP number. If more than one parcel is involved, list all STRAP numbers. If you don't know the STRAP number, you can look up the property in the records of the Lee County Property Appraiser at <http://www.leepa.org>. If the application includes only one or more undivided platted lots within a subdivision officially recorded in the Plat Books of Lee County, Florida, identify the property by lot number(s), block if applicable, subdivision unit if applicable, subdivision name, and plat book number and page number. If the property is not one or more undivided platted lots or is in an "unrecorded" subdivision, attach a metes and bounds legal description giving accurate bearings and distances for each course. If multiple parcels are involved, the metes and bounds legal description must describe the perimeter of the entire property subject to the request. The initial point in the description must be related to at least one established identifiable real property corner, such as a government corner or a recorded corner. The bearings used in the description must be clearly referenced to a well-established and monumented line. Exhibit 6-1
- B. Submit a Boundary Survey meeting the minimum technical standards for surveying set out in Chapter 61G17-6 of the Florida Administrative Code. Make sure that the surveyor is aware of any specific needs of the survey (location of Coastal Construction Lines, locations of existing structures, locations of easements, etc) that are relevant to your request. The perimeter boundary of the entire subject property should be indicated clearly with a heavy



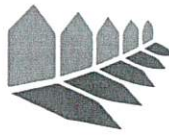
COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

line. Exhibit 6-2

- C. Provide the property dimensions or the approximate dimensions if the property is not a regular quadrilateral.
- D. Describe how to get to the property starting from either the Sky Bridge or the Big Carlos Pass Bridge (specify which). Exhibit 6-3
- E. If there are any deed restrictions or covenants that might affect the requested action, provide the information. Exhibit 6-4
- F. A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 6-5
- G. Attach a list of the surrounding property owners within 500 feet of the perimeter of the area of the request. Also include two sets of mailing labels providing the names and addresses of the owners on this list, and a map showing the parcel boundaries within the 500-foot radius Exhibit 6-6. This information can be acquired for a small fee by requesting a “variance report” from the Map Sales Office at the Lee County Property Appraiser’s Office. Contact information for the Property Appraiser can be found at <http://www.leepa.org>.
- H. Indicate the Future Land Use Map category or categories of the property as shown on the Fort Myers Beach Comprehensive Plan’s Future Land Use Map, and whether the property is located in the “platted overlay” on the map.
- I. Indicate the current zoning of the property. In most cases the current zoning is shown on the official zoning map of the Town of Fort Myers Beach, as adopted by ordinance. If zoning actions affecting the subject property have been taken since March 2004, call Town Hall to verify the current zoning.

Explanatory Notes – Part IV & V

The applicant must sign and submit either of the affidavits in Part V & VI, as applicable.



THE NEIGHBORHOOD
COMPANY

I Grant Distel, as authorized member of 7-Eleven, Inc. owner of property located at 841 Estero Blvd., Fort Myers Beach, FL, identified by STRAP Number 24-46-23-W3-0050B.0010, hereby authorizes The Neighborhood Company regarding the above-referenced property to serve as agent for the Town of Ft Myers Beach Planned Development Rezone Application.

7-Eleven, Inc.

By:

Print Name: Grant Distel

Title: SR. Director of Development

STATE OF FLORIDA
CITY OF LEE

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 23 day of SEPT, 2023 by GRANT DISTEL, as SR. DIRECTOR OF DEVELOPMENT of 7-ELEVEN INC, on behalf of the company(s), who ☒ is personally known to me OR ☐ has produced a(n) driver's license as identification.

(NOTARY STAMP)



Notary Public, State of FLORIDA

Print Name: Kelli J Frost

My Commission Expires: 2-26-24



The State of Texas

SECRETARY OF STATE

IT IS HEREBY CERTIFIED that the attached is/are true and correct copies of the following described document(s) on file in this office:

7-ELEVEN, INC.
FORMERLY: THE SOUTHLAND CORPORATION
CHARTER #179090-00

ARTICLES OF AMENDMENT

FILE DATE: APRIL 29, 1999
EFFECTIVE DATE: APRIL 30, 1999



IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused to be impressed hereon the Seal of State at my office in the City of Austin, on April 30, 1999.

Elton Bomer
Secretary of State

PH

**ARTICLES OF AMENDMENT
TO THE
SECOND RESTATED ARTICLES OF INCORPORATION OF
THE SOUTHLAND CORPORATION

In the Office of the
Secretary of State of Texas

APR 29 1999

Corporations Section

Pursuant to the provisions of the Texas Business Corporation Act, THE SOUTHLAND CORPORATION, a corporation organized under the laws of the State of Texas, hereby amends its Second Restated Articles of Incorporation (the "Articles of Incorporation") and for that purpose, submits the following statement:

ARTICLE ONE

The name of the corporation is The Southland Corporation.

ARTICLE TWO

Article One of the Articles of Incorporation is hereby amended and the full text of Article One, as amended, is as follows:

"The name of the Corporation is "7-Eleven, Inc."

ARTICLE THREE

The amendment to the Articles of Incorporation was adopted by a vote of the shareholders of the corporation on April 28, 1999.

ARTICLE FOUR

The number of shares of the corporation outstanding at the time of such adoption was 409,961,233; and the number of shares entitled to vote thereon was 409,941,168.

The designation and number of shares of each class or series entitled to vote thereon as a class or series were as follows:

Class or Series	Number of Shares Outstanding and Entitled to Vote
None	

ARTICLE FIVE

The number of shares voted for such amendment was 349,690,410 and the number of shares voted against such amendment was 159,879.

The number of shares of each class or series entitled to vote as a class or series voted for or against such amendment as follows:

Class or Series	Number of Shares Voted <u>For</u> <u>Against</u>
None	

ARTICLE SIX

The effective date of this amendment shall be April 30, 1999.

Dated the 28th day of April, 1999.
(to be effective April 30, 1999)

THE SOUTHLAND CORPORATION

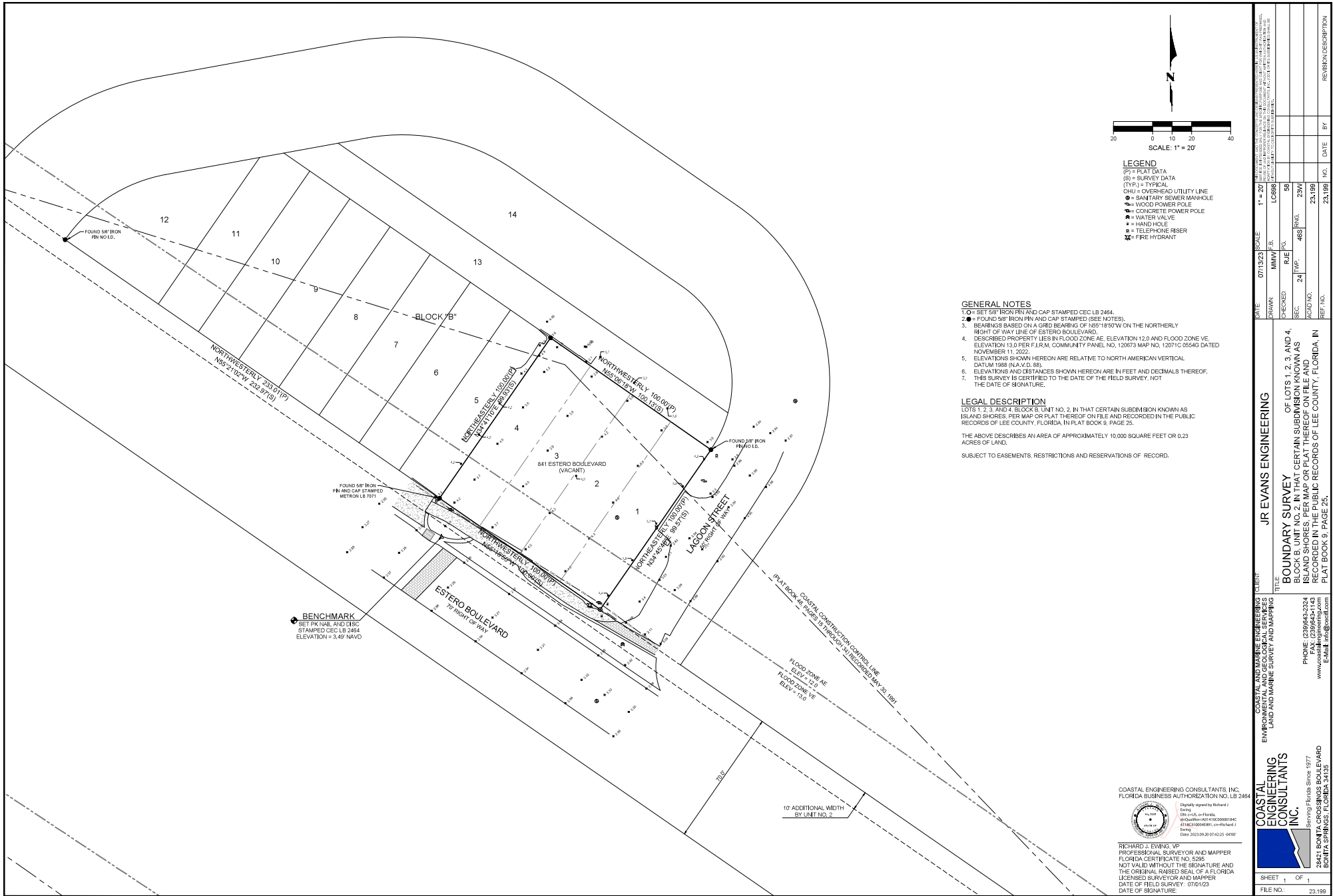
By: Bryan F. Smith, Jr.
Name and Title: Bryan F. Smith, Jr. - Senior Vice President



**841 ESTERO BLVD COMMERCIAL PLANNED DEVELOPMENT (CPD)
Planned Development Rezone**

EXHIBIT 6-1: STRAP # & LEGAL DESCRIPTION

- STRAP #: 24-46-23-W3-0050B.0010
- Description: (Instr. No. 131475)
 - Lots 1, 2, 3, and 4, Block B, Unit No. 2, in that certain subdivision known as Island Shores, per map or plat thereof on file and recorded in the public records of Lee County, Florida, in Plat Book 9, Page 25.



GENERAL NOTES

1. 0 = SET 5/8" IRON PIN AND CAP STAMPED CEC LB 2464.

2. 8 = FOUND 5/8" IRON PIN AND CAP STAMPED (SEE NOTES).

3. BEARINGS BASED ON A GRID BEARING OF N55°18'50"W ON THE NORTHERLY RIGHT OF WAY LINE OF ESTERO BOULEVARD.

4. DESCRIBED PROPERTY LIES IN FLOOD ZONE AE, ELEVATION 12.0 AND FLOOD ZONE VE, ELEVATION 13.0 PER F.L.R.M. COMMUNITY PANEL NO. 120673 MAP NO. 12071C 0554G DATED NOVEMBER 11, 2022.

5. ELEVATIONS SHOWN HEREON ARE RELATIVE TO NORTH AMERICAN VERTICAL DATUM 1988 (N.A.V.D. 88).

6. ELEVATIONS AND DISTANCES SHOWN HEREON ARE IN FEET AND DECIMALS THEREOF.

7. THIS SURVEY IS CERTIFIED TO THE DATE OF THE FIELD SURVEY, NOT THE DATE OF SIGNATURE.

LEGAL DESCRIPTION

LOTS 1, 2, 3, AND 4, BLOCK B, UNIT NO. 2, IN THAT CERTAIN SUBDIVISION KNOWN AS ISLAND SHORES, PER MAP OR PLAT THEREOF ON FILE AND RECORDED IN THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA IN PLAT BOOK 9, PAGE 25.

THE ABOVE DESCRIBES AN AREA OF APPROXIMATELY 10,000 SQUARE FEET OR 0.23 ACRES OF LAND.

SUBJECT TO EASEMENTS, RESTRICTIONS AND RESERVATIONS OF RECORD.

COASTAL ENGINEERING CONSULTANTS, INC.
FLORIDA BUSINESS AUTHORIZATION NO. LB 2464

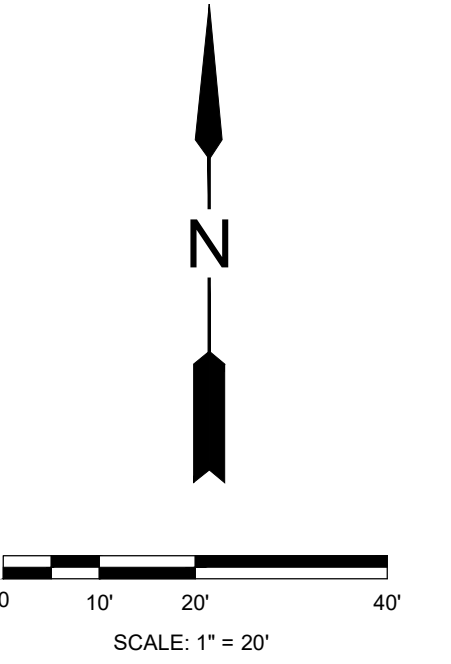
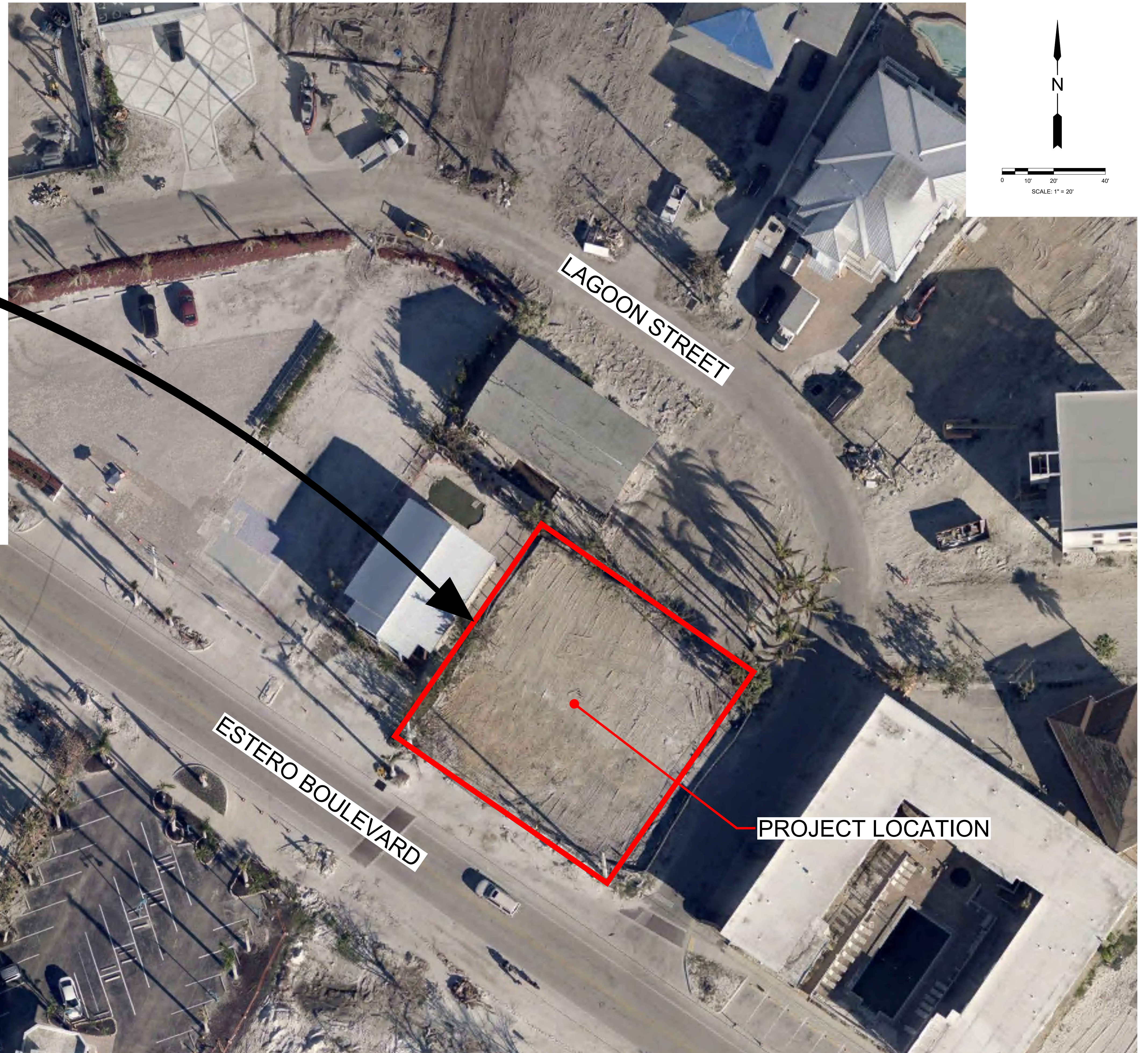
Digitally signed by Richard J. Ewing
DN: cn=JL, o=Florida
c=US, email=Richard.J.Ewing@ceci.com
Date: 2023.09.26 07:42:25 -0400

RICHARD J. EWING, VP
PROFESSIONAL SURVEYOR AND MAPPER
FLORIDA CERTIFICATE NO. 6298
NOT VALID WITHOUT THE SIGNATURE AND
THE ORIGINAL RAISED SEAL OF A FLORIDA
LICENSED SURVEYOR AND MAPPER
DATE OF FIELD SURVEY: 07/01/23
DATE OF SIGNATURE:

DATE	07/13/23	SCALE	1" = 20'	DRAWN	MMW/B	CHECKED	LCB88	DATE	07/13/23	SCALE	1" = 20'	DRAWN	MMW/B	CHECKED	LCB88
REV.	24	REV.	24	REV.	24	REV.	24	REV.	24	REV.	24	REV.	24	REV.	24
NO.	23,199	NO.	23,199	NO.	23,199	NO.	23,199	NO.	23,199	NO.	23,199	NO.	23,199	NO.	23,199
BY		BY		BY		BY		BY		BY		BY		BY	
DESCRIPTION		DESCRIPTION		DESCRIPTION		DESCRIPTION		DESCRIPTION		DESCRIPTION		DESCRIPTION		DESCRIPTION	



PROJECT LOCATION (N.T.S)





THE NEIGHBORHOOD COMPANY

841 ESTERO BLVD COMMERCIAL PLANNED DEVELOPMENT (CPD) Planned Development Rezone

500' Property Owner List

Buffer: 500 List Size: 76

FolioId	OwnerName	OwnerName2	MailAddress	MailAddress2	MailCity	MailState	MailZip	MailCountry
10127392	SOUTHLAND CORPORATION	CORPORATE TAX DEPT	2711 N HASKELL AVE		DALLAS	TX	75204	
10127266	LEE COUNTY		PO BOX 398		FORT MYERS	FL	33902	
10127267	RICHARD JOHN W TR		237 OLD SAN CARLOS BLVD		FORT MYERS BEACH	FL	33931	
10127317	CASEY KATHLEEN M +		32917 PEACH TREE LN		LEWES	DE	19958	
10127322	TOMAILO FRANKLIN L &		934 THIRD ST		FORT MYERS BEACH	FL	33931	
10127323	932 THIRD STREET LLC		932 THIRD ST		FORT MYERS BEACH	FL	33931	
10127325	DUDDY BRIAN PATRICK TR		14 STETSON PL		DUXBURY	MA	2332	
10127326	VANSOLKEMA TIMOTHY		7360 ROYAL RIDGE DR SE		CALEDONIA	MI	49316	
10127327	VANSOLKEMA TIMOTHY		7360 ROYAL RIDGE DR SE		CALEDONIA	MI	49316	
10127328	KOSTER RODNEY A & THERESA A		880 THIRD ST		FORT MYERS BEACH	FL	33931	
10127329	KOSTER RODNEY A & THERESE A		880 THIRD ST		FORT MYERS BEACH	FL	33931	
10127330	TAMIA SA		949 STRATFORD DR		ENCINITAS	CA	92024	
10127331	WOODSON MARK T + KAREN K		820 THIRD ST		FORT MYERS BEACH	FL	33931	
10127332	KADO KELLY +		2560 ESTERO BLVD #6A		FORT MYERS BEACH	FL	33931	
10127333	SCHMELING ROBERT W +		1621 SE 84TH CT		VANCOUVER	WA	98664	
10127334	SWING THOMAS J TR		2560 TURF PARADISE DR		STOW	OH	44224	
10127335	SCHROEDER KURT & GERALDINE		405 HARBOR CT		FORT MYERS BEACH	FL	33931	
10127341	KOSTER RODNEY A & THERESE A		880 THIRD ST		FORT MYERS BEACH	FL	33931	
10127347	GRIFFIS LLC		9051 E CHICAGO RD		JEROME	MI	49249	
10127349	FIRST CENTRAL INVESTMENT CORP	LAWRENCE A YAX	830 ESTERO BLVD		FORT MYERS BEACH	FL	33931	
10127350	DULLARD ROBERT TR		PO BOX 2695		FORT MYERS BEACH	FL	33931	
10127352	ETCHISON CAROLYN +		200 GREEN RD		ALPHARETTA	GA	30004	
10127353	CAMMICK PETER & VIVIAN		1270 PLAYMOOR DR		PALM HARBOR	FL	34683	
10127354	MAGNUM FMB 2 LLC		725 MATANZAS CT		FORT MYERS BEACH	FL	33931	
10588379	RICHARD JOHN W TR		237 OLD SAN CARLOS BLVD		FORT MYERS BEACH	FL	33931	
10127371	BAHAN SUZANNE E +		169 OLD SAN CARLOS BLVD		FORT MYERS BEACH	FL	33931	
10127372	MAY SUZANNE E		PO BOX 61176		FORT MYERS	FL	33906	
10127373	JENKINS CARROLL ANNE		3063 NORFOLK CR 23 RR6		TILLSONBURG	ON	N4G 4G9 CANADA	
10127374	151 OLD SAN CARLOS LLC		17840 SAN CARLOS BLVD		FORT MYERS BEACH	FL	33931	
10127375	BENSON BRADFORD J II TR		938 DEEP LAGOON LN		FORT MYERS	FL	33919	
10127376	HOLIDAY COURT MOTEL LLC		PO BOX 1118		LABELLE	FL	33975	
10127378	HOLBROOK LESLIE E		3658 COUNTY RD 31		GALION	OH	44833	
10127379	PURTELL JAMES F TR		60 STONEY BEACH RD		OSHKOSH	WI	54902	
10127380	BOYD TODD & JULIE		1206 HAIGHT LN		SARNIA	ON	N7S 2M5 CANADA	
10127381	DULLARD ROBERT TR +		PO BOX 2695		FT MYERS BCH	FL	33932	
10127382	BLOCD AHL LEASING LLC		3538 TIMBER RIDGE TRL		CEDAR RAPIDS	IA	52411	
10127383	ISLAND GEM LLC		8044 ESTERO BLVD		FORT MYERS BEACH	FL	33931	
10127384	J&J SNA PROPERTIES LLC		470 OAKRIDGE AVE		NORTH ATTLEBORO	MA	2760	

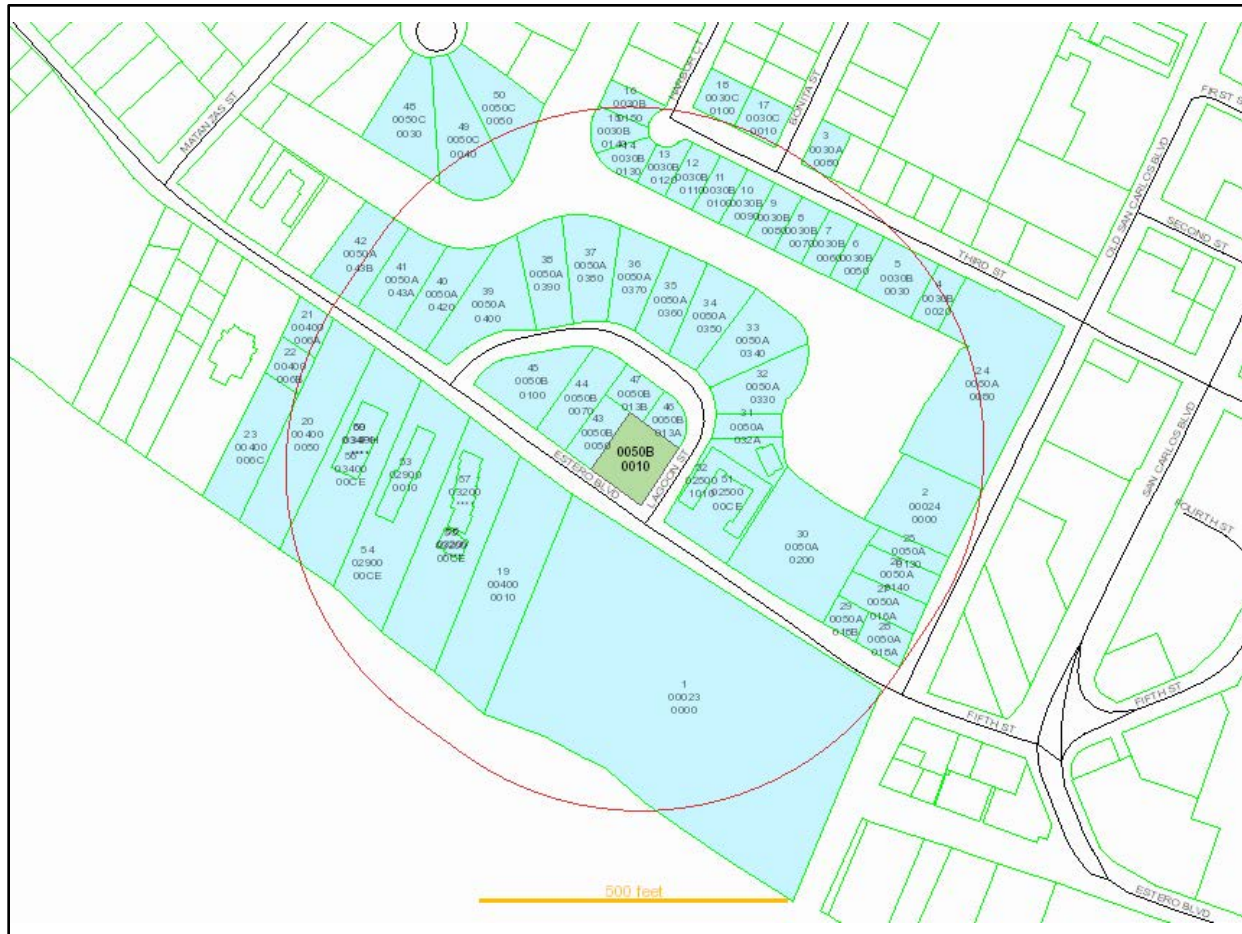


10127385 PAINE FREDERICK L & NANCY K		819 LAGOON ST	FORT MYERS BEACH	FL	33931
10127386 TOWN OF FORT MYERS BEACH	FINANCE DEPT	2525 ESTERO BLVD	FORT MYERS BEACH	FL	33931
10127387 EDGEWATER INN LLC		1440 BRICKELL BAY DR	MIAMI	FL	33131
10127388 PAYNE DONNA L		501 WILLIN WAY	MOUNT STERLING	KY	40353
10127389 SAVINO STEPHEN JR & LORI		58 HIGH VALLEY DR	CANTON	CT	6019
10127394 COURTNEY S MARK & DEBORAH S TR		83 CRANBERRY RD	GROVE CITY	PA	16127
10127395 PAINE FRED		823 LAGOON ST	FORT MYERS BEACH	FL	33931
10127396 PAINE FREDERICK L &		12 BELKNAP SHORES	SUPERIOR	WI	54880
10127397 ARTRIP BARBARA K TR		3225 E RIVERSIDE DR UNIT 57E	FORT MYERS	FL	33916
10127398 SCHWARTZ DEREK & KRISTEN		3329 ROSA AVE	NEW SMYRNA BEACH	FL	32168
10127402 BEBO PROPERTIES I LLC		1065 TONKAWA RD	ORONO	MN	55356
10127403 VANFOSSEN TERRI D		724 MATANZAS CT	FORT MYERS BEACH	FL	33931
10127404 CROW FMB FAMILY TRUST		2705 ODAWA TRL	MUSKEGON	MI	49444
10462842 SAND CASTLE BEACH CLUB CONDO		905 ESTERO BLVD	FORT MYERS BEACH	FL	33931
10127438 SAND CASTLE BEACH CLUB CONDO A		905 ESTERO BLVD	FORT MYERS BEACH	FL	33931
10127447 ROYAL BEACH CLUB CONDO ASSN		PO BOX 3427	NORTH FORT MYERS	FL	33918
10462843 ROYAL BEACH CLUB CONDO		800 ESTERO BLVD	FORT MYERS BEACH	FL	33931
10462844 ROYAL BEACH CLUB CONDO PH II		800 ESTERO BLVD	FORT MYERS BEACH	FL	33931
10462845 BEL-AIR BEACH CLUB CONDO		780 ESTERO BLVD	FORT MYERS BEACH	FL	33931
10127449 BEARCAT MOUNTAIN PROPERTIES LL		1510 INDIAN HILL LANE	BALLWIN	MO	63021
10127450 BELL MORGAN & JOSH +		11510 MAGNOLIA DR	FORT WAYNE	IN	46814
10127451 MANGAS JOHN M & ANN J +		8847 N STONE MILL RD	SYLVANIA	OH	43560
10127452 ROLLER JONATHAN L & LAURA J +		6711 MACINTOSH LANE	NORTH TONAWANDA	NY	14120
10127453 CALLA LILY REAL ESTATE LLC		4192 MORRIS PARK DR	MCFARLAND	WI	53558
10127454 CHURCHILL ROBYN A TR		15071 TEAKWOOD DR	MONROE	MI	48161
10127455 DIAMOND BAY MANAGEMENT GROUP L		3028 SPOOKY NOOK DR	MANHEIM	PA	17545
10127456 ARMIJO DANIEL G & JANET		17831 HASS RD	MOKENA	IL	60448
10127457 WALSH JANET M TR		2536 KENNELLY DR	WILLOUGHBY	OH	44094
10127458 DREAM MAKERS OCEAN ESTATES LLC		2998 HEARTHSTONE DR	ELLCOTT CITY	MD	21042
10127459 ROEGNER DONALD L & MARLYS A TR		4220 COVENTRY DR	KOKOMO	IN	46902
10127461 BEL-AIR BEACH CLUB ASSOC	RAL RESORT PROPERTY MGMT	17810 SAN CARLOS BLVD	FORT MYERS BEACH	FL	33931
10127462 SAWYER WILLIAM R & SONYA L		PO BOX 69	MILTON	VT	5468
10127463 WILLE BRIAN +		19752 REGAN RD	NEW LENOX	IL	60451
10127464 CANNY COLLEEN M TR		4536 GRAND AVE	WESTERN SPRINGS	IL	60558
10127465 DEALEY LARRY & JUDY		PO BOX 259	CONVOY	OH	45832
10127466 WATTS SHEILA A TR		17274 SAN CARLOS BLVD	FORT MYERS BEACH	FL	33931
10127467 RUPERT DONALD F JR &		329 BONNIEMERE RD	SHELBYVILLE	KY	40065
10127468 RYFINSKI WENDY K TR		780 ESTERO BLVD #PH4	FORT MYERS BEACH	FL	33931



THE NEIGHBORHOOD COMPANY

7-ELEVEN COMMERCIAL PLANNED DEVELOPMENT (CPD) 841 ESTERO BLVD. 500' SURROUNDING PROPERTY OWNERS MAP



Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

Supplement PH-D

Additional Required Information for a Planned Development Application

This is the second part of a two-part application. This part requests specific information for a planned development rezoning or an amendment to an approved planned development. Include this form with the Request for Public Hearing form.

Fee in the amount of \$8000.00 up to 1 acre +1000.00 per additional acre
\$2000.00 PD Amendment minor (< acre total property area)
\$4000.00 PD Reinstatement or \$6500.00 PD Amendment

Project Name: 841 Estero Blvd Commercial Planned Development Rezone (7-Eleven)
Authorized Applicant: Kenrick S. Gallander, The Neighborhood Company
STRAP Number(s): 19-46-24-W4-0060B.0160

Current Property Status: Vacant
Current Zoning: Downtown
Future Land Use Map (FLUM) Category: Pedestrian Commercial
Platted Overlay? ☐ yes, ☒ no FLUM Density Range:

Requested Action:

☐	DRI (with rezoning)
☒	Planned Development (also check below)
☒	Rezoning from: Downtown to: CPD
☐	Amendment to Master Concept Plan/attendant documentation

PART I Narrative Statements

A. Comprehensive Plan Amendments (check one)

☐	There are NO Comprehensive Plan Amendments pending that could affect the future use of this property.
☒	The following Comprehensive Plan Amendments ARE pending and could affect the future use of this property (list the amendment and give a brief explanation of its possible effect)
	See attached Narrative of Request

B. Phasing of Construction

☒	The development is to be constructed in a single phase.
☐	The development is to be constructed in phases as follows: (describe proposed phasing below)



Explain how the proposed development complies with applicable Goals, Objectives, and Policies of the Fort Myers Beach Comprehensive Plan.

D. Design Standards Compliance

For projects required to meet Commercial Design Standards, explain how the proposed development complies with the design standards set forth in LDC Sections 34-991 through 34-997.

3/30/2021



Explain how the proposed development complies with the guidelines for decision-making embodied in LDC Section 34-85.

[illegible]

Provide a list of the requested deviations keyed to the Master Concept Plan and provide a written justification for each deviation. The location of each deviation should be indicated on the Master Concept Plan.

[illegible]



For amendments to an approved Master Concept Plan, indicate the specific amendments that could not be approved administratively as set forth in LDC Section 34-219.

[illegible]

All applications for a planned development must submit fourteen (14) copies of this application form and all applicable exhibits.

Public Hearing Request Form
Supplement Form PH-D
Master Concept Plan
Traffic Impact Statement
Architectural Elevations
Schedule of Uses
Fee in the amount of \$8000.00 up to 1 acre +1000.00 per additional acre
\$2000.00 PD Amendment minor (< acre total property area)
\$4000.00 PD Reinstatement or \$6500.00 PD Amendment

For DRI: A Binding letter of interpretation from DCA or a complete and sufficient ADA.



841 ESTERO BLVD COMMERCIAL PLANNED DEVELOPMENT (CPD) Planned Development Rezone Application

NARRATIVE

BACKGROUND & REQUEST

The subject property is located at 841 Estero Blvd., Fort Myers Beach, FL 33931, and consists of a single parcel (STRAP#: 24-46-23-W3-0050B.0010) totaling 10,000± sq. ft. (0.23± acres) (See Figure 1). The property has a Future Land Use (FLU) Map Designation of Pedestrian Commercial and is within the Downtown Zoning District.

The Neighborhood Company, the Applicant and Authorized Representative/Agent, on behalf of the owner 7-Eleven Inc, is submitting this Planned Development Rezone Application to request the following:

- Rezone from Downtown to Commercial Planned Development (CPD)

The subject property prior to Hurricane Ian was developed with a convenience store (7-Eleven) (See Figure 2). As a result of the hurricane, the property, existing structure and surrounding properties received significant damage (See Figure 3). Assessments of the property required the structure and site infrastructure to be demolished and the site cleared (See Figure 4)



Figure 1. Location Map



Figure 2. Pre Hurricane Ian

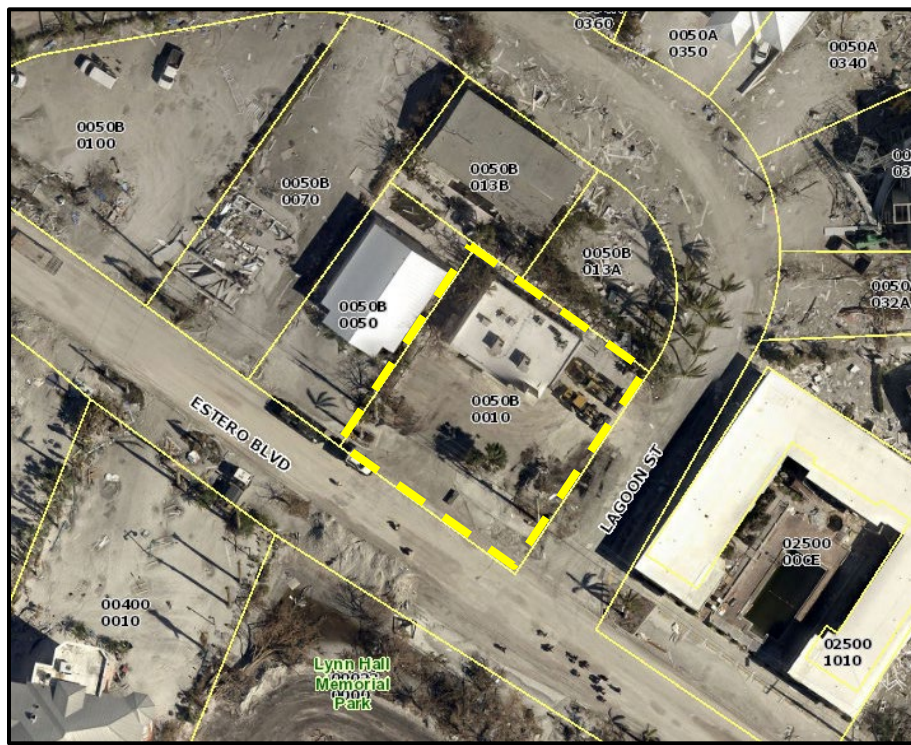


Figure 3. Post Hurricane Ian



Figure 4. Existing Conditions

PROPOSED USE/DEVELOPMENT

The 7-Eleven, which existed on the property for decades, was a very popular commercial business and provided convenience benefits to local residents and visitors. Based on the historic demand and continued need for convenience stores on Fort Myers Beach (FMB), the owner wants to redevelop the property with the same use. The plan for a new convenience store (7-Eleven) improves upon what existed prior to Hurricane Ian and reduces or eliminates non-conformities that existed on the property.

Convenience stores have been and continue to be a staple and necessary commercial business in all communities throughout the United States. Fort Myers Beach, Florida is no exception. As Fort Myers Beach continues to rebuild and regain its pre-Hurricane Ian resident and visitor populations, convenience related businesses will once again be needed and expected on this part of the island.

The proposed redevelopment of the property will consist of the following:

- A maximum 3,500+/- sq. ft. convenience store to be open 24 hours and seven days a week.
- Maintain two (2) access points. One from Estero Boulevard and the other from Lagoon Street.
- Dumpster and enclosure with direct access from Lagoon Street.



The Comprehensive Plan's Pedestrian Commercial FLU designation indicates that the maximum Floor Area Ratio (FAR) specified under the Land Development Code (LDC) may be as high as 2.5. With the subject property currently located within the Downtown zoning district, LDC Sec. 34-675(c)(3) allows an FAR up to 1.4.

A FAR of 1.4 would allow approximately 14,947.8 square feet of building. The CPD is proposing a total building area of approximately 3,500 square feet that is well below the potential maximum allowed.

LOCATION, SITE DESIGN & COMPATIBILITY

The property is situated within the "Core Area" of Fort Myers Beach at the northwest corner of Estero Blvd. and Lagoon St., located across from Lynn Hall Memorial Park and approximately 500 feet northwest of "Times Square" on Estero Blvd. This area of the island provides visitors with opportunities for beach access, parking, shopping, dining, and lodging. This mixed-use "Core Area" is an ideal location for a convenience store. It is where the prior 7-Eleven served the needs of residents and visitors for decades and represents an area of continued activity with the opening of Margaritaville, and the planned redevelopment of the Times Square area.

The subject property is limited in size and presents numerous design challenges that would require multiple variances if developed under conventional zoning regulations. As such, the Commercial Planned Development provides for regulatory flexibility that allows for redevelopment opportunities. The proposed Master Concept Plan (MCP) reconfigures the prior 7-Eleven site to make it more functional, attractive, resilient, and safer. It also reduces or eliminates non-conformities and makes it generally consistent with the intent of the Downtown redevelopment district.

First, the building is situated at the southwestern corner of the property. This allows for a safer and more functional parking lot design while creating parking and improved traffic circulation to support the redevelopment of the prior convenient store use. Access will be limited to two access points - one along Estero Blvd and the one along Lagoon Street. This will allow for a logical circulation pattern and will provide safer ingress and egress movements. Pedestrians will be able to enter the establishment by sidewalk from Estero Blvd. without crossing through the parking lot as was previously designed. Additionally, this configuration allows for a slightly larger convenience store that will be newer, more resilient, and better meet the needs of the community.

Second, the revised configuration will provide a primary façade along Lagoon St., that will cater to the motorist and improve vehicular access and a secondary facade closer to Estero, which will provide improved, quick and easy access to the pedestrian, cyclist and beachgoers at Lynn Hall Memorial Park. The placement of the building closer to Estero Blvd is consistent with the Downtown District build to lines and helps activate the street, create visual interest and encourages bicycle and pedestrian activity.

Third, the site configuration provides improved setbacks, and more space on the property for bike racks, pedestrian connectivity, accessibility to the existing bus/trolley stop, enhanced landscaping and an enclosed dumpster pad. These improvements will create a more usable, inviting, visually attractive development and will ensure locational compatibility.



The zoning and existing land uses surrounding the property are as follows:

- Northeast: RC/Vacant
- Northwest: RC/Multiple family
- Southwest: CPD & CF/Estero Blvd. Right-of-way, Hotel and Public Park
- Southeast: Downtown/Lagoon St. Right-of-way and Hotel

For decades, the properties surrounding this site were developed with multi-family residential, hotel, and public park and will remain a mixture of uses as the island redevelops. Currently, the surrounding properties are in various stages of vacancy, under renovation, or being redeveloped due to the impacts of the hurricane.

As outlined within the Development Standards Table on the MCP, the proposed build to line and setbacks are as follows:

- Build-to line:
 - Primary Street (Estero Blvd.): 0-5 FT
- Minimum Setbacks – Primary and Accessory Structures:
 - Secondary Street (Lagoon Street): 20 FT
 - Side/Rear: 0 - 5 FT

The development standards, inclusive of the build-to line and setbacks, ensure compatibility with adjacent uses and are appropriate for property located in very close proximity to the town's most intense commercial/tourism area, Times Square, and at the intersection of two roadways.

Development order approval will include code compliant landscaping throughout the property. Buffers are not required for all sides of the site as the property is located within the Downtown zoning district and adjacent to public rights-of-way on two sides. However, it is the intent of the developer to enhance landscaping on the property for a more aesthetically pleasing site. As shown on the MCP, type "C" buffers are proposed along portions of the northwest and northeast property boundaries and a min. 6 foot wall or fence along the remaining northeastern boundary. Landscaping is planned throughout the property and will be detailed as part of the development order approval specifically within the areas along Estero Blvd., Lagoon Street, and between a portion of the subject property and the multi-family structures to the northeast and northwest. Building edge plantings will also be provided along a portion of the building facing the northwest side of the building and landscaping within the right-of-way as permitted by the town. The dumpster enclosure, located on the northeast side of the property will be screened as required by LDC.

As stated in LDC Sec. 34-677(b) there are no minimum open space requirements in the Downtown zoning district. However, the developer intends to provide landscape areas within the site and as indicated on the enclosed MCP proposes to provide 10% open space for the redeveloped site.

The previously established convenience store use has a proven history of being compatible and complementary with the surrounding roadways, multi-family residences, lodging, nearby restaurants, and retail uses. The proposed development standards, enhanced buffering, and min. open space requirements outlined within the proposed CPD will continue to ensure the new convenience store is compatible.



**THE FOLLOWING ADDRESSES APPLICABLE SECTIONS PROVIDED FOR IN THE
PLANNED DEVELOPMENT APPLICATION – SUPPLEMENT PH-D FORM:**

A. COMPREHENSIVE PLAN AMENDMENTS

The following Comprehensive Plan Amendments are pending and could affect the future use of this property:

- Mixed Use Districts Designation – Time Square Mixed-Use District

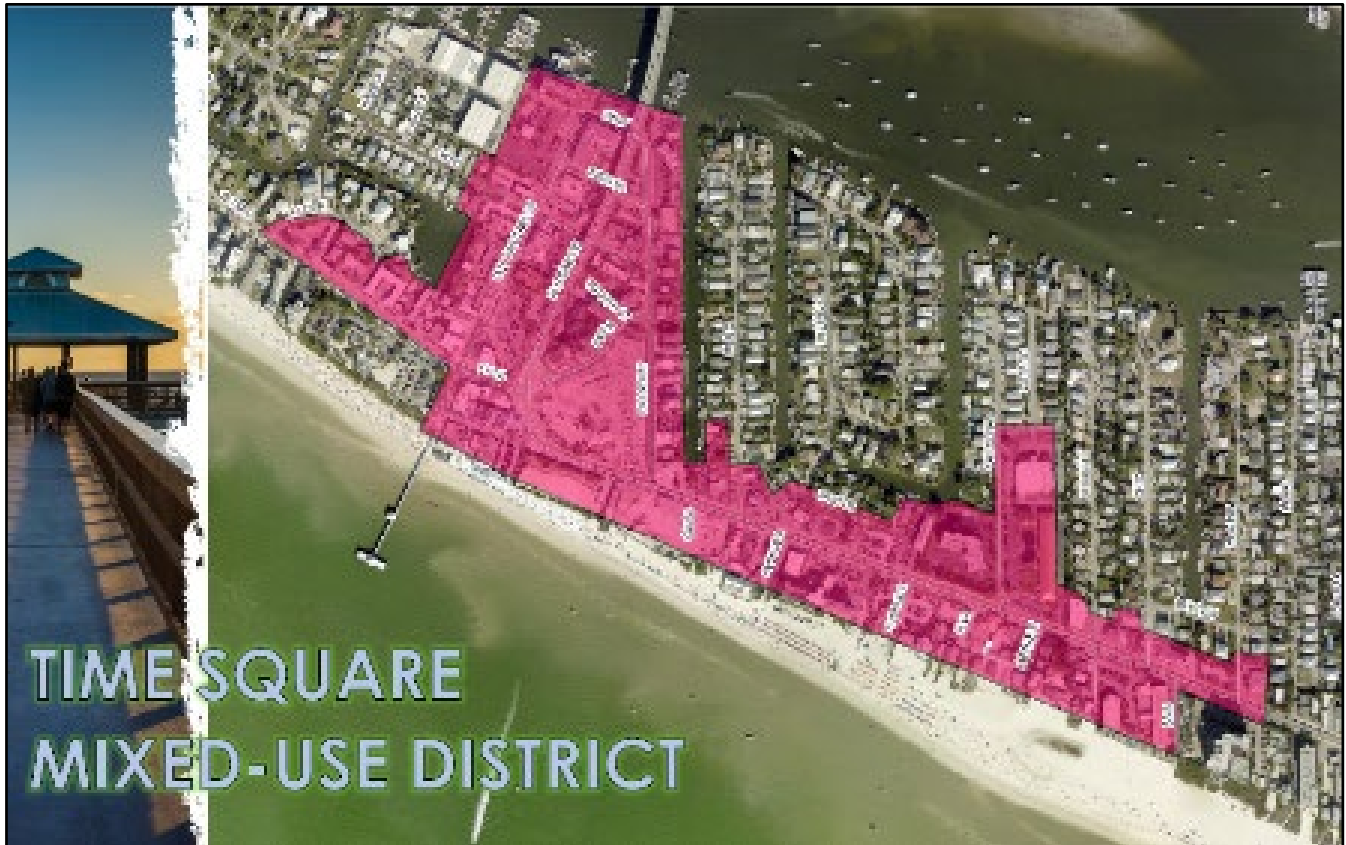


Figure 5. Proposed “Time Square Mixed-Use District” Boundary

The applicant is aware that the town is currently in the early stages of amending its Comprehensive Plan Future Land Use Map (FLUM) as presented by the town’s consultant. The town is considering a Future Land Use change for the subject property that would remove the property from the Pedestrian Commercial FLUM designation and place the property within a newly created “Time Square Mixed-Use District”. The applicant intends to comply and be consistent with the existing and potential Future Land Use designation for this area. While it is uncertain if and when the Time Square Mixed-Use District will be approved, it is our understanding that it intends to promote a mix of uses, greater commercial intensity and enhanced bicycle and pedestrian activity, which are all consistent with the proposed CPD.



B. PHASING OF CONSTRUCTION

The development is to be constructed in a single phase.



C. COMPREHENSIVE PLAN COMPLIANCE

COMMUNITY DESIGN ELEMENT:

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.

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.

The redevelopment plan proposes enhancements to the frontage along Estero Blvd. and throughout the site. These enhancements will include improved access management, increased open space and green areas, defined sidewalks for pedestrian connectivity to Estero Blvd and nearby transit, and improved landscaping. Due to the limited size of the site, it was determined that the proposed building location and orientation resulted in a more functional site with improved managed traffic flow to allow all vehicles to leave the parking lot in a forward motion and allowed for foot traffic to access the site without having to walk through the parking lot and drive aisles.

This plan proposes a reduction in the width of the driveway opening along Estero Blvd. to create a defined and controlled entrance into the development. Moreover, the new configuration will provide more open space and green areas on the northeast and northwest portions of the property. Additional enhancements to the site include landscaping, enhanced buffering, and potential mural artwork along Estero Blvd. These enhancements create a development with improved accessibility and safety for pedestrians, while improving the appearance for residents and visitors on the primary circulation route of Fort Myers Beach, thus supporting the “Estero Blvd” vision as described in Objective 1-A and Policy 1-A-1 of the Fort Myers Beach Comprehensive Plan.

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 a beach–resort environment and minimizing the damage that a hurricane 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.

The proposed project will rebuild a previously established commercial business which for decades provided easy and practical access to convenience goods for both residents and visitors. The proposed project will provide a more pedestrian friendly environment, through the reconfiguration of parking, the reduced width of the driveway opening from Estero Blvd., orientation of the building, appropriate setbacks/building location, and potential mural artwork on the southwest wall. Through the implementation of these elements, the development will enhance the public realm of Fort Myers Beach and add to its unique small-town character.

Finally, in an effort to minimize the damage that a future hurricane could inflict, the new building will be built to the current Florida Building Code, FEMA standards, and meet all applicable state and federal regulations.



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.

Located along Estero Blvd., approximately 500 feet west of Times Square, the proposed project will re-establish a long-standing convenience-based business that has provided goods to both residents and visitors for decades. The previous building was destroyed by Hurricane Ian but was an integral component to the heavily traveled Estero Blvd. and walkable area of the town.

The proposed site configuration will provide a primary façade along Lagoon St. catering to the motorist and improve vehicular access. A secondary facade closer to Estero Blvd. will provide pedestrians and cyclists with direct access to the site via a sidewalk rather than having to walk through the parking lot as the site was previously designed. The placement of the building closer to Estero Blvd is consistent with the Downtown District build to lines and helps activate the street, create visual interest and encourages bicycle and pedestrian activity. Other site elements provide for appropriately applied setbacks, enhanced buffers/landscaping, more space on the property for bike racks, accessway/driveway width reductions, sidewalks, and an enclosed dumpster pad. These improvements will create a more inviting, safer, visually attractive development ensuring locational compatibility and improved pedestrian-oriented areas consistent with Policy 4-A-2.

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. 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.

The project site is located within the Pedestrian Commercial FLUM, and as stated in Policy 4-B-6, commercial activities must contribute to the pedestrian-oriented public realm. The site plan proposes to provide enhancements to the public realm through the improved vehicular patterns on the site, clearly defined pedestrian sidewalks and the proposed mural located on the building to add to the pedestrian experience as people move along Estero Blvd. These proposed enhancements will contribute to the pedestrian-oriented public realm of Fort Myers Beach and are consistent with Policy 4-B-6.

POLICY 4-C-2: 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 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.

The Comprehensive Plan’s Pedestrian Commercial FLU designation indicates that the maximum Floor Area Ratio (FAR) specified under the Land Development Code (LDC) may be as high as 2.5. With the subject property currently located within the Downtown zoning district, LDC Sec. 34-675(c)(3) allows an FAR up to 1.4.



A FAR of 1.4 would allow approximately 14,947.8 square feet of building. The CPD is proposing a total building area of approximately 3,500 square feet which equals an FAR of approximately 0.33, which is well below the potential maximum allowed and thus is consistent with Policy 4-C-2.

POLICY 4-C-3. 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.

The Fort Myers Beach Land Development Code states that the intent of the Commercial Planned Development (CPD) zoning district is to allow a landowner the ability to submit a specific proposal for a land development that is primarily nonresidential and complies with the Fort Myers Beach Comprehensive Plan but does not meet all of the specific requirements of a conventional or redevelopment district. Due to the limited size of the subject property and the destruction caused by Hurricane Ian, this application requests a rezoning to CPD so the property can be redeveloped and to remove nonconformities which existed on the site prior to Hurricane Ian.

A proposed convenience retail store use is being requested within this CPD. This use classification is permitted by right within the Downtown zoning district as well as the Pedestrian Commercial category of the Fort Myers Beach Comprehensive Plan. The CPD rezone request is thereby in compliance with Policy 4-C-3.

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 build back policy.

The new commercial building will be more resilient and will comply with the latest and more stringent Florida Building Code. Additionally, state and federal flood regulations will be followed, improving the resiliency of the island's structures.

COASTAL MANAGEMENT ELEMENT:

GOAL 5: To keep the public aware of the potential effects of 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.

POLICY 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 and tropical storms. 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.

The proposed redevelopment of the site will be in compliance with all applicable federal, state and local regulations to develop a resilient commercial property to serve the residents and visitors of Fort Myers Beach.



TRANSPORTATION ELEMENT

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 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.

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. 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.

To better serve the public, the proposed site design includes a clearly marked parking lot with a reduced entrance width from Estero Blvd., appropriate parking lot lighting, and an unobstructed sidewalk with nearby street crossings. To encourage use of alternate travel modes under Policy 7-D-3 the development will provide bike racks for bicycle parking and will maintain a pedestrian pathway to the existing transit stop located on the property.

UTILITIES ELEMENT

GOAL 8: 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.

POLICY 8-A-1 Mandatory customer connections to water and sewer utilities shall continue to be the policy of the Town of Fort Myers Beach.

The proposed development will connect to central water and sewer utilities as mandated by the Town of Fort Myers Beach.



D. DESIGN STANDARDS COMPLIANCE

The proposed 7-Eleven convenience store will be consistent with the overall purpose and intent of the commercial design standards provided under LDC Section 34-991. The following outlines compliance with the specified design standards within LDC Sections 34-994 through 34-997:

As depicted in the architectural elevations and renderings provided (See the required Architectural Elevations included in the submittal documents), the proposed exterior walls will be a combination of stucco and fiber cement panels/boards, which are identified as an appropriate finish material under LDC Section 34-994. The structure will be dry-floodproofed with all fastenings and design to be “visually unobtrusive” and compliant with being located within FIRM Zone: AE 12. The principal façade will be designed to be compliant with the requirements for transparent windows, glazing, and shape.

The proposed building will generally comply with the intent and applicable portions of LDC Section 34-995 related to “Principal Façade Walls” standards. 7-Eleven is proposing to design and install a mural on the principal side wall façade facing Estero Blvd (primary street) to not have blank walls and to enhance visual interest toward the public realm.

LDC Section 34-996 specifically allows for a variety of roof types. The proposed 7-Eleven is designed with a flat roof and parapet, which is permitted under subsection (b). Above the front entrance facing Lagoon Street, an architectural “entry tower” with a hip roof is proposed. The “entry tower” roof and awnings consist of standing seam metal material, which is permitted under subsection (c).

Due to the proposed use, corner lot configuration and small lot size, the proposed design cannot support plazas and courtyards. The project does generally provide for portions of the building to be located close to and oriented toward the existing public sidewalk along Estero Boulevard. The project also provides for internal pedestrian passages or connections along the primary façade facing Lagoon Street to the existing sidewalk along Estero Boulevard, thus meeting the intent of LDC Section 34-997(d).



E. DECISION-MAKING COMPLIANCE

(1) Whether there exists an error or ambiguity which must be corrected.

There are no known errors or ambiguity that must be corrected in relation to the requested rezoning from Downtown to CPD. If any exist, they will be discussed and resolved during staff review and public hearings before the Local Planning Agency (LPA) and Town Council. Through the proposed CPD rezone request, reductions in prior existing non-conformities are being corrected specific to accessway widths and development standards.

(2) Whether there exist changed or changing conditions which make approval of the request appropriate.

The Town of Fort Myers Beach has been devastated by Hurricane Ian. The proposed rezoning will allow the rebuilding of the pre-storm 7-Eleven convenience store. The proposed CPD will assist in the Town's redevelopment by bringing back a well-established local business and providing a convenience store that will serve local residents and visitors.

(3) The impact of a proposed change on the intent of this chapter.

The proposed rezoning change to CPD is consistent with the purpose and intent of the zoning chapter of the Land Development Code (LDC). The CPD will encourage and promote the redevelopment of a destroyed convenience store business that is needed in the community, reduce or eliminate prior non-conformities, and provide for a more resilient and improved development within the Pedestrian Commercial FLU designation. Through the rezoning process allowed under this chapter and subsequent development order review and approvals, the new 7-Eleven will not negatively impact the community's health, safety, and general welfare.

(4) The testimony of any applicant.

The professional experts retained to support the petition will provide future testimony during the appropriate public hearings.

(5) The recommendation of staff and of the local planning agency.

The petition will be reviewed by staff, expert testimony will be provided during the public hearing process before the Local Planning Agency and a recommendation will be made to the Town Council.

(6) The testimony of the public.

The public will be provided with the opportunity to testify before the LPA and Town Council. Such testimony will be evaluated as applicable and appropriate to the request for the LPA's recommendation and Town Council's decision.



(7) Whether the request is consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses as set forth in the Fort Myers Beach Comprehensive Plan.

Please see Section C above, which explains how the petition is consistent with the town's comprehensive plan.

(8) Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.

The rezoning request and the proposed redevelopment of a convenience retail store are ideal for the location. The site was previously developed with a convenience store supporting the residents' and visitors' needs. The subject property is located within an urban and commercialized area of the town with limited or no impact to any existing long-term residential uses.

(9) Whether urban services are, or will be, available and adequate to serve a proposed land use change.

All urban services were in place for the previous 7-Eleven and remain in place to adequately serve the subject site.

(10) Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.

The subject property was previously developed and has been subsequently cleared of all existing natural vegetation due to the catastrophic impacts of Hurricane Ian. No environmentally critical areas and natural resources exist on the site.

(11) Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.

The request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to person or property as the proposed use existed prior to the catastrophic events of Hurricane Ian. There are no known documented code enforcement cases indicating the prior convenience retail use was deemed a nuisance, hazard, or caused detrimental effects to the community. The adjacent surrounding uses consist of public rights-of-way (Estero Boulevard and Lagoon Street), multi-family and vacant properties. Just beyond the roadways, are vacant or redeveloped commercially zoned lands and public parks with beach access, which are compatible with the proposed commercial use. All proposed setbacks, buffers, and open space areas are consistent with the standards provided for within the Land Development Code or are suitably proposed and complementary to the highly urbanized development pattern, and unique characteristics of the subject property.



(12) Whether the location of the request places an undue burden upon existing transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.

Given that this CPD simply replaces the previously existing 7-Eleven, there will be no net changes on public facilities and the proposed request does not create any burden upon existing transportation or other services and facilities. The CPD does improve site design to facilitate and enhance bicycle and pedestrian access.

(13) For planned development rezonings, see § 34-216 for additional considerations.

This request to rezone the subject property from Downtown to Commercial Planned Development (CPD) will be presented at public hearing before the local planning agency and the town council consistent with LDC Section 34-216(a)(1). As demonstrated throughout this narrative, the proposed CPD meets the following criteria under LDC Section 34-216(2):

- a. The proposed convenience retail use, as provided for within the Schedule of Uses is appropriate for the subject location due to the fact that a 7-Eleven previously existed on the property for decades without issue.
- b. Sufficient safeguards are in place to protect the public interest through the proposed CPD and supporting MCP. The design, location and proposed use and development standards are generally consistent with the mixture of uses and pedestrian nature of the area and will meet the needs of the town's residents and visitors. As depicted on the MCP, access and circulation will be safer and more functional, the pedestrian experience will be improved, and the site will be rebuilt with a new store, more open space than normally required, and improved landscaping/buffering.
- c. If recommended special conditions are presented and are deemed reasonable and feasible, the applicant will be willing to accept them to further ensure sufficient safeguards are established.
- d. The proposed rezoning request meets specific requirements of the comprehensive plan that are relevant to the requested planned development, such as the following:
 1. Policy 4-C-3: See Section "C" within the above narrative.
 2. Policies 4-B-6 and 4-C-3: See Section "C" within the above narrative.
 3. Policy 4-C-4: Proposed height of 30 feet is not taller than the standard height limit allowed under the Land Development Code.
 4. Policy 4-C-8: Density transfers. Not applicable.
 5. Policy 4-E-1: The existing development was consistent with and well below the max. allowed intensity (FAR 1.4) prior to the natural disaster (Hurricane Ian). The proposed max FAR is 0.35, which is also well below the allowed FAR of 1.4.
 6. Policy 7-J-2: The proposed rezone request is not a major rezoning as the request applies to a property that is less than one-quarter of an acre in area. Additionally, the proposed future redevelopment of an existing convenience retail store will not require roadway capacity improvements as a result of the additional traffic and will not adversely impact the surrounding network.



CONCLUSION:

As detailed in the above narrative, supporting application documents, and the proposed MCP, the application shows consistency and compliance with both the Fort Myers Beach Comprehensive Plan and Land Development Code. Addressing the context of the subject property through the regulatory flexibility of the CPD process, reduction or elimination of prior non-conformities, and compliance with today's Florida Building Codes and FEMA standards, the developer will provide a project that is more resilient and functional to the public. This rezoning effort will help bring back a much-needed convenience store on the island, helping to improve living conditions and supporting the public's overall health, safety and welfare.



**841 ESTERO BLVD COMMERCIAL PLANNED DEVELOPMENT (CPD)
Planned Development Rezone**

SECTION F: SCHEDULE OF DEVIATIONS AND JUSTIFICATIONS

DEVIATION #1 seeks relief from LDC Section 34-706(d) which requires that when properties are fronting on Estero Boulevard, existing driveway and parking spaces shall be relocated from Estero Boulevard to secondary streets, and new driveways shall connect only to secondary streets, except where these requirements would prohibit all reasonable access to a property. The deviation would allow driveways to remain connecting to Estero Boulevard and Lagoon Street.

Justification: In order to redevelop the property with the desired commercial convenience store use, the site design must take into consideration that a portion of the property is located within the VE flood zone (EI 13) along with being designed to meet the intent of the design standards of the town. The prior site configuration provided for existing access points (driveways) both onto Estero Boulevard (Primary Street) and Lagoon Street (Secondary Street), it is necessary to continue to allow access points from Estero Boulevard and Lagoon Street so that vehicular flow can be maintained without requiring vehicles to back out onto any street right-of-way. Convenience stores rely heavily on customer vehicular traffic and truck deliveries, which require appropriately designed and safe traffic movement. The design has been improved to enhance functionality and safety by reducing the need for vehicles having to back directly onto Estero Boulevard, thus providing reasonable access to the property and while improving the functionality of the site. The granting of this deviation does not negatively impact the health, safety and welfare of the community.

DEVIATION #2 seeks relief from the driveway separation requirements of LDC Section 10-285 along Estero Boulevard and Lagoon Street. The deviation would allow driveway separations along Estero Boulevard to be a minimum of approximately 80 feet and a minimum of approximately 60 feet along Lagoon Street.

Justification: The proposed accessways onto Estero Boulevard and Palermo Circle existed prior to Hurricane Ian and the destruction of the existing convenience store use. Relocation of the existing accessways to meet the distance separation from all surrounding street intersections or other accessways is impossible. Due to the unique configuration of the subject property and the need to manage vehicular traffic and create pedestrian connectivity to the site, the proposed site layout as detailed on the Master Concept Plan requires both accessways from Estero Boulevard and Lagoon Street Circle to remain. The two accessways were non-conforming in terms of their location and overall width. Both accessways, pursuant to requested Deviation #1, will be reduced in width. This will improve safe traffic circulation to and from the adjacent roadways. As detailed on the MCP, the proposed configuration decreases the width of the accessways, allows for direct pedestrian access from the Estero Boulevard sidewalk system and will increase the distance separation on Lagoon Street from all surrounding street intersections and accessways, thus working toward achieving general consistency of the intent of LDC Section 10-285 to provide as much connection separation while keeping the proposed redevelopment feasible. The granting of this deviation does not negatively impact the health, safety and welfare of the community.



Deviation #3 seeks relief from parking lot location requirements of LDC Section 34-706(a) The deviation would allow a parking lot to be located primarily fronting Estero Blvd.

Justification: Due to the devastation caused by Hurricane Ian and the need to redevelop the property to bring back the desired commercial convenience store use to the Town, reconfiguration of the site is necessary. The site is located within the Downtown zoning district, on the corner of Estero Blvd. and Lagoon Street and adjacent to property owned by others. LDC Sec. 34-953 states that request for a rezoning to Commercial Planned Development (CPD) zoning district requires that the building placement, size, design, and all other property development regulations, such as parking, shall be the same as for the CB zoning district, which means that off-street parking lots shall be placed in side or rear yards. The redeveloped site design must consider that a portion of the property is located within the Zone VE (EI 13) while meeting the intent of the off-street parking and building placement design location standards desired by the town. The proposed configuration positions the off-street parking relatively in the same location as it was prior to Hurricane Ian but with an improved layout. With these site constraints, context of convenience store use, and redevelopment opportunities based on impacts of Hurricane Ian, the ability to locate the parking lot out of the front and side yard of the building is not feasible.

As evidenced through the previously existing site layout, the reconfiguration of the parking layout, and the addition of bicycle parking as indicated on the proposed MCP, the granting of this deviation to allow the off-street parking lot to be located on the Estero Boulevard side of the property addresses the unique site configuration limitations, and does not negatively impact the health, safety and welfare of the community.

Deviation #4 seeks relief from LDC Section 34-2020(d)(2)i.1. which requires a minimum of four spaces per 1,000 square feet of total floor area or 14 parking spaces per 3,500 square feet of total floor area or 14 parking spaces for the proposed maximum 3,500 square feet of convenience store total floor area. The deviation would allow for a reduction in the minimum required parking spaces to 8 parking spaces.

Parking requirements for a convenience store are a minimum of four spaces per 1,000 square feet, which equates to a total of 14 vehicle parking spaces required for the proposed maximum 3,500 square foot convenience store. The site is located within an area of the town (Downtown zoning district) considered a “park-once” district and allows for a reduction of required vehicle parking by a multiplier of 67%. Through this multiplier, the required number of vehicle parking spaces would be reduced by 5 spaces for a total of 9 spaces.

However, LDC Sec. 34-953 states that requests for a rezoning to a Commercial Planned Development (CPD) zoning district requires building placement, size, design, and all other property development regulations, such as parking, shall be the same as for the CB zoning district. Following this requirement means the proposed convenience store is required to revert to providing a minimum of 14 vehicle parking spaces. This is counterproductive to the desired “park-once” intent the town is seeking for this area. Reverting to the CB requirements results in the applicant’s inability to apply the parking reduction multiplier and burdens the site with excessive off-street parking in this more urbanized area of the town.

The applicant desires to meet the intent of being within the Downtown “park-once” district by seeking a reduction in the number of off-street vehicle spaces from 14 to 8. Due to the configuration and constraints



of the subject property, the need to manage vehicular traffic and pedestrian connectivity to the site, and the need to support the proposed convenience store use results in the need to maintain a minimum of 8 parking spaces as shown on the MCP. The applicant also sees the benefit of and wants to promote the use of alternative modes of transportation to their development. The applicant is accomplishing this by designating an area for at least 1 bicycle rack able to hold 4 bicycles. As stated in LDC Sec. 34-2020(c), commercial buildings may eliminate one required vehicle parking space by providing and maintaining a bicycle rack able to hold four bicycles. Thus, providing the bicycle rack further supports and allows for the overall required parking to be 8 vehicle spaces.

The requested deviation to allow for the reduction to a minimum of 8 vehicle parking spaces for a convenience store is consistent with the intent to reduce off-street parking impacts as allowed within the Downtown zoning district, provides areas for additional bicycle parking, addresses the unique site configuration limitations, and does not negatively impact the health, safety and welfare of the community.

TRAFFIC IMPACT STATEMENT

FOR

7-ELEVEN @ 841 ESTERO BLVD

(PROJECT NO. F2308.17)

PREPARED BY:
TR Transportation Consultants, Inc.
2726 Oak Ridge Court, Suite 5034
Fort Myers, Florida 33901
239-278-3090

August 31, 2023

CONTENTS

- I. INTRODUCTION
- II. EXISTING CONDITIONS
- III. PROPOSED REDEVELOPMENT
- IV. TRIP GENERATION
- V. TRIP DISTRIBUTION
- VI. FUTURE TRAFFIC CONDITIONS
- VII. PROJECTED LEVEL OF SERVICE
- VIII. TURN LANE ANALYSIS
- IX. CONCLUSION

I. INTRODUCTION

TR Transportation Consultants, Inc. has prepared a traffic impact statement to fulfill requirements set forth by the Town of Fort Myers Beach for projects seeking approval for Development Order. The site is located at 841 Estero Boulevard in the Town of Fort Myers Beach, Florida. The site location is illustrated on **Figure 1**.

The site was previously occupied by an 1,800 square foot 7-Eleven convenience store which has been destroyed by hurricane Ian in late September of 2022. Upon approval of this local Development Order application, the subject site will be redeveloped with an approximate 3,109 square foot 7-Eleven convenience store. Access to the overall site will continue to be provided to Estero Boulevard and Lagoon Street via a single connection at each location.

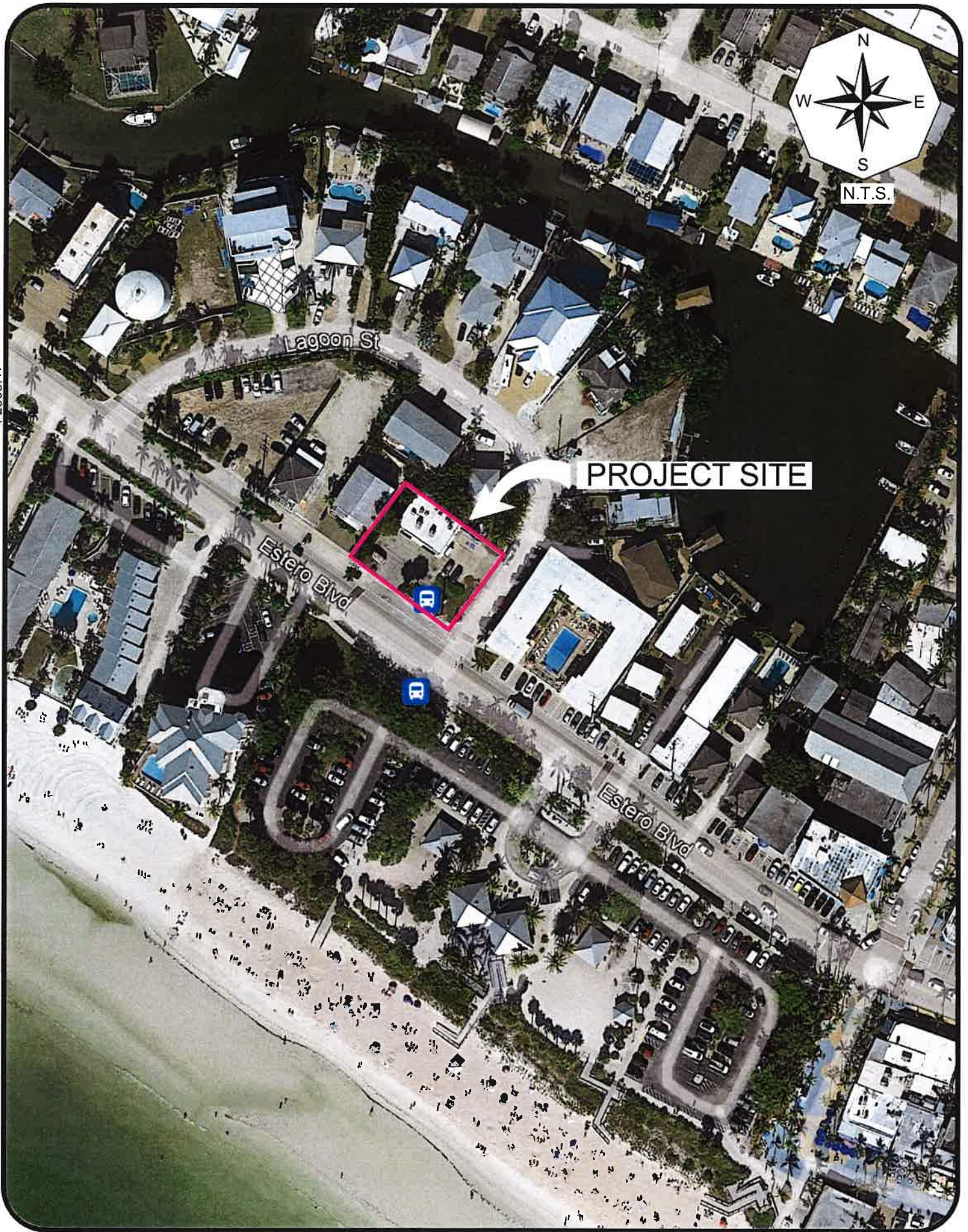
This report examines the impact of the redevelopment on the surrounding roadways. Trip generation and assignments to the site access driveways will be completed and analysis conducted to determine the impacts of the development on the surrounding streets.

II. EXISTING CONDITIONS

The subject site has been cleared but was previously occupied by an 1,800 square foot 7-Eleven convenience store. The overall site is bordered by Estero Boulevard to the south, Lagoon Street to the east, and residential uses to the north and west.

Estero Boulevard is an east/west two-lane Collector that borders the subject site to the south. Estero Boulevard has a posted speed limit of 25 mph and is under the jurisdiction of the Town of Fort Myers Beach west of San Carlos Boulevard.

F2308.17



III. PROPOSED REDEVELOPMENT

The site was previously occupied by an 1,800 square foot 7-Eleven convenience store which has been destroyed by hurricane Ian in late September of 2022. Upon approval of this local Development Order application, the subject site will be redeveloped with an approximate 3,109 square foot 7-Eleven convenience store. **Table 1** summarizes the land uses utilized for the purposes of this analysis.

Table 1
Land Uses
7-Eleven @ 841 Estero Blvd

Land Use	Approved	Proposed
Convenience Store	1,800 Sq. Ft.	3,109 Sq. Ft.

Access to the overall site will continue to be provided to Estero Boulevard and Lagoon Street via a single connection at each location.

IV. TRIP GENERATION

The trip generation for the approved and proposed redevelopment was determined by referencing the Institute of Transportation Engineer's (ITE) report, titled ***Trip Generation Manual***, 11th Edition. Land Use Code 851 (Convenience Store) was utilized for the trip generation purposes. The equations utilized from this land use are contained in the Appendix of this report for reference.

Table 2 outlines the anticipated weekday A.M. and P.M. peak hour and daily trip generation of the previous development on site. **Table 3** outlines the anticipated weekday A.M. and P.M. peak hour and daily trip generation of the redevelopment as currently proposed. The sites surveyed in the ITE report that formulate the trip generation for this use were based on sites typically located along major thoroughfares in larger metropolitan areas, and not in a beach community such as this site. This location has historically attracted a majority of the trips from the beach via foot traffic and the

adjacent neighborhood. Estero Boulevard has a low peak hour traffic volume compared to other major thoroughfares where these convenience stores are typically located. This site is not anticipated to generate the peak hour trip generation as estimated by the ITE data. However, to be conservative, a reduction in trips due to pedestrian traffic was not included in this analysis.

Table 2
Trip Generation – Approved
7-Eleven @ 841 Estero Blvd

Land Use	Weekday A.M. Peak Hour			Weekday P.M. Peak Hour			Daily (2-way)
	In	Out	Total	In	Out	Total	
Convenience Store (1,800 Sq. Ft.)	56	57	113	45	43	88	1,373

Table 3
Trip Generation – Proposed
7-Eleven @ 841 Estero Blvd

Land Use	Weekday A.M. Peak Hour			Weekday P.M. Peak Hour			Daily (2-way)
	In	Out	Total	In	Out	Total	
Convenience Store (3,109 Sq. Ft.)	97	97	194	78	75	153	2,370

Table 4 illustrates the trip change when comparing the trip generation of the previous use on the subject site to the trip generation of the proposed use (Table 2 vs Table 3). The trip change shown in Table 4 was utilized in the Level of Service Analysis conducted as part of this report.

Table 4
Trip Generation Comparison– Approved vs Proposed
Table 2 vs Table 3

Land Use	Weekday A.M. Peak Hour			Weekday P.M. Peak Hour			Daily (2-way)
	In	Out	Total	In	Out	Total	
Proposed	97	97	194	78	75	153	2,370
Approved	-56	-57	-113	-45	-43	-88	-1,373
Trip Change	+41	+40	+81	+33	+32	+65	+997

V. TRIP DISTRIBUTION

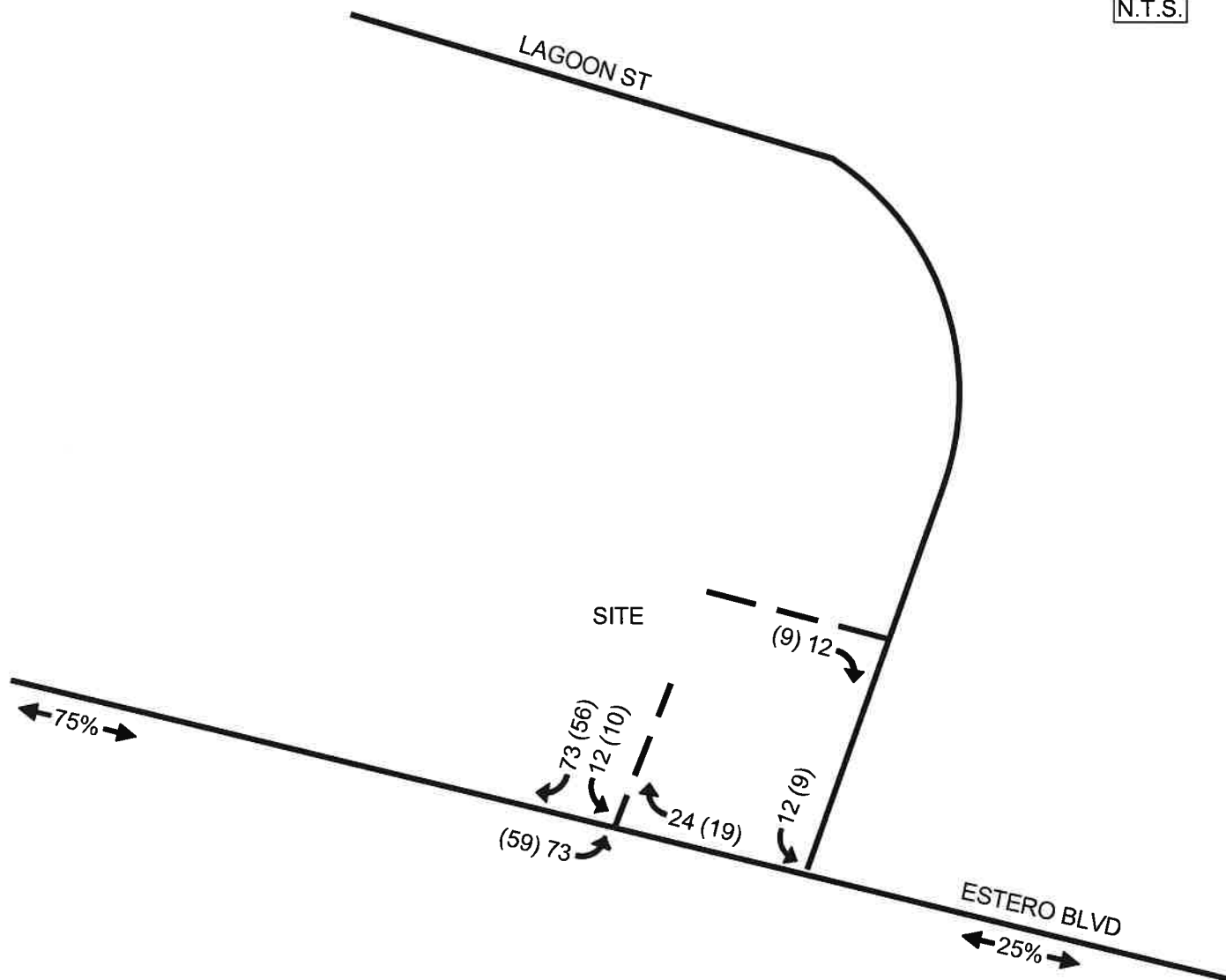
The trips the proposed redevelopment is anticipated to generate, as shown in Table 3, were then assigned to the surrounding roadway network. The trips were assigned based upon the routes drivers are anticipated to utilize to approach the subject site. **Figure 2** illustrates the anticipated trip distribution. Also shown in Figure 2, is the site traffic assignment of the proposed development to the proposed site access drives.

Table 1A, contained in the Appendix, was created to illustrate the adopted Level of Service volumes on the adjacent segment of Estero Boulevard. This table indicates which roadway links will experience a significant impact as a result of the additional trips (Table 4) from the proposed development order application. Significant impact is defined as any roadway projected to experience greater than 10% of the Peak Hour – Peak Direction Level of Service “C” volumes. The Level of Service Threshold volumes for all roadway links analyzed were obtained from the *Lee County Generalized Peak Hour Directional Volumes Table* provided by the Lee County Department of Transportation. Based on the information contained within Table 1A, none of the roadway links analyzed are anticipated to experience a significant impact as a result of the redeveloped 7-Eleven.

VI. FUTURE TRAFFIC CONDITIONS

A horizon year analysis of 2025 was selected as the analysis year to evaluate the future impacts this project will have on the surrounding roadway network. Based on this horizon year, a growth rate was applied to the existing traffic conditions for all roadway links in the study area. Due to lack of historical traffic data on the adjacent segment of Estero Boulevard, a typical annual growth rate of 2% compounded annually was assumed. Based on the project distribution illustrated on Figure 2, the link data was analyzed for the year 2025 without the development and year 2025 with the development.

F2308.17



LEGEND

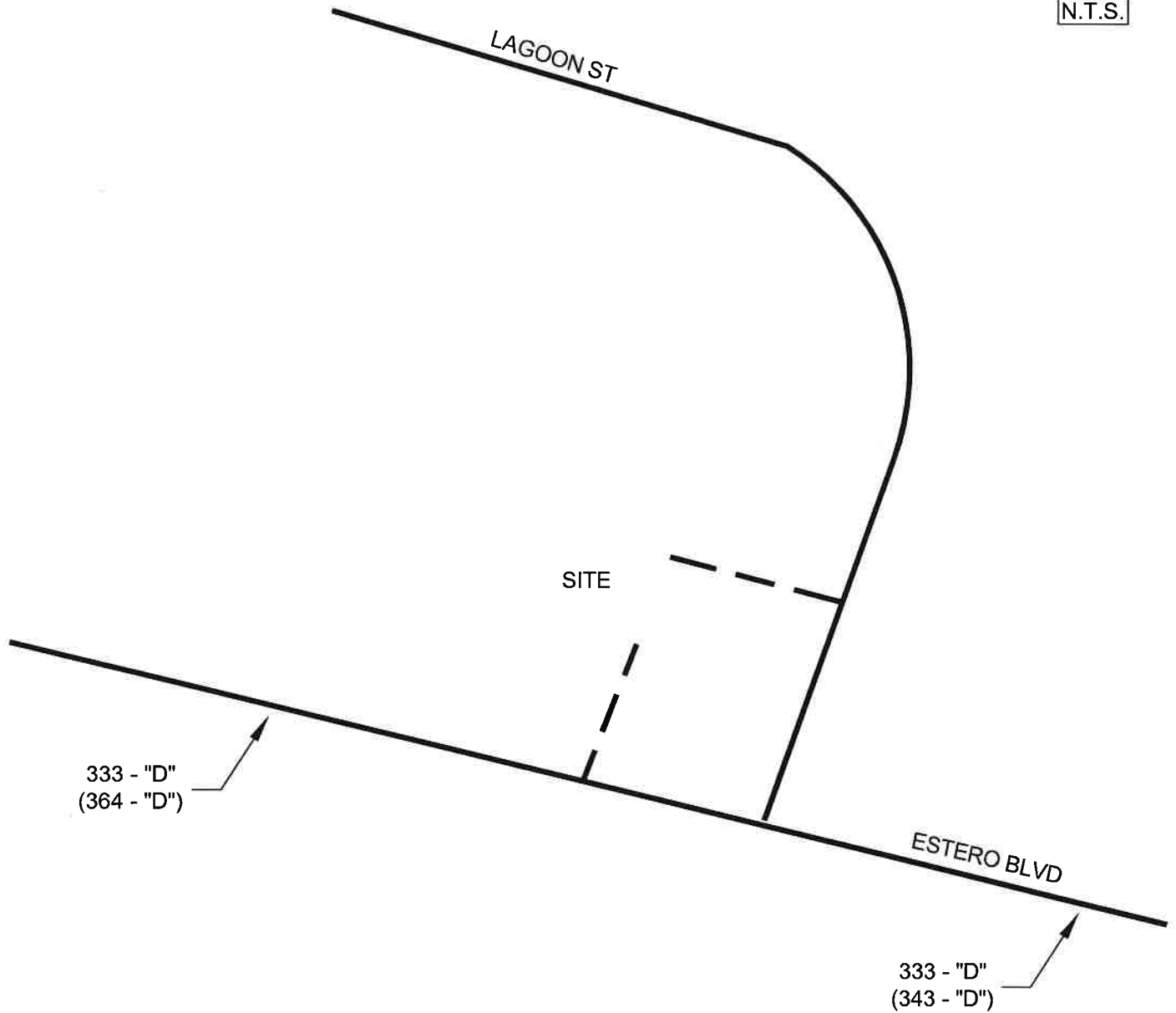
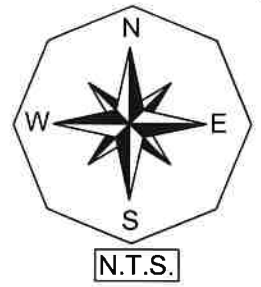
- ◄ 000 WEEKDAY AM PEAK HOUR TRAFFIC
- ◄ (000) WEEKDAY PM PEAK HOUR TRAFFIC
- ◄ 20% ► PERCENT TRIP DISTRIBUTION

Table 2A in the Appendix of the report indicates the methodology utilized to obtain the year 2025 build-out traffic volumes as well as the growth rate utilized for each roadway segment. The base year traffic volumes for Estero Boulevard were obtained from the peak season peak hour traffic counts conducted at Old San Carlos Boulevard and Fifth Street/Estero Boulevard intersection by FDOT as part of the SR 865 Traffic Report. It should be noted that the base traffic volumes utilized in this analysis were collected prior to Hurricane Ian. It will be a number of years before this level of traffic volume is attained again due to the loss of residential and hotel units on the island due to hurricane.

Figure 3 indicates the year 2025 peak hour – peak direction traffic volumes and Level of Service for the various roadway links within the study area. Noted on Figure 3 is the peak hour – peak direction volume and Level of Service of each link should no development occur on the subject site and the peak hour – peak direction volume and Level of Service for the weekday P.M. peak hour with the proposed redevelopment traffic added to the roadways. This figure is derived from Table 2A contained in the Appendix.

VII. PROJECTED LEVEL OF SERVICE

Adverse impacts are defined as a degradation of the Level of Service beyond the adopted Level of Service Thresholds for those links as indicated in Table 1A. In comparing the links' functional classification and calculated 2025 traffic volumes to the Service Volume Tables, it was determined that Estero Boulevard adjacent to the site is projected to operate at an acceptable Level of Service "D" in 2025 both with and without the proposed redevelopment traffic added to this roadway. Therefore, roadway capacity improvements will not be warranted as a result of the additional traffic to be generated by the proposed 7-Eleven redevelopment on the subject site.



LEGEND

XXX - "C" 2025 PEAK SEASON, PEAK HOUR,
PEAK DIRECTION BACKGROUND
TRAFFIC AND LEVEL OF SERVICE
DESIGNATION

(XXX -"C") 2025 PEAK SEASON, PEAK HOUR,
PEAK DIRECTION BACKGROUND
PLUS PROJECT TRAFFIC PEAK
HOUR PROJECT TRIPS AND LEVEL
OF SERVICE DESIGNATION

It should also be noted that FDOT has been recently released the construction project to begin improvements to San Carlos Boulevard from Buttonwood Drive to Estero Boulevard that will create two travel lanes southbound over Matanzas Pass Bridge as well as redesigning the intersection of San Carlos Boulevard and Estero Boulevard with a new signal. Based on discussion with FDOT, the construction for this improvement is anticipated to begin in April of 2024 and be completed by the end of year 2025.

VIII. TURN LANE ANALYSIS

A turn lane analysis was completed at the proposed site access drive on Estero Boulevard based upon the Lee County Turn Lane Policy (Lee County Administrative Code 11-4). The Lee County Administrative Code 11-4 is attached to the Appendix of this report for reference. Based upon the results of the turn lane analysis, no turn lanes will be warranted at this intersection as a result of the proposed 7-Eleven redevelopment of the subject site. A summary of the turn lane criteria is outlined below.

Right Turn Lane On Collector Street – Estero Boulevard

Posted speed limit of the collector street is equal to or greater than thirty-five (35) mph – Criteria Met – No, the posted speed limit is 25 mph.

Number of right turning movements from the collector street is equal to or greater than forty-five (45) during either the A.M. or P.M. peak hour of the collector street when the collector street AADT is less than 6,000 vpd, or equal to or greater than thirty (30) vph during either the A.M. or P.M. peak hour of the collector street or peak hour of the development when the collector street AADT is equal to or greater than 6,000 vpd– Criteria Met – No. See Figure 2.

Available Sight Distance for a right turning vehicle to be seen by through traffic traveling the same direction is less than the value shown in Table A-1 for the design speed of the collector street – Criteria Met – No.

Collector Street has been designated as a controlled access facility by the BOCC– Criteria Met – No.

Traffic Control of the intersecting street or access point connection is a signal or is anticipated to meet MUTCD traffic signal warrants by the build-out year– Criteria Met – No.

It is determined by the Lee County Department of Transportation that a turn lane is required for the health, safety, and welfare of the road users – Criteria Met – No.

At least two or more criteria need to be met to warrant a right turn lane. Since two or more criteria are not met, a separate westbound right turn lane is **NOT** warranted at proposed site access drive on Estero Boulevard.

Left Turn Lane On Collector Street – Estero Boulevard

Posted speed limit of the collector street is equal to or greater than thirty-five (35) mph – Criteria Met – No, the posted speed limit is 25 mph.

On a two-lane, two-way collector streets. Two-way peak season, peak hour through and right turn volume for either the peak hour of the roadway or the peak hour of development is greater than 500 and the left turn volume is greater than or equal to 20 vehicle for that same hour; or,

When the left turn volume for any hour is greater than 30, regardless of through and right turn volume– Criteria Met – Yes.

Available Sight Distance for left turning vehicles to observe approaching or for approaching moving in either direction to observe the left turning vehicle is less than the value shown in Table A-1 for the design speed limit, or posted speed plus 5 miles per hour if design speed is not available, of the collector street– Criteria Met – No.

Traffic Control of the intersecting street or access point connection is a traffic signal or is anticipated to meet MUTCD traffic signal warrants in the next five years– Criteria Met – No.

The collector streets is intersecting an arterial street or collector street – Criteria Met – No.

Five or more crashes reported at the intersection in a 12-month period during the past three years that could have been mitigated by a left turn lane – Criteria Met – N/A.

It is determined by the Lee County Department of Transportation that a turn lane is required for the health, safety, and welfare of the road users – Criteria Met – No.

At least two or more criteria need to be met to warrant a left turn lane. Since two or more criteria are not met, a separate eastbound left turn lane is **NOT** warranted at proposed site access drive on Estero Boulevard.

VII. CONCLUSION

The proposed Development Order application is for the redevelopment of the existing 7-Eleven convenience store located at 841 Estero Boulevard in the Town of Fort Myers Beach of Lee County, Florida. The results of the Level of Service Analysis conducted as part of this report indicate that Estero Boulevard adjacent to the site is projected to operate at an acceptable Level of Service “D” in 2025 both with and without the proposed redevelopment traffic added to this roadway. Therefore, roadway capacity improvements will not be warranted as a result of the additional traffic to be generated by the proposed 7-Eleven redevelopment on the subject site.

It should also be noted that FDOT has been recently released the construction project to begin improvements to San Carlos Boulevard from Buttonwood Drive to Estero Boulevard that will create two travel lanes southbound over Matanzas Pass Bridge and redesigning the intersection of San Carlos Boulevard and Estero Boulevard with a new signal. Based on discussion with FDOT, the construction for this improvement is anticipated to begin in April of 2024 and be completed by the end of year 2025.

No turn lanes will be warranted at the proposed site access drives on Estero Boulevard and Lagoon Street pursuant to the criteria that is outlined in the Lee County Turn Lane Policy (Administrative Code 11-4).

APPENDIX

TABLES 1A & 2A

TABLE 1A
PROJECT TRAFFIC VS. 10% LOS C LINK VOLUMES
7-ELEVEN @ 841 ESTERO BLVD

AM PEAK HOUR PROJECT TRAFFIC =		81	VPH	IN=	41	OUT=	40			
PM PEAK HOUR PROJECT TRAFFIC =		65	VPH	IN=	33	OUT=	32			
<u>ROADWAY</u>	<u>SEGMENT</u>	<u>ROADWAY CLASS</u>	<u>LOS A VOLUME</u>	<u>LOS B VOLUME</u>	<u>LOS C VOLUME</u>	<u>LOS D VOLUME</u>	<u>LOS E VOLUME</u>	<u>% PROJECT TRAFFIC</u>	<u>PROJECT TRIPS</u>	<u>PROJ/ LOS C</u>
Estero Blvd	W. of Site	2LN	0	0	310	660	740	75%	31	9.9%
	E. of Site	2LN	0	0	310	660	740	25%	10	3.3%

* Level of Service Thresholdswere taken from the Lee County Generalized Peak Hour Directional Service Volumes table, dated April 2016.

TABLE 2A
LEE COUNTY TRAFFIC COUNTS AND CALCULATIONS
7-ELEVEN @ 841 ESTERO BLVD

AM PEAK HOUR PROJECT TRAFFIC = 81 VPH		IN=	41	OUT=	40
PM PEAK HOUR PROJECT TRAFFIC = 65 VPH		IN=	33	OUT=	32
		2015	2025	2025	2025
		PK HR	PK HR	BCKGRND	BCKGRND
		ANNUAL	PK SEASON	PK SEASON	PK SEASON
		RATE	PEAK DIR. ¹	PEAK DIR.	PEAK DIR.
ROADWAY	W. of Site	2.00%	273	333	75%
	E. of Site	2.00%	273	333	25%
				AM PROJ	PM PROJ
				TRAFFIC	TRAFFIC
				364	358
				343	341

¹ 2015 Peak Hour volumes were obtained from the traffic count conducted at Old San Carlos Blvd and 5th Street intersection.

100TH HIGHEST HOUR LEVEL OF SERVICE

	2025	2025	2025
BCKGRND	BCKGRND	BCKGRND	BCKGRND
TRAFFIC	+ NEW AM	+ NEW PM	
LOS	PROJ LOS	PROJ LOS	PROJ LOS
Estero Blvd	D	D	D
W. of Site	D	D	D
E. of Site	D	D	D

**TRAFFIC DATA FROM
FDOT'S SR 865 TRAFFIC REPORT**

Project Traffic Report

Florida Department of Transportation

District One

SR 865 (San Carlos Boulevard)

From South of Estero Boulevard to CR 869 (Summerlin Road)

Lee County, Florida

Financial Project ID: 433726-1-22-01

The environmental review, consultation, and other actions required by applicable federal environmental laws for this project are being, or have been, carried out by the FDOT pursuant to 23 U.S.C. §327 and a Memorandum of Understanding (MOU) dated December 14, 2016 and executed by the Federal Highway Administration and FDOT.

December 2018

Project Traffic Report Certification

For

SR 865 (San Carlos Boulevard)

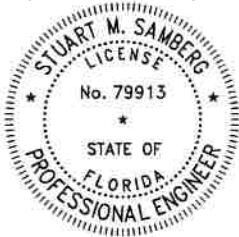
From South of Estero Boulevard to CR 869 (Summerlin Road)

Lee County, Florida

Financial Project ID: 433726-1-22-01

I, **Stuart M. Samberg (FL PE No. 79913)**, certify that the Project Traffic Report for **SR 865 (San Carlos Boulevard) from South of Estero Boulevard to CR 869 (Summerlin Road)** in Lee County, Florida has been prepared in accordance with **FDOT Project Traffic Forecasting Procedure Topic Number 525-030-120h (April 17, 2012)** and supplemental guidance as provided within the **FDOT Project Traffic Forecasting Handbook (2014 edition)**. All information as provided within this Project Traffic Report has been prepared using current information (available at the time of document preparation), transportation planning and traffic engineering practices and procedures.

The following duly authorized engineering business performed the engineering work represented by this report:



Rummel, Klepper & Kahl, LLP

402 S. Kentucky Avenue, Suite 400

Lakeland, Florida 33801

Telephone: (863) 682-4081

Florida Certificate of Authorization: 26879

Name: **Stuart M. Samberg, P.E.**

Signature: _____

Stuart M Samberg Date: 2018.12.14
13:09:14-05'00'

P.E. Number: 79913

Date: _____

December 14, 2018

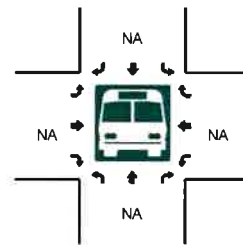
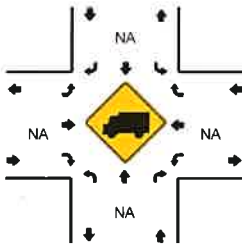
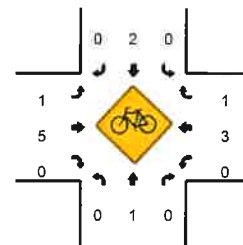
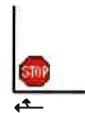
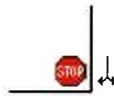
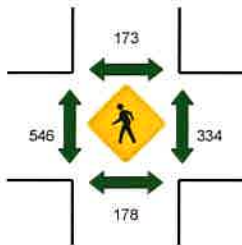
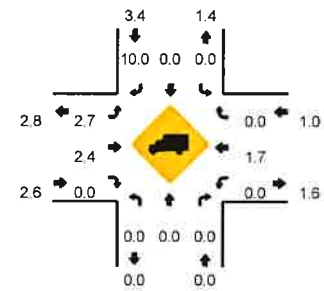
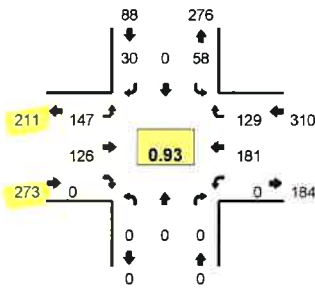
Type of peak hour being reported: Intersection Peak

Method for determining peak hour: Total Entering Volume

LOCATION: Old San Carlos Blvd -- Fifth St
CITY/STATE: Fort Myers Beach, FL

QC JOB #: 13203528
DATE: Thu, Feb 26 2015

Peak-Hour: 3:30 PM -- 4:30 PM
Peak 15-Min: 4:15 PM -- 4:30 PM



15-Min Count Period Beginning At	Old San Carlos Blvd (Northbound)				Old San Carlos Blvd (Southbound)				Fifth St (Eastbound)				Fifth St (Westbound)				Total	Hourly Totals
	Left	Thru	Right	U	Left	Thru	Right	U	Left	Thru	Right	U	Left	Thru	Right	U		
3:00 PM	0	0	0	0	12	0	10	0	37	25	0	0	0	58	27	0	169	
3:15 PM	0	0	0	0	11	0	6	0	42	25	0	0	0	61	30	0	175	
3:30 PM	0	0	0	0	10	0	7	0	32	27	0	0	0	50	30	0	156	
3:45 PM	0	0	0	0	11	0	7	0	32	32	0	0	0	46	35	0	163	663
4:00 PM	0	0	0	0	24	0	10	0	36	30	0	0	0	47	25	0	172	666
4:15 PM	0	0	0	0	13	0	6	0	47	37	0	0	0	38	39	0	180	671
4:30 PM	0	0	0	0	9	0	5	0	31	18	0	0	0	44	26	0	133	648
4:45 PM	0	0	0	0	15	0	3	0	34	27	0	0	0	42	32	0	153	638
Peak 15-Min Flowrates	Northbound				Southbound				Eastbound				Westbound				Total	
	Left	Thru	Right	U	Left	Thru	Right	U	Left	Thru	Right	U	Left	Thru	Right	U		
All Vehicles	0	0	0	0	52	0	24	0	188	148	0	0	0	152	156	0	720	
Heavy Trucks	0	0	0	0	0	0	4	0	4	4	0	0	0	0	0	0	12	
Pedestrians	232				168				448				368				1216	
Bicycles	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1	
Railroad																		
Stopped Buses																		

Comments: Needs back of queue studies for all approaches

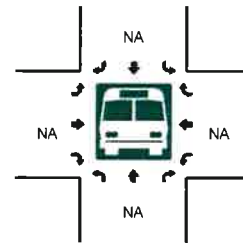
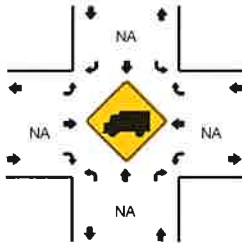
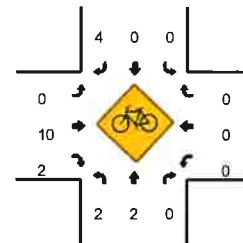
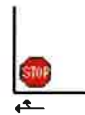
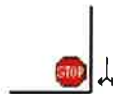
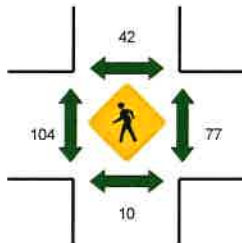
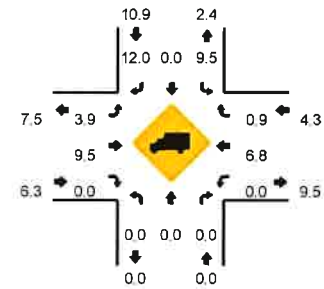
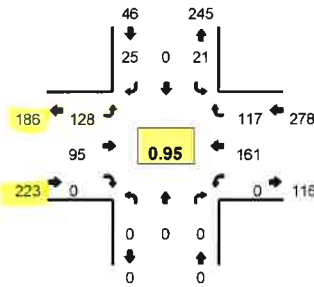
Type of peak hour being reported: Intersection Peak

Method for determining peak hour: Total Entering Volume

LOCATION: Old San Carlos Blvd -- Fifth St
CITY/STATE: Fort Myers Beach, FL

QC JOB #: 13203527
DATE: Thu, Feb 26 2015

Peak-Hour: 8:45 AM -- 9:45 AM
Peak 15-Min: 8:45 AM -- 9:00 AM



15-Min Count Period Beginning At	Old San Carlos Blvd (Northbound)				Old San Carlos Blvd (Southbound)				Fifth St (Eastbound)				Fifth St (Westbound)				Total	Hourly Totals
	Left	Thru	Right	U	Left	Thru	Right	U	Left	Thru	Right	U	Left	Thru	Right	U		
8:00 AM	0	0	0	0	4	0	4	0	14	19	0	0	0	28	14	0	83	
8:15 AM	0	0	0	0	2	0	3	0	20	10	0	0	0	50	27	0	112	
8:30 AM	0	0	0	0	7	0	7	0	18	15	0	0	0	38	23	0	108	
8:45 AM	0	0	0	0	4	0	3	0	22	28	0	0	0	54	33	0	144	447
9:00 AM	0	0	0	0	7	0	14	0	38	19	0	0	0	29	27	0	134	498
9:15 AM	0	0	0	0	2	0	3	0	36	28	0	0	0	36	28	0	133	519
9:30 AM	0	0	0	0	8	0	5	0	32	20	0	0	0	42	29	0	136	547
9:45 AM	0	0	0	0	7	0	3	0	29	25	0	0	0	31	29	0	124	527
Peak 15-Min Flowrates	Northbound				Southbound				Eastbound				Westbound				Total	
	Left	Thru	Right	U	Left	Thru	Right	U	Left	Thru	Right	U	Left	Thru	Right	U		
All Vehicles	0	0	0	0	16	0	12	0	88	112	0	0	0	216	132	0	576	
Heavy Trucks	0	0	0	0	0	0	4	0	4	12	0	0	0	8	0	0	28	
Pedestrians	0	20	0	0	0	72	0	0	0	112	0	0	0	64	0	0	268	
Bicycles	0	0	0	0	0	0	1	0	0	4	0	0	0	0	0	0	5	
Railroad																		
Stopped Buses																		

Comments: Needs back of queue studies for all approaches

Report generated on 5/25/2015 5:29 PM

SOURCE: Quality Counts, LLC (<http://www.qualitycounts.net>) 1-877-580-2212

**LEE COUNTY PEAK HOUR
GENERALIZED LEVEL OF SERVICE
TABLE**

Lee County
Generalized Peak Hour Directional Service Volumes
Urbanized Areas

April 2016

c:\input5

Uninterrupted Flow Highway						
Level of Service						
Lane	Divided	A	B	C	D	E
1	Undivided	130	420	850	1,210	1,640
2	Divided	1,060	1,810	2,560	3,240	3,590
3	Divided	1,600	2,720	3,840	4,860	5,380
Arterials						
Class I (40 mph or higher posted speed limit)						
Level of Service						
Lane	Divided	A	B	C	D	E
1	Undivided	*	140	800	860	860
2	Divided	*	250	1,840	1,960	1,960
3	Divided	*	400	2,840	2,940	2,940
4	Divided	*	540	3,830	3,940	3,940
Class II (35 mph or slower posted speed limit)						
Level of Service						
Lane	Divided	A	B	C	D	E
1	Undivided	*	*	330	710	780
2	Divided	*	*	710	1,590	1,660
3	Divided	*	*	1,150	2,450	2,500
4	Divided	*	*	1,580	3,310	3,340
Controlled Access Facilities						
Level of Service						
Lane	Divided	A	B	C	D	E
1	Undivided	*	160	880	940	940
2	Divided	*	270	1,970	2,100	2,100
3	Divided	*	430	3,050	3,180	3,180
Collectors						
Level of Service						
Lane	Divided	A	B	C	D	E
1	Undivided	*	*	310	660	740
1	Divided	*	*	330	700	780
2	Undivided	*	*	730	1,440	1,520
2	Divided	*	*	770	1,510	1,600
Note: the service volumes for I-75 (freeway), bicycle mode, pedestrian mode, and bus mode should be from FDOT's most current version of LOS Handbook.						

LEE COUNTY TURN LANE POLICY
ADMINISTRATIVE CODE 11-4

**Administrative Code
Board of County Commissioners**

CATEGORY: Transportation and Traffic Management

CODE NUMBER: AC-11-4

TITLE:
TURN LANE POLICY

ADOPTED: 10/19/88

AMENDED: 10/16/91 3/24/98, 08/17/21

ORIGINATING DEPARTMENT:
TRANSPORTATION

PURPOSE/SCOPE:

GENERAL

I. SCOPE

Deceleration, left turn, and right turn lanes are desirable for the safe execution of speed change maneuvers and for storage and protection of left and right turning vehicles. These additional lanes for exit or entrance maneuvers shall be provided in accordance with County Design Standards herein. The pavement width and cross slopes of such lanes shall meet minimum requirements; however, special designs may be allowed when deemed necessary by the Director of the Department of Transportation for County maintained facilities and the Manager of the Department of Community Development's Development Services Division for privately-maintained facilities. Shoulders and recovery areas should be provided in accordance with the same requirements for other travel lanes; wherever possible.

It should be realized that deceleration, left turn, and right turn lanes constitute an integral part of the geometric design of streets and highways and shall be included in the design for all new and replacement construction projects. Deceleration, left turn, and right turn lanes may need to be installed at an existing intersection or access point to improve the existing or outdated design, if and when a traffic analysis shows that the travel time or safety is being degraded by the proposed project traffic, or the turning movements at the intersection are being created by the proposed project's traffic. This Policy addresses the warrants and design features for both cases.

II. POLICY AND PROCEDURE

Deceleration, left turn, and right turn lanes shall be provided at all intersections and/or access points on county-maintained and privately-maintained facilities as required by this policy. Deceleration, left turn, and right turn lane requirements shall not apply to a single family residence, a duplex residence, or two (2) family residence. When an existing development increases trip generation by expanding facilities or by change in use, a one-time deviation may be granted whereby only the increased trip generation is considered in determining if the warrants for requiring deceleration, left and right turn lanes are satisfied providing such deviation does not create a new or increased existing hazard which is detrimental to the health, safety and welfare of the traveling public.

This policy shall not be used to deny access to county maintained facilities for property which otherwise has the right of access; and for which it is not possible to provide deceleration, left and right turn lanes without acquiring additional Right-of-way (ROW) beyond the limits of the subject property. Nothing in this policy shall be construed to place an obligation upon the County to permit left turn lanes into or out of any development via either any existing or proposed street or access point driveway from any street or highway facility where the Director of the Department of Transportation or the Manager of the Division of Development Services (hereinafter referred to as the "Directors") has determined it is not in the best interests of the health, safety and general welfare of the traveling public to allow such left turning movement.

III. DEFINITIONS

1. Deceleration Lane(s)

The primary function of a deceleration lane is to provide a safe travel path and sufficient distance for exiting vehicles to decelerate from the operating speed on the through lanes of a roadway prior to exiting from the facility.

2. Turn Lane(s)

a. Left Turn

The primary function of a left turn lane is to provide a protected area separated from the flow of through traffic in the same direction where left turning vehicles can slow to a stop and wait until a suitable gap occurs or is provided in the opposing flow of traffic to allow the turning maneuver to be safely completed. A secondary function is to eliminate the delay and congestion that would affect the through traffic movement in the same direction while the left turning vehicles slowed down and waited for a safe and adequate gap in the opposing flow of traffic to complete the turning maneuver.

b. Right Turn

The primary purpose of a right turn storage lane is to provide a protected area separated from the flow of through traffic in the same direction where right turning vehicles can slow to turning speed or stop and wait until the turning maneuver can be safely completed. A secondary purpose is to eliminate the delay and congestion that would occur for through traffic moving in the same direction while turning vehicles slowed down and completed the right turn movement.

3. Design Speed

The design speed is the speed noted on the roadway construction plans, or if plans are not available, it is the posted speed limit plus five miles per hour.

4. Two-way peak season volume

Two-way peak season peak hour volumes to be derived from the AADT estimates in the most recent Lee County Traffic Count Report or if County counts are not available, from developer's counts adjusted using the peak season and peak hour factors from an appropriate nearby permanent count station or combination of count stations. The volumes should also be adjusted to the appropriate horizon year per the TIS requirements.

5. FDOT Design Manual (FDM)

The latest version of the Florida Department of Transportation Design Manual.

IV. WARRANTS

The need for deceleration and turn lanes are generally determined by the following factors:

1. Street classification of any particular street or road as identified in the adopted County Administrative Code entitled "County Road Functional Classification Map and List".
2. Posted Roadway Speed
3. Number of Turning Movements during the Peak Hour of both the development and the adjacent roadway
4. Opposing and same direction peak hour through volumes.
5. Intersection and/or Stopping Sight Distance
6. Access Control

7. Crash history

Turn lane warrant reviews shall be required by developers at all project site access points, all intersections interior to planned developments open to public traffic, and all access points at the boundaries of planned developments at time of project plan review. Warrant reviews at all intersections interior to planned developments and all access points at the boundaries of planned developments must include all cumulative approved development traffic associated with the planned development.

LEFT TURN DECELERATION AND LEFT TURN LANES

A deceleration and left turn lane will be required when any two (2) or more of the following warrants are satisfied:

A. Arterial Street

1. Posted speed limit of the arterial street is equal to or greater than thirty-five (35) mph.
2. Estimated traffic volume:
 - a. Two-way peak season, peak hour through and right turn volume on the facility for either the peak hour of the roadway or the peak hour of the development is equal to or greater than 1000 vehicles and the left turn volume is greater than or equal to 10 vehicles; or
 - b. Two-way peak season, peak hour through and right turn volume on the facility for either the peak hour of the roadway or the peak hour of the development is between 500 and 1000 vehicles and the left turn volume is greater than or equal to 15 vehicles; or
 - c. When the left turn volume for any hour is greater than 20 trips regardless of through and right turn volumes on the facility.
3. Available Sight Distance for left turning vehicles to observe approaching traffic or for approaching traffic moving in either direction to observe the left turning vehicle is less than the value shown in Table A-1 for the design speed, or posted speed limit plus 5 miles per hour if the design speed is not available, of the arterial street.
4. The arterial street has been designated as a controlled access facility by the BOCC.
5. The arterial street intersection is an arterial street or collector street.
6. Traffic Control of the intersecting street or access point connection is by a traffic signal or is anticipated to meet MUTCD traffic signal warrants in the next five years.
7. Five or more crashes reported at the intersection in a 12-month period during the past three years that could have been mitigated by a left turn lane.
8. It is determined by the Lee County Department of Transportation that a turn lane is required for the health, safety, and welfare of the road users.

Table A-1				
Stopping Sight Distance for Approach to Stops				
Design Speed (mph)	< or = 30	40	50	> or = 60
Required sight distance (ft)	200	310	430	570

B. Collector Street

1. Posted speed limit of the collector street is equal to or greater than thirty-five (35) mph.
2. Number of Left Turning Movements
 - a. On multi-lane collector facilities the number of left turning vehicles from the collector roadway is equal to or greater than twenty (20) during either the A.M. or P.M. peak hour of the collector street or the peak hour of the development.
 - b. On two-lane two way collector streets:

- i. Two-way peak season, peak hour through and right turn volume for either the peak hour of the roadway or the peak hour of the development is equal to or greater than 500 vehicles and the left turn volume is equal to or greater than 20 vehicles for that same hour; or
 - ii. When the left turn volume for any hour is greater than 30 vehicles regardless of through and right turn volume.
- 3. Available Sight Distance for left turning vehicles to observe approaching traffic or for approaching traffic moving in either direction to observe the left turning vehicle is less than the value shown in Table A-I for the design speed, or posted speed limit plus 5 miles per hour if the design speed is not available, of the collector street.
- 4. Traffic Control of the intersecting street or access point connection is a traffic signal or is anticipated to meet MUTCD traffic signal warrants in the next five years.
- 5. The collector street is intersecting an arterial or collector street.
- 6. Five or more crashes reported at the intersection in a 12-month period during the past three years that could have been mitigated by a left turn lane.
- 7. It is determined by the Lee County Department of Transportation that a turn lane is required for the health, safety, and welfare of the road users.

C. Local Streets

- 1. Posted speed limit on the local street is equal to or greater than thirty (30) mph and the peak hour left turning movement is sixty (60) or more.
- 2. Number of Left Turning Movements
 - a. On multi-lane facilities the number of left turning vehicles exceeds one hundred (100) during the peak hour of the local street.
 - b. On two-lane, two way facilities the number of left turning vehicles from the local street exceeds sixty (60) during the peak hour of the local street and the opposing through plus right turn traffic volume exceeds five hundred (500) vehicles during either the A.M. or P.M. peak hour of the local street.
- 3. Available Sight Distance for left turning approaching traffic or for approaching traffic moving in either direction to observe the left turning vehicle is less than the value shown in Table A-I for the posted speed limit of the local street.
- 4. Traffic Control of the intersecting street or access point connection is a traffic signal or is anticipated to meet MUTCD traffic signal warrants in the next five years.
- 5. It is determined by the Lee County Department of Transportation that a turn lane is required for health, safety, and welfare of the road users.

D. Intersecting Streets

Separate left turn lanes are required on an intersecting street or access point connection when any two (2) or more of the following warrants are satisfied:

- 1. Intersecting Street/Connection to Arterial Streets
 - a. Posted speed limit of the intersecting street or access point connection is equal to or greater than thirty-five (35) mph.
 - b. When the Number of left turning vehicles from the intersecting street or access point connection is equal to or greater than thirty (30) vehicles during either A.M. or P.M. peak hour of the arterial street.
 - c. The arterial street which is being entered has been designated as a controlled access facility by the BOCC.

- d. Traffic Control of the intersecting street or access point connection is a traffic signal or is anticipated to meet MUTCD traffic signal warrants by the build-out year.
- e. It is determined by the Lee County Department of Transportation or the Department of Community Development that a turn lane is required for the health, safety, and welfare of the road users.

2. Intersecting Street/Connection to Collector Street

- a. Posted speed limit of the intersecting street or access point connection is equal to or greater than thirty five (35) mph.
- b. Number of left turning vehicles from the intersecting street or access point connection is equal to or greater than sixty (60) vehicles during either the A.M. or P.M. peak hour of the collector street.
- c. Traffic Control of the intersecting street or access point connection is a traffic signal or is anticipated to meet MUTCD traffic signal warrants by the build-out year.
- d. It is determined by the Lee County Department of Transportation or Department of Community Development that a turn lane is required for the health, safety, and welfare of the road users.

3. Intersecting Street/Connection to Local Street

- a. Posted speed limit of the intersecting street or access point connection is equal to or greater than thirty (30) mph.
- b. Number of left turning vehicles from the intersecting street or access point connection is equal to or greater than ninety (90) vehicles during either the A.M. or P.M. peak period of the local street.
- c. Traffic Control of the intersecting street or access point connection is a traffic signal.
- d. It is determined by the Lee County Department of Transportation or Department of Community Development that a turn lane is required for the health, safety, and welfare of the road users.

DECELERATION AND RIGHT TURN LANES

A deceleration and right turn lane will be required when any two (2) or more of the following warrants are satisfied:

A. Arterial Street

- 1. Posted speed limit of the arterial street is equal to or greater than thirty-five (35) mph.
- 2. Number of right turning movements from the arterial street is equal to or greater than thirty (30) during either the A.M. or P.M. peak hour of the arterial street or the peak hour of the development when the arterial street AADT is less than 6,000 vpd or equal to or greater than twenty (20) vph during either the A.M. or P.M. peak hour of the arterial street or peak hour of the development when the arterial street AADT is equal to or greater than 6,000 vpd.
- 3. Available Sight Distance of a right turning vehicle to be seen by through traffic traveling in the same direction is less than the value shown in Table A-I for the design speed of the arterial street.
- 4. Arterial Street has been designated as a controlled access facility by the BOCC.
- 5. Traffic Control of the intersecting street or access point connection is a traffic signal or is anticipated to meet MUTCD traffic signal warrants by the build-out year.
- 6. It is determined by the Lee County Department of Transportation or Department of Community Development that a turn lane is required for the health, safety, and welfare of the road users.

B. Collector Street

- 1. Posted speed limit of the collector street is equal to or greater than thirty-five (35) mph.

2. Number of right turning movements from the collector street is equal to or greater than forty-five (45) during either the A.M. or P.M. peak hour of the collector street when the collector street AADT is less than 6,000 vpd or equal to or greater than thirty (30) vph during either the A.M. or P.M. peak hour of the collector street or peak hour of the development when the collector street AADT is equal to or greater than 6,000 vpd.
 3. Available Sight Distance for a right turning vehicle to be seen by through traffic traveling in the same direction is less than the value shown in Table A-I for the design speed of the collector street.
 4. Traffic Control of the intersecting street or access point connection is a traffic signal or is anticipated to meet MUTCD traffic signal warrants by the build-out year.
 5. It is determined by the Lee County Department of Transportation or Department of Community Development that a turn lane is required for the health, safety, and welfare of the road users.
- C. Local Street
1. Posted speed limit of the local street is equal to or greater than thirty (30) mph.
 2. Number of right turning movements from the local street is equal to or greater than sixty (60) during either the A.M. or P.M. peak hour of the local street.
 3. Available Sight Distance for a right turning vehicle to be seen by through traffic traveling in the same direction is less than the value shown in Table A-I for the design speed of the local street.
 4. Traffic Control of the intersecting street or access point connection is a traffic signal.
 5. It is determined by the Lee County Department of Transportation or Department of Community Development that a turn lane is required for the health, safety, and welfare of the road users.
- D. Separate Right Turn Lanes are required on an intersecting street or access point connection when any two (2) or more of the following warrants are satisfied.
1. Intersecting Street/Connection to Arterial Street
 - a. Posted Speed Limit of the intersecting street or access point connection is equal to or greater than forty five (45) mph.
 - b. Number of right turning vehicles from the intersecting street or access point connection is equal to or greater than sixty (60) during either the A.M. or P.M. peak hour of the arterial street.
 - c. Arterial street which is being entered has been designated as a controlled access facility by the BOCC.
 - d. Traffic control of the intersecting street or access point connection is by a traffic signal.
 - e. It is determined by the Lee County Department of Transportation or Department of Community Development that a turn lane is required for the health, safety, and welfare of the road users.
 2. Intersecting Street/Connection to Collector Street
 - a. Posted speed limit of the intersecting street or access point connection is equal to or greater than thirty five (35) mph.
 - b. Number of right turning movements from the intersecting street or access point connection is equal to or greater than ninety (90) during either the A.M. or P.M. peak hour of the collector street.
 - c. Traffic control of the intersecting street or access point connection is by a traffic signal.
 - d. It is determined by the Lee County Department of Transportation or Department of Community Development that a turn lane is required for the health, safety, and welfare of the road users.

3. Intersecting Street/Connection to Local Street

- a. Posted speed limit of the intersecting street or access point connection is equal to or greater than thirty (30) mph.
- b. Number of right turning movements from the intersecting street or access point connection is equal to or greater than one hundred and twenty (120) during either the A.M. or P.M. peak hour of the local street.
- c. Traffic control of the intersecting street or access point connection is a traffic signal.

V. DESIGN

- I. Deceleration lanes consist of two distinct sections. The transition section is the distance needed for vehicles to achieve transfer from the through lane to the turn lane. The deceleration section is the distance needed to slow to a stop.

FDOT has tabulated standards for these distances, but those apply to typical rural highways. Under county urbanized conditions drivers begin deceleration immediately upon entry into the transition section and arrive at the deceleration section at lower speeds than the posted speed. Under urbanized conditions AASHTO recommends a deceleration rate of 10 ft. per sec. per sec. The table below represents a set of calculated County standards which differ from the FDOT standards except for those roads with a posted speed of 45 mph or above. County standards shall be used on County roads, except controlled access roadways which will utilize the FDOT standards. FDOT will specify requirements on State Highways. FDOT standards are found in the Florida Design Manual.

<u>Design Speed (mph)</u>	<u>Transition Distance (ft)</u>	<u>Deceleration Distance (ft)</u>	<u>Total Distance (ft)</u>
30	75	50	125
35	80	75	155
40	85	100	185
45	See FDM Section 212	See FDM Section 212	See FDM Section 212
50		See FDM Section 212	
55		See FDM Section 212	

The initial 50 feet (100 feet for a dual turn lane) of the transition length shall consist of pavement taper and the remaining length shall be the full width of the deceleration lane (see Figures FB-1 and FB-2).

II. DESIGN OF LEFT AND RIGHT TURN LANES

Where left and right turn lanes are required, storage lanes shall be used in conjunction with deceleration lanes and their lengths shall be added to the required transition and deceleration length.

A. For calculating the storage requirements for unsignalized intersections:

- a. For left turn lanes use the number of vehicles that will arrive in two minutes during the design peak hour:

$$N = \frac{V}{30} * L$$

Where:

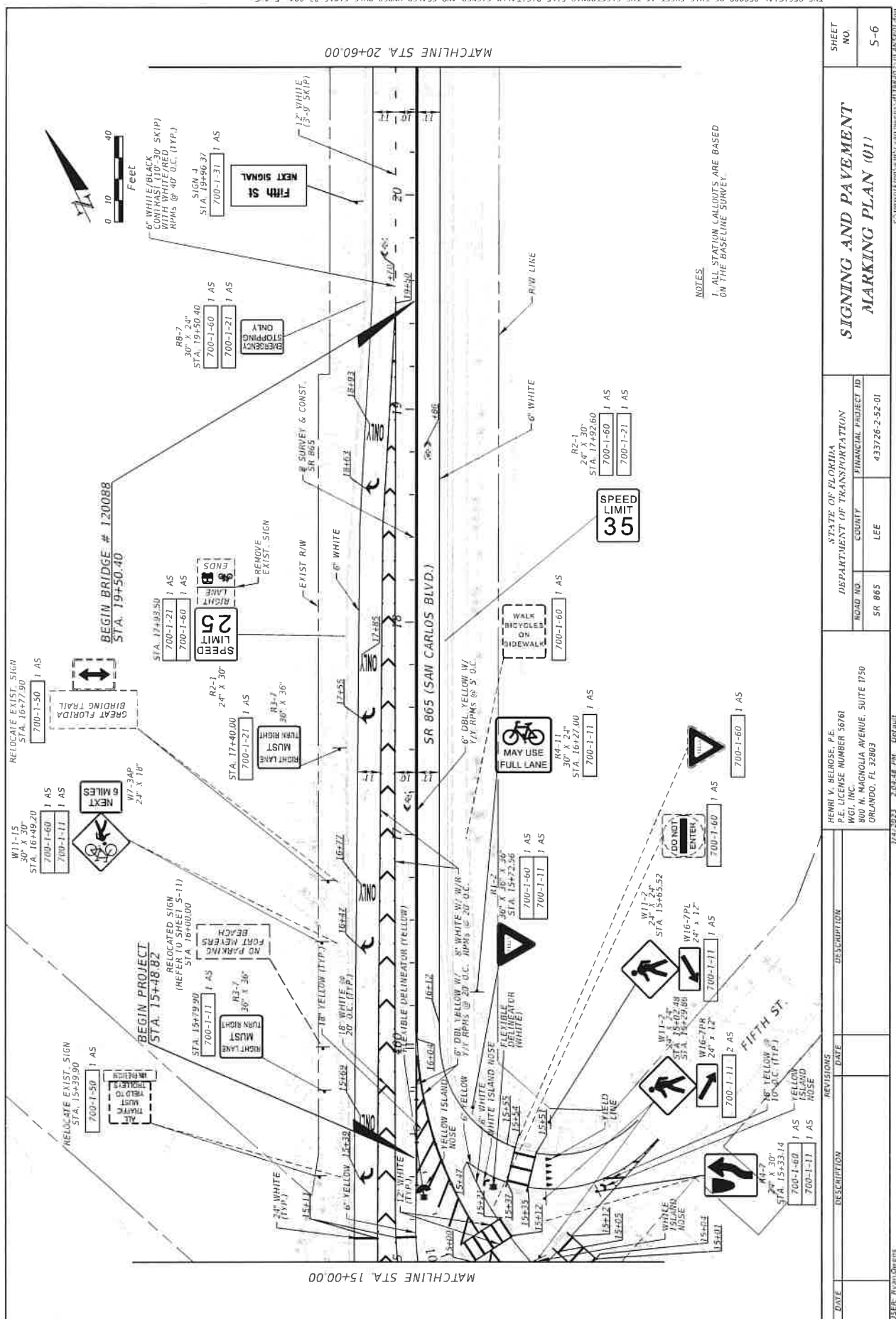
N= length of storage required (round to the next full vehicle length)

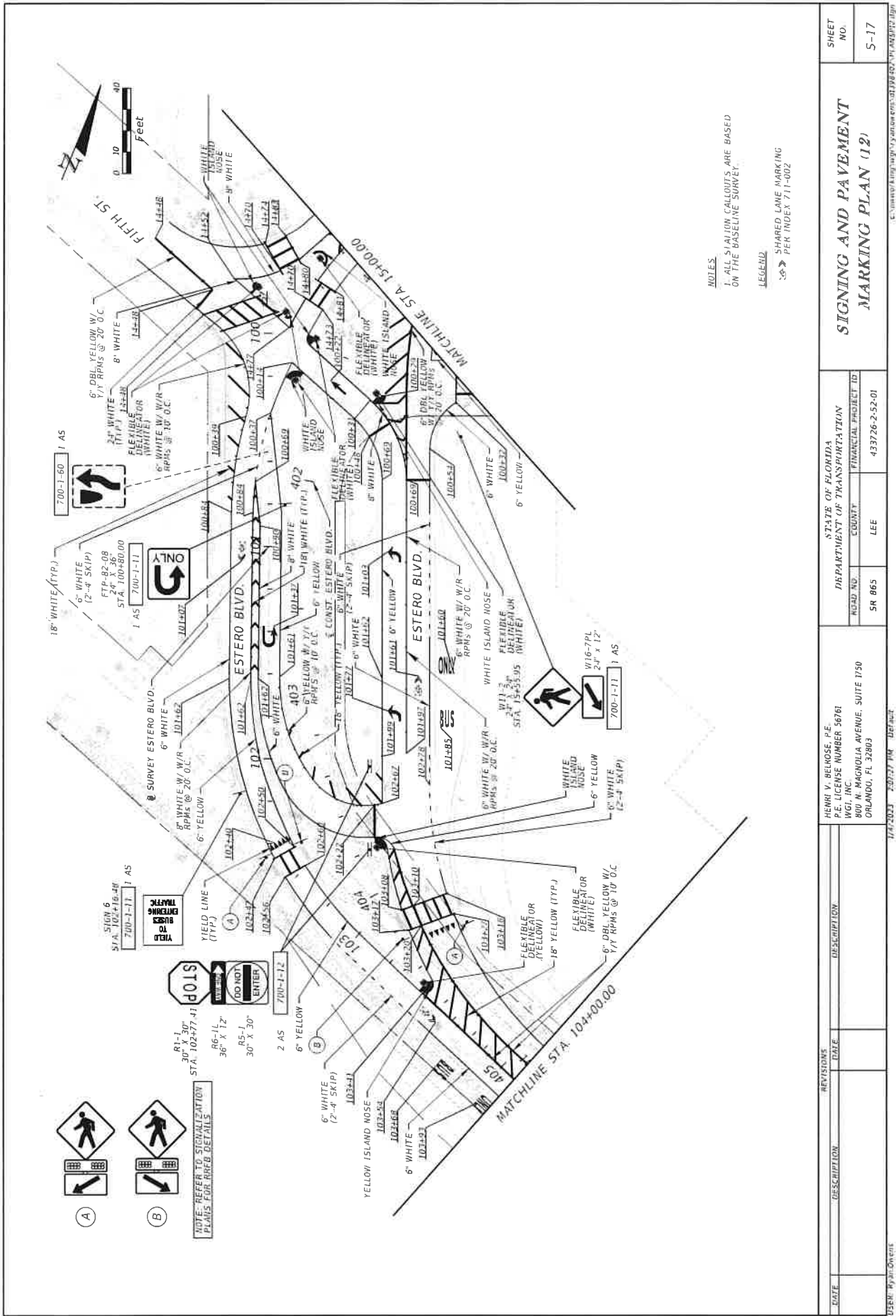
V = Number of turning vehicles during the peak hour of generator in the design year

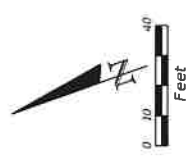
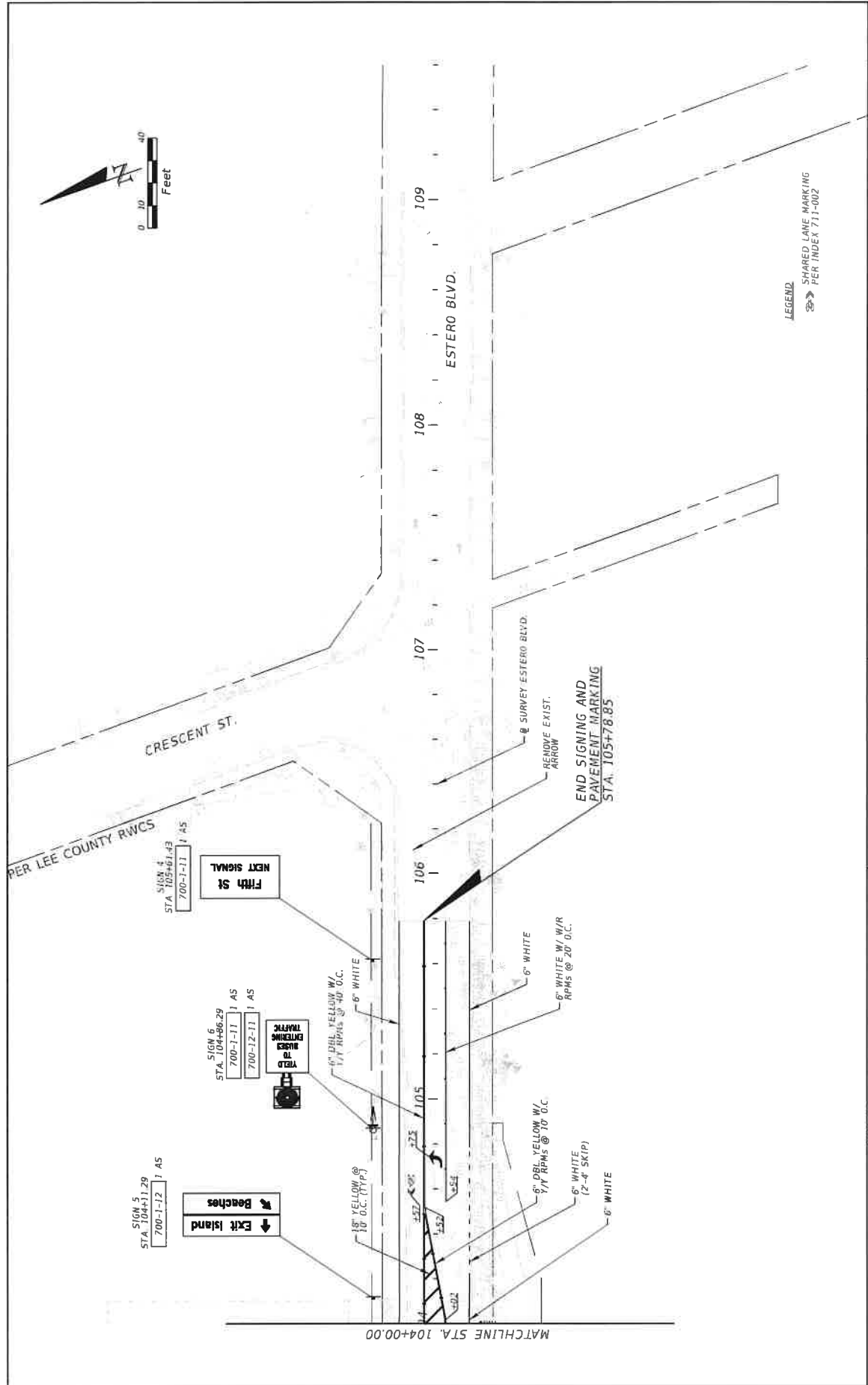
L = length of vehicle, including headway (use 25 feet as a minimum). A longer average vehicle length may be required if the vehicle mix includes a large number of trucks or buses.

- b. For right turn lane storage length, use the number of vehicles that will arrive in one minute during the design peak hour:

**FDOT PLANS FOR ESTERO BLVD @
SAN CARLOS BLVD**







LEGEND
 SHARED LANE MARKING
 PER INDEX 711-002

DATE		DESCRIPTION	REVISIONS		DATE	DESCRIPTION	HENRI V. BELINSE, P.E. P.E. LICENSE NUMBER 56761 HGI, INC. 800 N. MAGNOLIA AVENUE, SUITE 1750 ORLANDO, FL 32803	STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION			SIGNING AND PAVEMENT MARKING PLAN (13)		SHEET NO.
			ROAD NO.	COUNTY				FINANCIAL PROJECT ID					
								SR 865	LEE	433726-2-52-01			5-18

TRIP GENERATION EQUATIONS

Convenience Store (851)

Vehicle Trip Ends vs: 1000 Sq. Ft. GFA
On a: Weekday

Setting/Location: General Urban/Suburban

Number of Studies: 8

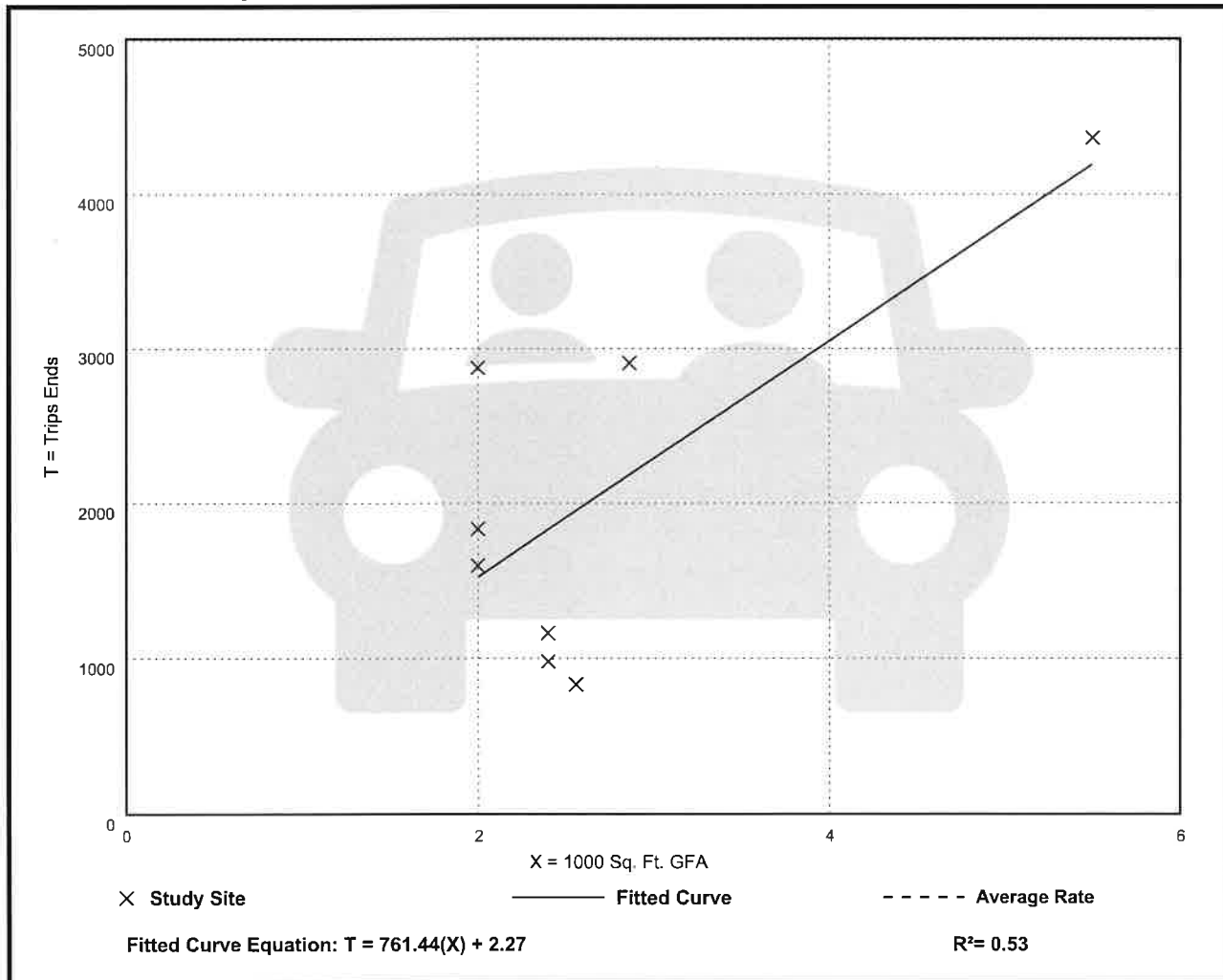
Avg. 1000 Sq. Ft. GFA: 3

Directional Distribution: 50% entering, 50% exiting

Vehicle Trip Generation per 1000 Sq. Ft. GFA

Average Rate	Range of Rates	Standard Deviation
762.28	325.78 - 1438.00	333.89

Data Plot and Equation



Convenience Store (851)

Vehicle Trip Ends vs: 1000 Sq. Ft. GFA

On a: Weekday,

Peak Hour of Adjacent Street Traffic,

One Hour Between 7 and 9 a.m.

Setting/Location: General Urban/Suburban

Number of Studies: 39

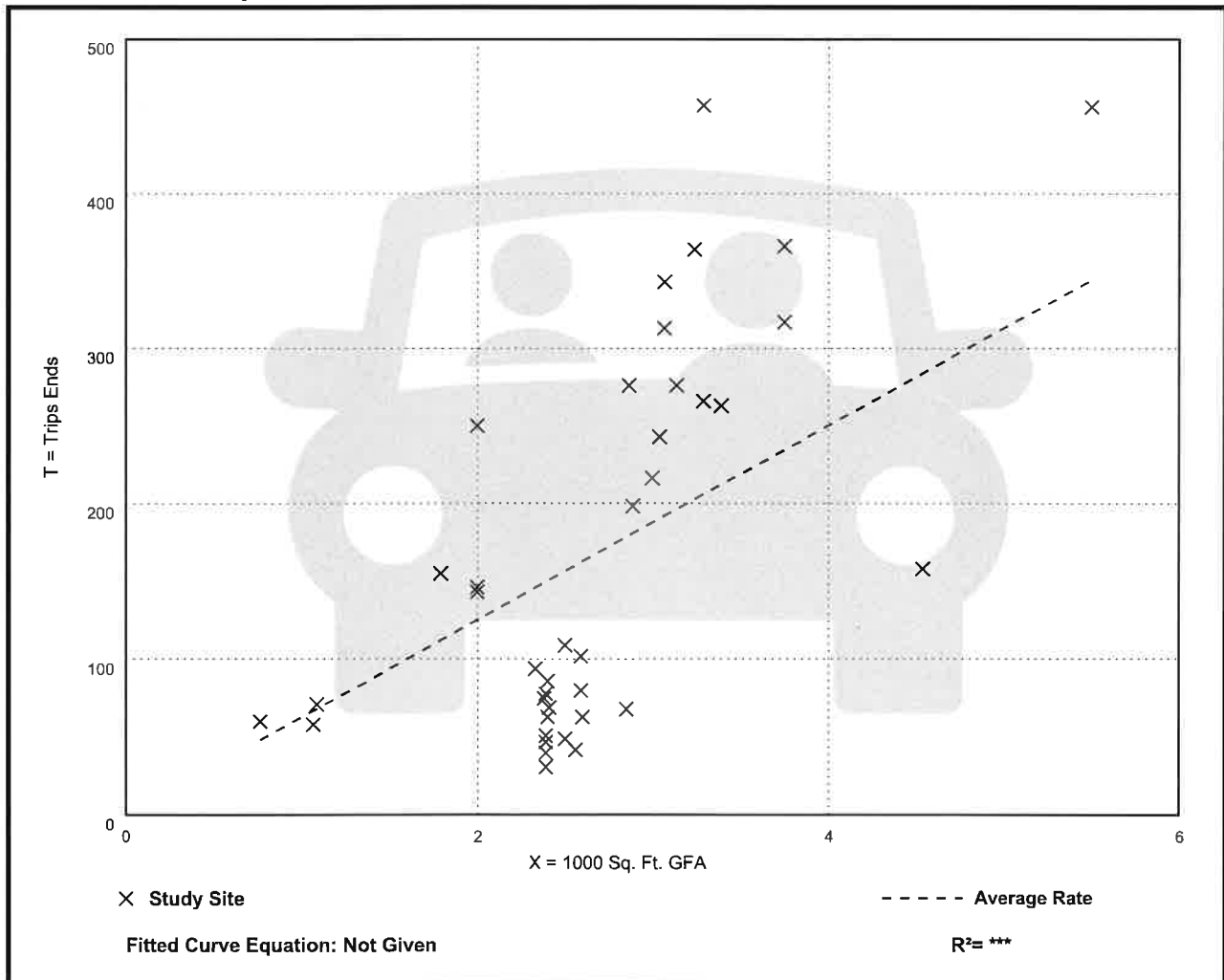
Avg. 1000 Sq. Ft. GFA: 3

Directional Distribution: 50% entering, 50% exiting

Vehicle Trip Generation per 1000 Sq. Ft. GFA

Average Rate	Range of Rates	Standard Deviation
62.54	12.97 - 138.91	35.04

Data Plot and Equation



Convenience Store (851)

Vehicle Trip Ends vs: 1000 Sq. Ft. GFA

On a: Weekday,

Peak Hour of Adjacent Street Traffic,
One Hour Between 4 and 6 p.m.

Setting/Location: General Urban/Suburban

Number of Studies: 39

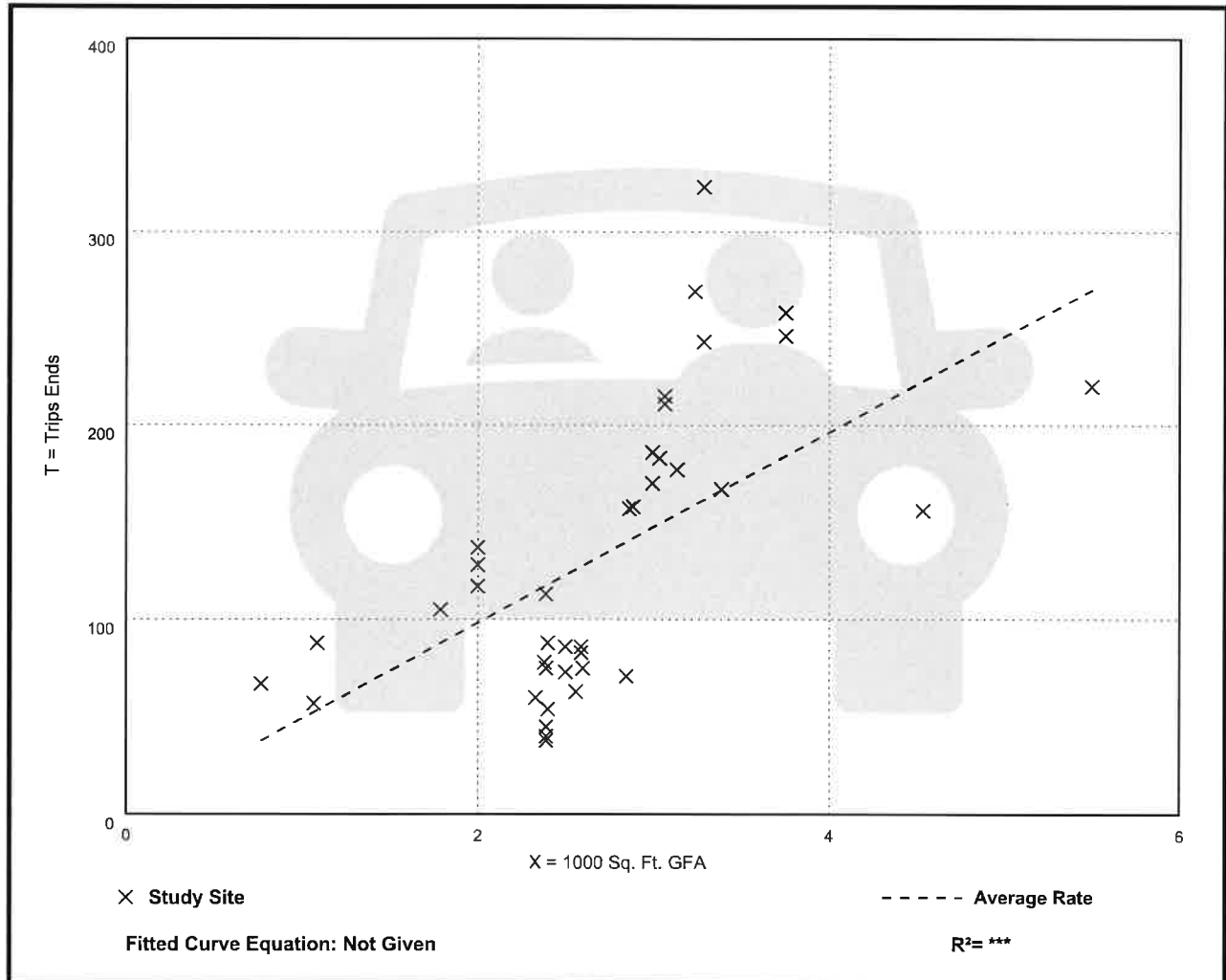
Avg. 1000 Sq. Ft. GFA: 3

Directional Distribution: 51% entering, 49% exiting

Vehicle Trip Generation per 1000 Sq. Ft. GFA

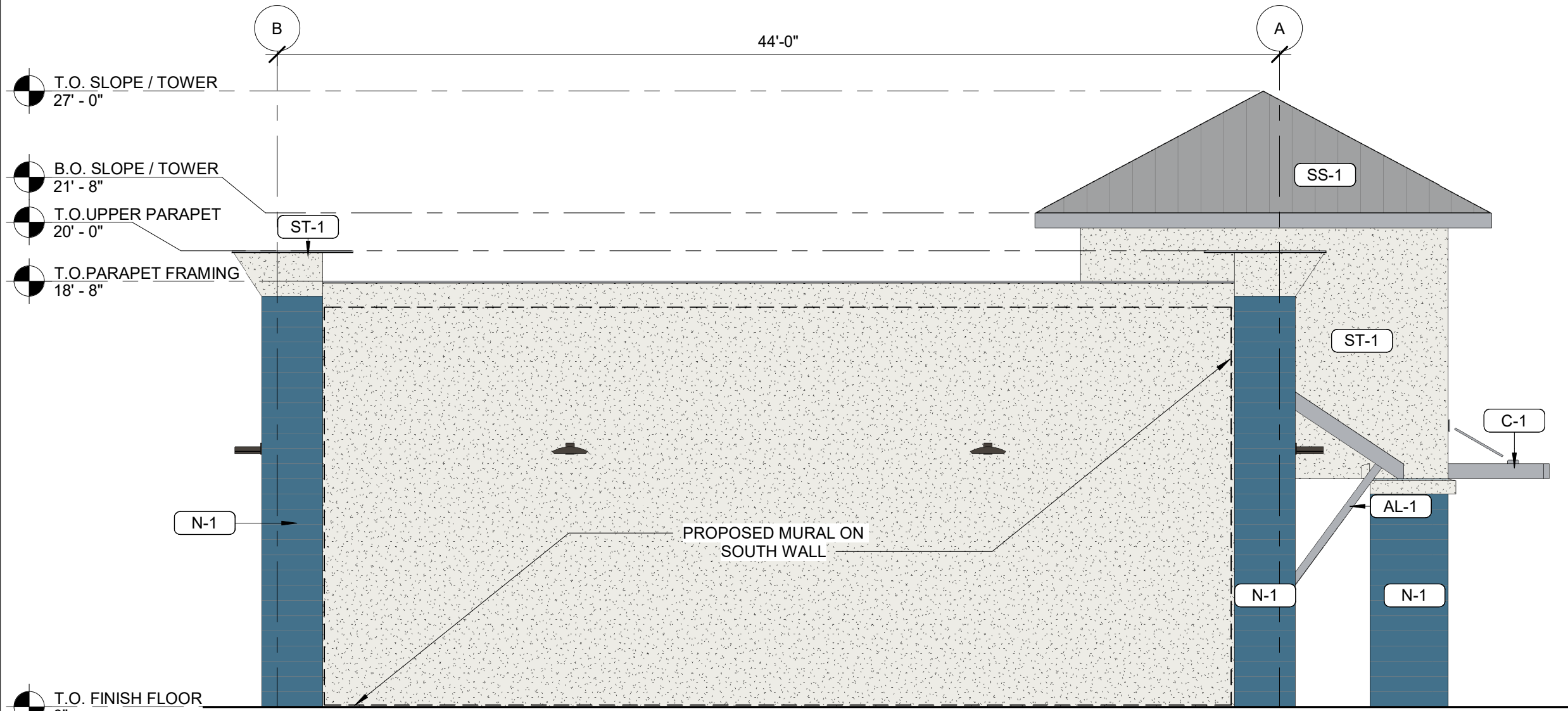
Average Rate	Range of Rates	Standard Deviation
49.11	15.90 - 98.18	20.84

Data Plot and Equation

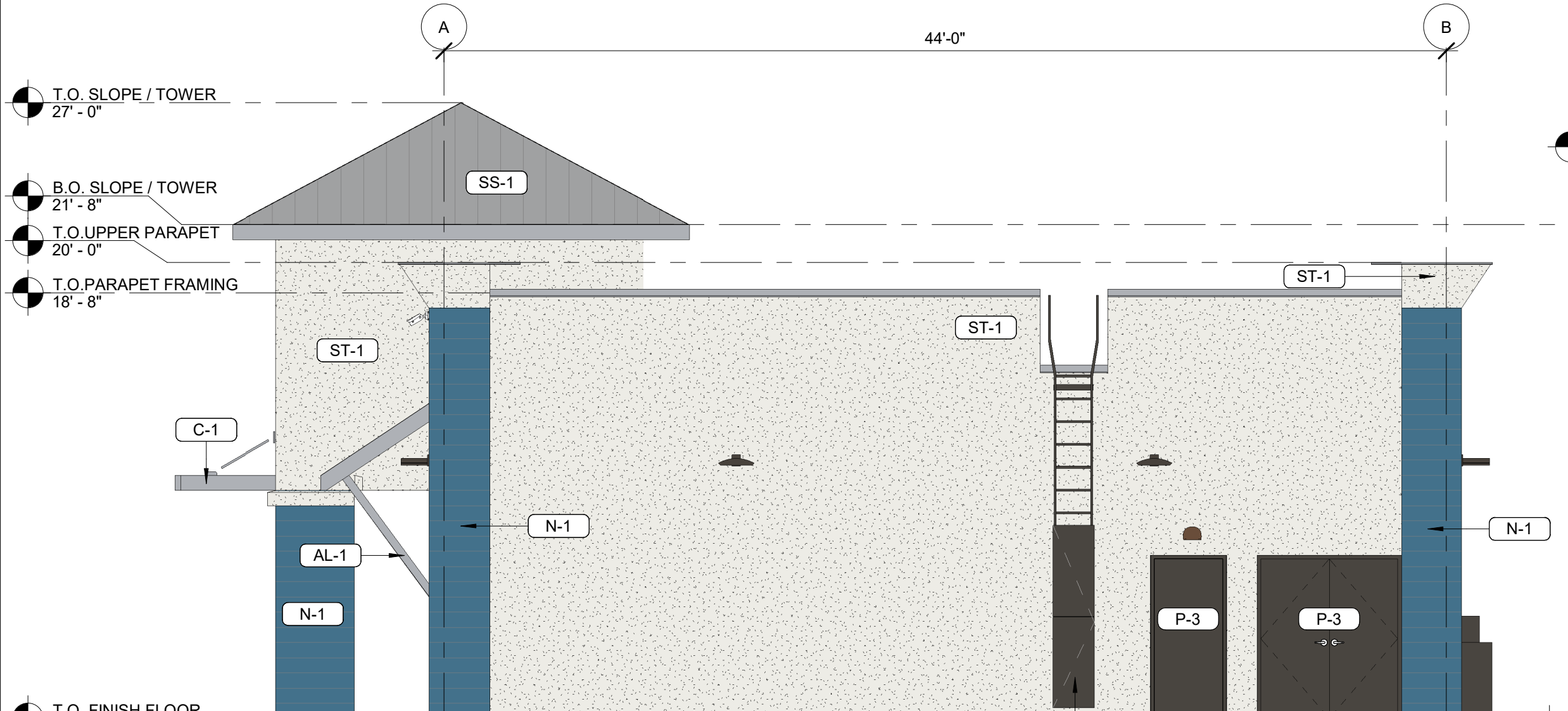




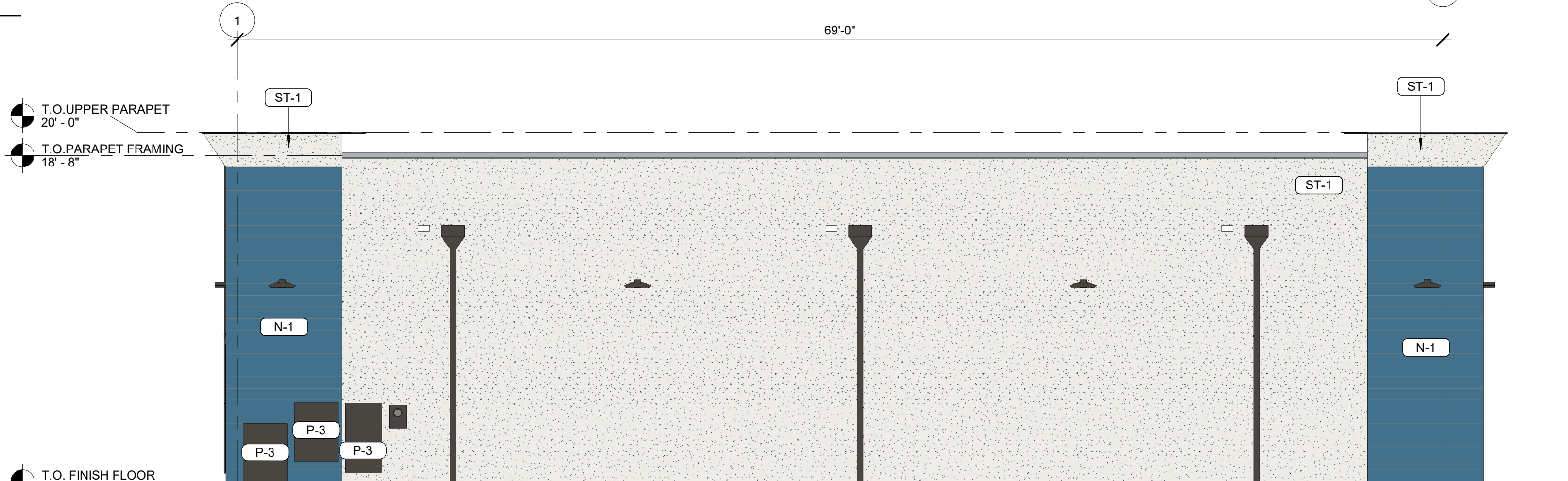
**NOT FOR
CONSTRUCTION**



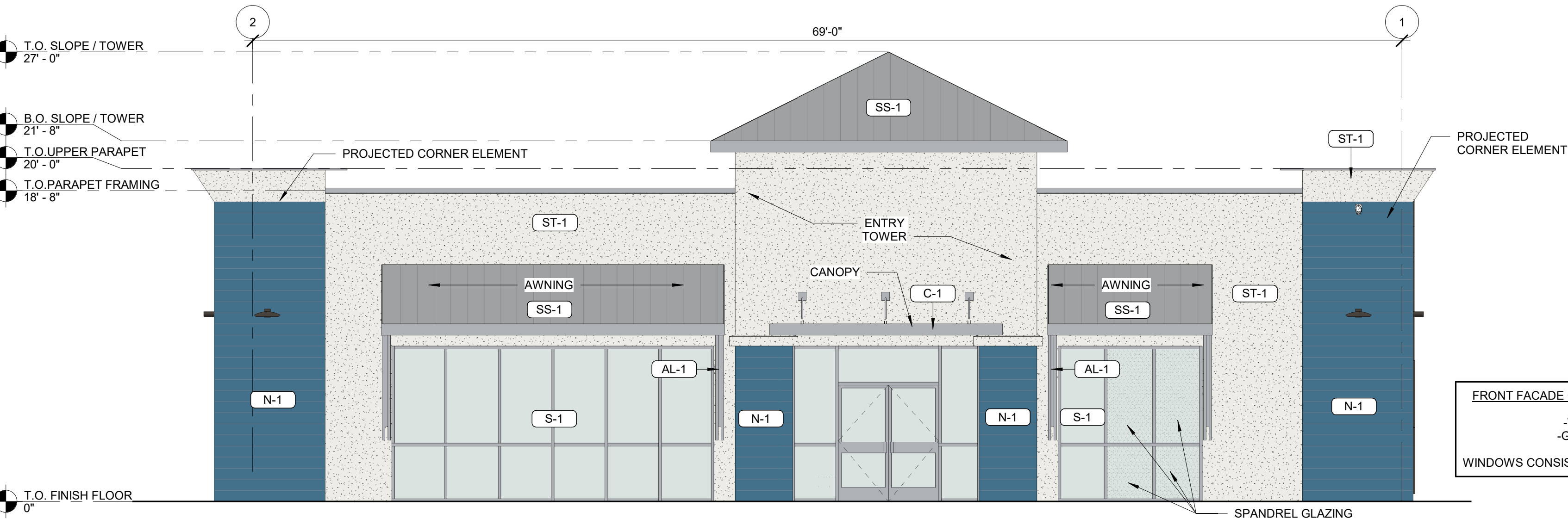
4 ELEVATION - RIGHT (SOUTHWEST)
3/16" = 1'-0"



2 ELEVATION - LEFT (NORTHEAST)
3/16" = 1'-0"



3 ELEVATION - REAR (NORTHWEST)
3/16" = 1'-0"



1 ELEVATION - FRONT (SOUTHEAST)
3/16" = 1'-0"

EXTERIOR MATERIALS SCHEDULE			
(NOT ALL MATERIALS IN SCHEDULE ARE USED)			
NO.	MATERIAL	MANUFACTURER	COLOR
MR-1	MEMBRANE ROOFING	DUROLAST	WHITE
N-1	FIBER CEMENT PANEL	NICHIHA	DOWN POUR SW 6516
P-3	EXTERIOR HM DOORS, FRAMES, TRASH ENCLOSURE GATE, GRAVEL GUARDS, AND LIGHT POLES	SHERWIN WILLIAMS	SEAL SKIN SW 7675
S-1	ALUMINUM STOREFRONT GLAZING	KAWNEER	CLEAR
C-1	PREFINISHED ALUMINUM CANOPY	MAPES LUMISHADE	CLEAR ANODIZED
SS-1	STANDING SEAM METAL ROOF	BERRIDGE	LEAD COTE
ST-1	STUCCO	DRYVIT OR EQ	PAINTED (P-1) PURE WHITE
AL-1	ALUMINUM CANOPY BRACKETS	TBD	CLEAR ANODIZED

FRONT FACADE GLAZING CALCULATIONS:
-WALL AREA = 1,005 SQFT.
-GLAZING AREA = 366 SQFT
WINDOWS CONSIST OF 36% OF WALL AREA

7-ELEVEN #1055525
841 ESTERO BLVD.
FORT MYERS BEACH, FL 33931

CREIGHTON COMMERCIAL DEVELOPMENT
900 SW PINE ISLAND ROAD, SUITE 202 CAPE CORAL, FL 33991

REVIEW BOARD ELEVATIONS

CREIGHTON
COMMERCIAL DEVELOPMENT

BOTI
ARCHITECTURE
504 W. COLLEGE ST.
SPRINGFIELD, MO 65806
TEL: 877.297.2684
www.boti.studio

Drawings and Specifications as Instruments of service are and shall remain the property of the Architect. They are not to be used on other projects or extensions to this project except by agreement in writing and with appropriate compensation to the Architect.

Contractor is responsible for confirming and correcting dimensions at job site. The Architect will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the project.

The seal and signature apply only to the document to which they are affixed and we expressly disclaim any responsibility for all other plans, specifications, estimates, reports or other documents or instruments relating to or intended to be used for any part or parts of the project.

NOT FOR CONSTRUCTION

08/14/2023

JOB#: 23048
DATE: 08/14/2023
SHEET: R0.01



08/14/2023

JOB#:	23048
DATE:	08/14/2023
SHEET:	

R0.02

[illegible]

PROTO:7043 CST 2022-02

7-ELEVEN #1055525
841 ESTERO BLVD.
FORT MYERS BEACH, FL. 33931

CREIGHTON COMMERCIAL DEVELOPMENT
900 SW PINE ISLAND ROAD, SUITE 202 CAPE CORAL FL 33991

REVIEW BOARD DUMPSTER ENCLOSURE



BOTI ARCHITECTURE
504 W. COLLEGE ST.
SPRINGFIELD, MO 65806
TEL: 877.297.2684
www.boti.studio

Drawings and Specifications as instruments of service are and shall remain the property of the Architect. They are not to be used on other projects or extensions to this project except by agreement in writing and with appropriate compensation to the Architect.

Contractor is responsible for confirming and correlating dimensions at job site; the Architect will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the project.

The seal and signature apply only to the document to which they are affixed and we expressly disclaim any responsibility for all other plans, specifications, estimates, reports or other documents or instruments relating to or intended to be used for any part or parts of the project.



1
R001

3D VIEW - FRONT (SOUTHEAST)
N.T.S.

REV.	DATE	DESCRIPTION

PROTO-7543 CST-2022-02

7-ELEVEN #1055525 841 ESTERO BLVD. FORT MYERS BEACH, FL 33951
CREIGHTON COMMERCIAL DEVELOPMENT 900 SW PINE ISLAND ROAD, SUITE 202 CAPE CORAL, FL 33991
3D RENDERINGS

CREIGHTON
COMMERCIAL DEVELOPMENT

BOTI
ARCHITECTURE
504 W. COLLEGE ST.
SPRINGFIELD, MO 65806
www.boti-studio.com

Drawings and specifications are the property of the Architect and shall remain the property of the Architect. They are not to be used or copied or reproduced in any form without the written consent of the Architect. The Architect is responsible for confirming and correcting dimensions and data. The Architect is not responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and protection work. The user and licensee agree to indemnify the Architect and hold the Architect harmless from and against all claims, damages, losses and expenses, including reasonable attorneys' fees, arising from or due to the use of the drawings and specifications for any purpose other than that for which they were prepared.

The seal and signature apply only to the documents and drawings which are the property of the Architect. The Architect is not responsible for other plans, specifications, schedules, reports or other documents or drawings which may be used in connection with the project.

NOT FOR
CONSTRUCTION
08/31/2023

JOB#: 23048
DATE: 08/31/2023
SHEET: R001



1 3D VIEW - FRONT (EAST)
R002 N.T.S.

[illegible]

PROTO:7043 CST 2022-02

7-ELEVEN #1055525
841 ESTERO BLVD.
FORT MYERS BEACH, FL 33931

CREIGHTON COMMERCIAL DEVELOPMENT
9000 SW PINE ISLAND ROAD, SUITE 202 CAPE CORAL, FL 33991

3D RENDERINGS

CREIGHTON
COMMERCIAL DEVELOPMENT

BOTI
ARCHITECTURE
504 W. COLLEGE ST.
SPRINGFIELD, MO 65806
TEL: 877.297.2684

Drawings and Specifications are instruments of service and shall remain the property of Architect. They are not to be used on other projects or extensions to this project except by agreement in writing and with appropriate compensation to the Architect.

Contractor is responsible for confirming and correlating dimensions at job site; the Architect will not be responsible for construction means, methods, techniques, sequences or procedures or for safety precautions and programs in connection with the project.

The seal and signature apply only to the document to which they are affixed and we expressly disavow responsibility for all other plans, specifications, statements, reports or other documents or instruments relating to or intended to be used as part or parts of the project.

--	--

100



NOT FOR CONSTRUCTION

08/31/2023

JOB#: 230
DATE: 08/31/20
SHEET: B002

	R002
--	------



1
R003

3D VIEW - SIDE (SOUTHWEST)
1" = 1'-0"

[illegible]

PROTO:7043 CST 2022-02

7-ELEVEN #1055525
841 ESTERO BLVD.
FORT MYERS BEACH, FL 33931

CREIGHTON COMMERCIAL DEVELOPMENT
3000 SW PINE ISLAND ROAD, SUITE 202 CORAL, FL 33991

3D RENDERINGS



CREIGHTON
COMMERCIAL DEVELOPMENT

BOTI
ARCHITECTURE
504 W. COLLEGE ST.
SPRINGFIELD, MO 65806
TEL: 817.297.2684

Drawings and Specifications as Instruments of service are and shall remain the property of Architect. They are not to be used on other projects or extensions to this project except by agreement in writing and with appropriate compensation to the Architect.

Contractor is responsible for confirming and correlating dimensions at job site; the Architect will not be responsible for construction means, methods, techniques, sequences or procedures or for safety precautions and programs in connection with the project.

The seal and signature apply only to the documents to which they are affixed and we expressly disavow responsibility for all other plans, specifications, addendums, reports or other documents or instruments relating to or intended to be used on any part or parts of the project.

--	--

[illegible]

2

NOT FOR CONSTRUCTION

08/31/2023

JOB#: 230
DATE: 08/31/20
SHEET: **R003**

	R005
--	------



THE NEIGHBORHOOD COMPANY

841 ESTERO BLVD COMMERCIAL PLANNED DEVELOPMENT (CPD) Planned Development Rezone

SCHEDULE OF USES

RETAIL STORE, SMALL TO INCLUDE:

CONVENIENCE STORES, NO FUEL PUMPS (OPEN 24 HRS/7 DAYS)



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 24-14 AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING A REQUEST TO REZONE THE PROPERTY LOCATED AT 841 ESTERO BLVD. GENERALLY IDENTIFIED AS STRAP NUMBERS 24-46-23-W3-0050B.0010 FORT MYERS BEACH, FROM DOWNTOWN TO COMMERCIAL PLANNED DEVELOPMENT (CPD) ZONING FOR A CONVENIENCE STORE; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, 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 [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;
 - 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 [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 is requested by a private property owner to allow a commercial planned development rezoning.

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 24-14.

Ordinance 24-14 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:

This affects only the property applying for the rezoning.

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

1. **Request:**

Meeting Date: May 20, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING VARIANCE VAR20240084, REQUESTING A VARIANCE FROM LDC 34-1174(b). TO ALLOW A PICKLEBALL COURT, CLOSER TO STREET THAN THE PRINCIPAL BUILDING IN THE RS ZONING DISTRICT, FOR THE PROPERTY LOCATED AT 6140 COURT STREET; 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:

The Town Council hears and decides variance requests.

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 a pickleball court closer to the street than the principal building in the RS zoning.

Attachments:

1. 24-96, VAR20240084 6140 Court St (1) ns
2. TC STAFF REP 6140 Court St
3. EXHIBIT A-SITE PLAN
4. EXHIBIT B- SURVEY
5. EXHIBIT C-LANDSCAPE PLAN
6. EXHIBIT D-LPA AND TC postcard 6140 Court St
7. EXHIBIT E-COMPLETE APPLICATION

Financial Impact:

unknown

6. **Alternative Action**

APPROVE

7. **Management Recommendations:**

Recommend denial of the request.

8. **Recommended Approval:**

Kendra Rosa, Zoning Coordinator
Frankie Kropacek, Operations & Compliance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 5/13/2024
Approved - 5/13/2024
Approved - 5/14/2024
Approved - 5/15/2024
Final Approval - 5/15/2024

RESOLUTION NUMBER 24-96

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/APPROVING WITH CONDITIONS/ DENYING VARIANCE VAR20240084, REQUESTING A VARIANCE FROM LDC 34-1174(b) TO ALLOW A PICKLEBALL COURT, CLOSER TO THE STREET THAN THE PRINCIPAL BUILDING IN THE RS ZONING DISTRICT, FOR THE PROPERTY LOCATED AT 6140 COURT STREET; 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, Cary & Laura Kledzik ("Applicant") are the owners of the property located at 6140 Court Street, and are requesting a variance from LDC 34-1174(b) to allow an accessory structure closer to the street than the principal building in the RS zoning district; and

WHEREAS, the STRAP number for the subject property is 33-46-24-W3-0010A.2000; and

WHEREAS, the Property is located in the "Mixed Residential" and "Recreational" category of the Future Land Use Map of the Comprehensive Plan and the "Residential, Single Family" 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 30, 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 to 0 to recommend approval with conditions of the variance, with one member absent; and

WHEREAS, on May 20, 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 a variance from LDC 34-1174(b) to allow an accessory structure closer to the street than the principal building in the RS zoning district.

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 approved, this variance does not give the Applicant an undeniable right to approval of a building permit. 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.

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

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

ADOPTED this 20th 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: VAR20240084

CASE NAME: 6140 Court St; requesting variance from LDC 34-1174(b) to allow a pickleball court, closer to street than the principal building in RS zoning district.

**TOWN COUNCIL
HEARING DATE:** May 20, 2024 9AM

**LPA
HEARING DATE:** April 30, 2024 9AM

**STAFF
RECOMMENDATION:** DENIAL

**PREPARED/
SUBMITTED BY:** Jason Smalley

I. APPLICATION SUMMARY

Owner/Agent: Cary & Laura Kledzik (Owner)/ Kara Stewart (Agent)

Request: Variance from LDC 34-1174(b) to allow an accessory structure/pickleball court closer to the street than the principal building in RS zoning district.

Subject property: See attached site plan

Physical Address: 6140 Court St

STRAP #: 33-46-24-W3.0010.A2000

FLU: Mixed Residential/ Recreation

Zoning: Residential Single Family (RS)

Adjacent zoning and land uses:

North:	Residential Single Family (RS) Mixed Residential
South:	Environmentally Critical (EC) Recreation
East:	Residential Single Family (RS) Environmental Critical (EC) Mixed Residential/ Recreation
West:	Residential Single Family (RS) Environmental Critical (EC) Mixed Residential/ Recreation

II. BACKGROUND AND ANALYSIS

Background:

Cary and Laura Kledzik, the owners of 6140 Court St, are requesting one variance from the Town's Land Development Code (LDC): 1) Section 34-1174(b) which prohibits location of accessory structures, closer to street right-of-way line than the principal building in the RS zoning district.

The proposed pickleball court is considered an accessory structure. The property owner(s) has an issued permit under the previous setback ordinance to construct a single-family home. The permit has an issued date of 8/11/2021. During the design of the home, the applicant did not accommodate a pickleball court in their original site design. The accessory structure meets the sides, and street setbacks outlined for accessory structures on a waterbody lot in the RS zoning district and will be further buffered by landscaping around the pickleball court. The owner will amend the drainage plan for the single-family home to ensure that the site adheres to the Neighborhood Flooding ordinance.

Analysis:

The subject property is 75 feet wide, and approximately 183 feet deep. It is a conforming lot. The proposed pickleball court will be 25 feet from the Court Street right of way and a minimum of 7.5 feet from the side property lines. LDC 34-1174(b) states that accessory structures, shall not be closer to a street right-of-way line or street easement than the principal building.

Neighborhood Compatibility:

The purpose of the RS zoning district is to provide stable neighborhoods where single-family detached homes are the predominant land use. The subject property is part of an existing residential neighborhood. It does not appear that the neighborhood has any accessory structures closer to the street right-of-way than the principle building.

Findings and Conclusions:

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

- a. *That there **are not** exceptional or extraordinary conditions or circumstances that are inherent to the property in question, or that the request **is** for a de minimis variance under circumstances or conditions where rigid compliance is not essential to protect public policy.*

There are no exceptional or extraordinary conditions inherent to the property itself. However, the new home was constructed near the rear of the property, with little room for a pickleball court elsewhere. The applicant has the choice to not construct the pickleball court

- b. *That the conditions justifying the variance **are** the result of actions of the applicant taken after the adoption of the regulation in question.*

The conditions justifying the variance are the result of the actions of the Applicant. The owner(s) designed a home without incorporating the proposed pickleball court which is not compliant with Section 34-1174(b) of the Town's LDC.

- c. *That the variance granted **is** the minimum variance that will relieve that applicant of an unreasonable burden caused by the application of the regulation in question to his property.*

Because of the chosen location of the residence, construction of a pickleball court is only possible forward of the residence.

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

The granting of both variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare. The property owner will be installing landscape buffering for noise mitigation and shield the pickleball

from Court St as well as the neighboring property owners. from view of the road.

- e. *That the conditions or circumstances on the specific piece of property for which the variance is sought **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 variances are sought are not general in nature and do not warrant a code change.

IV. RECOMMENDATION

Staff has reviewed the request for a variance *from LDC 3434-1174(b) which prohibits location of accessory structures, such as accessory structures, closer to street right-of-way line than the principal building in the RS zoning district* and found that the variance request **does not meet** the requirements set-forth in sec. 34-87.

Therefore, staff recommends **DENIAL** of the request to allow the proposed pickleball court closer to the street right of way line than the single-family residence.

At the April 30th LPA hearing, LPA unanimously recommended approval with conditions for the requested variance as well as adding the adding condition of an approved landscaping plan.

IV. CONDITIONS FOR APPROVAL

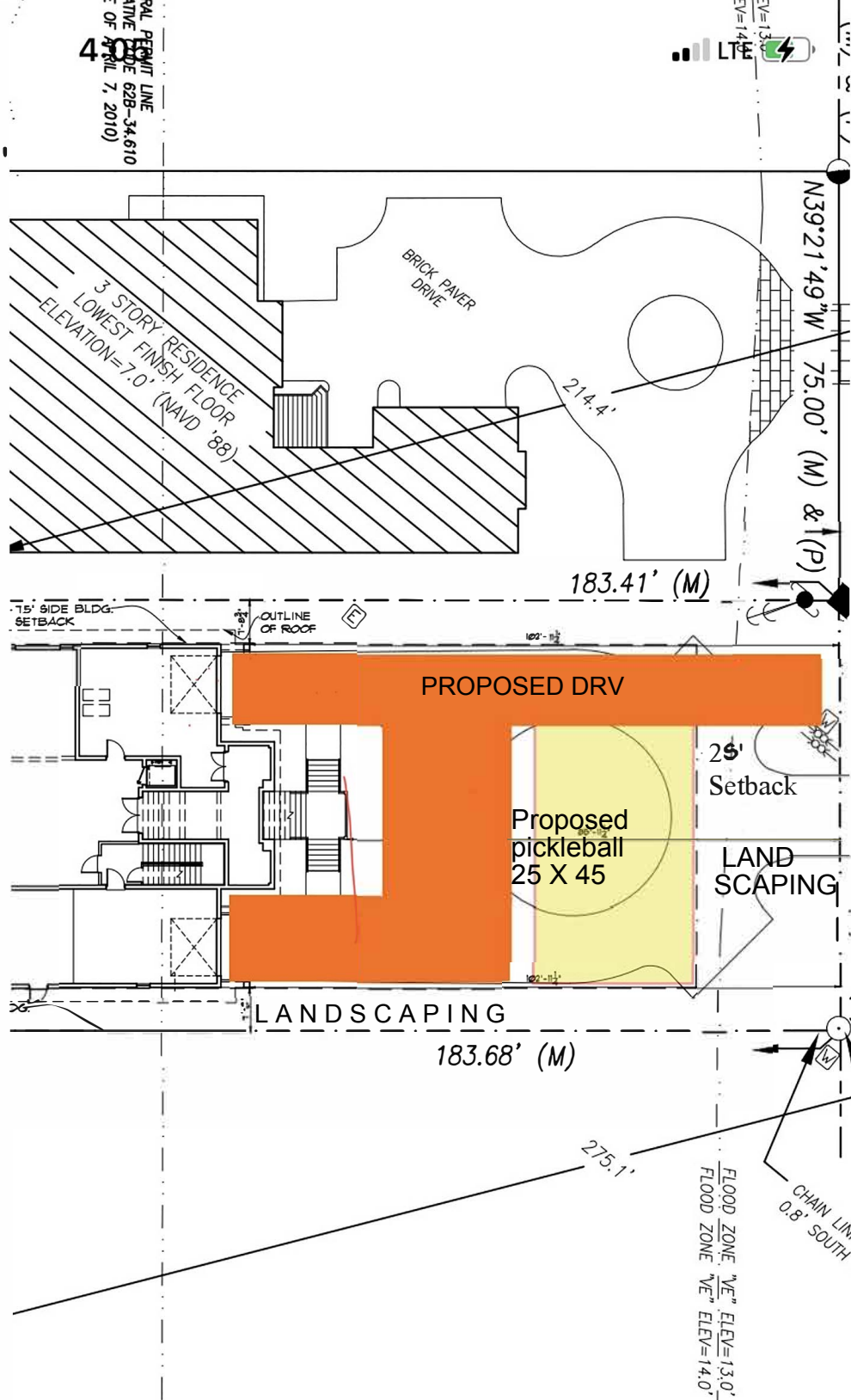
If the LPA chooses to recommend approval for this variance, the town's staff will recommend the following conditions.

- 1) 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.
- 2) The property owner(s) will need to submit an updated drainage plan to ensure that the site will adhere to the Neighborhood Flooding Ordinance.
- 3) The pickleball court cannot be rented out and can only be used by the owner, their guests, and tenants.
- 4) The property owner(s) must comply with the Noise disturbance section of the Land Development Code.

VI. EXHIBITS

Exhibit A- Site plan
Exhibit B- Survey
Exhibit C-Landscape Plan
Exhibit D- Postcards to Adjacent Property Owners
Exhibit E- Complete Application Packet

EXHIBIT "A"



A
 AL
 ORAGE
 ID, UNPROTECTED
 TO MIDPOINT OF
 ER STATE DEP DUNE

LOT AREA (LANDWARD OF 1978 C.C.C.L.) = 13,176 SF
 BUILDING COVERAGE = 4,800 SF
 DRIVEWAY COVERAGE = 40% X 13,176 = 5,510 SF

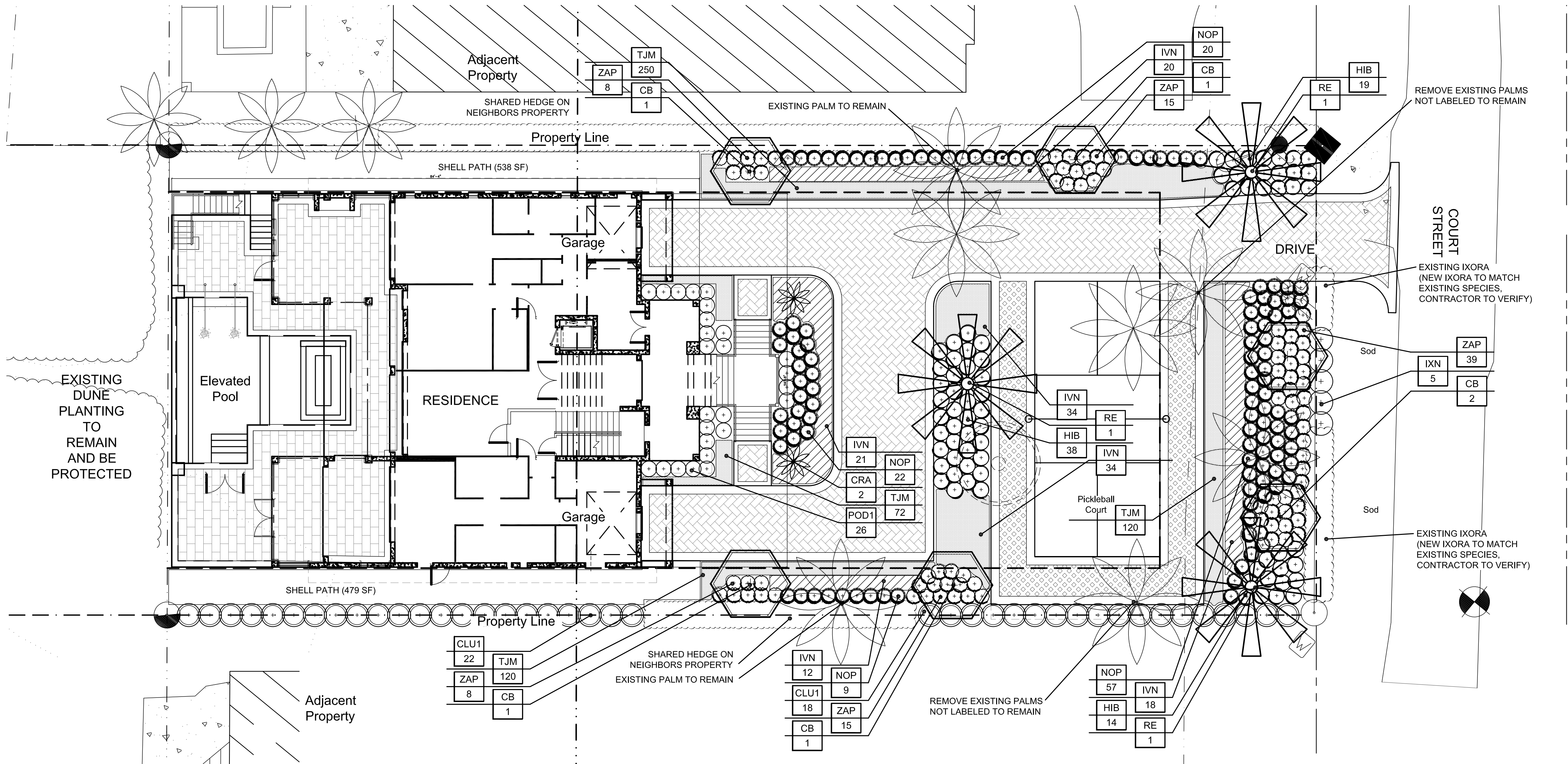
Plant List

TREES						
Qty.	Symbol	Botanical Name	Common Name	Specification	Spacing	Native USDA Zone
6	CB	Conocarpus erectus sericeus	Silver Buttonwood Tree	10' ht x 4' spr, multi, 25g	as shown	Y 10B-11
PALMS						
Qty.	Symbol	Botanical Name	Common Name	Specification	Spacing	Native USDA Zone
3	RE	Roystonea elata	Florida Royal Palm	10' gw matched	as shown	Y 10A-11
ACCENTS						
Qty.	Symbol	Botanical Name	Common Name	Specification	Spacing	Native USDA Zone
2	CRA	Crinum asiaticum	Crinum Lily	10 gal. 30" ht specimen	as shown	N 9a-11
85	ZAP	Zamia pumila	Coontie	10 gallon 24"-30" specimen	as shown	Y 8b-11
SHRUBS						
Qty.	Symbol	Botanical Name	Common Name	Specification	Spacing	Native USDA Zone
40	CLU1	Clusia guttifera	Small Leaf Clusia	10 gallon 48" oa ht	48" on center	N 10-11
5	IXN	Ixora (Contractor to match existing)	Ixora	10 gallon 30" oa ht	30" on center	N 10-11
92	NOP	Nerium oleander 'Petite'	Dwarf Oleander	3 gallon 18" oa ht	30" on center	N 8a-11
71	HIB	Hibiscus rosa-sinensis	Pink Hibiscus	3 gallon 18" oa ht	30" on center	N 9b-11
26	POD1	Podocarpus macrophyllus	Upright Podocarpus	10 gallon 5' oa ht	36" on center	N 8a-11
GROUNDCOVERS						
Qty.	Symbol	Botanical Name	Common Name	Specification	Spacing	Native USDA Zone
112	IVN	Ilex vomitoria 'Stokes Dwarf'	Dwarf Yaupon Holly	3 gallon 16" oa ht	30" on center	Y 8a-10
572	TJM	Trachelospermum asiaticum 'Minima'	Dwarf Asian Jasmine	1 gallon 12" oa ht	12" on center	N 8b-10
ANNUALS						
Qty.	Symbol	Botanical Name	Common Name	Specification	Spacing	Native USDA Zone
0	SAN	Seasonal Annuals:	Owner's Choice	6" Pots	12" on center	N
MISCELLANEOUS						
Qty.	Symbol	Botanical Name	Common Name	Specification	Native	
1017	SF	Shell	Crushed Shell	2"-3" depth		
4989	SF	Irrigation	SEE PLANS OR SPECS	To be field verified by contractor.		
1290	SF	Zoysia empire	Zoysia 'Empire'	SEE PLANS OR SPECS		

NOTE: Base data collected from multiple sources. Contractor to verify all existing field conditions prior to ordering, manufacturing, and construction.

Landscape Soil Specification

- The Contractor shall perform percolation and compaction tests within each planting area to ensure that all plant material has adequate drainage to survive and produce normal, viable growth through its natural life span. Test for drainage by completely filling with water to finish grade a 12" X 12" round test hole. The test hole shall be dug to a depth of 24" deep from finished grade. Water must percolate at a rate of not less than 2" per hour after the sub-soil becomes saturated. Provide owner's representative with test results and written recommendations to improve percolation/compaction. After correcting any disclosed percolation/compaction problems, the testing shall be repeated to verify success.
- Test existing soils for pH, organic matter, salts, magnesium, calcium, phosphorus, and potash. Samples shall be taken from various locations in each planting area. Each area sampled shall be collected as follows; clean debris from top layer, extract sample to six (12) inches deep, collect three such samples randomly per area, place all three (3) samples in one container, mix thoroughly, take one third (1/3) of the soil and package for sample, discard the rest, this is the sample to be sent for analysis. Submit all samples to an independent testing laboratory for analysis. Laboratory selection is to be approved by the owners representative. Request recommendations based on all information provided. Reports from the Laboratory will identify deficiencies and be the basis for the Contractor's recommendations to correct the deficiencies and to adjust pH to comply with the specifications. Tests shall be repeated to ensure compliance with the recommendations and specifications. Submittal of the Contractor's fertilizer program shall be based upon the laboratory recommendations and is required before acceptance of the project work for payment. Submit copies of all test results to owners representative for review.
- Planting soil backfill shall be free from all contaminants including but not limited to site building debris, volatile organics, noxious weeds, seeds, plants, and any other undesirable material that would be toxic, harmful, or hinder plant growth. Planting soil backfill shall consist of sandy loam topsoil with an organic content of not more than 6%, and less than 10% clay particles. The soil shall percolate and be adequate to consistency maintain good quality plant growth. The organic material must be approved by the owner's representative before use as a soil amendment. The planting soil backfill shall have a pH value in the range of 6.0 to 7.0 inclusive. Planting soil backfill may be provided by amending the existing soils in designated planting areas or providing an equivalent commercial mixture.
- Planting area shall be prepared according to this document and with adjustments required as a result of the compaction/percolation and soil testing. Planting areas containing inferior or compacted soil not meeting requirements for planting soil backfill set forth herein must be excavated to a depth of 18" below finished grade, and refilled with planting soil backfill. The finished grade of the soil shall be 3" below the top of finished hardscape to accommodate the layer of mulch or turf.



NOTICE: ALL DRAWING DISCREPANCIES MUST BE BROUGHT TO THE ATTENTION OF THE LANDSCAPE ARCHITECT, AND LA APPROVED SHOP DRAWINGS MUST BE OBTAINED PRIOR TO ORDERING MATERIALS OR BEGINNING CONSTRUCTION.

W. Patrick Cook, ASLA
Landscape Architect #1481

OUTSIDE PRODUCTIONS
International
The firm is an Equal Opportunity Employer
504-111-1111 • 10000 N. US HWY 90, SUITE 100, FORT MYERS, FL 33903
www.outsideproductions.com

JOB Number:
091520
This plan and design are the property of Outside Productions, Inc. Plans shall not be copied or reproduced without the written permission of Outside Productions, Inc.

6140 Court Street
PREPARED FOR: MR. AND MRS. KLEDZIK
FORT MYERS BEACH, LEE COUNTY, FLORIDA

Scale: 1" = 10'-0"
NORTH

Date: 11-30-20
Designed By: OPI
Date: 11-30-20
Drawn By: OPI

LP1
LANDSCAPE PLANTING PLAN



Town of Fort Myers Beach
Community Development Services - Planning Division
2731 Oak St,
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 30, 2024, and Town Council May 20, 2024

CASE: VAR20240084

ADDRESS: 6140 Court St

APPLICANT: Cary & Laura Kledzik

REQUEST: Variance request to allow an accessory structure/pickleball court closer to the street than the principal building in RS zoning 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
2731 Oak St,
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 30, 2024, and Town Council May 20, 2024

CASE: VAR20240084

ADDRESS: 6140 Court St

APPLICANT: Cary & Laura Kledzik

REQUEST: Variance request to allow an accessory structure/pickleball court closer to the street than the principal building in RS zoning 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
2731 Oak St,
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 30, 2024, and Town Council May 20, 2024

CASE: VAR20240084

ADDRESS: 6140 Court St

APPLICANT: Cary & Laura Kledzik

REQUEST: Variance request to allow an accessory structure/pickleball court closer to the street than the principal building in RS zoning 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
2731 Oak St,
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 30, 2024, and Town Council May 20, 2024

CASE: VAR20240084

ADDRESS: 6140 Court St

APPLICANT: Cary & Laura Kledzik

REQUEST: Variance request to allow an accessory structure/pickleball court closer to the street than the principal building in RS zoning 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»



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: 6140 Court St
STRAP Number: 334624W30010A2000
Applicant: Potter Homes c/o Kara Stewart Phone: _____
Contact Name: Kara Stewart Phone: 239-770-4198
Email: stewart.karalyn@gmail.com Fax: _____
Current Zoning District: RS
Future Land Use Map (FLUM) Category: Mixed Residential
FLUM Density Range: 6du/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: 34-1174

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*: Potter Homes c/o Kara Stewart Phone: 239-770-4198

**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: _____

Email: stewart.karalyn@gmail.com Fax: _____

Contact Name: Kara Stewart Phone: 239-770-4198



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: Kara Stewart Phone: 239-770-4198

Address: _____

Email: _____ Fax: _____

D. Other Agent(s). Please list the names of all Authorized Agents (attach extra sheets if necessary)

Name: _____ Phone: _____

Address: _____

Email: _____ 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 34 - 1174
- ☐ 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: Cary & Laura Kledzik Phone: 630-862-9918

Mailing Address: 2006 STIERS CT BATAVIA IL 60510

Email: kled6@aol.com/tytegtay@aol.com Fax: _____

AFFIDAVIT

APPLICATION IS SIGNED BY AN INDIVIDUAL OWNER OR APPLICANT

I, Kara Stewart 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.

Kara Stewart
Signature

Kara Stewart
Printed Name

STATE OF Florida COUNTY OF Lee

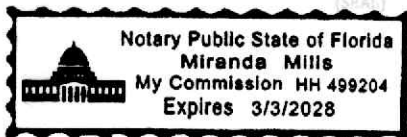
The foregoing instrument was certified and subscribed before me by means of ☒ physical

presence OR ☐ online notarization, this 15th day of March, 2024, by

Kara Stewart ☒ who is personally known to me OR ☐ who has produced

_____ as identification.

Miranda Mills
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, _____ (name), as _____ (title) of _____ (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

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: 33-46-24-W3-0010A.2000

Property Address: 6140 Court St

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: Flamingo Park

Book: 9 Page: 66 Unit: _____ Block: A 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) 75 feet
Depth (please provide an average width if irregular in shape) 295 feet
Frontage on street: 75 feet. Frontage on waterbody: 75 feet
Total land area: 22125 ☐ acres ☒ square feet

D. General Location of Subject Property (from Sky Bridge or Big Carlos Pass Bridge):

2 miles north of Big Carlos Pass, west of Estero Blvd, off side street,
backing up to the beach

☒ 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 |



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

EXPLANATORY NOTES

Please do not print, copy and submit these instructions

Please submit required applications, supplemental information, exhibits and documents to zoningpermits@fmbgov.com.

Application fees are set by resolution of the Town Council of the Town of Fort Myers Beach and must be paid before any materials submitted will be considered an application.

The applicant is responsible for the accuracy and completeness of this application. Time delays or additional expenses necessitated by submitting inaccurate or incomplete information will be the responsibility of the applicant. Decisions regarding requests to waive submittal requirements are at the discretion of the Community Development Director and may not be appealed.

All information submitted with the application becomes a part of the public record and will be a permanent part of the file.

All attachments and exhibits must be legible, suitable for recording, and of a size that will fit or conveniently fold into a letter size (8 ½ by 11) folder.

Explanatory Notes – Part I

- A. Applicant's name: The applicant may be the landowner or an authorized agent.
- B. Relationship of applicant to property: Indicate if the applicant is the property owner, and if so, the type of ownership. If the applicant is not the owner of the property, indicate the relationship of the applicant to the owner and submit a notarized authorization from the owner(s) to the applicant.
- C. Agent's name: If the applicant will have others representing him/her in processing the application, indicate name, address, and phone number.
- D. Other agents: Provide contact information for any other agents that may be involved in the request.

Explanatory Notes – Part II

Indicate the requested action.

Explanatory Notes – Part III

If waiver of any application requirement has been approved by the Community Development Director, attach a copy of the approval. Please request waivers prior to applying. Exhibit 3-1

Explanatory Notes – Part IV

- A. If the property owner is an individual or husband and wife, check the box and provide the information.



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

Explanatory Notes – Part V

- A. If there are multiple property owners exhibit 5-1, complete the disclosure form and include the names and mailing addresses of all persons or entities having an ownership interest in the property, including the names of all stockholders and trust beneficiaries. Disclosure is not required of any entity whose interests are solely equity interests that are regularly traded on an established securities market in the United States or another country.
- B. If more than one parcel is involved, submit a list of all property owners and their mailing addresses. Provide a map keyed to the list of property owners showing their interests. The applicant is responsible for the accuracy of the list and map Exhibit 5-2
- C. Where the property is a condominium or timeshare condominium, the application must be initiated by both the condominium association and no less than 75% of the total number of unit owners. To verify ownership, the list of property owners must be identified by unit number and/or timeshare period as applicable, along with proof that the owners who did not join in the application were given actual written notice of the application by the applicants, who must verify the list and the notice by sworn affidavit. Attach this affidavit as Exhibit 5-3.
- D. In addition, a letter of opinion from an attorney licensed to practice law in the State of Florida addressing the considerations in LDC Section 34-201(a)(1)b.3. must be attached as Exhibit 5-4.

Explanatory Notes – Part VI

- A. Include the street address of the subject property. List STRAP number. If more than one parcel is involved, list all STRAP numbers. If you don't know the STRAP number, you can look up the property in the records of the Lee County Property Appraiser at <http://www.leepa.org>. If the application includes only one or more undivided platted lots within a subdivision officially recorded in the Plat Books of Lee County, Florida, identify the property by lot number(s), block if applicable, subdivision unit if applicable, subdivision name, and plat book number and page number. If the property is not one or more undivided platted lots or is in an "unrecorded" subdivision, attach a metes and bounds legal description giving accurate bearings and distances for each course. If multiple parcels are involved, the metes and bounds legal description must describe the perimeter of the entire property subject to the request. The initial point in the description must be related to at least one established identifiable real property corner, such as a government corner or a recorded corner. The bearings used in the description must be clearly referenced to a well-established and monumented line. Exhibit 6-1
- B. Submit a Boundary Survey meeting the minimum technical standards for surveying set out in Chapter 61G17-6 of the Florida Administrative Code. Make sure that the surveyor is aware of any specific needs of the survey (location of Coastal Construction Lines, locations of existing structures, locations of easements, etc) that are relevant to your request. The perimeter boundary of the entire subject property should be indicated clearly with a heavy



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

line. Exhibit 6-2

- C. Provide the property dimensions or the approximate dimensions if the property is not a regular quadrilateral.
- D. Describe how to get to the property starting from either the Sky Bridge or the Big Carlos Pass Bridge (specify which). Exhibit 6-3
- E. If there are any deed restrictions or covenants that might affect the requested action, provide the information. Exhibit 6-4
- F. A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 6-5
- G. Attach a list of the surrounding property owners within 500 feet of the perimeter of the area of the request. Also include two sets of mailing labels providing the names and addresses of the owners on this list, and a map showing the parcel boundaries within the 500-foot radius Exhibit 6-6. This information can be acquired for a small fee by requesting a “variance report” from the Map Sales Office at the Lee County Property Appraiser’s Office. Contact information for the Property Appraiser can be found at <http://www.leepa.org>.
- H. Indicate the Future Land Use Map category or categories of the property as shown on the Fort Myers Beach Comprehensive Plan’s Future Land Use Map, and whether the property is located in the “platted overlay” on the map.
- I. Indicate the current zoning of the property. In most cases the current zoning is shown on the official zoning map of the Town of Fort Myers Beach, as adopted by ordinance. If zoning actions affecting the subject property have been taken since March 2004, call Town Hall to verify the current zoning.

Explanatory Notes – Part IV & V

The applicant must sign and submit either of the affidavits in Part V & VI, as applicable.



Case # _____

Date Received: _____

Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

Supplement PH-B

Additional Required Information for a Variance Application

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

Case Number:
Project Name: 6140 Court St Pickleball Court
Authorized Applicant: Kara Stewart
LeePA STRAP Number: 334624W30010A2000

Current Property Status: SFR under construction	
Current Zoning: RS	
Future Land Use Map (FLUM) Category: Mixed Residential	
Comp Plan Density: 6 du/acre	Platted Overlay? ☐ Yes ☒ No

Variance is requested from:

LDC Section Number	Title of Section or Subsection
34-1174 (B)	Location and Setbacks Generally (accessory structure)

Complete the narrative statements below for EACH variance requested.

PART I
Narrative Statements

Request for variance from 34-1174 (b) **(LDC Section number)**

Explain the specific regulation contained in this section from which relief is sought:
The owners of 6140 Court St are proposing a pickleball court be located
forward of the principle structure, thus placing it between Court St and the
Principle structure . LDC 34-1174 (b) prohibits certain accessory structures from
being placed between the principle structure and the ROW
See Exhibit "A" Proposed Pickleball Site plan
See Exhibit "B" landscape plan which will be amended but indicates a
desire to create a buffer between neighbors and front of street

Reasons for request

Explain why the variance is needed:
The replacement single family was located in a manner to allow for a large
front yard. Keeping maximum distance from Court St.
Unfortunately when the project was being designed there
wasn't any thought as to adding a pickleball court. With the structure in place
it was recognized that having a court between the SFR and the ROW would
provide an additional needed buffer to the wind and sand.
Thus the desire to request a pickleball court be added to the design.
The replacement single family is adjacent to the 1978 CCCL therefore not
allowing for an additional structure in the rear.

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

The Pickleball court will be maintaining all required setbacks and will be further buffered by landscaping to the neighbor and front of property. At this time the owner is not planning on installing a fence but keeping as much landscaping as reasonable to provide a more natural affect.

If the project is approved, the owner will amend the drainage plan to ensure no further drainage issues will arise on the adjacent properties due to the pickleball court.

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

The property is limited in the depth due to lying between the 1991 CCCL and the 1978 CCCL. The Single family is under construction at this time and unfortunately this request has only come subsequent to the owners getting a better feel for the property and how to best use the space,. The single family is being constructed up to the 1978 CCCL. Hence preferred location is forward of the Single Family which is under construction.

Explain how the property qualifies for a variance. Direct this explanation to the guidelines for decision-making in LDC Section 34-87.
<i>1. Rigid compliance is not essential to protect public safety, this is a de minimus request as well.</i>
The structure will be maintaining all required setbacks for front, rear, side. The location of the pickleball court which consists of a flat surface with painted lines requires
this variance as it is located in front of the SFR and not adjacent to or on it's side.
The impact of the variance is de minimus as we meet all other criteria of the code.
<i>2. The request is not the result of actions taken by the applicant after adoption.</i>
The decision to install a pickleboard court came about post start of construction when the applicant had a better vision of the property.
<i>3. That the variance granted is the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation in question to his property</i>
Allowing the structure forward of the principle structure is the minimum needed to provide for the further enhancement of the property.
<i>4. That the granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare</i>
The granting of this variance will have no detrimental affect to public welfare as it is entirely within the property and meets all other required setbacks. Landscaping is proposed on the side as well as the front property line, providing buffer.
<i>5. That the conditions or circumstances on the specific piece of property for which the variance is sought are not of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.</i>
The request is unique to the property and position of the replacement home.

PART 2

Submittal Requirements

All applications for a variance must be submitted electronically through our Iworq portal - [iworq \(talktomycity.com\)](http://iworq.talktomycity.com)

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
- Fee in the amount of \$1800.00 (residential)/Additional Variance \$500.00
- Variance (non-residential) \$2800.00/ Additional Variance \$700.00

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.

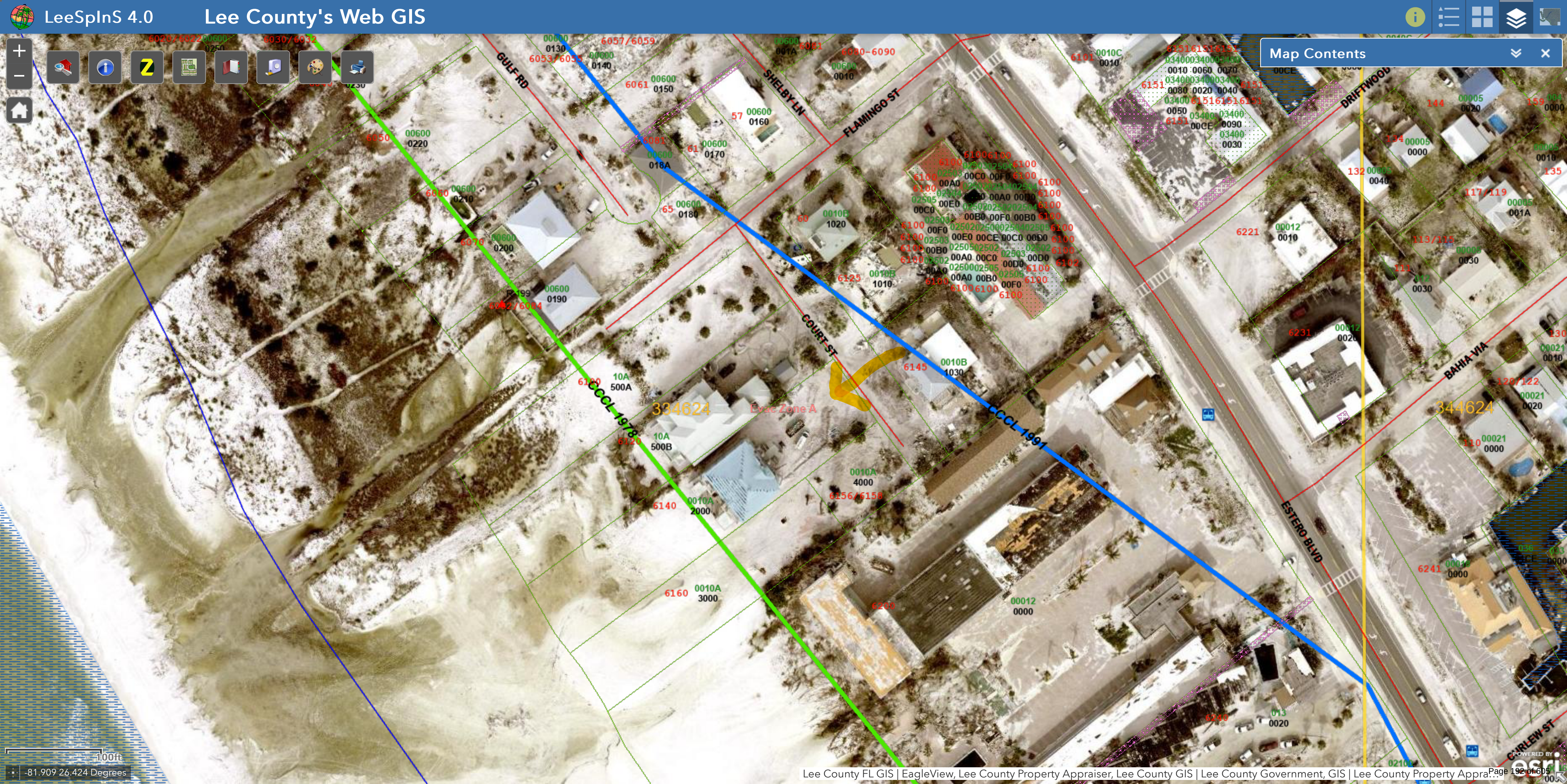
Site plan

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.



EIFLER PROPERTIES LLC
7833 BUCCANEER DR
FORT MYERS BEACH FL 33931

REINFRIED FAMILY LLC
2023 BRECKENRIDGE DR
MOUNT JULIET TN 37122

6200 ESTERO BLVD INVESTMENTS L
2210 VANDERBILT BEACH RD #1300
NAPLES FL 34109

SOUTHLAND CORPORATION
CORPORATE TAX DEPT
2711 N HASKELL AVE
DALLAS TX 75204

6231 ESTERO LLC
DOUGLAS D SCHUMANN
500 KINGS TOWN DR
NAPLES FL 34102

CAROUSEL BEACH REDEVELOPMENT L
815 N EAST AVE
OAK PARK IL 60302

JOHNSON DIANNE D TR
4183 BAY BEACH LN #3H4
FORT MYERS BEACH FL 33931

JOHNSON DIANNE D TR
4183 BAY BEACH LN 3H4
FORT MYERS BEACH FL 33931

RB CAPITAL LTD
2305 CR 3210
MOUNT PLEASANT TX 75455

RB CAPITAL LTD
2305 CR 3210
MOUNT PLEASANT TX 75455

OSFS REAL ESTATE TRUST
2200 KENTMERE PKWY
WILMINGTON DE 19806

REAL ESTATE COLLABORATIVE GROU
RECG LLC
840 JACK PINE DR
ROCHESTER MI 48306

STEVENS FAMILY VENTURES LP
1170 MASSEY ST
NAPLES FL 34120

6101 ESTERO LLC
14511 STIRLING RD
SOUTHWEST RANCHES FL 33330

JE INVESTMENT ENTERPRISES LLC
6090 ESTERO BLVD
FORT MYERS BEACH FL 33931

NEWQUIST HOWARD R TR
128 MANOR DR
DEKALB IL 60115

WEGLARZ RUSSELL J &
148 FLAMINGO ST
FORT MYERS BEACH FL 33931

LEATHERMAN THOMAS M &
512 S 6TH ST
GOSHEN IN 46527

CLARK PAUL GORDON
828 N SHORE DR
GLEN BURNIE MD 21060

CHRISTIANSON RODNEY G &
401 E 8TH ST #214 PMB 1224
SIOUX FALLS SD 57103

KIEBLER EDWARD L + PATRICIA C
9240 CROOKED CREEK
SAINT LOUIS MO 63141

DEHENNING STEVEN P +
33721 COOLEY RD
COLUMBIA STATION OH 44028

TIDES INN LLC
1256 FIRETHORNE CLUB DR
WAXHAW NC 28173

MOUW COLLEEN
1401 JACK NICKLAUS DR
ELK POINT SD 57025

PARSONS JOHN R & LINDA
5325 BOOTH RD
OXFORD OH 45056

TIVA INVEST REAL LLC
15701 S TAMiami TRAIL
FORT MYERS FL 33908

PILAT KARL
6700 WEST RD
WASHINGTON MI 48094

6081 GULF RD LLC
10N130 MUIRHEAD LN
PLATO CENTER IL 60124

DENNIS PROPERTY MANAGEMENT
MICHAEL DENNIS
6707 HOGAN WAY NW
CANTON OH 44718

6070 GULF ROAD LLC
PO BOX 803338 PMB 79785
CHICAGO IL 60680

470 17TH AVE S LLC
5216 MAIN ST
DOWNERS GROVE IL 60515

BOSTON-REAMEY ANN M TR
6050 GULF RD
FORT MYERS BEACH FL 33931

LYKE RUSSELL VERN FAMILY LP
1810 E HIGH ST
JACKSON MI 49203

COQUINA CONDOMINIUM ASSOC
SENTRY MANAGEMENT INC
2180 W SR 434 #5000
LONGWOOD FL 32779

ISLAND BREEZE CONDO
6151 ESTERO BLVD
FORT MYERS BEACH FL 33931

6100 ESTERO BLVD LLC
STEVE MILO
561 PONTE VEDRA BLVD
PONTE VEDRA BEACH FL 32082

SWEENEY TIMOTHY J &
6100 ESTERO BLVD UNIT 2A
FORT MYERS BEACH FL 33931

WITTEKIND RAYMOND E JR &
11311 SOUTH MILLARD
CHICAGO IL 60655

GUIX FAMILY LLC
16855 DRAKE CT
BROOKFIELD WI 53005

PECK ROBERT & SARAH B
75 BUFFALO AVE
MEDFORD NY 11763

SIMS FRANCIS C +
10545 S RIDGEWAY AVE
CHICAGO IL 60655

OREILLY MICHAEL J +
10615 S BELL AVE
CHICAGO IL 60643

KINSINGER CHERYL L TR
1109 WESTMINSTER DR
WASHINGTON IL 61571

CAROLYN B SHAW TRUST +
4437 XERXES AVE S
MINNEAPOLIS MN 55410

FINLAYSON JAMES R TR
2157 W 110TH ST
CHICAGO IL 60643

MURRAY MICHAEL M TR
6100 ESTERO BLVD #3D
FORT MYERS BEACH FL 33931

MURPHY DONNA RABBIT +
1307 ROBERTSON DR
CRESTWOOD KY 40014

LARSON STEPHEN P & DEBRA J
6100 ESTERO BLVD #3F
FORT MYERS BEACH FL 33931

GREISSINGER GARY S
6100 ESTERO BLVD #4A
FORT MYERS BEACH FL 33931

LESKIW WALTER +
9229 N HORIZAN TRAIL
FOUNTAIN HILLS AZ 85268

CURRAN KATHLEEN TR
9236 TANDRAGEE DR
ORLAND PARK IL 60462

GARY L BROOKS TRUST +
6100 ESTERO BLVD #4D
FORT MYERS BEACH FL 33931

MAHONEY JOHN J & MAUREEN T
10635 S MAPLEWOOD AVE
CHICAGO IL 60655

KEARNEY ERIC E
629 CAPE CORAL PKWY E
CAPE CORAL FL 33904

LIKENS JO LYNN
907 COUNTRY CLUB DR
WARSAW IN 46580

NORRIS CECELIA E TR
10512 S KENNETH AVE
OAK LAWN IL 60453

CURRAN BARBARA L TR
8914 CREST OAK LN
SAINT LOUIS MO 63126

TEMPLES KATHLEEN A L/E
PO BOX 62735
FORT MYERS FL 33906

COLEMAN BRIAN P &
2124 PRAIRIE LN
WOODRIDGE IL 60517

EGELUS GERALD A +
236 REINERTSON DR
WAYNESVILLE NC 28786

VANWECHEL CHRISTY A &
41947 MATSON POINT ROAD
PELICAN RAPIDS MN 56572

STONE JENNIFER L
106 HIBISCUS DR
FORT MYERS BEACH FL 33931

KABAJ LLC
PO BOX 187
BALTIMORE OH 43105

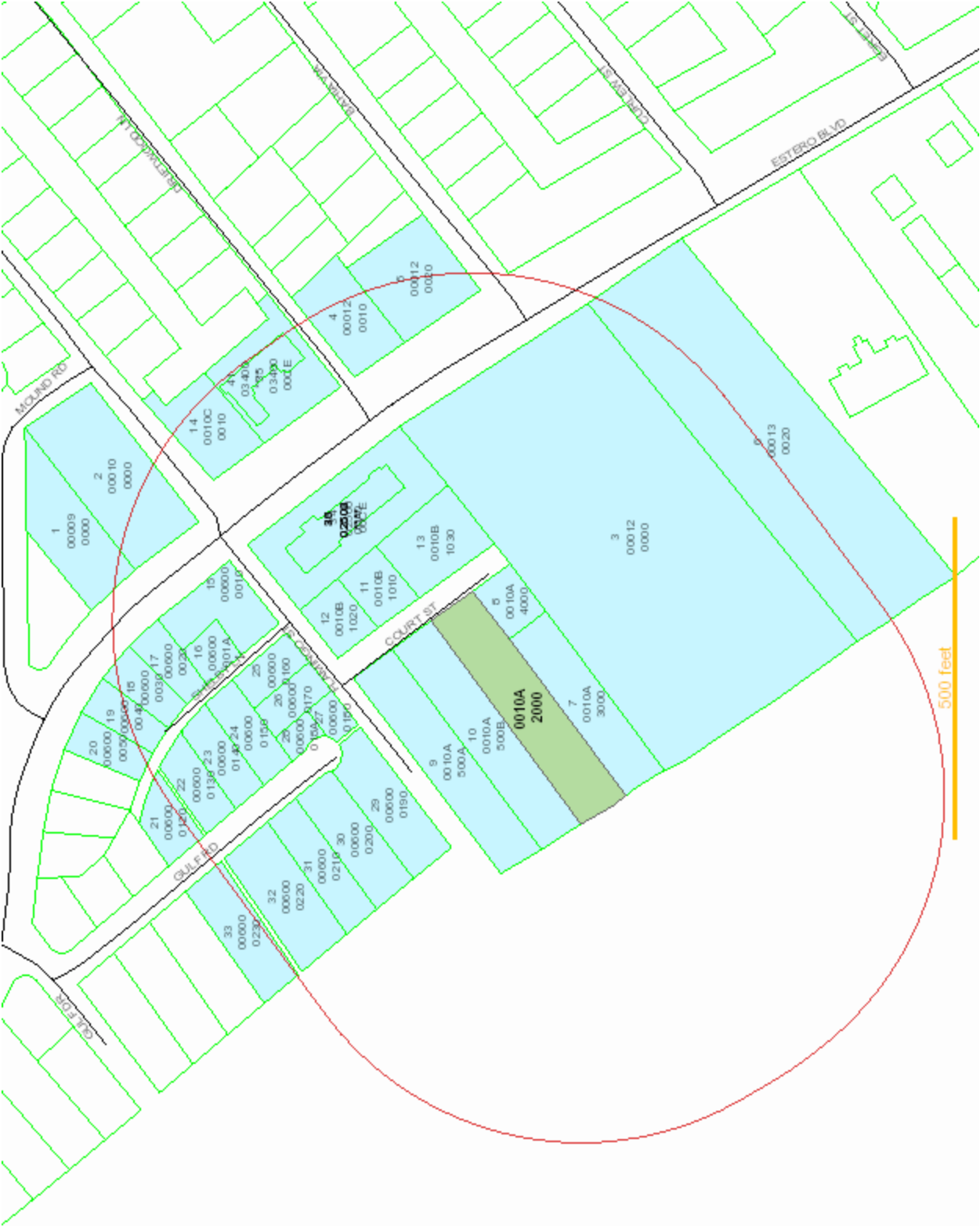
DANZI REAL ESTATE VENTURES LLC
1352 SHEFFIELD WAY
FORT MYERS FL 33919

DANZI REAL ESTATE VENTURES LLC
1352 SHEFFIELD WAY
FORT MYERS FL 33919

LANGONE KARINA
6350 NW 95TH LN
PARKLAND FL 33076

MORGAN JEFFREY R & SIRENA S
8136 E CHEROKEE RD
SYRACUSE IN 46567

CRITCHLEY JOSPEH & TANIA
9 HIGHLAND AVE
RED BANK NJ 07701



1. **Request:**

Meeting Date: May 20, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING / APPROVING WITH CONDITIONS / DENYING SPECIAL EXCEPTION SEZ20240069 TO ALLOW FOR THE REPLACEMENT/REPAIR OF A SUN DECK, POOL PATIO, RETAINING WALL, AND FENCE IN THE ENVIRONMENTALLY CRITICAL (EC) ZONING DISTRICT, FOR THE PROPERTY LOCATED AT 830 ESTERO BOULEVARD; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, AND AN EFFECTIVE DATE.

Why the action is necessary:

Special Exceptions are reviewed and decided by the Town Council.

What the action accomplishes:

Approval of the special exception will allow for the repair/replacement of sun deck, pool patio, retaining wall, and fence.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Jason Smalley, Senior Planner

5. **Background:**

The applicant is proposing the repair/replacement of a sun deck, pool patio, retaining wall, pool fence, foot wash/shower, partially or fully within the Environmentally Critical (EC) zoning district. All of these features are part of the common element for the Edison Beach House and were in existence in the proposed locations, prior to Hurricane Ian.

Attachments:

1. Resolution 24-97, SEZ20240069_830 Estero ns
2. 830 Estero Blvd Staff report (3)
3. A - Site Plan
4. B - Survey
5. C- LPA AND TC postcard 830 estero Blvd
6. D- 830 Estero Blvd_PublicHearing&Supplemental

Financial Impact:

Unknown

6. **Alternative Action**

Deny

7. **Management Recommendations:**

Approval

8. **Recommended Approval:**

Eli Lee, Planner
Frankie Kropacek, Operations & Compliance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk

Created/Initiated - 5/13/2024
Approved - 5/13/2024
Approved - 5/14/2024
Approved - 5/15/2024

RESOLUTION NUMBER 24-97

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING / APPROVING WITH CONDITIONS / DENYING SPECIAL EXCEPTION SEZ20240069 TO ALLOW FOR THE REPLACEMENT/REPAIR OF A SUN DECK, POOL PATIO, RETAINING WALL, AND FENCE IN THE ENVIRONMENTALLY CRITICAL (EC) ZONING DISTRICT, WITH CONDITIONS, FOR THE PROPERTY LOCATED AT 830 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, Edison Beach Condominium is requesting a special exception for the replacement/repair of major accessory structures that were destroyed during Hurricane Ian, including a sun deck, pool patio, retaining wall 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 24-46-23-W3-00400.0010;

WHEREAS, the property is located in the “Mixed Residential” 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 30, 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 to 0 to recommend approval of the special exception, with one member absent; and

WHEREAS, on May 20, 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 replacement/repair of major accessory structures that were destroyed during hurricane Ian, including a sun deck, pool patio, retaining wall 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 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.



Town of Fort Myers Beach
COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT

TYPE OF CASE: Special Exception

CASE NUMBER: SEZ20240069

CASE NAME: Special Exception for the replacement/repair of a sun deck, pool patio, retaining wall, and fence, partially in the EC zoning.

TOWN COUNCIL HEARING DATE: May 20, 2024 at 9:00 AM

LPA HEARING DATE: April 30, 2024 at 9:00 AM

STAFF RECOMMENDATION: Approve

**PREPARED/
SUBMITTED BY:** Jason Smalley

I. APPLICATION SUMMARY

Applicant/Owner: Edison Beach Condominium

Requests: To return the pool area to pre-Ian condition; repair/replacement of sun deck, pool patio, retaining wall, and fence.

Physical Address: 830 Estero Blvd

STRAP #: 24-46-23-W3-00400.0010

FLU: Recreation

Zoning: Environmentally Critical (EC)

Adjacent zoning and land uses:

North: Commercial Planned Development (CPD)
Common Element of Edison Beach House

South: Environmentally Critical (EC)
Beach

East: Community Facilities (CF)
Lynn Hall Memorial Park
West: Residential Multi-family (RM)
Royal Beach Club Condominium

II. BACKGROUND AND ANALYSIS

Background:

The applicant is proposing the repair/replacement of a sun deck, pool patio, retaining wall, pool fence, foot wash/shower, partially or fully within the Environmentally Critical (EC) zoning district. All of these features are part of the common element for the Edison Beach House and were in existence in the proposed locations, prior to Hurricane Ian.

These structures are considered major accessory structures 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 site plan indicates the CCCL as the dashed blue line running through the back portion of the condominium building and through the pool patio and sun deck.

Analysis:

The condominium structure was built in 2000 with an effective date of 2002, per Lee County Property Appraiser. Staff does not have a copy of the original development order to verify that the pool patio, sun deck, retaining and fence was built at the same time as the hotel, however it appears in 2008 (RES NO. 08-48) a new patio area added to the Master Concept Plan (MCP) which was located landward of the coastal construction control line.

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 likely less than ten primary and accessory structures that extend over the 1978 CCCL. The aerials are not precise so that may be an over or under estimate of the number. These developments 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 confirmed that the proposed fence will be designed to fail under wind load and adhere to floodplain requirements.

- b. *Repairs may not damage existing dunes or dune vegetation.*

The repairs are proposed landward of the seawall. 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 begins on May 1st .

- 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 pool patio, sun deck, retaining wall, and fence in the EC were destroyed or severely damaged during Ian. Construction seaward of the EC is likely to be damaged by storm surge in the future.

- 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 several major accessory structures in the EC zoning district is in compliance with item Sec. 34-88(b)(1).

Therefore, staff recommends **Approval** of SEZ20240069 for the pool patio, sun deck, retaining wall, and fence.

At the April 30, 2024 LPA hearing the LPA unanimously recommended approval of the request.

Staff Report Exhibits:

A – Site Layout Plan

B - Survey

C–Postcard to Adjacent Property Owners

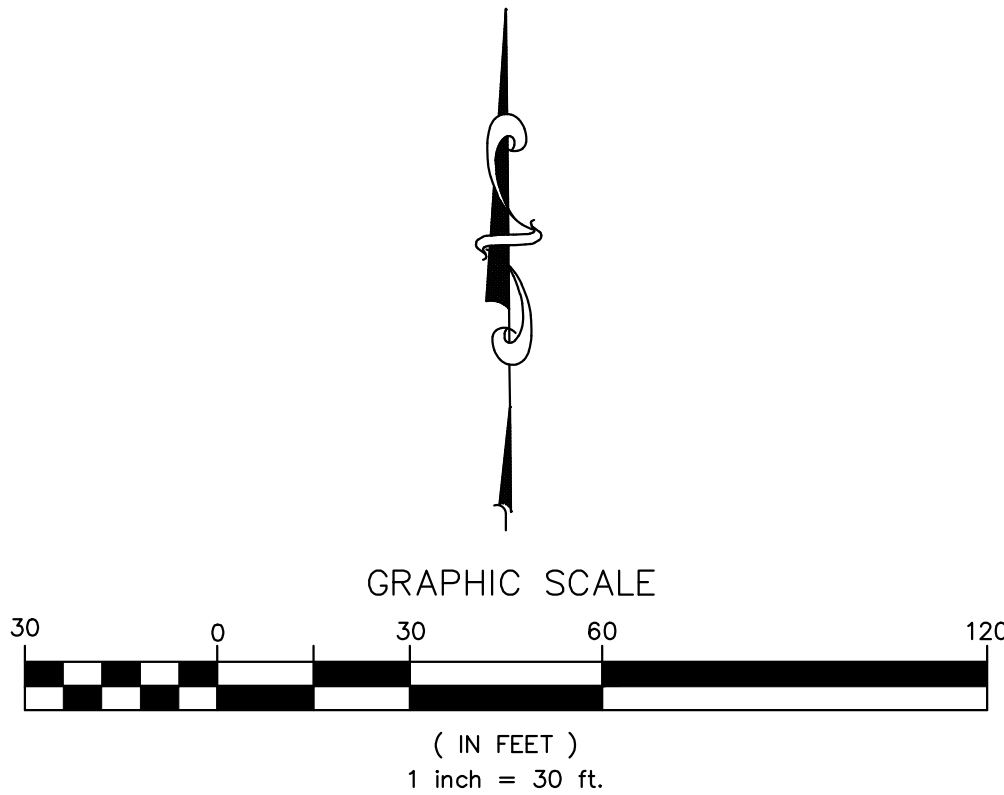
D – SEZ Application Packet

LEGEND:

(A)	- ARC LENGTH
A.C.	- AIR CONDITIONER
⊙	- CABLE TV
(C)	- CALCULATED
C.B.	- CATCH BASIN
CB	- CHORD BEARING
CH	- CHORD DISTANCE
F.C.M.	- FOUND CONC. MONUMENT
(C)	- DEED
B.O.B.	- BASIS OF BEARINGS
D.E.	- DRAINAGE EASEMENT
EL.	- ELEVATION
E.O.P.	- EDGE OF PAVEMENT
F.H.	- FIRE HYDRANT
FND.	- FOUND
GV	- GATE VALVE
I.R.	- IRON ROD
G.W.	- GUY WIRE
(M)	- MEASURED
N&T	- NAIL & TAB
N.A.V.D.	- NORTH AMERICAN VERTICAL DATUM (1988)
N.S.	- NOT TO SCALE
(NR)	- NOT RADIAL
O.R.	- OFFICIAL RECORD
(P)	- PLAT
P.B.	- PLAT BOOK
P.C.	- POINT OF CURVATURE
P.C.C.	- POINT OF COMOUND CURVATURE
P.L.P.	- PERMANENT CONTROL POINT
P.I.	- POINT OF INTERSECT
P.	- PAGE
P.O.B.	- POINT OF BEGINNING
P.O.C.	- POINT OF COMMENCEMENT
P.P.	- POWER POLE
P.R.C.	- POINT OF REVERSE CURVATURE
P.R.M.	- PERMANENT REFERENCE MONUMENT
P.T.	- POINT OF TANGENCY
P.U.E.	- PUBLIC UTILITY EASEMENT
R	- RADIUS
(R)	- RADIAL
RNG.	- RANGE
R/W	- RIGHT OF WAY
SEC.	- SECTION
SET I.R.	- SET 1/2" IRON ROD LB8427
SPKD	- SET PK NAIL AND DISC LB8427
S.W.	- SIDEWALK
Ⓣ	- TELEPHONE BOX
TWP.	- TOWNSHIP
U.P.	- UTILITY PEDESTAL
W	- WATER METER
Δ	- DELTA ANGLE
⊕	- FIRE HYDRANT
⊕	- TEMPORARY MARK
⊕	- CENTERLINE
⊕	- WIRE FENCE
—	- WOOD FENCE
P—	- OVERHEAD WIRES
⊕	- CONCRETE PAD
⊕	- EXISTING ELEVATION
(X)	- LOT NUMBER
MHW	- MEAN HIGH WATER
MLW	- MEAN LOW WATER

COMMUNITY PANEL NUMBER: 120673 / 12071C0554G

LEGAL DESCRIPTION:
830 ESTERO BOULEVARD, FORT MYERS BEACH, FLORIDA 33931
Lot 1, of that certain subdivision known as Island Shores,
Unit No. 1, according to the map or plat thereof on file
and recorded in the Office of the Clerk of the Circuit
Court of Lee County, Florida, in Plat Book 9, Page 24.



Reviewed and Approved By:
John Robert Avery III
P.S.M. Professional
Surveyor and Mapper
FL License No. 5298
06/25/2017 16:25:42

(SIGNED)

*John Robert Avery III, P.S.M.
Professional Surveyor & Mapper
State of Florida License No. 5298
Not Valid without Signature and Original Raised Seal or
Adobe Electronic Signature of John Robert Avery III, P.S.M.*

FIELD SURVEY	09/20/2023
CREW CHIEF	J. PEDRO
DRAWN BY	J. KNORR
SCALE	1" = 30'
ELITE JOB NO	230758
SHEET: 1 OF 1	DATE: 03/27/2024

LOT 1, UNIT 1, ISLAND SHORES

PLAT BOOK 9, PAGE 24
SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST
TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA

NOTES:

1. THIS SKETCH DOES NOT REFLECT OR DETERMINE OWNERSHIP.
2. DESCRIPTION AS FURNISHED BY CLIENT. NO SEARCH OF THE PUBLIC RECORDS WAS CONDUCTED BY THIS FIRM.
3. BEARINGS ARE BASED ON PLAT OR DEED.
4. ELEVATIONS AS SHOWN ARE BASED ON N.A.S.D. 1988
5. THERE ARE NO OTHER EASEMENTS.
6. THERE ARE NO VISIBLE ENCROACHMENTS AS SHOWN.
7. THERE MAY BE OTHER EASEMENTS NOT SHOWN HEREON RECORDED IN THE PUBLIC RECORDS OF THE GOVERNING COUNTRY.
8. NO DETERMINATION OF HAZARDOUS WASTE MATERIALS HAVE BEEN MADE BY THIS FIRM.
9. LOCATION OF UNDERGROUND UTILITIES OR STRUCTURES NOT SHOWN UNLESS OTHERWISE NOTED.
10. SIGNOR LIMITS LIABILITY ONLY UP TO THE COST OF SURVEY.
11. THIS SURVEY IS PROTECTED BY COPYRIGHT AND ALL RIGHTS ARE RESERVED.
12. SURVEY WAS BASED ON INFORMATION PROVIDED BY CLIENT AND EXISTING MONUMENTATION.
13. ADDITIONS OR DELETIONS TO SURVEY MAPS OR REPORTS BY OTHER THAN THE SIGNING PARTY OR PARTIES IS WITHOUT THE WRITTEN CONSENT OF THE SIGNING PARTY OR PARTIES.
14. THE FEMA FLOOD ZONE INFORMATION INDICATED HEREON IS BASED ON MAPS SUPPLIED BY THE FEDERAL GOVERNMENT. THE FLOOD INFORMATION MUST BE VERIFIED BY ANOTHER FIRM.
15. PARCEL CONTAINS 28,350 SQUARE FEET, PLUS OR MINUS

LEGEND:

- (A) — ARC LENGTH
A.C. — AIR CONDITIONER
C — CABLE TV
(C) — CALCULATED
C.B. — CATCH BASIN
CB — CHORD BEARING
C.D. — CHORD DISTANCE
F.C.M. — FOUND CONC. MONUMENT
(D) — DEED
B.O.B. — BASIS OF BEARINGS
D.E. — DRAINAGE EASEMENT
EL. — ELEVATION
E.O.P. — EDGE OF PAVEMENT
F.H. — FIRE HYDRANT
FND. — FOUND
GV — GATE VALVE
I.R. — IRON ROD
G.W. — GUY WIRE
(M) — MEASURED
N&T — NAIL & TAB
N.A.V.D. — NORTH AMERICAN VERTICAL DATUM (1988)
N.T.S. — NOT TO SCALE
(NR) — NOT RADIAL
O.R. — OFFICIAL RECORD
(P) — PLAT
P.B. — PLAT BOOK
P.C. — POINT OF CURVATURE
P.C.C. — POINT OF COMPOUND CURVATURE
P.C.P. — PERMANENT CONTROL POINT
P.I. — POINT OF INTERSECT
PAGE — PAGE
P.O.B. — POINT OF BEGINNING
P.O.C. — POINT OF COMMENCEMENT
P.P. — POWER POLE
P.R.C. — POINT OF REVERSE CURVATURE
P.R.M. — PERMANENT REFERENCE MONUMENT
P.T. — POINT OF TANGENCY
P.U.E. — PUBLIC UTILITY EASEMENT
R — RADIUS
(R) — RADIAL
RNG. — RANGE
R/W — RIGHT OF WAY
SEC. — SECTION
SET P.K. I.R. — SET P.K. IRON ROD LBB427
SPKD — SET PK NAIL AND DISC LBB427
S.W. — SIDEWALK
(T) — TELEPHONE BOX
TWP. — TOWNSHIP
U.P. — UTILITY PEDESTAL
WATER METER — WATER METER
Δ — DELTA ANGLE
(X) — FIRE HYDRANT
+ — TEMPORARY BENCHMARK
— CENTERLINE
— WIRE FENCE
— WOOD FENCE
P — POLE
— OVERHEAD WIRES
— CONCRETE PAD
— EXISTING ELEVATION
° — LOT NUMBER
(X) — LOT NUMBER
MHW — MEAN HIGH WATER
MLW — MEAN LOW WATER

FLOOD_ZONE:	VE	ELEVATION:	12.0' (NAVD88)
	VE		13.0' (NAVD88)
	VE		14.0' (NAVD88)

DATE OF MAP: 05-16-12

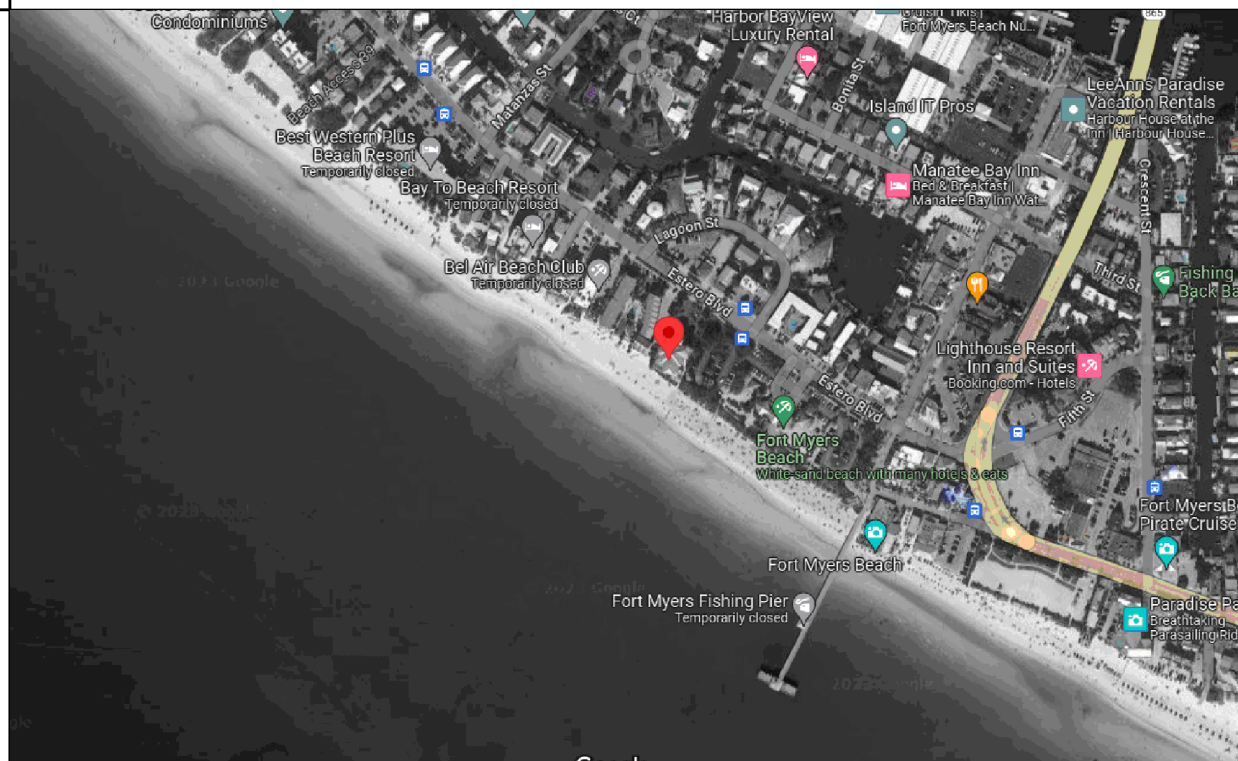
CERTIFIED TO:

First Central Investment Corp.

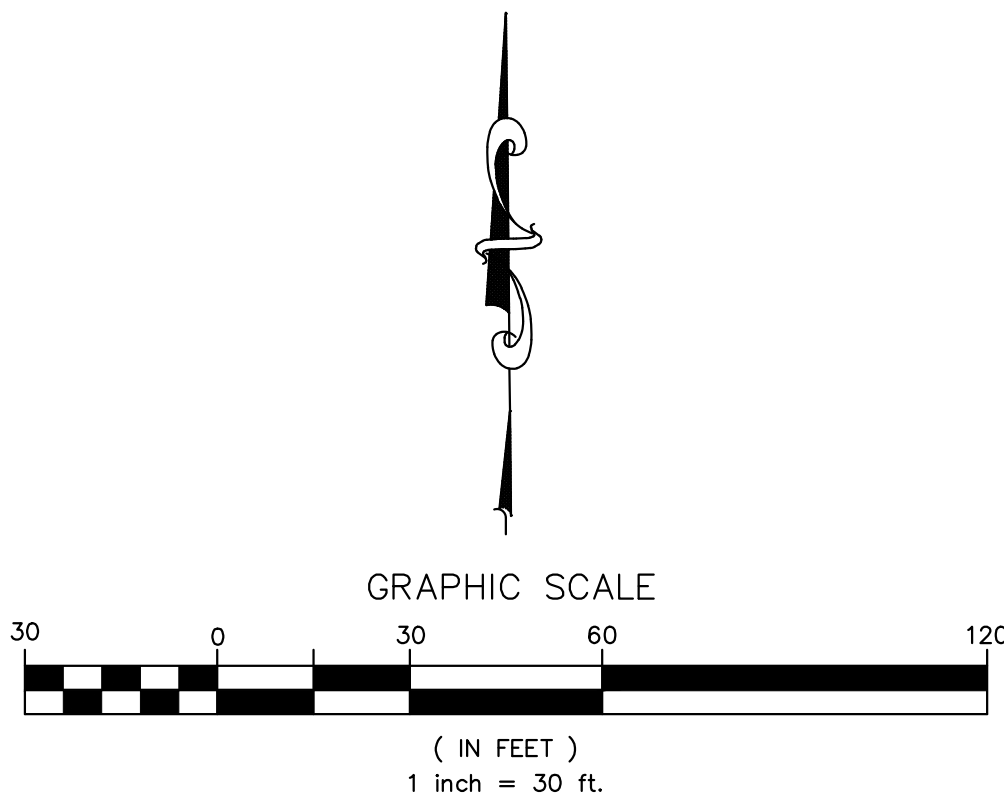
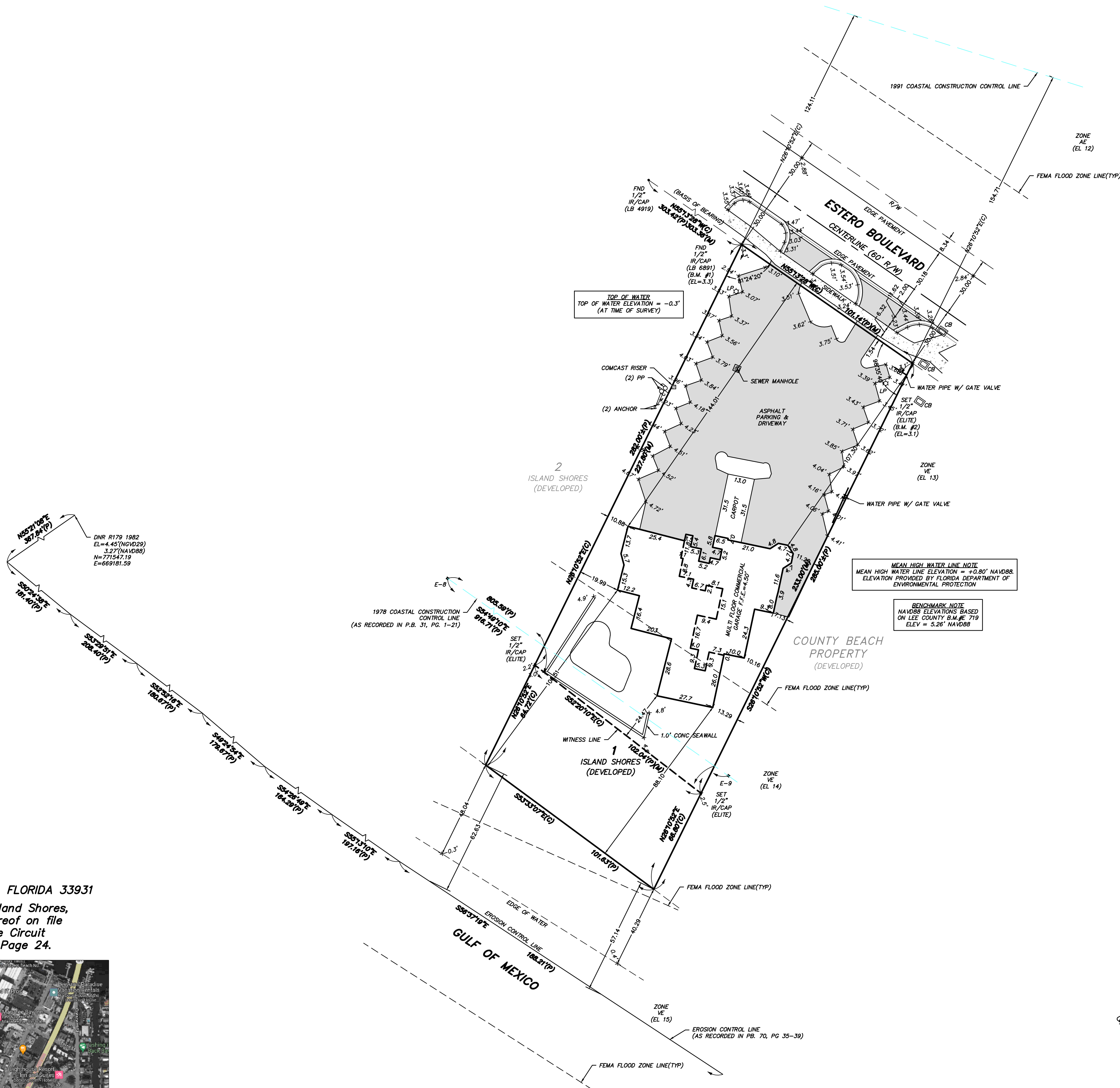
LEGAL DESCRIPTION:

830 ESTERO BOULEVARD, FORT MYERS BEACH, FLORIDA 33931

Lot 1, of that certain subdivision known as Island Shores, Unit No. 1, according to the map or plat thereof on file and recorded in the Office of the Clerk of the Circuit Court of Lee County, Florida, in Plat Book 9, Page 24.



VICINITY MAP
N.T.S.



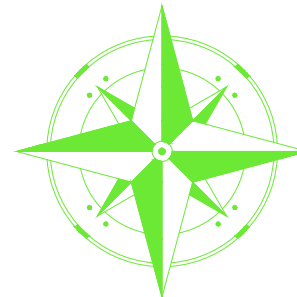
BOUNDARY AND TOPOGRAPHIC SURVEY
REVISED: 03/27/2024_1978 CCCL

I HEREBY CERTIFY THAT THIS SKETCH OF SURVEY WAS MADE UNDER MY DIRECTION AND TO THE BEST OF MY KNOWLEDGE AND BELIEF SAID SURVEY MEETS THE STANDARDS OF PRACTICE SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL LAND SURVEYORS IN CHAPTER 5J-17 FLORIDA ADMINISTRATIVE CODE. FURTHER, THIS DOCUMENT IS ELECTRONICALLY SIGNED AND SEALED PURSUANT TO SECTION 472.027, OF THE FLORIDA STATUTES AND CHAPTER 5J-17 OF THE FLORIDA ADMINISTRATION CODE. NO OTHER PERSON OR ENTITY MAY RELY ON THIS SURVEY. NO ABSTRACT WAS REVIEWED. NO TITLE OPINION EXPRESSED.

Reviewed and Approved By:

John Robert Avery III
P.S.M. Professional
Surveyor and Mapper
FL License No. 5298

**John Robert Avery III, P.S.M.
Professional Surveyor & Mapper
State of Florida License No. 5298**



ELITE SURVEYING

4371 NOCATEE LANE.
FORT MYERS, FL 33905
339-481-2366(OFFICE) INFO@ELITESURVEYING.NET
LB8427

FIELD SURVEY	09/20/2023
--------------	------------

CREW CHIEF

DRAWN BY	J. KNORR
----------	----------

SCALE	1" = 30'
ELITE JOB NO	230758

SHEET: 1 OF 1	DATE: 10/16/2023
---------------	------------------



Town of Fort Myers Beach
Community Development Services - Planning Division
2731 Oak St,
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 30, 2024, and Town Council May 20, 2024
CASE: SEZ20240069
ADDRESS: 830 Estero Blvd
APPLICANT: Justin Yax
REQUEST: A request to reconstruct beach and pool amenities seaward of the 1978 Coastal Construction Control Line (CCCL).

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
2731 Oak St,
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 30, 2024, and Town Council May 20, 2024
CASE: SEZ20240069
ADDRESS: 830 Estero Blvd
APPLICANT: Justin Yax
REQUEST: A request to reconstruct beach and pool amenities seaward of the 1978 Coastal Construction Control Line (CCCL).

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
2731 Oak St,
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 30, 2024, and Town Council May 20, 2024
CASE: SEZ20240069
ADDRESS: 830 Estero Blvd
APPLICANT: Justin Yax
REQUEST: A request to reconstruct beach and pool amenities seaward of the 1978 Coastal Construction Control Line (CCCL).

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
2731 Oak St,
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 30, 2024, and Town Council May 20, 2024
CASE: SEZ20240069
ADDRESS: 830 Estero Blvd
APPLICANT: Justin Yax
REQUEST: A request to reconstruct beach and pool amenities seaward of the 1978 Coastal Construction Control Line (CCCL).

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»



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: 830 Estero Blvd., Fort Myers Beach, FL. 33931
STRAP Number: 24-46-23-W3-00400.0010
Applicant: First Central Investment Corp. Phone: (239) 440-4818
Contact Name: Justin Yax Phone: (239) 440-4818
Email: justinyax@hotmail.com Fax: _____
Current Zoning District: CPD/EC
Future Land Use Map (FLUM) Category: Mixed Residential/Environmentally Critical
FLUM Density Range: 6 per 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

PART I – General Information

A. Applicant*: Justin Yax Phone: (239) 440-4818
**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: 20512 Beaconsfield Blvd., Rocky River, OH. 44116
Email: justinyax@hotmail.com Fax: _____
Contact Name: Justin Yax Phone: (239) 440-4818



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: Justin Yax Phone: (239) 440-4818
Address: 20512 Beaconsfield Blvd., Rocky River, OH. 44116
Email: justinyax@hotmail.com Fax: _____

D. Other Agent(s). Please list the names of all Authorized Agents (attach extra sheets if necessary)

Name: _____ Phone: _____
Address: _____
Email: _____ 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: Betty Lou Yax Phone: (239) 297-5813

Mailing Address: 830 Estero Blvd., Fort Myers Beach, FL. 33931

Email: justinyax@hotmail.com Fax: _____

AFFIDAVIT

APPLICATION IS SIGNED BY AN INDIVIDUAL OWNER OR APPLICANT

I, Justin Andrew Yax 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 [Handwritten Signature]
STATE OF Ohio COUNTY OF Cuyahoga

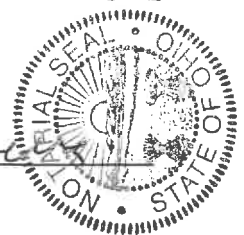
Printed Name Justin Andrew Yax

The foregoing instrument was certified and subscribed before me by means of ☒ physical presence OR ☐ online notarization, this 21st day of Feb, 2024, by [Signature] who is personally known to me OR ☒ who has produced

Ohio Driver License as identification.

[Handwritten Signature]
Notary Public Signature

DOREEN C. PACURA
Notary Public, State of Ohio
My Commission Expires
August 4, 2025



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, Justin Andrew Yax (name), as Secretary (title)
of First Central Investment Corp. (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

First Central Investment Corp.

Name of Entity (corporation, partnership, LLP, LLC, etc)

Signature

Justin Yax

Typed or Printed Name

STATE OF Florida COUNTY OF Lee

Secretary

Title

Date

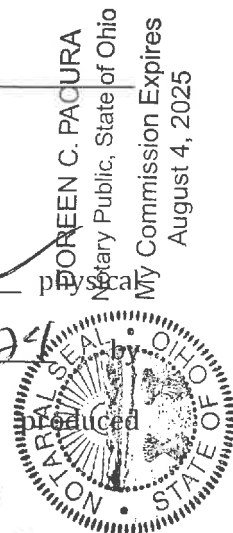
The foregoing instrument was certified and subscribed before me by means of physical

presence OR ☐ online notarization, this 21st day of Feb, 2024

☐ who is personally known to me OR ☒ who has produced

Ohio Driver's License as identification.

Notary Public Signature



PART VI- Property Information

A. Legal Description:

STRAP: 24-46-23-W3-00400.0010

Property Address: 830 Estero Blvd., Fort Myers Beach, 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 6-1.

☒ Yes. Property identified in subdivision: Island Shores, Unit 1

Book: 9 Page: 24 Unit: N/A Block: N/A Lot(s): 1

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) 101 feet
Depth (please provide an average width if irregular in shape) 283 feet
Frontage on street: 101 feet. Frontage on waterbody: 101 feet
Total land area: 28,583 ☐ acres ☒ square feet

D. General Location of Subject Property (from Sky Bridge or Big Carlos Pass Bridge):

Exiting Sky Bridge while driving West, turn right onto Estero Blvd. Drive 850 feet
to the end of Lynn Hall Park. The property will be on your immediate Left side.

☐ 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 |



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

EXPLANATORY NOTES

Please do not print, copy and submit these instructions

Please submit required applications, supplemental information, exhibits and documents to zoningpermits@fmbgov.com.

Application fees are set by resolution of the Town Council of the Town of Fort Myers Beach and must be paid before any materials submitted will be considered an application.

The applicant is responsible for the accuracy and completeness of this application. Time delays or additional expenses necessitated by submitting inaccurate or incomplete information will be the responsibility of the applicant. Decisions regarding requests to waive submittal requirements are at the discretion of the Community Development Director and may not be appealed.

All information submitted with the application becomes a part of the public record and will be a permanent part of the file.

All attachments and exhibits must be legible, suitable for recording, and of a size that will fit or conveniently fold into a letter size (8 ½ by 11) folder.

Explanatory Notes – Part I

- A. Applicant's name: The applicant may be the landowner or an authorized agent.
- B. Relationship of applicant to property: Indicate if the applicant is the property owner, and if so, the type of ownership. If the applicant is not the owner of the property, indicate the relationship of the applicant to the owner and submit a notarized authorization from the owner(s) to the applicant.
- C. Agent's name: If the applicant will have others representing him/her in processing the application, indicate name, address, and phone number.
- D. Other agents: Provide contact information for any other agents that may be involved in the request.

Explanatory Notes – Part II

Indicate the requested action.

Explanatory Notes – Part III

If waiver of any application requirement has been approved by the Community Development Director, attach a copy of the approval. Please request waivers prior to applying. Exhibit 3-1

Explanatory Notes – Part IV

- A. If the property owner is an individual or husband and wife, check the box and provide the information.



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

Explanatory Notes – Part V

- A. If there are multiple property owners exhibit 5-1, complete the disclosure form and include the names and mailing addresses of all persons or entities having an ownership interest in the property, including the names of all stockholders and trust beneficiaries. Disclosure is not required of any entity whose interests are solely equity interests that are regularly traded on an established securities market in the United States or another country.
- B. If more than one parcel is involved, submit a list of all property owners and their mailing addresses. Provide a map keyed to the list of property owners showing their interests. The applicant is responsible for the accuracy of the list and map Exhibit 5-2
- C. Where the property is a condominium or timeshare condominium, the application must be initiated by both the condominium association and no less than 75% of the total number of unit owners. To verify ownership, the list of property owners must be identified by unit number and/or timeshare period as applicable, along with proof that the owners who did not join in the application were given actual written notice of the application by the applicants, who must verify the list and the notice by sworn affidavit. Attach this affidavit as Exhibit 5-3.
- D. In addition, a letter of opinion from an attorney licensed to practice law in the State of Florida addressing the considerations in LDC Section 34-201(a)(1)b.3. must be attached as Exhibit 5-4.

Explanatory Notes – Part VI

- A. Include the street address of the subject property. List STRAP number. If more than one parcel is involved, list all STRAP numbers. If you don't know the STRAP number, you can look up the property in the records of the Lee County Property Appraiser at <http://www.leepa.org>. If the application includes only one or more undivided platted lots within a subdivision officially recorded in the Plat Books of Lee County, Florida, identify the property by lot number(s), block if applicable, subdivision unit if applicable, subdivision name, and plat book number and page number. If the property is not one or more undivided platted lots or is in an "unrecorded" subdivision, attach a metes and bounds legal description giving accurate bearings and distances for each course. If multiple parcels are involved, the metes and bounds legal description must describe the perimeter of the entire property subject to the request. The initial point in the description must be related to at least one established identifiable real property corner, such as a government corner or a recorded corner. The bearings used in the description must be clearly referenced to a well-established and monumented line. Exhibit 6-1
- B. Submit a Boundary Survey meeting the minimum technical standards for surveying set out in Chapter 61G17-6 of the Florida Administrative Code. Make sure that the surveyor is aware of any specific needs of the survey (location of Coastal Construction Lines, locations of existing structures, locations of easements, etc) that are relevant to your request. The perimeter boundary of the entire subject property should be indicated clearly with a heavy



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

line. Exhibit 6-2

- C. Provide the property dimensions or the approximate dimensions if the property is not a regular quadrilateral.
- D. Describe how to get to the property starting from either the Sky Bridge or the Big Carlos Pass Bridge (specify which). Exhibit 6-3
- E. If there are any deed restrictions or covenants that might affect the requested action, provide the information. Exhibit 6-4
- F. A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 6-5
- G. Attach a list of the surrounding property owners within 500 feet of the perimeter of the area of the request. Also include two sets of mailing labels providing the names and addresses of the owners on this list, and a map showing the parcel boundaries within the 500-foot radius Exhibit 6-6. This information can be acquired for a small fee by requesting a "variance report" from the Map Sales Office at the Lee County Property Appraiser's Office. Contact information for the Property Appraiser can be found at <http://www.leepa.org>.
- H. Indicate the Future Land Use Map category or categories of the property as shown on the Fort Myers Beach Comprehensive Plan's Future Land Use Map, and whether the property is located in the "platted overlay" on the map.
- I. Indicate the current zoning of the property. In most cases the current zoning is shown on the official zoning map of the Town of Fort Myers Beach, as adopted by ordinance. If zoning actions affecting the subject property have been taken since March 2004, call Town Hall to verify the current zoning.

Explanatory Notes – Part IV & V

The applicant must sign and submit either of the affidavits in Part V & VI, as applicable.



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: Edison Beach House
Authorized Applicant: Gulfpoint Construction Co.
LEIPA STRAP Number(s): 24-46-23-W3-00400.0010

Current Property Status: Developed Hotel
Current Zoning: CPD/EC
Future Land Use Map (FLUM) Category: Mixed Residential/Environmentally Critical
Platted Overlay? ☐ yes ☐ no FLUM Density Range:

Requested Action:

☒	Use of premises in the EC (Environmentally Critical) zoning district for: Repair of accessory structure to the exsisting pool.
☐	Use of premises in the _____ zoning district for:

PART I

Narrative Statements

A. Request for: (indicate the proposed use that requires a special exception)

Replacmcent of accessory structure to exsisting commercial pool, including pool
repair, pool patio, retaining wall, pool fence, sun deck and pool foot wash/showers
for guest use. Goal is to restore to original footprint with NO additions.

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:
Our request is consistant with the goals and objectives of Fort Myers Beach in
re-establishing the recreational pool area that our guests have come to enjoy
over the years and return to Fort Myers Beach to enjoy with their families. We
intend to continue our commitment to preserve environmentally critical areas by
planting native Floridian flora seaward of the reconstructed retaining wall to help
protect against erosion as we have done prior to Hurricaine Ian. This requeust will
in no way interfere with surrounding businesses and will not cause damage,
hazard, nuisance, or other detriment to persons or property. In addition, repairs
will not damage any existing dunes or dune vegetation. Reconstruction of the pool
retaining wall, pool fence, pool, sundeck and sundeck shower/foot wash will
be completed while minimizing effect on turtle nesting season. Retaining wall will
be no more than 24" above the level of the pool deck.



We foresee no impacts on surrounding properties with our reconstruction request as we are only rebuilding what we had lost in Hurricane Ian.

Page 225 of 605

For Consumption of Alcoholic Beverages (COP) license approval:

- a. Notarized authorization from the Property Owner to apply for permit
- b. A statement indicating the type of establishment, the type of state license to be acquired, and the planned hours of operation. Also indicate if the request includes outdoor seating areas and indicate the seating areas and capacity on the site plan.
- c. A map showing the locations of other properties within 500 feet of the request where consumption-on-premises uses are already in operation.
- d. The site plan must include the public entrances and exits to the building, the floor area and proposed seating capacity, and floor area and seating capacity of any areas within the building subdivided between restaurant and bar/lounge areas. The site plan should also indicate the parking area, including the spacing and the locations of entrances and exits.

For transit terminals:

The site plan must indicate the location of the bus stalls; commuter parking areas, if provided; taxi waiting stalls; circulation pattern for buses including the entrances and exits; and the location of any building(s) housing the terminal and waiting areas.

For use of the EC zoning district:

- a. If the location of the request is in the portion of the EC zoning district between Estero Boulevard and the Gulf of Mexico, provide a survey meeting the requirements of Chapter 62B-33.0081 of the Florida Administrative Code, also including the precise location of the (1978) Coastal Construction Setback Line for Estero Island recorded in Plat Book 33, Page 3, of the Official Records of Lee County, Florida.
- b. The site plan must indicate the precise location of the request on the subject property and any related details of the existing conditions or planned improvements to the subject property. For areas in the EC zoning district between Estero Boulevard and the Gulf of Mexico, the precise location of the request in relation to the (1978) Coastal Construction Setback Line must be shown on the site plan.

Guide to Filing Supplement PH-A for Special Exceptions

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.

Authorized 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.

Requested Action: Indicate the nature of the request and include the current zoning of the property.

Part 1 Narrative Statements:

“Request for...”

Indicate the nature of the request that requires a special exception, and explain why it requires a special exception. Describe the relationship of the requested use to any existing use(s) of the property, if applicable.

“The property qualifies for a special exception because...”

Explain why the request and the subject property qualify for a special exception. Address the standards for decision-making for special exceptions that are provided in the Land Development Code, as follows:

- Whether there exist changed or changing conditions which make approval of the request appropriate.
- Whether the request is consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan.
- Whether the request meets or exceeds all performance and locational standards for the proposed use.
- Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.

- Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
- 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.

“Granting the requested special exception could impact surrounding properties as follows...”

Explain how this request, if granted for the subject property, could affect the surrounding properties and the existing or planned uses on those properties.

Submittal Requirements Check List and Filing Guide

☐

A completed Public Hearing Application Form.

☐

A completed Supplemental form PH-A.

Site Plan. The site plan should be to scale and should indicate the location of the request on the property. Existing buildings and other improvements (such as swimming pools, fences, decks, or parking lots) should also be shown on the site plan. The site plan should also indicate the existing uses on adjacent properties. Also include any additional relevant detail related to the specific request.

Guide to Filing Supplement PH-A for Special Exceptions

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.

Authorized 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.

Requested Action: Indicate the nature of the request and include the current zoning of the property.

Part 1 Narrative Statements: "Request for..."

Indicate the nature of the request that requires a special exception, and explain why it requires a special exception. Describe the relationship of the requested use to any existing use(s) of the property, if applicable.

"The property qualifies for a special exception because..."

Explain why the request and the subject property qualify for a special exception. Address the standards for decision-making for special exceptions that are provided in the Land Development Code, as follows:

- Whether there exist changed or changing conditions which make approval of the request appropriate.
- Whether the request is consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan.
- Whether the request meets or exceeds all performance and locational standards for the proposed use.
- Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.
- Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
- 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.

"Granting the requested special exception could impact surrounding properties as follows..."

Explain how this request, if granted for the subject property, could affect the surrounding properties and the existing or planned uses on those properties.

EXPLANATORY NOTES

Please do not print, copy and submit these instructions

Please submit required applications, supplemental information, exhibits and documents to zoningpermits@fmbgov.com.

Application fees are set by resolution of the Town Council of the Town of Fort Myers Beach and must be paid before any materials submitted will be considered an application.

The applicant is responsible for the accuracy and completeness of this application. Time delays or additional expenses necessitated by submitting inaccurate or incomplete information will be the responsibility of the applicant. Decisions regarding requests to waive submittal requirements are at the discretion of the Community Development Director and may not be appealed.

All information submitted with the application becomes a part of the public record and will be a permanent part of the file.

Explanatory Notes – Part I

- A. Applicant's name: The applicant may be the landowner or an authorized agent.
- B. Relationship of applicant to property: Indicate if the applicant is the property owner, and if so, the type of ownership. If the applicant is not the owner of the property, indicate the relationship of the applicant to the owner and submit a notarized authorization from the owner(s) to the applicant.
- C. Agent's name: If the applicant will have others representing him/her in processing the application, indicate name, address, and phone number.
- D. Other agents: Provide contact information for any other agents that may be involved in the request.

Explanatory Notes – Part II

Indicate the requested action.

Explanatory Notes – Part III

If waiver of any application requirement has been approved by the Community Development Director, attach a copy of the approval. Please request waivers prior to applying. Exhibit 3-1

Explanatory Notes – Part IV

- A. If the property owner is an individual or husband and wife, check the box and provide the information.

Explanatory Notes – Part V

- A. If there are multiple property owners exhibit 5-1, complete the disclosure form and include the names and mailing addresses of all persons or entities having an ownership interest in the property, including the names of all stockholders and trust beneficiaries. Disclosure is not required of any entity whose interests are solely equity interests that are regularly traded on an established securities market in the United States or another country.
- B. If more than one parcel is involved, submit a list of all property owners and their mailing addresses. Provide a map keyed to the list of property owners showing their interests. The applicant is responsible for the accuracy of the list and map Exhibit 5-2
- C. Where the property is a condominium or timeshare condominium, the application must be initiated by both the condominium association and no less than 75% of the total number of unit owners. To verify ownership, the list of property owners must be identified by unit number and/or timeshare period as applicable, along with proof that the owners who did not join in the application were given actual written notice of the application by the applicants, who must verify the list and the notice by sworn affidavit. Attach this affidavit as Exhibit 5-3.
- D. In addition, a letter of opinion from an attorney licensed to practice law in the State of Florida addressing the considerations in LDC Section 34-201(a)(1)b.3. must be attached as Exhibit 5-4.

Explanatory Notes – Part VI

- A. Include the street address of the subject property. List STRAP number. If more than one parcel is involved, list all STRAP numbers. If you don't know the STRAP number, you can look up the property in the records of the Lee County Property Appraiser at <http://www.leepa.org>. If the application includes only one or more undivided platted lots within a subdivision officially recorded in the Plat Books of Lee County, Florida, identify the property by lot number(s), block if applicable, subdivision unit if applicable, subdivision name, and plat book number and page number. If the property is not one or more undivided platted lots or is in an "unrecorded" subdivision, attach a metes and bounds legal description giving accurate bearings and distances for each course. If multiple parcels are involved, the metes and bounds legal description must describe the perimeter of the entire property subject to the request. The initial point in the description must be related to at least one established identifiable real property corner, such as a government

- corner or a recorded corner. The bearings used in the description must be clearly referenced to a well-established and monumented line. Exhibit 6-1
- B. Submit a Boundary Survey meeting the minimum technical standards for surveying set out in Chapter 61G17-6 of the Florida Administrative Code. Make sure that the surveyor is aware of any specific needs of the survey (location of Coastal Construction Lines, locations of existing structures, locations of easements, etc) that are relevant to your request. The perimeter boundary of the entire subject property should be indicated clearly with a heavy line. Exhibit 6-2
 - C. Provide the property dimensions or the approximate dimensions if the property is not a regular quadrilateral.
 - D. Describe how to get to the property starting from either the Sky Bridge or the Big Carlos Pass Bridge (specify which). Exhibit 6-3
 - E. If there are any deed restrictions or covenants that might affect the requested action, provide the information. Exhibit 6-4
 - F. A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 6-5
 - G. Attach a list of the surrounding property owners within 500 feet of the perimeter of the area of the request. Also include two sets of mailing labels providing the names and addresses of the owners on this list, and a map showing the parcel boundaries within the 500-foot radius Exhibit 6-6. This information can be acquired for a small fee by requesting a "variance report" from the Map Sales Office at the Lee County Property Appraiser's Office. Contact information for the Property Appraiser can be found at <http://www.leepa.org>.
 - H. Indicate the Future Land Use Map category or categories of the property as shown on the Fort Myers Beach Comprehensive Plan's Future Land Use Map, and whether the property is located in the "platted overlay" on the map.
 - I. Indicate the current zoning of the property. In most cases the current zoning is shown on the official zoning map of the Town of Fort Myers Beach, as adopted by ordinance. If zoning actions affecting the subject property have been taken since March 2004, call Town Hall to verify the current zoning.

Explanatory Notes – Part IV & V

The applicant must have either of the affidavits in Part V & VI, notarized, signed and submit, as applicable.

1. **Request:**

Meeting Date: May 20, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING VAR20240088, A REQUEST FOR TWO VARIANCES FROM LDC TABLE 34-3 TO DECREASE REQUIRED STREET SETBACK BY 17 FEET 6 INCHES FROM THE REQUIRED 25 FEET, AND TO REDUCE THE REAR SETBACK BY 12 FEET 1 INCH FROM THE REQUIRED 20 FEET, IN THE RM ZONING DISTRICT, FOR THE PROPERTY LOCATED AT 614 ESTERO BLVD; AND PROVIDING FOR AN EFFECTIVE DATE

Why the action is necessary:

The Town Council decides variance requests.

What the action accomplishes:

Approval of the request will allow the applicant to build a cottage home with decreased front and rear setbacks.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Sarah Propst, Community
Development, Planning
Manager

5. **Background:**

The owner of 614 Estero Boulevard, is requesting two variances from the Town's Land Development Code (LDC) Table 34-3 which requires a single-family home in the RM zoning district to provide a minimum 25 feet street setback and a minimum 20 feet rear setback. The subject property is one of the beach-side cottage lots connected by a 7.5 feet wide access easement from Estero Blvd. The property supported a single-family residence, prior to Hurricane Ian. The Applicant is requesting a variance of 17 feet and 6 inches for the street setback and a variance of 12 feet and 1 inch for the rear setback, to build a new single-family home.

Attachments:

1. 24-98, VAR20240088 614 Estero ns
2. TC Staff Report
3. Exhibit A Site plan and drawing
4. Exhibit B LPA AND TC postcard
5. Exhibit C Application

Financial Impact:

unknown

6. **Alternative Action**

Deny

7. **Management Recommendations:**

Approve

8. **Recommended Approval:**

Kendra Rosa, Zoning Coordinator
Frankie Kropacek, Operations & Compliance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 5/13/2024
Approved - 5/13/2024
Approved - 5/14/2024
Approved - 5/15/2024
Final Approval - 5/15/2024

RESOLUTION 24-98

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING VAR20240088, A REQUEST FOR TWO VARIANCES FROM LDC TABLE 34-3 TO DECREASE REQUIRED STREET SETBACK BY 17 FEET 6 INCHES FROM THE REQUIRED 25 FEET, AND TO REDUCE THE REAR SETBACK BY 12 FEET 1 INCH FROM THE REQUIRED 20 FEET, IN THE RM ZONING DISTRICT, FOR THE PROPERTY LOCATED AT 614 ESTERO BLVD; 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 Applicant, Lawrence Black, is the owner and is requesting a variance from LDC Table 34-3 which requires all single-family residences in RM zoning district to provide a minimum 25 feet street setback and a minimum 20 feet rear setback; and

WHEREAS, the STRAP number for the subject property is 24-46-23-W4-00.400.014C; and

WHEREAS, the Property is located in the "Mixed Residential" category of the Future Land Use Map of the Comprehensive Plan and the "Residential Multi Family" (RM) 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 30, 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 voted 6 to 0, with one member absent, to recommend approval with conditions of the variances; and

WHEREAS, on May 20, 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 Variance with conditions 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 public, the Town Council **APPROVES/ APPROVES WITH CONDITIONS/ DENIES** the variance from LDC 34-3 which requires all single-family residences in RM zoning district to provide a minimum 25 feet street setback and a minimum 20 feet rear setback.

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 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 be / will not** be injurious to the neighborhood or otherwise detrimental to the public welfare.
- E. The conditions or circumstances on the Property **are of/ 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. No part of the house or parked vehicles may encroach into the 7.5-foot access easement.
- C. The development must substantially comply with the drawings as provided in Exhibit A, attached.

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

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

ADOPTED this 20th day of 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, 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: VAR20240088

CASE NAME: 614 Estero Boulevard; Variance from LDC Table 34-3 to reduce the front setback by 17'6" feet and reduce the rear setback by 12'1".

TOWN COUNCIL HEARING DATE: May 20, 2024

LPA HEARING DATE: April 30, 2024

STAFF RECOMMENDATION: Approval

**PREPARED/
SUBMITTED BY:** Sarah Propst, AICP, PMP / Jason Green AICP, CFM

I. APPLICATION SUMMARY

Applicant/Owner: Lawrence Black (Owner/Applicant)

Request: Variance from LDC Table 34-3 to reduce the front setback by 17 feet 6 inches and reduce the rear setback by 12 feet 1 inches.

Subject property: See attached site plan

Physical Address: 614 Estero Boulevard

STRAP #: 24-46-23-W4-00.400.014C

FLU: Mixed Residential

Zoning: Residential Multifamily (RM)

Adjacent zoning and land uses:

North:	MIXED RESIDENTIAL AND RECREATIONAL Residential Multifamily (RM) and Environmental Conservation (EC)
South:	MIXED RESIDENTIAL AND RECREATIONAL Residential Multifamily (RM) and Environmental Conservation (EC)
East:	MIXED RESIDENTIAL AND RECREATIONAL Residential Multifamily (RM)
West:	MIXED RESIDENTIAL Residential Multifamily (RM)

II. BACKGROUND AND ANALYSIS

Background:

Lawrence Black, the applicant for 614 Estero Boulevard, is requesting two variances from the Town's Land Development Code (LDC) Table 34-3 which requires a single-family home in the RM zoning district to provide a minimum 25 feet street setback, a minimum 20 feet rear setback.

The subject property is one of the beach-side cottage homes connected through a 7.5 feet wide access easement from Estero Blvd. The property supported a single-family residence, prior to Hurricane Ian. The Applicant is requesting a variance of 17 feet and 6 inches for the street setback and a variance of 12 feet and 1 inch for the rear setback, to build a new single-family home.

Analysis:

The purpose of the RM zoning district is to designate suitable locations for a wide variety of multifamily residences. The subject property is one of the beach-side cottage homes connected through a 7.5 feet wide access easement from Estero Blvd. The lot is 50 feet wide and 60 feet long and is designated as a non-conforming lot. The existing single-family residence was destroyed in Hurricane Ian and the Applicant is now proposing to rebuild a residence of higher square footage. The Applicant acquired a minimum use determination on November 21, 2023.

Based on LDC Section 34-3273 (7) *A nonconforming lot, which previously had or currently has a residence constructed on it and receives an affirmative minimum use determination per Sec. 34-3274 may request an administrative setback variance in accordance with sec. 34-268.* Based on LDC Section 34-268 (a) (1) b., the director has the authority to modify the setbacks using administrative variance if the proposed remodeling or addition or expansion of non-conforming structures does not lead to further diminution of the setback. The Applicant is, however, proposing a house of

greater square footage with reduced setbacks and thus, does not qualify for administrative variance.

As per LDC table 34-3, a single-family home in the RM zoning district shall provide a minimum street setback equal to 25 feet and a minimum rear setback of 20 feet, respectively. The Applicant is, therefore, requesting a variance of 17 feet and six inches for the street setback, a variance of 12 feet and one inch in rear setback.

The Applicant is also proposing the mechanical equipment at a setback of 8 feet and 9 inches from the rear property line. However, if the requested rear setback variance is approved, the proposed mechanical equipment will encroach no more than 10 inches into the new setback. Mechanical equipment is allowed to encroach up to three feet into the rear setback. Therefore, approval of the proposed setback variance of 12 feet and one inch to the exterior staircase, will allow the mechanical equipment to encroach 10 inches into the rear setback as proposed.

The Applicant has the choice to construct a residence of same square footage as the residence that existed post Hurricane Ian, which would be consistent with the Town's LDC and could be approved through the process of administrative variance. Moreover, staff believes that **a residence of this scale on the subject non-conforming lot, might raise access issues with Fire Department of the Town of Fort Myer's Beach.** However, the Applicant wants to build a residence of higher square footage with reduced setbacks, which is only possible if the said variances are granted.

Neighborhood Compatibility:

The subject property is one of the cottages in Northwest part of the island formed by the intersection of Estero Blvd and Matanzas Street. Several properties on the seaward side of Estero are similar non-conforming lots supporting single family residences that appear to be in consistency with the Town's LDC.

III. FINDINGS AND CONCLUSION

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 subject property is a non-conforming lot with access through a 7.5 feet wide access easement from Estero Boulevard. The Applicant has already acquired a minimum use determination letter to allow a construction of a single-family resident post Ian. The town's LDC allows the Applicant to build a

single-family residence the same footprint as before Ian through an administrative variance. The Applicant is, however, proposing a house of greater square footage and thus, requires variances from the code required street and rear setbacks.

- 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 is a nonconforming cottage lot which would be unbuildable if the required setbacks applied. The applicant is proposing a single story residence over base flood elevation. This design is in line with the desire of the Town to rebuild single story cottages on these cottage lots.

- 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 his property.*

While it may be possible to have less variances, the proposed house being a single story over flood is a preferred design.

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

The granting of this variance **could** be injurious to the neighborhood or otherwise detrimental to the public welfare. The site is presently accessible via a 7.5 feet easement connecting Estero Blvd to the beach. It will be very important for no part of the house to encroach into the easement to ensure Fire Department and emergency access to the properties behind this home. This requirement is included in the conditions.

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

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

IV. RECOMMENDATION

Staff has reviewed the request for a variance from LDC Table 34-3 which requires a single-family home in RM zoning district to provide a minimum 25 feet street setback, a minimum 20 feet rear setback and found that the variance request does not meet the requirements set forth in sec. 34-87.

Therefore, staff recommends **APPROVAL** of VAR20240088, a request for a variance of 17 feet and six inches for the street setback and a variance of 12 feet and 1 inch in rear setback.

At the LPA hearing the LPA voted unanimously, with one member absent, to approve the request. Since the LPA hearing, staff has included additional language in condition 2 to ensure parked vehicles do not encroach into the access easement.

V. CONDITIONS FOR APPROVAL

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

- 1) Approval of 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.
- 2) No part of the house or parked vehicles may encroach into the 7.5 foot access easement.
- 3) The development must substantially comply with the drawings as provided in Exhibit A, attached.

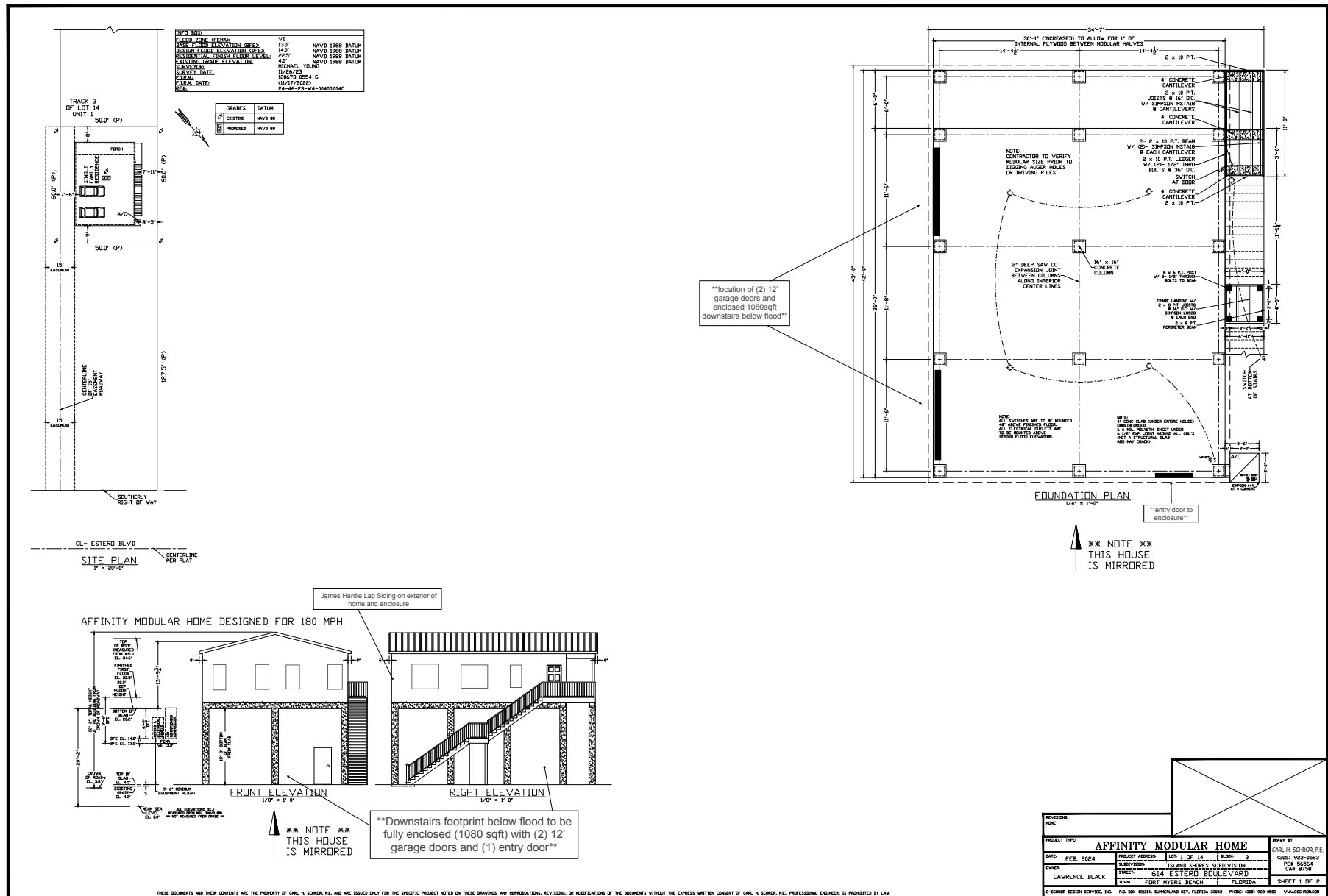
VI. EXHIBITS

Exhibit A: Site plan and drawing

Exhibit B: Postcards to Adjacent Property Owners

Exhibit C: Complete Application

Exhibit D proposed replacement SFR





Town of Fort Myers Beach
Community Development Services - Planning Division
2731 Oak St,
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 30, 2024, and Town Council May 20, 2024

CASE: VAR20240088

ADDRESS: 614 Estero Blvd

APPLICANT: Lawrence Black

REQUEST: Requesting a variance from Table 34-3 to decrease the front setback by 17 feet 6 inches and decrease the rear setback by 12 feet and 1 inch.

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
2731 Oak St,
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 30, 2024, and Town Council May 20, 2024

CASE: VAR20240088

ADDRESS: 614 Estero Blvd

APPLICANT: Lawrence Black

REQUEST: Requesting a variance from Table 34-3 to decrease the front setback by 17 feet 6 inches and decrease the rear setback by 12 feet and 1 inch.

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
2731 Oak St,
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 30, 2024, and Town Council May 20, 2024

CASE: VAR20240088

ADDRESS: 614 Estero Blvd

APPLICANT: Lawrence Black

REQUEST: Requesting a variance from Table 34-3 to decrease the front setback by 17 feet 6 inches and decrease the rear setback by 12 feet and 1 inch.

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
2731 Oak St,
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 30, 2024, and Town Council May 20, 2024

CASE: VAR20240088

ADDRESS: 614 Estero Blvd

APPLICANT: Lawrence Black

REQUEST: Requesting a variance from Table 34-3 to decrease the front setback by 17 feet 6 inches and decrease the rear setback by 12 feet and 1 inch.

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
2731 Oak St,
Fort Myers Beach, FL 33931

Town of Fort Myers Beach
2731 Oak St,
Fort Myers Beach, FL 33931

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»«Next Record»

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»«Next Record»

Town of Fort Myers Beach
2731 Oak St,
Fort Myers Beach, FL 33931

Town of Fort Myers Beach
2731 Oak St,
Fort Myers Beach, FL 33931

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»«Next Record»

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»



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: 614 Estero Blvd
STRAP Number: 24-46-23-W4-00400.014C
Applicant: Lawrence Black Phone: 239-851-1125
Contact Name: Kara Stewart Phone: 239-770-4198
Email: stewart.karalyn@gmail.com Fax: _____
Current Zoning District: RM
Future Land Use Map (FLUM) Category: Mixed Residential
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

PART I – General Information

A. Applicant*: Lawrence Black Phone: 239-851-1125
**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: 5320 Harborage Dr Fort Myers FL 33908
Email: lawrencerblack@icloud.com Fax: _____
Contact Name: Larry Black Phone: 239-851-1125



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: Kara Stewart Phone: 239-770-4198

Address: _____

Email: stewart.karalyn@gmail.com Fax: _____

D. Other Agent(s). Please list the names of all Authorized Agents (attach extra sheets if necessary)

Name: _____ Phone: _____

Address: _____

Email: _____ 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 34 - 638; 634
- ☐ 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: Lawrence & Deborah Black Phone: 239-851-1125

Mailing Address: 5320 Harborage Dr., Fort Myers Fl

Email: lawrencerblack@icloud.com Fax: _____

AFFIDAVIT

APPLICATION IS SIGNED BY AN INDIVIDUAL OWNER OR APPLICANT

I, Lawrence Black 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.

Lawrence Black
Signature

Lawrence Black
Printed Name

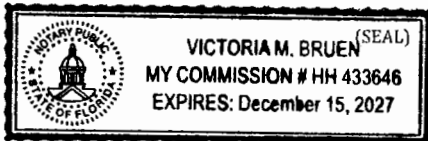
STATE OF Florida COUNTY OF Lee

The foregoing instrument was certified and subscribed before me by means of X physical

presence OR _____ online notarization, this 7th day of March, 2024, by

Lawrence Black ☐ who is personally known to me OR ☒ who has produced

Driver License as identification.



Victoria M. Bruen
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, _____ (name), as _____ (title) of _____ (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

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: 24-46-23-W4-00400.014C

Property Address: 614 Estero 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: Island Shores

Book: 9 Page: 24 Unit: 1 Block: _____ Lot(s): 14

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) 50.00 feet
Depth (please provide an average width if irregular in shape) 60 feet
Frontage on street: 60 (easement) feet. Frontage on waterbody: 0 feet
Total land area: 3000 ☐ acres ☒ square feet

D. General Location of Subject Property (from Sky Bridge or Big Carlos Pass Bridge):

Over bridge go right

☐ 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 |



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

EXPLANATORY NOTES

Please do not print, copy and submit these instructions

Please submit required applications, supplemental information, exhibits and documents to zoningpermits@fmbgov.com.

Application fees are set by resolution of the Town Council of the Town of Fort Myers Beach and must be paid before any materials submitted will be considered an application.

The applicant is responsible for the accuracy and completeness of this application. Time delays or additional expenses necessitated by submitting inaccurate or incomplete information will be the responsibility of the applicant. Decisions regarding requests to waive submittal requirements are at the discretion of the Community Development Director and may not be appealed.

All information submitted with the application becomes a part of the public record and will be a permanent part of the file.

All attachments and exhibits must be legible, suitable for recording, and of a size that will fit or conveniently fold into a letter size (8 ½ by 11) folder.

Explanatory Notes – Part I

- A. Applicant's name: The applicant may be the landowner or an authorized agent.
- B. Relationship of applicant to property: Indicate if the applicant is the property owner, and if so, the type of ownership. If the applicant is not the owner of the property, indicate the relationship of the applicant to the owner and submit a notarized authorization from the owner(s) to the applicant.
- C. Agent's name: If the applicant will have others representing him/her in processing the application, indicate name, address, and phone number.
- D. Other agents: Provide contact information for any other agents that may be involved in the request.

Explanatory Notes – Part II

Indicate the requested action.

Explanatory Notes – Part III

If waiver of any application requirement has been approved by the Community Development Director, attach a copy of the approval. Please request waivers prior to applying. Exhibit 3-1

Explanatory Notes – Part IV

- A. If the property owner is an individual or husband and wife, check the box and provide the information.



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

Explanatory Notes – Part V

- A. If there are multiple property owners exhibit 5-1, complete the disclosure form and include the names and mailing addresses of all persons or entities having an ownership interest in the property, including the names of all stockholders and trust beneficiaries. Disclosure is not required of any entity whose interests are solely equity interests that are regularly traded on an established securities market in the United States or another country.
- B. If more than one parcel is involved, submit a list of all property owners and their mailing addresses. Provide a map keyed to the list of property owners showing their interests. The applicant is responsible for the accuracy of the list and map Exhibit 5-2
- C. Where the property is a condominium or timeshare condominium, the application must be initiated by both the condominium association and no less than 75% of the total number of unit owners. To verify ownership, the list of property owners must be identified by unit number and/or timeshare period as applicable, along with proof that the owners who did not join in the application were given actual written notice of the application by the applicants, who must verify the list and the notice by sworn affidavit. Attach this affidavit as Exhibit 5-3.
- D. In addition, a letter of opinion from an attorney licensed to practice law in the State of Florida addressing the considerations in LDC Section 34-201(a)(1)b.3. must be attached as Exhibit 5-4.

Explanatory Notes – Part VI

- A. Include the street address of the subject property. List STRAP number. If more than one parcel is involved, list all STRAP numbers. If you don't know the STRAP number, you can look up the property in the records of the Lee County Property Appraiser at <http://www.leepa.org>. If the application includes only one or more undivided platted lots within a subdivision officially recorded in the Plat Books of Lee County, Florida, identify the property by lot number(s), block if applicable, subdivision unit if applicable, subdivision name, and plat book number and page number. If the property is not one or more undivided platted lots or is in an "unrecorded" subdivision, attach a metes and bounds legal description giving accurate bearings and distances for each course. If multiple parcels are involved, the metes and bounds legal description must describe the perimeter of the entire property subject to the request. The initial point in the description must be related to at least one established identifiable real property corner, such as a government corner or a recorded corner. The bearings used in the description must be clearly referenced to a well-established and monumented line. Exhibit 6-1
- B. Submit a Boundary Survey meeting the minimum technical standards for surveying set out in Chapter 61G17-6 of the Florida Administrative Code. Make sure that the surveyor is aware of any specific needs of the survey (location of Coastal Construction Lines, locations of existing structures, locations of easements, etc) that are relevant to your request. The perimeter boundary of the entire subject property should be indicated clearly with a heavy



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

line. Exhibit 6-2

- C. Provide the property dimensions or the approximate dimensions if the property is not a regular quadrilateral.
- D. Describe how to get to the property starting from either the Sky Bridge or the Big Carlos Pass Bridge (specify which). Exhibit 6-3
- E. If there are any deed restrictions or covenants that might affect the requested action, provide the information. Exhibit 6-4
- F. A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 6-5
- G. Attach a list of the surrounding property owners within 500 feet of the perimeter of the area of the request. Also include two sets of mailing labels providing the names and addresses of the owners on this list, and a map showing the parcel boundaries within the 500-foot radius Exhibit 6-6. This information can be acquired for a small fee by requesting a “variance report” from the Map Sales Office at the Lee County Property Appraiser’s Office. Contact information for the Property Appraiser can be found at <http://www.leepa.org>.
- H. Indicate the Future Land Use Map category or categories of the property as shown on the Fort Myers Beach Comprehensive Plan’s Future Land Use Map, and whether the property is located in the “platted overlay” on the map.
- I. Indicate the current zoning of the property. In most cases the current zoning is shown on the official zoning map of the Town of Fort Myers Beach, as adopted by ordinance. If zoning actions affecting the subject property have been taken since March 2004, call Town Hall to verify the current zoning.

Explanatory Notes – Part IV & V

The applicant must sign and submit either of the affidavits in Part V & VI, as applicable.



Case # _____

Date Received: _____

Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

Supplement PH-B

Additional Required Information for a Variance Application

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

Case Number:
Project Name: 614 Estero Blvd
Authorized Applicant: Lawrence Black c/o Kara Stewart
LeePA STRAP Number: 244623W400400014C

Current Property Status: Vacant	
Current Zoning: RM	
Future Land Use Map (FLUM) Category: Mixed Residential	
Comp Plan Density: 6du/acre	Platted Overlay? ☐ Yes ☒ No

Variance is requested from:

LDC Section Number	Title of Section or Subsection
34-638	Setbacks
34-634	Lot Coverage

Complete the narrative statements below for EACH variance requested.

PART I
Narrative Statements

Request for variance from 34-638; 634 **(LDC Section number)**

Explain the specific regulation contained in this section from which relief is sought:
Required front setback from easement is 25' We are requesting a reduction of
17'6" to the front of house, giving us a 7'6" front setback
Required rear setback is 20'. We are requesting 12'1" reduction, giving us 7'11"
to the staircase. The a/c pad will be 8'5" to the rear property line, thus requiring
an a/c setback reduction of 8'7" when taking into account the allowable 3'
encroachment into rear yard.
With this prefabricated buiding lot coverage will be at approx 44% as opposed
to the limited 40%
See Exhibit D for proposed layout

Reasons for request

Explain why the variance is needed:
Hurricane Ian destroyed the home. The owner is looking to replace the single
family in a very similiar size/location as was previously on site. While the owner
wishes to only construct one floor above flood they would however like to
protect their vehicle, beach equipment, bicycles, etc from the weather while
providing security for such items, they are looking to enclose the ground floor.
As such they do not qualify for an administrative variance.
The lot is only 3000sf while trying to replicate as best they can the homeowner
is using a prefabricated building and has been somewhat limited with dimension.
The previous structure was at approx 43% lot coverage
See Exhibit A and B previous layout

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

The structure being proposed is very similar in size and nature as what was previously at this location. The neighboring properties will not have any adverse effects. The access easement will function as it has in the past. The previous home was 30.2 X 42.4, the proposed structure is 34'7" (including the 4' wide staircase) X 43'. The structure being located adjacent to the access easement is the same configuration as in the past. ~~it should be noted this access easement ends at this property and was for~~ the use of this residence, it does not extend as driveway easement beyond this property.

The neighbor to the west has a shuffleboard court and pool adjacent to this property

As the lot coverage is very close to what was previously there, the surrounding properties would not be any further affected. The surrounding properties may faced with similar challenges.

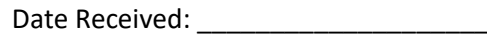
See exhibit C

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

The irregular lot size 60 X 50 with the required setbacks of 25' front, 20' rear doesn't allow for the construction of a replacement single family, home could only be 5' in depth. The design chosen has placed this structure in same location and basic size as in the past.

The property has acquired a Minimum use determination MUD20230253

Lot coverage request: it is difficult to construct a home on a very limited lot size 60 X 50; using a prefabricated home we are somewhat limited with design



The request is not so broad in nature to require a code change: the size of this lot is not typical throughout the island.

PART 2

Submittal Requirements

All applications for a variance must be submitted electronically through our Iworq portal - [iworq \(talktomycity.com\)](http://iworq.talktomycity.com)

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
- Fee in the amount of \$1800.00 (residential)/Additional Variance \$500.00
- Variance (non-residential) \$2800.00/ Additional Variance \$700.00

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

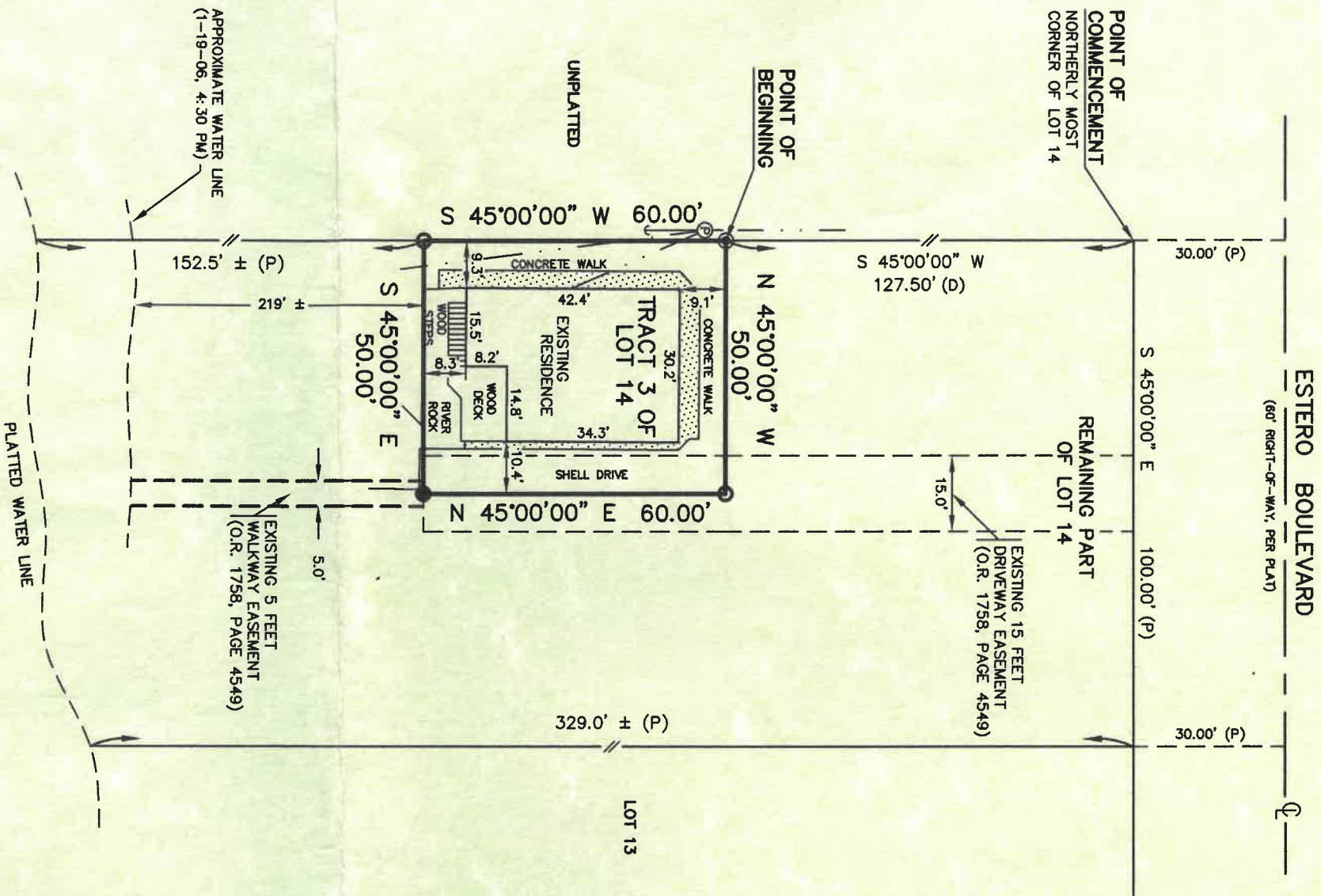
The guidelines for decision-making regarding a request for a variance are as follows:

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.

BOUNDARY SURVEY

Exhibit A

SCALE
1" = 30'



LEGAL DESCRIPTION

(AS FURNISHED)

TRACT 3 OF LOT 14, UNIT 1, ISLAND SHORES SUBDIVISION, MORE FULLY DESCRIBED AS FOLLOWS: SITUATED IN THE STATE OF FLORIDA, COUNTY OF LEE, BEING A PART OF SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST AND FURTHER BOUNDED AND DESCRIBED AS FOLLOWS:

STARTING AT THE NORTHERLY MOST CORNER OF LOT 14, UNIT 1, ISLAND SHORES SUBDIVISION, AS RECORDED IN PLAT BOOK 9, PAGE 24, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE S 45 DEGREES W 127.50 FEET TO A POINT AND THE PRINCIPAL PLACE OF BEGINNING; THENCE CONTINUE S 45 DEGREES W ALONG THE AFORESAID NORTHWESTERLY LINE A DISTANCE OF 60.00 FEET; THENCE S 45 DEGREES E DISTANCE OF 50.00 FEET; THENCE N 45 DEGREES E A DISTANCE OF 60.00 FEET; THENCE N 45 DEGREES W A DISTANCE OF 50.00 FEET TO THE PRINCIPAL PLACE OF BEGINNING.

- NOTES:
1. BEARINGS ARE BASED ON THE WESTERLY PROPERTY LINE OF LOT 14, BEING S 45°00'00" W, (PER PLAT).
 2. UNDERGROUND STRUCTURES AND UTILITIES, IF ANY, NOT LOCATED.
 3. SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD.
 4. PARCEL LIES IN F.I.R.M. ZONE A-12, ACCORDING TO FIRM PANEL 125124 0429 D DATED 9-20-96, BASE ELEVATION 14' FEET. **FLOOD ZONE SHOULD BE VERIFIED BY ANY AND ALL AGENCIES INVOLVED.**
 5. THIS CERTIFICATION IS ONLY FOR LAND AS DESCRIBED HEREON. IT IS NOT A CERTIFICATION OF TITLE, ZONING OR FREEDOM OF ENCUMBRANCES.
 6. NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.
 7. ADDITIONS OR DELETIONS TO SURVEY MAPS OR REPORTS BY OTHER THAN THE SIGNING PARTY OR PARTIES IS PROHIBITED WITHOUT WRITTEN CONSENT OF THE SIGNING PARTY OR PARTIES.
 8. ALL BEARINGS AND DISTANCES ARE PLAT AND MEASURED. (UNLESS OTHERWISE SHOWN.)

THIS BOUNDARY SURVEY PREPARED FOR:

JEFFERY M. LENTZ
WILLIAM E. SHENKO, JR. P.A.
FIFTH THIRD MORTGAGE COMPANY

LEGEND

- SET 5/8" IRON ROD & CAP
LICENSED BUSINESS # 6427
- FOUND 1/2" IRON ROD
NO CAP
- FOUND 1/2" IRON ROD & CAP
CAP ILLEGIBLE
- Ⓟ POWER POLE
- OVERHEAD LINES
- ← GUY WIRE ANCHOR
- O.R. OFFICIAL RECORD BOOK
(TYP) TYPICAL
- CONC. CONCRETE
- (P) PLAT
- (M) MEASURED
- (D) DEED

PROJECT NO. 06-1014

SURVEY DATE: JANUARY 19, 2006

STREET ADDRESS

614 ESTERO BOULEVARD
FORT MYERS BEACH, FLORIDA

REVISIONS:

NO.	DATE	DESCRIPTION	BY

JRI & ASSOCIATES, INC.
LAND SURVEYORS and MAPPERS
LICENSED BUSINESS No. 6427

12811 KENWOOD LANE, SUITE 116
FORT MYERS, FLORIDA 33907

TEL. (239) 278-4858

FAX (239) 278-4799

MICHAEL C. SELPH
PROFESSIONAL LAND SURVEYOR
LICENSE NO. 5067



Tools

N

W

E

S

Images year: 2021

◀

01/29/2021
View 1

▶

-

+

☒ Display Parcels

Exhibit B

STRUCTURE PRE IAN



Exhibit C

614 ESTERO BLVD

1. **Request:**

Meeting Date: May 20, 2024

Resolve the Bid Protest for the Estero Island Beach Nourishment and Hurricane Recovery Project ITB-24-03-EN received from Callan Marine, Ltd

Why the action is necessary:

In accordance with Town Code Section 2-486 (3) for a Bid Protest 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.

What the action accomplishes:

Town Council hears and can resolve bid protests in accordance with Town Code Section 2-486 (3).

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

Chadd Chustz, Environmental
Projects Manager

5. **Background:**

On April 30, 2024, Callan Marine, Ltd (Callan) submitted a Notice of Intent to Protest the Town of Fort Myers Beach's issuance of a Notice of Intent to Recommend Award of the Estero Island Beach Nourishment and Hurricane Recovery Project ITB-24-03-EN (The Project) to Ahtna Marine and Construction (Ahtna). Callan's Notice was timely received in accordance with Town Code Section 2-486 (2) b, which provides "[w]ritten 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."

On May 7, 2024, Callan submitted a Formal Written Protest in connection with ITB-24-003. Callan's Formal Written Protest was received in a timely manner in accordance with Town Code Section 2-486 (2) c, which provides "[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 facts and law upon which the protest is based." Callan's Formal Written Protest was received with a One Million Eight Hundred Fifty Nine Thousand Five Hundred Dollar (\$1,859,550.00) bond for payment of any costs that may be levied against Callan by the Town as a result of a frivolous protest. The bond was reviewed and approved by the Town Attorney to satisfy Town Code Section 2-486 (2) 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.

Staff scheduled a conference call with Callan and their Attorney on May 13, 2024 to attempt to resolve the protest. Becky Vose, Michael Poff, Chadd Chustz, Nancy Stuparich, and Amy Baker participated in the call on behalf of the Town, and Cary Des Roches and John Sullivan participated in the call on behalf of Callan. No resolution was reached between Callan and the

Town. Callan's protest is based on claims of safety, environmental harm and operational efficiency issues.

Attachments:

1. FL Procurement Protest Bond - Callan Marine
2. 4 30 24 Notice pf Protest Final2
3. 5 7 24 Formal Protest Final
4. 24504 Estero Island Beach Bid Tabluation 20240425
5. AHTAH - FMB_003 Official Bid Form
6. CALLAN - FMB_003 Official Bid Form
7. 24504 Callan Bid Protest Response 20240514
8. AMCC Estero Island protest response letter_ added 5.16.2024

Financial Impact:

Ahtna bid \$21,722,385.09 for the Estero Island Beach Nourishment and Hurricane Recovery Project ITB-24-03-EN.

Callan bid \$37,191,000.00 for the Estero Island Beach Nourishment and Hurricane Recovery Project ITB-24-03-EN.

In order for this project to be completed by November 30 to protect the community from further damage from future storms, a Notice to proceed must be issued no later than Monday June 3, 2024. Any delay due to this protest jeopardizes project completion.

The Project was bid based on non-winter month production, which typically has less delays due to inclimate weather. Delaying the project into the winter months may cause an increase in the bid amounts.

6. Alternative Action

7. Management Recommendations:

Staff recommendation is denial of the bid protest.

8. Recommended Approval:

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

Created/Initiated - 5/13/2024
Approved - 5/14/2024
Approved - 5/15/2024
Approved - 5/15/2024
Final Approval - 5/15/2024

STATE OF FLORIDA

PROCUREMENT PROTEST BOND

Bond Number: 108019966

KNOW ALL PERSONS BY THESE PRESENTS:

That we, Callan Marine, LTD a (mark one) ☐ corporation, ☒ partnership,
☐ proprietorship, organized and existing under the laws of the State of Texas,
and having its principal place of business at 6800 Harborside Drive, Galveston, TX 77554 /
P.O. Box 17017, Galveston, TX 77552, as PRINCIPAL;
and Travelers Casualty and Surety
Company of America, a surety company, organized under the laws
of the State of CT, and duly authorized to do business in the State of Florida,
whose principal place of business is One Tower Square, Hartford, CT 06183, as SURETY,
are held and firmly bound unto the Town of Fort Myers Beach (Agency), as
OBLIGEE, in the amount of One Million Eight Hundred Fifty Nine
Thousand Five Hundred Fifty and 00/100 Dollars (\$ 1,859,550.00)
for the payment of which sum we, as Principal and Surety, bind ourselves, our heirs,
personal representatives, successors and assigns jointly and severally.

THIS BOND is issued under the provisions of Town of Fort Myers Beach Ordinance 17-01 and the
Town of Fort Meyers Beach Purchasing of Goods and Services Policies and Procedures.

The above-named Principal has initiated an administrative protest regarding the Obligee's decision
or intended decision pertaining to the Estero Island Beach Nourishment and Hurricane Recovery
Project ITB-24-03-EN; Said protest is conditioned upon the posting of a bond for payment of any
costs that be levied against the Principal by the Town of Fort Meyers Beach as a result of a
frivolous protest.

NOW, THEREFORE, the condition of this Bond is that if the Principal, after the administrative

hearing process and/or any appellate court proceedings regarding the protest, shall satisfy all costs levied against the Principal by the Town of Fort Meyers Beach as a result of a frivolous protest. then the obligation shall be null and void; otherwise it shall remain in full force and effect.

PRINCIPAL: Callan Marine, LTD

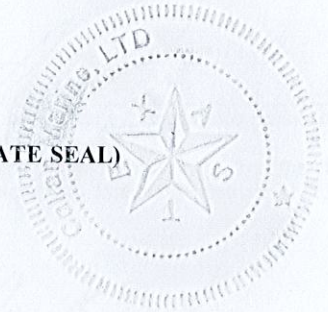
BY: [Signature]

Title: CFO

ATTEST: [Signature]

Jordan Guy; Proposal Manager

(CORPORATE SEAL)



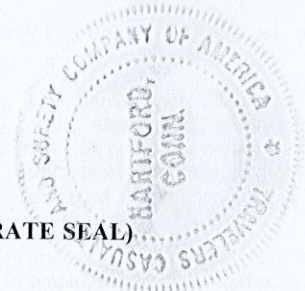
SURETY: Travelers Casualty and Surety Company of America

BY: [Signature]

Title: David T. Mickle, Attorney-in-Fact

Signed, Sealed and Dated: May 7, 2024

(CORPORATE SEAL)



Florida Resident Agent: [Signature]

Matthew S. Nilles, FL Resident Agent, License No. E011320

Note: Power of Attorney showing authority of Surety's agent or Attorney in Fact must be attached.



Travelers Casualty and Surety Company of America
Travelers Casualty and Surety Company
St. Paul Fire and Marine Insurance Company

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company are corporations duly organized under the laws of the State of Connecticut (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint **DAVID T MICLETTE** of **HOUSTON, Texas**, their true and lawful Attorney(s)-in-Fact to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed, and their corporate seals to be hereto affixed, this **21st day of April, 2021**.



State of Connecticut

City of Hartford ss.

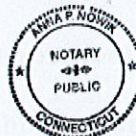
By: _____

Robert L. Raney, Senior Vice President

On this the **21st day of April, 2021**, before me personally appeared **Robert L. Raney**, who acknowledged himself to be the Senior Vice President of each of the Companies, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of said Companies by himself as a duly authorized officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission expires the **30th day of June, 2026**



Anna P. Nowik, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of each of the Companies, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, **Kevin E. Hughes**, the undersigned, Assistant Secretary of each of the Companies, do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which remains in full force and effect.

Dated this **7th** day of **May**, 20**24**



Kevin E. Hughes, Assistant Secretary

To verify the authenticity of this Power of Attorney, please call us at 1-800-421-3880.
Please refer to the above-named Attorney(s)-in-Fact and the details of the bond to which this Power of Attorney is attached.

LAW OFFICE OF
CARY A. DES ROCHES, APLC
225 PHOSPHOR AVENUE
METAIRIE, LOUISIANA 70005

1100 POYDRAS STREET
SUITE 3250
NEW ORLEANS, LOUISIANA 70163

Telephone: (504) 235-9322
Telefax: (504) 588-9750
Email: cdr@desrocheslaw.com

April 30, 2024

VIA FEDEX AND EMAIL: Amy@fmbgov.com

Amy Baker, Town Clerk
Town of Fort Meyers Beach
2731 Oak Street
Fort Myers Beach, FL 33931

*Re: Estero Island Beach Nourishment and Hurricane
Recovery Project ITB-24-03-EN; Notice of Bid Protest*

Dear Ms. Baker:

In accordance with the Notice of Intent to Recommend Award in connection with the above-referenced project, Callan Marine, Ltd. ("Callan"), an aggrieved bidder, provides this Notice of Bid Protest.

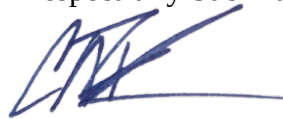
Among other reasons, and based on our initial research, Ahtna Marine and Construction Company, LLC has limited equipment to perform this project safely, efficiently, and productively while conforming with the Plans and the Specifications provided for this ITB. The borrow area is offshore and exposed to potentially hazardous sea conditions. The Town of Fort Meyers Beach has the responsibility to contract with bidders who are complaint with the dredging industry's established best practices. The nearest available and specified borrow area is offshore and more than 1.5 miles from safe harbor and any dredging vessel engaged on the project should be capable of withstanding expected weather conditions.

Safety is a top priority in the dredging industry. It is also important for the customers to decipher if the bidder is acting in a responsible and safe manner with their work plan.

We understand there is a recommendation going in front of the Town Commissioners for approval on or about May 2. We respectfully request you delay the recommendation until you have received/reviewed our formal protest.

Finally, we acknowledge the Town has \$25,000,000 approved for this project. Based on our experience, additional funds can be requested from the State and FEMA if the project estimate was less than the established commercial range provided by responsible bidders, and it is shown the project requires more funds. The project has been competitively bid twice and it is clear the Town's anticipated range of pricing from responsible bidders and its corresponding Town estimate should be closer to \$35,000,000-\$40,000,000. Callan would work with the Town and the State to justify the price and arrange for additional funding.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read 'C. Des Roches', with a long horizontal flourish extending to the right.

Cary A. Des Roches
Counsel for Callan Marine, Ltd.

cc Andy Hyatt, Town Manager via email andyhyatt@fmbgov.com
Chadd Chutz, Estero Island Project Manager via email chadd@fmbgov.com

LAW OFFICE OF
CARY A. DES ROCHES, APLC
225 PHOSPHOR AVENUE
METAIRIE, LOUISIANA 70005

1100 POYDRAS STREET
SUITE 3250
NEW ORLEANS, LOUISIANA 70163

Telephone: (504) 235-9322
Telefax: (504) 588-9750
Email: cdr@desrocheslaw.com

May 7, 2024

VIA FEDEX AND EMAIL: Amy@fmbgov.com

Amy Baker, Town Clerk
Town of Fort Meyers Beach
2731 Oak Street
Fort Myers Beach, FL 33931

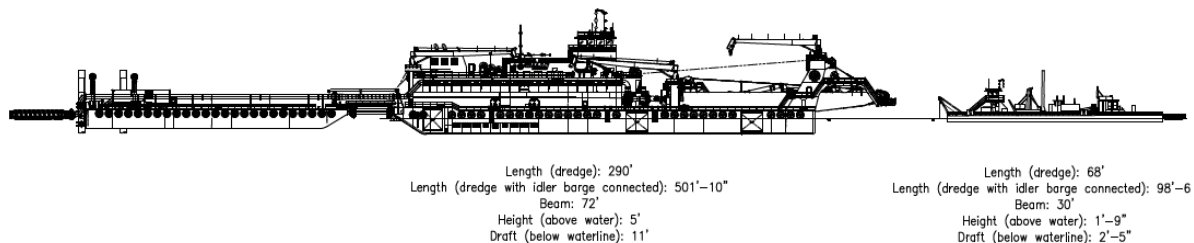
*Re: Estero Island Beach Nourishment and Hurricane
Recovery Project ITB-24-03-EN; Formal Bid Protest*

Dear Ms. Baker:

In accordance with the procedures set forth in the Town of Fort Meyers Beach Ordinance No. 17-01, Callan Marine, Ltd. (“Callan”), an aggrieved bidder, provides this Formal Bid Protest in connection with the referenced ITB.

As previously set forth in its April 30, 2024 Notice of Protest, and based on information currently known and available to Callan, Ahtna Marine and Construction Company, LLC (“Ahtna”) does not possess the available dredge(s) or other equipment to safely perform the Estero Island Beach Nourishment and Hurricane Recovery Project (the “Project”). The nearest available and specified borrow area for the Project is offshore and exposes any dredge on the Project to potentially hazardous sea and weather conditions. The nearest safe harbor is 1.5 miles from the Project borrow area. Ahtna’s dredges and other equipment are designed for inland operations. A prudent and responsible *inland* dredge operator should not expose its personnel and vessels to *offshore* sea and weather conditions that exceed the safe operating parameters of its equipment.

By contrast, Callan’s dredges are designed for and operate in offshore sea and weather conditions. The scaled drawing below graphically illustrates the differences between Ahtna’s inland dredge that it will use on the Project and Callan’s offshore dredge for the Project:



Similarly, prudence and responsibility dictate that the Town of Fort Meyer Beach award the Project to a responsible bidder possessing satisfactory offshore equipment that can safely perform the Project without unnecessarily exposing the beach areas and adjacent waters to environmental hazards that would be associated with inland equipment on the Project. A dredge or dredge tender sinking or even partially sinking would cause a significant oil spill with a catastrophic environmental impact on the adjacent waters, wildlife and beach areas.

From a production standpoint and based on information provided in its own bid documents, Ahtna's dredge has approximately 1,200 installed horsepower compared to the more than 24,000 horsepower installed on the dredge that Callan intends to use for the Project. Ahtna's own bid submission proves that at an industry average of 16 hours running time per day, Ahtna could expect to dredge 5,600 cubic yards per day if they pump to the nearest reach of the North-Central Estero Island Beach Fill. With substantial completion required 180 days after commencement of Work and if 20% of the allowable duration is lost to weather and mechanical delay (we would expect that there would be more delay than that for Ahtna), there are only 144 days which Ahtna will have available to dredge and pump to the beach. With even 0% losses on the fill (the beach), which losses normally run between 18-20%, Ahtna will not finish the project in time. With a reasonable 18-20% loss of material on the beach, Ahtna will be even further behind the allowable contract duration.

Callan further submits the attached Protest Bond concurrently with this Formal Protest letter.

Respectfully Submitted,

Cary A. Des Roches
Counsel for Callan Marine, Ltd.

cc Andy Hyatt, Town Manager via email andyhyatt@fmbgov.com
Chadd Chutz, Estero Island Project Manager via email chadd@fmbgov.com

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 April 25, 2024					TOTAL	\$25,184,500.00
					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



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 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)



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)

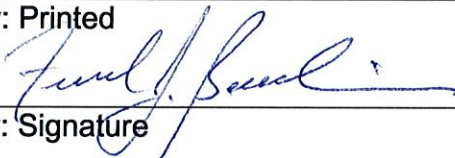
W19000060094

(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

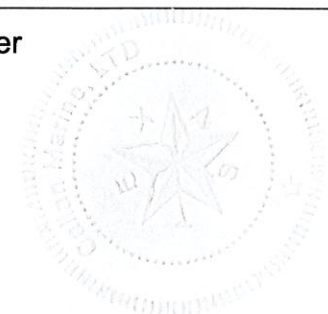
Fax Number

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:

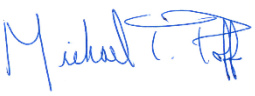
The foregoing Resolutions represent the duly-authorized acts of CALLAN MARINE LTD. taken in accordance with its governing documents.

CALLAN MARINE LTD.



By: William W. Sullivan
Its: Vice President and Secretary

MEMORANDUM

TO: Chadd Chustz
FROM: Michael Poff 
DATE: May 14, 2024
SUBJECT: Town of Fort Myers Beach - Estero Island Nourishment Bid ITB-24-03-EN
Callan Marine Bid Protest Response
CEC FILE NO.: 24.504

Per your request, Coastal Engineering Consultants, Inc. (CEC) is providing additional details on our evaluation of Ahtna Marine and Construction Company's (Ahtna) bid to assist the Town respond to Callan Marine's Bid Protest.

EXPERIENCE

CEC has worked with Ahtna on multiple beach, inlet, and dredging projects in Southwest Florida. They successfully completed these projects on time and on budget. There were no safety issues or environmental hazards. Our local government clients (City of Marco Island, Collier County, Lee County, WCIND) were all highly satisfied with Ahtna's quality of work, professionalism, and client services.

Ahtna provided details and references on multiple beach nourishment and dredging projects within their qualifications. We contacted Mohamed Dabees with Humiston and Moore on the Tigertail Lagoon project on Marco Island. Mr. Dabees gave Ahtna the highest recommendation. This project utilized a nearshore borrow area in the Gulf of Mexico. CEC was one of the City's consultants on this project and understands Ahtna completed the project safely and without environmental hazards.

We contacted Ken Craig with Taylor Engineering on the Jupiter Inlet and Fort Pierce projects. He also gave Ahtna the highest recommendation. We contacted multiple U.S. Army Corps of Engineers project managers. They shared they are not allowed to provide verbal references and referred us to their contractor performance assessment reporting system (CPARS). However, CPARS are not available to private consulting firms.

PRODUCTION RATE ANALYSIS (AHTNA)

Ahtna provided the FMB:25-Plant and Equipment Schedule within their bid. The dredge and booster pumps proposed for the Project include:

Dredge: 18" cutterhead suction dredge *Katie John*
Boosters: 2 ea. 1,200 Hp 18" booster
1 ea. 1,870 Hp 18" booster
1 ea. 1,500 Hp 18" booster

The Plant and Equipment Schedule for the *Katie John* lists an effective production rate of 350 cubic yards (CY) per hour. The bid quantity total for Beach Fill is 945,000 CY for both the North-Central Beach Fill Area (629,000 CY) and South Beach Fill Area (316,000 CY). Assuming the cutterhead dredge operates at an average of 16 hours per day, the volume of sediment excavated would be 5,600 CY/day. The duration to complete the excavation of 945,000 CY would be 169 days. The Contract Time is 180 days for Substantial Completion, 195 days for Final Completion. The information provided indicates Ahtna can meet the Contract Time requirement.

PRODUCTION RATE ANALYSIS (CEC)

For comparison, CEC utilized the Dredge Production and Cost Estimation Software developed by the Center for Dredging Studies (CDS), Zachary Department of Civil Engineering, Texas A&M University. Inputs to the program include dredge size, quantity to be dredged, bank height (dredge cut depth from seabed), digging depth from water surface, pipeline distances for floating, submerged, and shore pipe, number of boosters, and sediment characteristics (mean grain size, percent fines). Sediment characteristics were obtained for the borrow area geotechnical investigation sediment analysis.

Pipeline distances were measured from the Contract Plans. The submerged sediment pipeline was measured at 8,300 feet along the pipeline corridor from the Nearshore Borrow Area to the shoreline of the North-Central Beach Fill Area. The shore pipeline was measured at 20,700 feet as the longest pumping distance from the termination of the submerged sediment pipeline at the shore to the southern end of the North-Central Beach Fill Area. The floating pipeline was assumed to be 800 feet. The maximum pipeline distance is the sum of the floating, submerged, and shore pipeline for a length of 29,800 feet.

These values were entered into the program in the green highlighted cells and the software yields an estimated production rate in CY/hour. Applying these inputs into the CDS program, the estimated production rate equaled 562 CY/hour. For a 16-hour day, that equates to 8,992 CY/day. This would require 70 days to complete the North-Central segment.

We repeated the analysis using the pipeline lengths to the South Beach Fill Area. An additional 9,600 feet of shore pipeline was added from the end of the North-Central Beach Fill Area to the end of the South Beach Fill Area. The maximum pipeline distance is the sum of the floating, submerged, and shore pipeline for a length of 40,600 feet.

Applying these inputs into the CDS program, the estimated production rate equaled 481 CY/hour. For a 16-hour day, that equates to 7,696 CY/day. This would require 41 days to complete the South Beach Fill segment.

Combining the two estimates yields a dredge window of 111 days. CEC's production rate analysis demonstrates Ahtna can meet the Contract requirements within the Contract Time.

2011 ESTERO ISLAND PROJECT COMPARISON

CEC spoke with Lee County representatives to confirm the dredge details for the 2011 project that used the same Nearshore Borrow Area and constructed the North Beach Fill. The contractor was Florida Dredge and Dock. They used their dredge *Gator Point*. Reviewing data found online under a Florida Inland Navigation District 2018 report, the *Gator Point* was a 14” cutterhead dredge with 1,100 hp.

Ahtna has proposed a dredge equal to or greater in size and production capacity from the dredge that safely completed the 2011 project without environmental hazards.

SAFE HARBOR

The U.S. Army Corps of Engineers maintains the federal navigation channel for Matanzas Pass. The approximate sailing distance from the Nearshore Borrow Area to safe harbor inside Matanzas Pass (east of the bridge) is approximately 4 miles.

Ahtna conducted the maintenance dredging of the federal channel for Matanzas Pass in 2000 under their contract with the U.S. Army Corps of Engineers. Ahtna is familiar with the Project area and the safe harbor. CEC was the surveyor for the project and understands Ahtna complete the project safely and without environmental hazards.

SUMMARY

Based on our review of Ahtna’s qualifications, professional references, information provided in their Bid, and our independent analysis of production, it is our opinion Ahtna should have sufficient capacity and experience to construct this Project within the Contract Time.

Date: May 15, 2024

Amy Baker, Town Clerk
Town of Fort Meyers Beach
2731 Oak Street
Fort Myers Beach, FL 33931

Subject: Estero Island Beach Nourishment and Hurricane
Recovery Project ITB-24-03-EN: protest response

Dear Ms. Baker,

Ahtna Marine & construction company appreciates the opportunity to participate in the Bid for the Estero Island Beach Nourishment and Hurricane Recovery Project.

We have reviewed the protest letter from Callan Marines' counsel and would like to correct assumed information Provided to the county in the letter.

The dredge selected by our team for this project is the Ellicott Manufactured 1270 18" cutter suction dredge The "Katie John ". The "Katie John "overall length of the dredge is 98.6" and with the ladder down to proposed grade is approximately 90 foot long. However, the dredge is equipped with a spud carriage booster barge which is 80 foot in length given the dredge an over length of 178.6 foot. The suggested length of AMCC dredge of 68' is not accurate.

In addition, The "Katie John "is equipped with 1375 horse power only on the main engines with capacity to adjust the engine computers to increase dredge horse power more than 1700 hp if desired, which is not necessary. When combining the Generator, cutter gear box, and other HP components the dredge as it sits is over 2000HP without the booster pump configuration. The dredge is also equipment with a 1500 horsepower caterpillar C32 marine engine driving a 20" inch Pearce booster pump with a 46 inch diameter impeller. The dredge is currently configured with ample horsepower to pump at minimum 13,000 linear feet before an additional booster pump is required. The suggested HP of the AMCC dredge of 1300Hp is not accurate.

Ahtna Marine & construction company working hours will be 24 hours a day seven days a week. As per AMCC bid estimated dredge production run hours is 10 hours each shift with 2 hours for maintenance, adjusting anchors, adding pipeline, and miscellaneous. Ahtna assumed operational run time in a 24 hour period is 20 hours pumping 4 hours down. Ahtna's Historical operation data is around 21 hours of operational run time. The suggested 16 hours of industry average for dredge run operation time does not apply to AMCC, nor do we know of a competitor company loosing 8 hours of operational time in a 24-hour period.

Furthermore, The Ellicott 1270 cutter suction dredge is equipped from the manufacturer with all water tight sealed doors, as well as, all hatches, fuel cells, USCG approved oil tanks, and openings are sealed from possible water intrusion or leakage. The dredge is also equipped with a quick disconnect ball and bell for expedited departures if needed. A push/tug tender accompanies the dredge at all times. Ahtna team continuously monitors all weather events throughout the day. In the event of foul weather, the dredge will be moved into safe harbor as depicted in the attached storm Weather plan. In addition, Ahtna most recently completed a successful and without incident, the "tiger tail project" for the city of Marco Island in which More than 90,000 cubic yards of material among the 500,000 plus cubic yards excavated on the project was dredged thousands of feet off shore.

Production: The Ellicott 1270 dredge is configured with a booster, as well as, a spud carriage barge. The spud carriage barge has the ability to increase operational production efficiencies in a number of ways, one being it increase the capable swing arch of the dredge to maximize surface coverage and increase the available cubic yards dredged before advancing the dredge ahead. Second, the spud carriage barge configured to the dredge has 18 foot of stroke to advance the dredge Before resetting the dredge spuds which gives the dredge an ability to increase digging operations to maximize production and efficiency. Third, The Dredge is equipped with a 1500 hp 20" booster pump which maximizes the dredges' ability to move thousands of gallons of slurry filled sediments beyond the dredges own capacities and boosts the material to the beach at more than 13.5 feet per second through the discharge line. Ahtna's "Katie John" is also equipped with a stern winch system that the dredge can use in Lieu of the spuds to increase advancement ability and swing radius during optimal conditions. The "Katie John" is an extremely mobile dredge for its size and is configured to be versatile in many different operating conditions to maximize production and efficiencies.

The Ellicott 18"x 18" dredge Pump capacity can easily dredge well over 600 cubic yards an hour in coarse sand at the Proposed project depths to feed the configured dredge booster pump. Ahtna has selected a modest 350 cubic yards and hour production bid rate for the project. Although, actual production rates are assumed to be much higher during dredge operations, Ahtna leaves room to exceed all expectation.

In short, it is AMCC professional opinion that our equipment, our dredge and operations plan, as well as, our team Meet and exceed the criteria of completing another safe and incident free project. Ahtna is in full awareness of the project concerns, plans, specifications, goals, and requirements to complete the renourishment project as bid. Although Ahtna views Callan Marine as a competent marine contractor with an impressive large ocean-going dredge, there assumption of our dredging equipment and operations plan is far from accurate.

Ahtna Marine & construction company is pleased to be a part of the bid opportunity for the Estero Island Beach Nourishment and Hurricane Recovery Project and Our team looks forward to the exceeding all expectations.

Sincerely,



Wesly Gammons
Vice president of AMCC

CONTINGENCY PLAN FOR SEVERE WEATHER

In the event of severe weather all personnel must follow the following procedures:

- All personnel shall shut down field operations and take shelter.
- If lightning is occurring, stop outdoor work and move indoors, or stay inside a moving vehicle (do not continue to linger outdoors). Shut down and move away from heavy equipment.
- In case of tornado conditions, seek out low ground (i.e. ditch or basement), shield yourself from falling objects, and stay away from windows.
- The SSHO will take a head count.
- Any visitors should remain with the group, if applicable.

Ahtna Marine and Construction Company's (AMCC's) General Safety Guidelines and emergency procedures apply to this Severe Weather Contingency Plan.

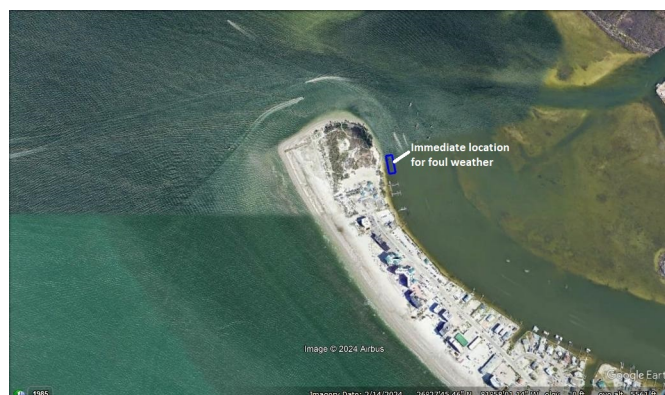
CONTINGENCY PLAN FOR SEVERE WEATHER

Severe weather can occur at any time while operating on and near the coastal waters of Florida. Seas can build quickly as the result of wind and weather. Lighting and water spouts are a frequent occurrence and proper planning is essential in ensuring that no harm comes to personnel, equipment, natural resources and the work site. As such, personnel continually monitor NOAA weather advisories and observe the radar. The following procedures are being put in place for severe weather events.

In the event of severe weather all personnel must follow the following procedures once notified of an impending severe weather condition:

Beach:

- Secure any loose materials.
- Anchor any equipment that may potentially be damaged.
- Move any heavy equipment well outside of potential wave run-up elevations.
- Remove any debris that may become a potential hazard.
- All personnel shall shut down field operations and take shelter.
- If lightning is occurring, stop outdoor work and move indoors, or stay inside a moving vehicle (do not continue to linger outdoors). Shut down and move away from heavy equipment.
- In case of tornado conditions, seek out low ground (i.e. ditch or basement), shield yourself from falling objects, and stay away from windows.
- The SSHO will take a head count.
- Any visitors should remain with the group, if applicable.



Dredge Site:

- If the condition of the sea worsens to the point that the dredge can no longer safely operate, the dredging operation shall be shut down and the dredge pipe shall be disconnected.
- Mark the end of the pipe with a buoy and allow it to remain floating in the channel to be retrieved when conditions improve. The end of the pipe will be properly lighted as per applicable regulations.
- Demobilize the dredge from the borrow site and sail it to a protected bay or other location where the seas are easily managed by the vessel.
- For typical short-term weather squalls, the dredge will not be allowed to remain unmanned. If weather conditions are expected to worsen to the point where it is unsafe for personnel to remain on the vessel, the dredge shall be moved to an available dock at a nearby marina where it can be secured to the seawall and be allowed to ride out the storm securely. This location will be determined based on availability of dock space. AMCC will locate several sites for emergency purposes. These marinas have staff on hand to observe if any vessels have issues with listing or bilge pump failure. They will have emergency contact names and phone numbers to ensure an immediate response should one of AMCC's vessels be in distress.
- Once the storm has passed and conditions allow, the dredge will return to the borrow area, reconnect to the pipe and resume work.

HURRICANE PLAN

The hurricane season extends from June to November. As such, this project falls within the timeframe typically associated with hurricanes. Hurricanes can cause extensive damage and loss of human life. To minimize these dangers the following hurricane plan was developed and will be adhered to.

The civilian hurricane warning service for the North Atlantic is provided by the National Hurricane Center, Miami, Florida. They collate ship, aircraft, radar and satellite data to produce and issue warnings and forecasts for the South Florida area. The Tropical Cyclone message is issued every six hours, with intermediate bulletins provided as needed.

For tropical storms and hurricanes threatening to cross the coast of the U.S., coastal advisories are issued to the public so that precautionary actions, including evacuation, can be initiated to minimize damage to property and personnel. Two levels of warnings are issued:

1. HURRICANE WATCH – a preliminary alert that a hurricane MAY threaten a specified portion of the coast. It is issued 36 hour before landfall may occur.
2. HURRICANE WARNING – indicates that hurricane conditions are expected along a specified portion of the coast. It is issued 24 hours before landfall will occur. To provide additional information for maritime interests, a Marine Advisory is also issued which provides storm position forecasts for up to 72 hours in advance of a storm and probabilities of hurricane strikes for coastal locations and offshore coordinates. A hurricane is a severe storm originating over the tropical waters typically during the months from June to October. Wind speeds near the center of a hurricane will be in excess of 74 miles per hour. A distinctive characteristic of a hurricane is its center eye and counterclockwise rotation with a diameter of ranging from 50 to 1000 miles.

When a hurricane watch/warnings are issued by the U.S. Weather Bureau, the following actions must be taken depending on the type of alert. Lower level protective actions are made inclusive to any and all higher level procedures:

HURRICANE ALERT I - CONDITION YELLOW

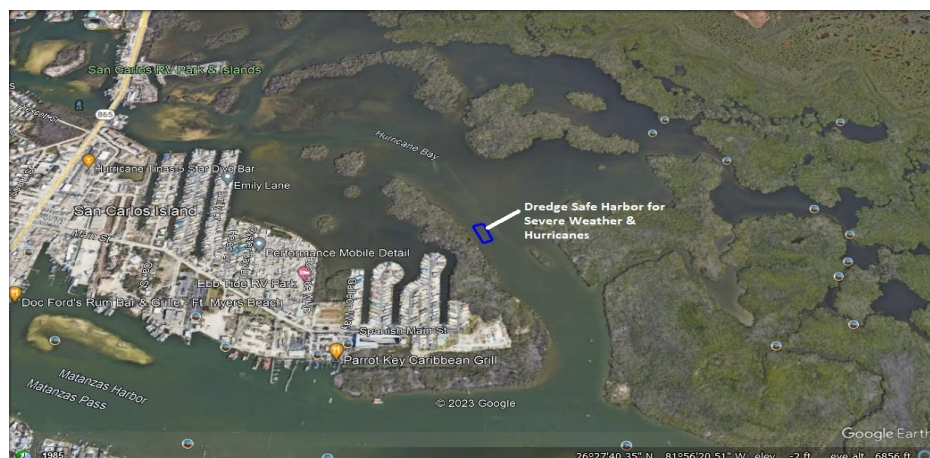
This alert is issued when a hurricane is in the western Atlantic, Caribbean or east of the Gulf of Mexico. Construction materials & equipment need not be relocated during this period. However, the following actions must be taken:

1. Clean-up site. Pick up all loose trash and excess material.
2. Review the schedule for possible critical activities that might be affected.
3. Coordinate & review preparedness with the Owner's Representative.
4. Check for supply of protective material like plywood, lumber, visqueen & sandbags.
5. All non-essential gear and equipment shall be moved to the designated laydown area.
6. All support vessels with accompanying equipment shall be moved to their safe harbor.
7. Dredge operation shall be shut down and pipe shall be disconnected and allowed to sink to the bottom of the channel. Marker buoys shall be attached to the end of the pipe to facilitate retrieval.
8. Dredge will be sailed to safe harbor location.

HURRICANE ALERT II - CONDITION ORANGE

A hurricane watch is issued when the storm makes a steady movement towards the project site and its vicinity. The following action must be taken:

1. Fill and secure all fuel storage tanks.
2. Secure equipment and material which is not practical to be relocated. All ancillary equipment shall be similarly anchored and secured. Pipe segments shall be strapped and anchored with ground anchors.
3. Locate and retain portable generators & utility pumps.
4. Vessels must be at their designated safe harbor. All equipment will be shut off, except for the bilge pump systems which will remove any water from the hull. Everything shall be locked down and secured to prevent any movement on the vessel.
5. All non-essential personnel evacuated to land based installations, unless deemed otherwise by the Captain or Supervisor. ALL PERSONNEL SHALL HAVE ON LIFE VESTS. Hatches, watertight doors, portals, etc., will be secured. All personnel will be instructed to keep movement to a minimum, in order to prevent mishaps as a result of slips or falls. No person shall be permitted on deck without the expressed consent of the Captain or Supervisor.



HURRICANE ALERT III - CONDITION RED

This is a hurricane warning where hurricane force winds are expected to occur within 24 hours at the project site and its vicinity. The following actions must be taken:

1. Final cleanup of the entire construction site.
2. Trash barrels shall be emptied and secured.
3. Trash dumpsters must be emptied and removed from the jobsite.
4. Secure all temporary toilets to stable objects.
5. Welding machines, compressors, gang boxes and gas bottles to be grouped together and, if possible, secured to stabilize objects.
6. Earthmoving equipment and other onsite vehicles must be left on high ground with brake set.
7. Relocate all onsite electronic equipment, drawings, plans, specifications, files and records to a safe place.
8. Turn off electrical power at main switches.
9. Notify the Owner's Representative and Project Manager when final preparations are done.
10. Evacuate the project site.
11. Document pre-hurricane conditions utilizing a still and/or video camera.
12. Onsite vehicles are to be left with brakes set on high ground in the laydown area.
13. Ice chests are to be secured with a full supply of ice on hand.
14. Security coverage will be as directed by the Site/Project Manager.
15. Notify Company/Operations Management when final stages are complete.

After the hurricane has passed through the area, winds and heavy rains have ended, damage assessment, clean up and remobilization of the project shall begin. Activities include:

1. Damage assessment. Review all areas of the project for water & wind damage.
2. Document damage on still and/or video camera.
3. Notify the insurance carrier for a potential claim.
4. Remove standing water.
5. Review the project with the electrician and turn on the power when safe.
6. Remove all temporary protective measures.
7. Clean-up and dispose of all damaged materials and debris.
8. Vessel to be made ship shape as rapidly as possible.
9. Meet with the Owner's Representative to review damage and schedule impact.

1. **Request:**

Meeting Date: May 20, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS, FLORIDA, APPROVING AN AGREEMENT BETWEEN THE TOWN OF FORT MYERS BEACH AND AHTNA MARINE AND CONSTRUCTION, LLC TO COMPLETE THE ESTERO ISLAND BEACH NOURISHMENT AND HURRICANE RECOVERY PROJECT; AUTHORIZING THE TOWN MANAGER TO EXECUTE AN AGREEMENT AND EXPEND BUDGETED FUNDS ON BEHALF OF THE TOWN; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, AND AN EFFECTIVE DATE.

Why the action is necessary:

The Town of Fort Myers Beach is seeking to maintain and restore the beach in the interest of public health, safety, and welfare to mitigate erosion on Estero Island beaches in order to improve the protection of upland development and infrastructure, the tourist economy, recreational interest, and wildlife habitat.

What the action accomplishes:

The Resolution accepts Ahtna Marine and Construction LLC as the lowest responsive and responsible bidder to ITB-24-03-EN Estero Island Beach Nourishment and Hurricane Recovery Project, approves the contract between Ahtna and the Town for beach nourishment work, authorizes the Town Manager to execute the contract, expend budgeted funds on behalf of the Town, and provides for an effective date.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

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 5.2 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 borrow area was added to the project scope to provide ample sand resources for future nourishment projects. The US Army Corps of Engineers Permit for the 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 was advertised 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 canceled, 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 accepting 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.

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 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.

Ahtna's bid did not include an option for a discounted cost in their bid to provide for 24 hour trucking.

The Lee County Board of County Commissioners approved the ILA with the Town on May 7th, 2024.

The Estero Island Beach Nourishment and Hurricane Recovery Project (Project) scope encompasses the Estero Island shoreline extending from Florida Department of Environmental Protection Range Monuments R-175 at the northern end of Estero Island to R-182 (North Project Segment), and R-182 to R-198 (Central Project Segment), and R-203 to R-207 (South Project Segment). The project will dredge, place, and grade high quality beach sand from permitted burrows in the Gulf of Mexico. Approximately 630,000 cubic yards of dredged sand will be placed onto the North and Central Segments, and approximately 316,000 cubic yards will be placed onto the Southern Segment. The contracted project duration is 180 days, and must commence no later than June 3, 2024 to be substantially complete by November 30, 2024.

Attachments:

1. Resolution 24-99, Ahtna Renourishment ITB-24-03-EN
2. Beach Renourishment Agreement 5202024-CECNS 1120 Final added 5.16.2024
3. Exhibit 2 - Specifications and Drawings added 5.16.2024
4. Exhibit 3 - Contractors Bid added 5.16.2024
5. CEC POPCC 240424 Agenda Item
6. Review of Successful Bidder Costs
7. 23LE1 Estero Island Shore Protection Project signed
8. ILA Beach Renouishment Town Executed 240404
9. PRJ_Report_705212_Renourishment Project CAT G
10. Chapter 252 Section 37 FS
11. Senate Bill 4-A

Financial Impact:

The Florida Department of Environmental Protection Agreement Number 23LE1 provides \$14,013,346.00 to fund the Estero Island Nourishment and Hurricane Recovery Project design, construction, and monitoring for The Project.

The Lee County Board of County Commissioners approved an Interlocal Agreement between Lee County and the Town of Fort Myers Beach (ILA) to provide up to \$9,200,000.00 in accordance with Section Six of the Interlocal Agreement to fund the Estero Island Beach Renourishment

Project permitting, engineering, construction, project management, and environmental protection and monitoring required by State and Federal permits for The Project.

The United States of America Department of Homeland Security Federal Emergency Management Agency Category G Public Assistance Program obligated \$1,450,910.70 for Disaster #4673DR Project # 705212 P/W 643 to furnish and install 56,845 cubic yards of sand and plant mature dune vegetation along the North Project Segment.

The State of Florida via the Florida Department of Emergency Management will fund \$161,212.30 for Disaster #4673DR Project # 705212 P/W 643 to furnish and install 56,845 cubic yards of sand and plant mature dune vegetation along the North Project Segment.

The Florida Department of Emergency Management State-Funded LAP Grant Agreement Number D1502 provides \$8,000,000 to fund dredge sand to place on the beach for beach restoration for damage caused by major Hurricane Ian and construct a dune along the Central and South Project Segments of Estero Island. A portion of these funds may be allowed by FDEM and FDEP to pay for the local cost share of the Central Project Segment. If Staff is successful in qualifying FDEM LAP Grant funds as local cost share, then the Town's estimated cost for the project is \$756,567.77. If the FDEM LAP Grant funds are not allowed to be used as local cost share, then the Town's estimated cost for the project is \$1,908,963.49.

6. **Alternative Action**

7. **Management Recommendations:**

If the previous agenda item XII.A. results in Town Council denying the Callan Bid Protest, then the Management Recommendation is:

- Approve the agreement between Ahtna and the Town to construct the Estero Island Beach Nourishment and Hurricane Recovery Project.
- Authorize the Town Manager to execute the agreement and expend budgeted funds on behalf of the Town.
- Provide an effective date.

If the previous agenda item XII.A. results in accepting the bid protest, then this item is moot and should be removed from the agenda.

8. **Recommended Approval:**

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

Created/Initiated - 5/14/2024
Approved - 5/14/2024
Approved - 5/15/2024
Approved - 5/15/2024
Final Approval - 5/15/2024

RESOLUTION NUMBER 24-99

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS, FLORIDA, APPROVING AN AGREEMENT BETWEEN THE TOWN OF FORT MYERS BEACH AND AHTNA MARINE AND CONSTRUCTION, LLC TO COMPLETE THE ESTERO ISLAND BEACH NOURISHMENT AND HURRICANE RECOVERY PROJECT; AUTHORIZING THE TOWN MANAGER TO EXECUTE AN AGREEMENT AND EXPEND BUDGETED FUNDS ON BEHALF OF THE TOWN; 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 ("Town") empowers the Town to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

WHEREAS, the Town of Fort Myers Beach is seeking to maintain and restore the beach in the interest of public health, safety, and welfare to mitigate erosion on Estero Island beaches in order to improve the protection of upland development and infrastructure, the tourist economy, recreational interest, and wildlife habitat; and

WHEREAS, the Estero Island Beach Nourishment and Hurricane Recovery Project (Project) scope encompasses the Estero Island shoreline extending from Florida Department of Environmental Protection Range Monuments R-175 at the northern end of Estero Island to R-182 (North Project Segment), and R-182 to R-198 (Central Project Segment), R-203 to R-207 (South Project Segment); and

WHEREAS, the Florida Department of Environmental Protection Agreement Number 23LE1 has agreed to provide \$14,013,346.00 to fund the Estero Island Nourishment and Hurricane Recovery Project's design, construction, and monitoring; and

WHEREAS, the Lee County Board of County Commissioners approved an Interlocal Agreement between Lee County and the Town of Fort Myers Beach (ILA) to provide up to \$9,200,000.00 in accordance with Section Six of the Interlocal Agreement to fund the Estero Island Beach Renourishment Project's permitting, engineering, construction, project management, and environmental protection and monitoring required by State and Federal permits for the Project; and

WHEREAS, the Florida Department of Emergency Management State-Funded LAP Grant Agreement Number D1502 provides \$8,000,000 to fund dredge sand to place on the beach for

beach restoration for damage caused by Hurricane Ian and construct a dune along the Central and South Project Segments of Estero Island; and

WHEREAS, the United States of America Department of Homeland Security Federal Emergency Management Agency (FEMA) Category G Public Assistance Program obligated \$1,450,910.70 for Disaster #4673DR Project # 705212 P/W 643 to furnish and install 56,845 cubic yards of sand and plant mature dune vegetation along the North Project Segment; and

WHEREAS, Chapter 252 Section 37 (5)(a), Florida Statutes states that whenever the State accepts financial assistance from the Federal Government or its agencies under the federal Public Assistance Program and such financial assistance is conditioned upon a requirement for matching funds, the State shall provide one-half of the required match for grants to local governments; and

WHEREAS, Senate Bill 4-A allocates \$350 million dollars to provide the other one-half of the required match for FEMA's Public Assistance program to local governments located in a county named in a FEMA disaster declaration for Hurricane Ian and the Town is located in Lee County named in the FEMA disaster declaration for Hurricane Ian; and

WHEREAS, the lowest and responsive bid for completion of the Project received from Ahtna in the amount of \$21,722,385.09 is eligible for the funding provided by the Florida Department of Environmental Protection Agreement 23LE1, the Lee County Estero Island Beach Renourishment Project ILA, the Florida Department of Emergency Management State-Funded LAP Grant Agreement Number D1502, the FEMA Category G Public Assistance Program, and State funding via the Florida Department of Emergency Management pursuant to 252.37(5)(a) and Senate Bill 4-A; and

WHEREAS, pursuant to a competitive procurement process in compliance with State Law and Town Code – ITB-24-03-EN “Estero Island Beach Nourishment and Hurricane Recovery Project,” the Town awarded the bid to Ahtna subject to verification of funding from Lee County and resolution of a bid protest filed by another bidder, which has been resolved; and

WHEREAS, Ahtna has agreed to execute an agreement for the for Beach Nourishment Work containing similar terms as included in the bid (“Agreement”). A copy of the Agreement is attached as Exhibit “A”; and

WHEREAS, it is in the best interest of the Town to contract with Ahtna as provided in the Agreement.

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 between the Town and Ahtna for Beach Nourishment Work. A copy of the agreement is attached hereto as Exhibit “A”.

Section 3. The Town Manager is hereby authorized to execute the Agreement and expend budgeted funds on behalf of the Town to satisfy the Town's financial obligations under the Agreement.

Section 4. This resolution shall take effect 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 20th 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 SOLELY:

Vose Law Firm, Town Attorney

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



Contract No. ITB-24-03-EN

Council Award Date: May 6, 2024

CONSTRUCTION CONTRACT AGREEMENT

THIS AGREEMENT (also referred herein as “Contract”) is made this 20th day of May, 2024 by and between the Town of Fort Myers Beach, Florida, a Florida municipal corporation, whose address is 2731 Oak Street, Fort Myers Beach, Florida 33931, hereinafter called “TOWN,” and Ahtna Marine and Construction Company, LLC, an Alaska foreign limited liability company, authorized to do business in the State of Florida, whose address is 444 W. Boynton Beach Blvd. E., Boynton Beach, FL 33435, hereinafter called “CONTRACTOR.”

WITNESSETH:

For and in consideration of the mutual covenants herein set forth, the parties agree as follows:

ARTICLE 1. WORK

The CONTRACTOR shall commence and complete all work for ESTERO ISLAND BEACH NOURISHMENT AND HURRICANE RECOVERY PROJECT as more particularly described in the TOWN’s ITB-24-03-EN in accordance with the Contract Documents. Generally, the Work consists of excavation, transport, and placement of approximately 950,000 cubic yards of beach compatible sand from a Gulf of Mexico sand source to nourish multiple beach segments on Estero Island and to offset impacts from Hurricane Ian. CONTRACTOR shall furnish all of the material, supplies, tools, equipment, labor and other services necessary for the completion of the project described in the Contract Documents.

ARTICLE 2. CONTRACT SUM

- 2.1. The TOWN shall pay the CONTRACTOR, in current funds, for the performance of the Work described in Article 1, subject to additions and deductions by Change Order as provided in the Contract Documents, the sum of \$21,722,385.09, said amount being the Total Base Bid Amount as listed on the CONTRACTOR’s Schedule of Values included in its Bid.

ARTICLE 3. PROGRESS PAYMENTS

Based upon applications for payments submitted to TOWN'S Representative by the CONTRACTOR, and Certificates for Payment issued by the TOWN'S representative, the TOWN shall make progress payments on account of the Contract Price to the CONTRACTOR as provided in the Contract Documents as follows:

- 3.1. Not later than ninety (90) calendar days following the approval of an Application for payment, TOWN will make payment to CONTRACTOR in an amount equal to ninety-five percent (95%) of that portion of the Contract Price properly allocated to labor, materials and equipment incorporated in the Work and ninety-five percent (95%) of the portion of the Contract Price properly allocated to materials and equipment suitably stored at the site or at some other location agreed upon in writing, for the period covered by the application for payment, less the aggregate of previous payments made by the TOWN.
- 3.2. The TOWN shall withhold 5% of each progress payment as retainage until the project is completed.
- 3.3. 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 TOWN shall determine for all incomplete work, unsettled claims or unused units as provided in the Contract Documents.

ARTICLE 4. CONTRACT DOCUMENTS

The Term "**Contract Documents**" shall include this Contract, Attachments, the Contractor's Bid, except to the extent it conflicts with any other contractual provision; the Notice to Proceed, the Public Payment and Performance Bond(s); the Bid Package prepared and issued by the TOWN with 4 Addendums; the General Conditions; the Specifications and Drawings; any Special Provisions all Written Amendments to the Contract or any contract document; Certificates of Insurance; Change Orders; and Work Change Directives or Field Orders. In the event of conflict between any provision of any document referenced herein as part of the contract and this Agreement, the terms of this Agreement shall control. A copy of the Contract Documents are or shall be attached as Exhibits to this Agreement, and are incorporated by reference herein as provided in this Article.

ARTICLE 5. TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

- 5.1. The CONTRACTOR shall commence work as required by the CONTRACT DOCUMENTS and as provided in the Official Notice to Proceed, to be issued by the TOWN no later than June 3, 2024, unless otherwise agreed by the parties.
- 5.2. Substantial completion shall be achieved not later than 180 consecutive calendar days from the date of the Notice to Proceed, unless the period for substantial completion is extended otherwise by the CONTRACT DOCUMENTS or by written

agreement of the parties.

- 5.3. Final completion shall be achieved not later than 195 consecutive calendar days from the Notice to Proceed, unless the period for final completion is extended otherwise by the CONTRACT DOCUMENTS or by written agreement of the parties.
- 5.4. Time is of the essence in the performance of this Contract.

Liquidated Damages:

- 5.5. The TOWN and CONTRACTOR recognize that time is of the essence of this agreement and that the TOWN will suffer financial loss if the work is not completed within the times specified in 5.2 and 5.3 above, plus any extensions thereof allowed by Change Order. They also recognize the delays, expense, and difficulties involved in proving in a legal proceeding and the actual loss suffered by the TOWN if the work is not completed on time. Accordingly, instead of requiring any such proof, TOWN and CONTRACTOR agree that Liquidated Damages will be assessed in the amount of \$3,570 per day for each calendar day that is beyond the substantial and final completion dates required by the CONTRACT DOCUMENTS.

The TOWN shall have the right to deduct all damages due from the final payment request as well as retainage.

Any sums due and payable hereunder by the CONTRACTOR shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the TOWN estimated at the time of executing the Contract. When the TOWN reasonably believes that substantial completion will be inexcusably delayed, the TOWN shall be entitled, but not required, to withhold from any amounts otherwise due the CONTRACTOR an amount then believed by the TOWN to be adequate to recover liquidated damages applicable to such delays. If and when the CONTRACTOR overcomes the delay in achieving substantial Completion, or any part thereof, for which the TOWN has withheld payment, the TOWN shall promptly release to the CONTRACTOR those funds withheld, but no longer applicable as liquidated damages, less sums incurred by the TOWN resulting from CONTRACTOR's delay in achieving substantial completion.

The CONTRACTOR shall also be liable for any actual damages sustained by the TOWN after CONTRACTOR has achieved substantial completion for CONTRACTOR's failure to fully complete the Contract Documents. Actual damages may include, but not be limited to, costs related to supervision, inspection, rentals, testing, consulting fees, or lost productivity and overhead. The TOWN shall have the right to deduct all damages due from final payment request as well as retainage.

ARTICLE 6. CONTRACTOR'S REPRESENTATIONS.

In order to induce TOWN to enter into this Agreement, CONTRACTOR makes the following representations:

CONTRACTOR has been familiarized with the Contract Documents and the nature and extent of the work required to be performed, locality, local conditions, the areas of intended construction including surface and sub-surface conditions, and Federal, State and Local laws, ordinances, rules and regulation that in any manner may affect costs, progress or performance of the work.

CONTRACTOR has studied carefully all reports of investigations and tests of subsurface and latent physical conditions at the site which may affect cost, progress or performance of the work.

CONTRACTOR has made or caused to be made examinations, investigations, tests and studies as deemed necessary for the performance of the Work at the Contract Price, within the Contract Time, and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations, test, reports or similar data are or will be required by CONTRACTOR for such purposes.

CONTRACTOR has correlated the results of all such observations, examination, investigations, test, reports and data with the terms and conditions of the Contract Documents.

CONTRACTOR has given TOWN written notice of all conflicts, errors or discrepancies that have been discovered in the CONTRACT DOCUMENTS and the written resolution thereof by TOWN is acceptable to CONTRACTOR.

ARTICLE 7. GENERAL CONDITIONS

7.1 RESPONSIBILITY OF THE CONTRACTOR.

The CONTRACTOR shall be responsible for the condition of the Work until its release from its obligations. It shall bear all losses resulting to it on account of the amount or character of the Work, the character of the ground or existing underground installation being different from what it anticipated, or on account of the weather or the elements.

Information shown on the Drawings as to the location of the existing utilities has been prepared from the most reliable data available to the TOWN. This information is not guaranteed, however, and it shall be this CONTRACTOR's responsibility to determine the location, character and depth of existing utilities. Extreme caution shall be exercised to eliminate any possibility of any damage to utilities resulting from CONTRACTOR's activities. The location of all overhead utilities shall be verified and the TOWN notified on any conflict which might occur. The CONTRACTOR shall be responsible for determining which poles will need shoring during excavation and shall provide such shoring and

support as is required.

Caution shall be exercised by the CONTRACTOR in grading operations, as some existing underground utilities have a minimum cover. The CONTRACTOR shall be responsible for replacing any underground facility broken or dislocated during construction for which sufficient underground information has been shown on the plans.

ARTICLE 8. TERMINATION FOR CONVENIENCE

This Contract may be terminated by TOWN for its convenience upon thirty (30) days prior written notice to CONTRACTOR. In the event of termination, the CONTRACTOR shall be paid as compensation in full for work performed to the date of such termination, an amount prorated in accordance with the work substantially performed under this Agreement. Such amount shall be paid by the TOWN after inspection of the work to determine the extent of performance under this Agreement, whether completed or in progress.

ARTICLE 9. PUBLIC RECORDS

The following provisions are required by §119.0701, Fla. Stat., and may not be amended. CONTRACTOR shall keep and maintain public records required by the TOWN to perform the services required under this Contract. Upon request from TOWN's custodian of public records, CONTRACTOR shall provide 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. 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 Contract's term and following completion of the Contract if CONTRACTOR does not transfer the public records to TOWN. Upon completion of the Contract, CONTRACTOR may transfer, at no cost, to TOWN all public records in possession of CONTRACTOR or keep and maintain public records required by TOWN to perform the services required under the Contract.

If CONTRACTOR transfers all public records to TOWN upon completion of the Contract, CONTRACTOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If CONTRACTOR keeps and maintains public records upon completion of the Contract, CONTRACTOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to TOWN, upon request from TOWN's custodian of public records, in a format that is compatible with TOWN's information technology systems. The failure of CONTRACTOR 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 THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO

THIS CONTRACT, CONTACT THE CUSTODIAN OF THE PUBLIC RECORDS AT (239) 765-0202, FMBPUBLICRECORDS@FMBGOV.COM, 2545 ESTERO BOULEVARD, FORT MYERS BEACH, FLORIDA 33931.

CONTRACTOR further agrees to indemnify and hold the TOWN harmless against any and all claims, damage awards, and causes of action arising from CONTRACTOR's failure to comply with the public records disclosure requirements of Section 119.07(1), Florida Statutes, or by CONTRACTOR's failure to maintain public records that are exempt or confidential and exempt from the public records disclosure requirements, including, but not limited to, any third party claims or awards for attorneys' fees and costs arising therefrom. CONTRACTOR authorizes the TOWN to seek declaratory, injunctive, or other appropriate relief against CONTRACTOR in Lee County Circuit Court on an expedited basis to enforce the requirements of this section.

The CONTRACTOR agrees to provide the TOWN, Lee County, and the Florida Department of Environmental Protection, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the CONTRACTOR which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions. The CONTRACTOR agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. The CONTRACTOR agrees to provide the FEMA Administrator or his or her authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

ARTICLE 10. MISCELLANEOUS PROVISIONS

- 10.1. Final payment, constituting the entire unpaid balance of the Contract Price shall be paid by the TOWN to the CONTRACTOR when the work has been completed, the Contract fully performed, and a final Certificate for Payment, form No. FMB: 013, has been approved by the TOWN.
- 10.2. Terms used in the Agreement which are defined in the General Conditions of the Contract (Part F) shall have the meaning designated in those conditions.
- 10.3. The TOWN 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 to all covenants, agreements, and obligations contained in the Contract Documents.
- 10.4. This Agreement may not be assigned except with the written consent of the TOWN, and if so assigned, shall extend and be binding upon the successors and assigns of the CONTRACTOR.

- 10.5. The CONTRACTOR agrees through the signing of this agreement by an authorized party or agent that it shall hold harmless and indemnify the TOWN and its agents and employees from all suits and action, including attorney's fees, and all cost of litigation and judgments of every name and description arising out of and incidental to the performance of this Contract or Work performed thereunder, whether or not due to or caused by negligence of the TOWN, excluding only the sole negligence of the TOWN. This provision shall also pertain to any claims brought against the TOWN by any employee of the CONTRACTOR, or sub-CONTRACTOR(s), or anyone directly or indirectly employed by any of them. The CONTRACTOR'S obligation under this provision shall not be limited in any way to the agreed upon Contract Price as shown in this agreement or the CONTRACTOR'S limit of or lack of sufficient insurance protection. The parties acknowledge the exchange and receipt of additional consideration for this indemnification, which shall survive the termination of this Agreement.
- 10.6. This Agreement constitutes the entire and exclusive agreement between the parties and supersedes any and all prior communications, discussions, negotiations, understandings, or agreements, whether written or oral.
- 10.7. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and the agreement shall be construed in all respects as if such invalid or unenforceable provision(s) were omitted.
- 10.8. No Amendments or changes to the terms or conditions of this agreement shall be valid unless in writing and signed by all parties.
- 10.9. The validity, construction and effect of this Agreement shall be governed by the laws of the State of Florida. All claims and/or dispute resolution concerning this Agreement, whether by mediation, litigation, or other agreed to method of dispute resolution, shall take place in Lee County, Florida. Any litigation between the parties arising from this Agreement shall be filed in the 20th Judicial Circuit in and for Lee County, Florida.
- 10.10. TOWN reserves unto itself the sole authority to execute and authorize the issuance of Change Orders, directives, or other documents to the CONTRACTOR which impact on or change the Contract Time or Price. These actions by the TOWN will be taken after due consideration of the recommendations and analysis of the TOWN's consulting engineer. This provision supersedes any other contradictory provisions in the Contract Documents.
- 10.11 Any dispute arising out of or relating to any of the Contract Documents or this Agreement shall be first submitted to mediation for resolution. The parties shall mutually agree upon a mediator and equally divide the expenses of such mediation. In the event of an impasse and litigation, the parties agree to each pay their own attorney fees and costs.

- 10.12 No provision in this contract shall be construed more strongly against either party or in a light less favorable to either party because of who drafted it as a method of contract interpretation.
- 10.13 The parties recognize that funding in whole or in part for the services authorized by this Contract will be obtained from a grant from the Florida Department of Environmental Protection, Lee County, Florida, a grant from the Florida Department of Emergency Management, and the United States of America Department of Homeland Security Federal Emergency Management Agency (FEMA). CONTRACTOR agrees to comply with any additional requirements that may be required related to the TOWN's receipt of the funding and contractual obligations associated with the funding.

ARTICLE 11. CONTRACT TERMS REQUIRED BY FLORIDA LAW.

- 11.1. **Compliance/Consistency with Section 768.28, Fla. Stat.** Any indemnification or agreement to defend or hold harmless by TOWN specified in the Agreement shall not be construed as a waiver of TOWN's sovereign immunity and shall be limited to such indemnification and liability limits consistent with the requirements of Section 768.28, Fla. Stat. and subject to the procedural requirements set forth therein. Any other purported indemnification by TOWN in the Agreement in derogation hereof shall be void and of no force or effect.
- 11.2 **Non-Appropriation.** TOWN's performance and obligation to pay under this Agreement is contingent upon an appropriation during the TOWN's annual budget approval process. If funds are not appropriated for a fiscal year, then CONTRACTOR shall be notified as soon as is practical by memorandum from the Town Manager or designee that funds have not been appropriated for continuation of the Agreement, and the Agreement shall expire at the end of the fiscal year for which funding has been appropriated. The termination of the Agreement at fiscal year end shall be without penalty or expense to the TOWN subject to the TOWN paying all invoices for services rendered during the period the Agreement was funded by appropriations.
- 11.3. **E-Verify Compliance.** By entering into this Agreement, the CONTRACTOR is obligated to comply with the provisions of Section 448.095, Florida Statutes, "Employment Eligibility," as amended from time to time. This includes but is not limited to register with and use E-Verify System to verify the work authorization status of all newly hired employees, and requiring all subCONTRACTORs to provide an affidavit to CONTRACTOR attesting that the subCONTRACTOR does not employ, contract with, or subcontract with, an unauthorized alien. CONTRACTOR agrees to maintain a copy of such affidavit for the duration of this Agreement. Failure to comply with this paragraph will result in the termination of this Agreement as provided in Section 448.095, Florida Statutes, CONTRACTOR is registered with and uses the E-Verify system to verify the work authorization status of all newly hired employees, that in accordance with such statute,

CONTRACTOR requires from each of its subCONTRACTORS an affidavit stating that the subCONTRACTOR does not employ, contract with, or subcontract with an unauthorized alien, and that CONTRACTOR is otherwise in compliance with Sections 448.09 and 448.095, Florida Statutes.

- 11.4. **Compliance/Consistency with Scrutinized Companies Provisions of Florida Statutes.** Section 287.135(2)(a), Florida Statutes, prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services of any amount if, at the time of contracting or renewal, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to section 215.4725, Florida Statutes, or is engaged in a boycott of Israel. Section 287.135(2)(b), Florida Statutes, further prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services over one million dollars (\$1,000,000) if, at the time of contracting or renewal, the company is on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, both created pursuant to section 215.473, Florida Statutes, or the company is engaged in business operations in Cuba or Syria. CONTRACTOR hereby certifies that CONTRACTOR is not listed on any of the following: (i) the Scrutinized Companies that Boycott Israel List, (ii) Scrutinized Companies with Activities in Sudan List, or (iii) the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. CONTRACTOR further hereby certifies that CONTRACTOR is not engaged in a boycott of Israel or engaged in business operations in Cuba or Syria. CONTRACTOR understands that pursuant to section 287.135, Florida Statutes, the submission of a false certification may subject CONTRACTOR to civil penalties, attorney's fees, and/or costs. CONTRACTOR further understands that any contract with TOWN for goods or services of any amount may be terminated at the option of TOWN if CONTRACTOR (i) is found to have submitted a false certification, (ii) has been placed on the Scrutinized Companies that Boycott Israel List, or (iii) is engaged in a boycott of Israel. And, in addition to the foregoing, if the amount of the contract is one million dollars (\$1,000,000) or more, the contract may be terminated at the option of TOWN if the company is found to have submitted a false certification, has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has been engaged in business operations in Cuba or Syria.

Moreover, CONTRACTOR shall comply with the disclosure requirements set forth in section 286.101 (3) (a), F.S., which requires "Any entity that applies to a state agency or political subdivision for a grant or proposes having a contract value of \$100,000 or more shall disclose to the state agency or political subdivision any current or prior interest of, any contract with, or any grant or gift received from a "foreign country of concern" if such interest, contract, grant or gift received from a "foreign country of concern" if such interest, contract, grant or gift has a value of \$50,000 or more and such interest existed at any time or such contract, grant or gift was received or in force at any time during the previous five (5) years. Such

disclosure shall contain the name and mailing address of the disclosing entity, the amount of the gift or the value of the interest disclosed, the applicable “foreign country of concern” and, if applicable the date of termination of the contract or interest, the date of receipt of the grant or gift and the name of the agent or controlled entity that is the source or interest holder. Within one (1) year before applying for any grant or proposing any contract, such entity must provide a copy of such disclosure to the Department of Financial Services”. Pursuant to section 268.101(7), F.S.: “In addition to any fine assessed under [section 286.101(7)(a), F.S.], a final order determining a third or subsequent violation by an entity other than a state agency or political subdivision shall automatically disqualify the entity from eligibility for any grant or contract funded by a state agency or any political subdivision until such ineligibility is lifted by the Administration Commission for good cause.”

- 11.5 Public Entities Crime or Convicted Vendor List.** CONTRACTOR agrees and assumes a continuous duty to disclose to the TOWN if the CONTRACTOR or any of its affiliates as defined by Section 287.133(1)(a), Florida Statutes are placed on the Convicted Vendor List or the Antitrust Violator Vendor List maintained by the Florida Department of Management Services.
- 11.6 Data Management; Notice of Breach.** CONTRACTOR shall cooperate with the TOWN and provide timely incident reporting, response activities/fact gathering, public and agency notification, severity level assessment, after-action reports etc, which the TOWN must report in accordance with Sections 282.3185(5) & (6), Florida Statutes in the event of a data breach.
- 11.7 Environmental and Social Government and Corporate Activism.** The TOWN has not given preference or requested documentation from the CONTRACTOR based on CONTRACTOR’s social, political or ideological interest. CONTRACTOR agrees to similarly not request documentation or give preference to any subCONTRACTOR based on the subCONTRACTOR’s social, political or ideological interests.

In witness whereof, TOWN and CONTRACTOR have signed this agreement in duplicate originals. One original has been retained by the Town Clerk, one original has been delivered to the CONTRACTOR. All portions of the Contract Document have been signed or identified by TOWN and CONTRACTOR.

Signed, sealed, and delivered in the presence of:

(Secretary)

(Corporate Seal)

Ahtna Marine and Construction Company,
LLC

BY: _____
(Title)

Date: _____

TOWN OF FORT MYERS BEACH COUNCIL
FORT MYERS BEACH, FLORIDA

ATTEST:

BY: _____
Amy Baker, Town Clerk

Date: _____

BY: _____
Andrew Hyatt, Town Manager

Date: _____

APPROVED AS TO FORM

BY: _____
Vose Law Firm, Town Attorney

EXHIBITS

(Documents highlighted in bold are attached to the Contract)

1. **General Conditions** (initialed by the parties when contract is signed)
2. **Specifications and Drawings** (initialed by the parties when the contract is signed)
3. **Copy of the CONTRACTOR's Bid**
4. Special Provisions (as contained in the ITB-24-03-EN)
5. Amendments to Contract (if any)
6. The Bid Package prepared and issued by the TOWN. (Available from the Town Clerk.)
7. Copy of the Notice to Proceed (To be inserted as per Contract terms)
8. Copy of the Public Payment and Performance Bond (To be provided when the contract is executed by the parties)
9. Certificates of Insurance (To be provided when Contract is executed)
10. Change Orders (As included in the ITB-24-03-EN, and to be provided as needed)
11. Work Change Directives or Field Orders (As included in ITB-24-03-EN, and to be provided as needed).

EXHIBIT 1 – GENERAL CONDITIONS

ARTICLE 1. PRELIMINARY MATTERS

Titles, Article Headings, Section Headings, Indexes and Table of Contents are given for the sake of clarity; ease of reading and as a guide for ease of reference to specific topics within the General Conditions.

Administration

1.1 The TOWN reserves the right to make final decisions considering any TOWN Consultant's recommendations or interpretations of the Contract Documents. The TOWN's Consultant does not have authority to obligate or commit the TOWN to fund additional expenditures or approve extensions of time over the approved Contract time or price.

Copies of Documents

1.2 The TOWN shall furnish to the CONTRACTOR the number of copies of the Contract Documents specified in the Supplementary Conditions as are reasonably necessary for the execution of the Work. Additional copies will be furnished, upon request, at the cost of reproduction which shall be paid by the CONTRACTOR.

Before Starting Construction

1.3 Before undertaking each phase of the Work, the CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. The CONTRACTOR shall promptly report in writing to the OWNER'S REPRESENTATIVE any conflict, error or discrepancy which the CONTRACTOR may discover, or other information known to the CONTRACTOR and shall obtain a written interpretation or clarification from the OWNER'S REPRESENTATIVE before proceeding with any Work affected thereby. If the CONTRACTOR performs any construction activity knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the OWNER'S REPRESENTATIVE, the CONTRACTOR shall assume responsibility for such performance and shall share in costs associated with correction; however, the CONTRACTOR shall not be liable to the TOWN for failure to report any conflict, error or discrepancy in the Contract Documents, unless the CONTRACTOR had actual knowledge thereof or should reasonably have known thereof.

1.4 Within ten (10) calendar days after the Effective Date of the Agreement (unless otherwise specified in the Contract Documents), the CONTRACTOR shall submit to the OWNER'S REPRESENTATIVE for review and approval:

1.4.1 an estimated progress schedule indicating the starting and completion dates of the various stages of the Work:

1.4.1.1 long lead item(s) shall be identified and scheduled accordingly.

1.4.2 a preliminary schedule of Shop Drawing submission; and

1.4.3 a preliminary schedule of values for all of the Work which will include quantities and

prices of items aggregating the Contract Price and will subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction on Form No. FMB:011. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work which will be confirmed in writing by the CONTRACTOR at the time of submission; and specify times for Application for Payment.

1.4.4 a plan of work for maintenance of traffic, when the Contract Documents require maintenance of traffic.

1.4.5 for informational purposes, a proposed listing of subcontractors to be used for the project.

Pre-Construction Conference

1.5 Within fifteen (15) calendar days after the Effective Date of the Agreement, but before the CONTRACTOR starts the Work at the site, a conference attended by the CONTRACTOR, the OWNER'S REPRESENTATIVE, the TOWN, and Others as appropriate, will be held to discuss the items referred to in paragraph 1.4, to discuss procedures for handling Shop Drawings and other submittals and for processing Applications for Payment, and to establish an understanding among the parties as to the Work.

ARTICLE 2. DEFINITIONS

The following definition of terms is provided to establish a common understanding between the parties as to the intended usage, application and interpretation of such terms.

AGREEMENT means the written agreement between the TOWN and the CONTRACTOR covering the Work to be performed; the Agreement is a part of the Contract Documents.

CHANGE ORDERS are written orders to the CONTRACTOR signed by the TOWN, issued after execution of the Contract, authorizing a change in the Work or an adjustment in the Contract price or the Contract Time. The Contract Price and the Contract Time may be changed only by a written Change Order. A Change Order signed by the CONTRACTOR indicates his agreement therewith, including the adjustment in the Contract Price or the Contract Time.

COMPLETION (FINAL) means acceptance of the Project by the TOWN as evidenced by its signature upon a final payment Certification Form FMB:014, and approval thereof by the Town of Fort Myers Beach Town Council or their designee. The final payment Certification shall be signed only after the TOWN has assured itself by tests, inspections, or otherwise that all of the provisions of the Contract have been complied with.

COMPLETION (SUBSTANTIAL) shall mean an acceptance of the Work by the TOWN when construction is sufficiently complete in accordance with the Contract Documents so the TOWN can occupy or utilize the Work or designated portion thereof for the intended use. A certificate of occupancy, issued by the Building Official, is required concurrent with or prior to issuance of the Certificate of Substantial Completion.

CONSTRUCTION is the erection, fabrication, assembly, remodeling, renovation, addition, modification, repair or demolition of any building or structure or any appurtenances connected or attached to such buildings or structures. The term includes but is not limited to the repair, replacement modification or construction of buildings, roads, bridges, sidewalks, traffic devices,

parking lots, drainage, underground and overhead utilities.

CONSULTANT is a person or entity lawfully licensed to practice Architecture or Engineering or another profession and registered in the State of Florida, identified as such in the Construction Contract, and is referred to throughout the Contract Documents as if singular in number and masculine in genre.

The term includes the CONSULTANT's authorized representative.

CONTRACT DOCUMENTS consist of the documents as defined in Article IV of the Contract.

CONTRACT PRICE means the total monies payable to the CONTRACTOR under the Contract Documents.

CONTRACT TIME means the number of Calendar days stated in the Agreement for the purpose of establishing Substantial Completion and Final Completion dates.

CONTRACTOR is the person, firm, joint venture, or corporation with whom the TOWN has contracted and who has the primary responsibility for performance of the work.

DAYS - The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically designated. A calendar day constitutes twenty-four (24) hours measured from midnight to the next midnight.

DEFECTIVE - An adjective which, when modifying the word "Work," refers to Work that is unsatisfactory, faulty or deficient, or does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to the OWNER'S REPRESENTATIVE recommendation of final payment (unless responsibility for the protection thereof has been assumed by the TOWN at Substantial Completion in accordance with paragraph 14.5 or 14.6).

EFFECTIVE DATE – The Effective Date of the Agreement is the date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is last signed by the last of the two parties.

FIELD CHANGE ORDER is a written change order requested by the OWNER'S Representative, accepted by the CONTRACTOR, and approved by the PROJECT MANAGER for minor changes in the Work, not involving adjustments in the Contract Sum or an extension of Time, and not inconsistent with the overall intent of the Contract Documents.

FIELD DIRECTIVE CHANGE - A written directive to the CONTRACT, issued on or after the effective date of the Agreement ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen physical conditions under which the Work is to be performed as provided in paragraph 5.2 or 5.3, or to emergencies under paragraph 7.20. A Field Directive Change may not change the Contract Price or the Contract Time, but is evidence that the parties expect that the change directed or documented by a Field Directive Change will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or the Contract Time as provided in Articles 11 and 12.

FINAL ACCEPTANCE means acceptance of the Work by the TOWN upon the expiration of the warranty period as stated in the Contract Documents.

MATERIALS – Includes, but is not limited to, anything used in the process of constructing, demolishing, renovating or remodeling of any building, structure, road, bridge, recreational facility, transportation element and utility or any addition thereto utilized for this project.

NOTICE means written notice. Notice shall be served upon the CONTRACTOR either personally or by leaving the said Notice at his residence or addressed to the CONTRACTOR at the place of business stated in the Bid Proposal and deposited in the United States Mail.

NOTICE TO PROCEED is a written instrument issued by the TOWN to the CONTRACTOR, authorizing the CONTRACTOR to commence Work on the Project. The NOTICE TO PROCEED shall include the effective date of Commencement.

NOTICE OF AWARD means the written Notice given by the TOWN to the successful BIDDER.

NOTICE OF TERMINATION is a written instrument issued in accordance with the Contract Documents as stated in Section 15.2, by the TOWN to the CONTRACTOR or by the CONTRACTOR to the TOWN notifying the receiving party that the Contract is being terminated. The NOTICE shall clearly identify the effective date the Contract is to be terminated.

OWNER'S REPRESENTATIVE is the CONSULTANT contracted by the TOWN for Professional Services during the construction phase of this project or a qualified person authorized as his or her official representative, or in the absence of such a contract, the Project Manager will be considered the OWNER'S REPRESENTATIVE. The OWNER'S REPRESENTATIVE is not authorized to issue change orders to the contract sum, contract time or scope of work without express approval of the TOWN.

PLANS AND/OR DRAWINGS are a graphic representation of the arrangement of the materials or parts of the construction of the project and are a portion of the Contract Documents.

PROJECT shall mean the entire improvement contracted for by the Town.

PROJECT MANAGER is an employee or representative of the Town Department which requested the Contract and is a designee authorized by or for that Department who is the representative of the Town Council in matters concerning this project. The project manager will act as the OWNER'S REPRESENTATIVE in the absence of a Town contract with a consultant. The PROJECT MANAGER is not authorized to issue changes to the Contract Sum, Contract Time, or Scope of Work without express approval by the Department Director, Town Manager, or Town Council. The PROJECT MANAGER, within the authority conferred by the Town Council, acting as the TOWN'S designated representative shall initiate written Change Orders, and notification to the CONTRACTOR of any and all changes approved by the TOWN in the CONTRACTOR'S (1) compensation (2) time and/or schedule of service delivery; (3) any Amendment (s) or other change(s) relative to the WORK and ADDITIONAL SERVICES pursuant to this Contract, or AMENDMENTS, or CHANGE ORDERS pertaining thereto. Following TOWN approval, the Project Manager shall coordinate completion of any such documents. The PROJECT MANAGER or designee shall be responsible for acting on the TOWN'S behalf to administer, coordinate, interpret and otherwise manage the contractual provisions and requirements, or any AMENDMENT(S), or CHANGE ORDER(S) issued there under.

PROJECT MANUAL means the General Conditions, Supplementary General Conditions, Technical Specifications, and the Bidding Documents.

PROJECT/RESIDENT INSPECTOR - The authorized representative of the TOWN who is assigned to the project as an observer to observe the work and report back to the TOWN and CONSULTANT.

PUBLIC WORKS DIRECTOR means the person employed by the TOWN COUNCIL to serve and act on the TOWN'S behalf as the DIRECTOR of the TOWN'S Public Works Office.

SPECIFICATIONS are written documents organized into divisions, sections, and articles which provide detailed instructions to the CONTRACTOR pertaining, but not limited to, materials, style, workmanship, fabrication, dimensions, colors, warranties, finishes, quality, manufacturer, grade and operational data of all components to be provided by the CONTRACTOR and incorporated into the Project.

SUBCONTRACTOR is a person, firm, partnership, corporation, or entity who has a direct contract with the CONTRACTOR to perform any of the Work at the site. The term Subcontractor does not include those whose sole purpose is that of a supplier of materials. A supplier of materials shall be classified as a Subcontractor if it enters into any agreement, whether written or verbal, for the installation of said materials. The term Subcontractor means a Subcontractor or its authorized representative.

SUB-Subcontractor is a person, firm, partnership, corporation, or entity who has a direct or indirect Contract with a Subcontractor to perform any of the Work at the site. The term Sub-Subcontractor means a Sub-Subcontractor or its authorized representative.

SUPPLIER - A manufacturer, fabricator, distributor, materialmen or vendor.

SURETY is the surety company or individual that is bound by Contract bond with and for the CONTRACTOR who is primarily liable and is responsible for CONTRACTOR'S acceptable performance of the Project and payment of all debts pertaining to the Contract Documents in accordance with Section 255.05, Florida Statutes.

TOWN means the Town of Fort Myers Beach, Florida, Florida municipal corporation, its successors and assigns, also referred to as OWNER.

UNDERGROUND FACILITIES - All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasements containing such facilities which have been installed underground to furnish any of the following services or materials: electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, sewage and drainage removal, traffic or other control systems or water.

WORK is the construction required by the Contract Documents and includes all labor necessary to produce such construction, and all materials and equipment incorporated or to be incorporated in such construction.

ARTICLE 3. STARTING THE WORK

3.1 Written Notice to Proceed is contingent upon and will be issued subsequent to the CONTRACTOR fully satisfying the TOWN'S insurance and Bond submittal requirements. Until the CONTRACTOR receives the TOWN'S written Notice to Proceed, the CONTRACTOR is

advised that the TOWN will not be liable for any expenses which the CONTRACTOR may incur before the contract is executed and the written Notice to Proceed is issued.

3.2 The Contract time shall begin to run on the date specified in the "Notice to Proceed".

3.3 The CONTRACTOR is required, before commencing the Work, to record in the public records and deliver to the TOWN the Public Construction Bond issued by a surety insurer authorized to do business in the State of Florida as Surety. The Bond shall be in substantially the form specified by State law (Section 255.05, Fla. Stat.), must state the name and principal business address of both the principal and the Surety and must contain a description of the project sufficient to identify it. A copy of the bond shall be posted in a conspicuous place at the project site.

3.4 The TOWN will forward to the CONTRACTOR a Notice of Commencement with instructions to post in a conspicuous spot on the project site.

ARTICLE 4. INTERPRETATION, INTENT, AMENDING AND REUSE OF CONTRACT DOCUMENTS.

4.1 It is the intent of the Specifications and Plans to describe a complete Project to be constructed in accordance with the Contract Documents.

4.2 The Contract Documents are complementary; what is called for by one is as binding as if called for by all. If the CONTRACTOR finds a conflict, error or discrepancy in the Contract Documents, he or she shall immediately call it to the attention of the OWNER'S REPRESENTATIVE in writing before proceeding with the Work affected thereby.

4.3 Any Work that may be reasonably inferred from the specifications or Drawings as being required to produce the intended result shall be supplied whether or not it is specifically called for.

4.4 Work, materials or equipment described in words which have a well-known technical or trade meaning, shall be deemed to refer to such recognized standards.

4.5 In resolving conflicts, errors, and discrepancies, the order of precedence of the Contract Documents, as applicable, is as follows:

1. Change Order
2. Standard Form of Agreement/Contract
3. Addenda
4. Supplementary Conditions
5. General Conditions
6. Specifications
7. Drawings
8. Figure Dimensions
9. Scale Dimensions (Large Scale Drawings supersede Small Scale Drawings)

The Town may, at its sole discretion, in resolving conflicts, errors or discrepancies, opt to require that the more stringent requirement or that which the Town considers to be in its best interest shall apply, the order of precedence indicated in this paragraph 4.5 notwithstanding.

AMENDING AND SUPPLEMENTING CONTRACT DOCUMENTS:

4.6 The Contract Documents may be amended to provide for additions, deletions and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways:

- 4.6.1 a formal Written Amendment,
- 4.6.2 a Change Order (pursuant to Article 10).
- 4.6.3 a Field Directive Change (pursuant to Article 10).

As indicated in paragraphs 11.2 and 12.1, the Contract Price and the Contract Time may only be changed by a Written Amendment executed by the parties.

4.7 In addition, the requirements of the Contract Documents may be supplemented, and minor variations and deviations of the Work may be authorized, in one or more of the following ways:

- 4.7.1 a field Change Order (pursuant to paragraph 9.3)
- 4.7.2 The OWNER'S REPRESENTATIVE's approval of a Shop Drawing or sample (pursuant to paragraphs 7.21 through 7.25), or
- 4.7.3 The OWNER'S REPRESENTATIVE's written interpretation or clarification (pursuant to paragraph 9.2).

REUSE OF DOCUMENTS:

4.8 Neither the CONTRACTOR nor any SUBCONTRACTOR or Supplier or other person or organization performing or furnishing any of the Work under a direct or indirect contract with the TOWN shall have or acquire any title to or ownership rights in any of the Drawings, Specifications or other documents (or copies of any thereof) prepared by or bearing the seal of the CONSULTANT; and they shall not reuse any of them on extensions of the Project or any other project without written consent of the TOWN or their CONSULTANT and the specific written verification or adaptation by the CONSULTANT.

ARTICLE 5. AVAILABILITY OF LANDS: PHYSICAL CONDITION: REFERENCE POINTS

Availability of Lands

5.1 The TOWN will furnish, as indicated in the Contract Documents and not later than the date when needed by the CONTRACTOR, the lands upon which the Work is to be done, rights-of-way and easements for access thereto, and such other lands which are designated for the use of the CONTRACTOR. Easements for permanent structures or permanent changes in existing facilities will be obtained by the TOWN unless otherwise specified in the Contract Documents. If the CONTRACTOR believes that any delay in the TOWN'S furnishing these lands or easements entitles him to an extension of the Contract Time, he or she may make a claim therefor as provided in Article 10. The CONTRACTOR will provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment unless designated otherwise. The OWNER'S REPRESENTATIVE will, upon request, furnish to the CONTRACTOR copies of all available boundary and topographic surveys as required and sub-surface tests.

Physical Conditions

5.2 Explorations and Reports: Reference is made to the Supplementary Conditions for

identification of those reports of explorations and tests of subsurface conditions at the site that have been utilized by the CONSULTANT and/or the TOWN in preparation of the Contract Documents. These reports are not part of the Contract Documents. The CONTRACTOR may rely upon the accuracy of the technical data contained in such reports, but not upon the non-technical data, interpretations or opinions contained therein, for the completeness or accuracy thereof for the CONTRACTOR'S purposes of preparing or submitting a bid. Except as indicated in the immediately preceding sentence and in paragraph 5.7, the CONTRACTOR shall have full responsibility with respect to subsurface conditions at the site. The technical data which will be made available only at the CONTRACTOR'S request may not be sufficient for construction purposes. Additional investigations may be necessary for the purposes of carrying out the construction project.

5.3 Existing Structures: Reference is made to the Supplementary Conditions for identification of those drawings of physical conditions in or relating to existing surface and subsurface structures (except Underground Facilities referred to in paragraph 5.9) which are at or contiguous to the site that have been utilized by the CONSULTANT and/or the TOWN in preparation of the Contract Documents. The CONTRACTOR may rely upon the accuracy of the technical data contained in such drawings but not for the completeness thereof for the purposes of preparing or submitting a bid. Except as indicated in the immediately preceding sentence and paragraph 5.7, the CONTRACTOR shall have full responsibility with respect to physical conditions in or relating to such structures.

5.4 Unless otherwise stated, the CONTRACTOR shall be fully responsible for the removal of any materials, debris, garbage, vehicles or other such items which would interfere with the undertaking and completion of the project. By submission of a bid, the CONTRACTOR assumes full responsibility for the expenses associated with such removal. There shall not be an increase in time or price associated with such removal.

5.5 Report of Differing Conditions: If the CONTRACTOR believes that:

5.5.1 any technical data on which the CONTRACTOR is entitled to rely as provided in paragraph 5.2 and 5.3 is inaccurate, or

5.5.2 any physical condition uncovered or revealed at the site differs materially from that indicated, reflected or referred to in the Contract Documents.

The CONTRACTOR shall, promptly after becoming aware thereof and before performing any work in connection therewith (except in an emergency as permitted by paragraph 7.20) notify the OWNER'S REPRESENTATIVE in writing about the inaccuracy or difference.

5.6 OWNER'S REPRESENTATIVE Review: The OWNER'S REPRESENTATIVE will promptly review the pertinent conditions, determine the necessity or obtaining additional explorations or tests with respect thereto and advise the TOWN in writing (with a copy to the CONTRACTOR) of the OWNER'S REPRESENTATIVE'S findings and conclusions.

5.7 Possible Contract Documents Change: If the OWNER'S REPRESENTATIVE and the TOWN conclude that there is a material error in the Contract Documents and a change in the Contract Documents is required, a Field Directive Change, a Field Change or a Change Order will be issued as provided in Article 10 to reflect and document the consequences of the inaccuracy or difference.

5.8 Possible Price and Time Adjustments: In each case of a material error in the Contract Documents, an increase or decrease in the Contract Price or an extension or shortening of the Contract Time, or any combination thereof, will be allowable to the extent that they are attributable to any such inaccuracy or difference.

5.9 Physical Conditions - Underground Facilities: The information and data shown or indicated in the Contract Documents with respect to existing underground facilities at or contiguous to the site is based on information and data furnished to the TOWN or the CONSULTANT by the owners of such underground facilities or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

5.9.1 The CONTRACTOR shall have full responsibility for reviewing and checking all such information and data, for locating all Underground Facilities shown or indicated in the Contract Documents, for coordination of the Work with the owners of such Underground Facilities during construction, for the safety and protection thereof as provided in paragraph 7.17 and for repairing any damage thereto resulting from the Work, the cost of all of which will be considered as having been included in the Contract Price.

5.10 Not Shown or Indicated: If an Underground Facility is uncovered or revealed at or contiguous to the site which was not shown or indicated in the Contract Documents and which the CONTRACTOR could not reasonably have been expected to be aware of, the CONTRACTOR shall, promptly after becoming aware thereof and before performing any Work affected thereby (except in an emergency as permitted by paragraph 7.20) identify the owner of such Underground Facility and give written notice thereof to that owner and to the OWNER'S REPRESENTATIVE.

The OWNER'S REPRESENTATIVE will promptly review the Underground Facility to determine the extent to which the Contract Documents should be modified to reflect and document the consequences of the existence of the Underground Facility, and with the TOWN'S approval, the Contract Documents will be amended or supplemented to the extent necessary. During such time, the CONTRACTOR shall be responsible for the safety and protection of such Underground Facility as provided in paragraph 7.17. The CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, to the extent that they are attributable to the existence of any Underground Facility that was not shown or indicated in the Contract Documents and which the CONTRACTOR could not reasonably have been expected to be aware of.

Reference Points

5.11 The CONTRACTOR shall be responsible for laying out the Work (unless otherwise specified in the Technical Specifications), shall protect and preserve the established reference points and shall make no changes or relocations without the prior written approval of the TOWN. The CONTRACTOR shall report to the OWNER'S REPRESENTATIVE whenever any reference point is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points by professionally qualified personnel.

ARTICLE 6. BONDS AND INSURANCE

Public Construction Bond

6.1 The CONTRACTOR will execute the Public Construction Bond as security for the faithful performance and payment of all his obligations under the Contract Documents. This Bond shall be in amounts at least equal to the Contract Price and in such form and with such securities as are acceptable to the TOWN. Prior to execution of the Contract Documents, the TOWN may require the CONTRACTOR to furnish such other bonds, in such form and with such sureties as it may require. If such bonds are required by written instructions given prior to opening of Bids, the Premiums shall be paid by the CONTRACTOR. If the Contract is increased by a Change Order, it shall be the CONTRACTOR'S responsibility to insure that the Public Construction Bond is amended accordingly and a copy of the amendment forwarded to CONTRACTS MANAGEMENT.

6.2 If the surety on any bond furnished by the CONTRACTOR is declared bankrupt or becomes insolvent or its right to do business is terminated in the State of Florida or it ceases to meet the requirements imposed by the Contract Documents, the CONTRACTOR shall within five (5) calendar days thereafter substitute another Bond and Surety, both of which shall be acceptable to the TOWN.

6.2.1 If the CONTRACTOR cannot obtain another bond and surety within (5) calendar days, the TOWN will accept, and the CONTRACTOR shall submit, an irrevocable letter of credit drawn on a Lee County, Florida bank until the replacement bond and surety can be obtained.

Qualifications of Surety Companies

6.3 In order to be acceptable to the TOWN, a surety company issuing Bid Guaranty Bonds or 100% Public Construction Bonds, called for in these specifications, shall meet and comply with the following minimum standards:

6.3.1 General

6.3.1.1 All Sureties for the Town of Fort Myers Beach projects must be authorized to do business in the State of Florida and shall comply with the provisions of Florida Statute Section 255.05.

6.3.1.2 Attorneys-in-Fact who sign bid bonds or Public Construction Bonds for Town of Fort Myers Beach projects must file with such bond a certified copy of their Power of Attorney that authorizes the agent to sign such bond.

6.3.1.3 Agents of surety companies must list their name, address, and telephone number on all bonds.

6.3.1.4 All bonds provided to the Town of Fort Myers Beach shall remain in effect for a period of twelve (12) months from the date of final payment and shall include a waiver of alteration to any terms in the Contract, extensions of time and/or forbearance on the part of the TOWN.

6.3.1.5 The amount of the bond shall automatically be reduced from 100% of the contract price to an amount specified in the Supplemental Conditions. If not set forth in the Supplemental conditions, this amount shall be automatically reduced to 40% upon final completion and acceptance by the TOWN.

6.3.2 To be acceptable to the OWNER as Surety on projects not in excess of \$500,000.00, Surety shall comply with these minimum provisions of State Statute 287.0935 as follows:

6.3.2.1 Surety must have twice the minimum surplus and capital required by Florida Insurance

Code at the time of bid solicitation.

6.3.2.2 Surety must be in compliance with all provisions of the Florida Insurance Code and hold a currently valid certificate of authority issued by the United States Department of the Treasury under SS.31 U.S.C. 9404-9308.

6.3.3 Sureties on projects in excess of \$500,000.00 shall comply with the above minimum provisions as well as being rated thru A.M. Best shall comply with the following provisions:

6.3.3.1 The Surety shall be rated as "A-" or better as to General Policyholders Rating and Class VII or better as to financial category by the most current Best's Key Rating Guide, published by A.M. Best Company.

6.3.3.2 Surety must have fulfilled all of its obligations on all other bonds previously given to the TOWN.

6.3.3.3 Surety must have a minimum underwriting limitation of \$5,000,000 published in the latest edition of the Federal Register for Federal Bonds (U.S. Dept. of Treasury).

Letter of Credit

6.4 At any time during the life of a letter of credit, should the rating of financial institution fall below both of the minimum ratings as indicated in the Contract Documents, or should the financial institution become insolvent, the CONTRACTOR must, within five (5) calendar days after notification by the TOWN:

6.4.1 replace the existing letter of credit with a replacement letter of credit from a financial institution with either of the minimum ratings as specified in the Contract Documents, or

6.4.2 have the existing letter of credit confirmed by a financial institution with either of the minimum ratings as specified in the Contract Documents.

6.5 At the TOWN'S option, the letter of credit may be replaced by a Public Construction Bond in accordance with the TOWN'S then-existing bond policies.

6.6 Failure to comply with this provision may result in any or all of the following actions by the TOWN:

6.6.1 suspension of the CONTRACTOR'S right to pull building permits and schedule inspections;

6.6.2 a stop work order; and/or

6.6.3 revocation of the Land Development Permit.

Financial Institutions/Letters of Credit

6.7 In order to be acceptable to the TOWN, a financial institution issuing 100% Letters of Credit, called for in these specifications, shall meet and comply with the following minimum standards:

6.7.1 General

6.7.1.1 The face of the letter of credit must be in a format utilizing Town of Fort Myers Beach Standard Form FMB:006 and indicate the following:

6.7.1.1.1 the letter of credit must be “clean” and “irrevocable”;

6.7.1.1.2 it must contain an exact expiration date. All letters of credit provided to the Town of Fort Myers Beach shall remain in effect for a period of twelve (12) months from the date of final payment;

6.7.1.1.3 statement of the purpose or project for which the letter of credit is issued;

6.7.1.1.4 a specific amount of the letter of credit, in U.S. dollars, which amount shall be equal to or greater than the amount of the Contract.

6.7.1.1.5 the method of disbursement of draws against the letter of credit;

6.7.1.1.6 the street address where draws against the letter of credit may be made; and

6.7.1.1.7 provide for venue in Lee County, Florida.

6.7.1.2 Verification of the status or certification of any financial institution may be made with:

Department of Insurance and Treasurer
Bureau of Collateral Securities
200 East Gaines Street
Tallahassee, FL 32377-0345
Phone (850) 922-3167

or

Town of Fort Myers Beach Risk Management
2545 Estero Boulevard
Fort Myers Beach, FL 33931
Phone (239) 765-0202

6.7.2 At the time of issuance of the letter of credit, the financial institution must have a minimum “peer group” rating of 50 in the latest Sheshunoff Quarterly Listing or a minimum rating of 125 in the latest IDC Bank Financial Quarterly Listing.

6.7.3 Letters of Credit from financial institutions which do not meet either of the minimum ratings indicated in 6.7.2 above must be confirmed by a financial institution with either of the minimum ratings indicated in 6.7.2 above.

6.7.4 All financial institutions which issue or confirm any Letter of Credit must be authorized by the Secretary of State to do business in the State of Florida, shall show proof of same upon request by TOWN staff, and agree to venue in Lee County, Florida.

6.8 These actions shall be in effect until a satisfactory replacement bond or letter of credit is accepted by the TOWN. The CONTRACTOR agreement shall provide for replacement or confirmation in accordance with this policy.

Contractor's Liability Insurance

6.9 The Contractor shall obtain and maintain such insurance as will protect it from: (1) claims under workers' compensation laws, disability benefit laws, or other similar employee benefit laws; (2) claims for damages because of bodily injury, occupational sickness or disease or death of its employees including claims insured by general personal injury liability coverage; (3) claims for damages because of bodily injury, sickness or disease, or death of any person other than its employees including claims insured by usual personal injury liability coverage; and (4) claims for injury to or destruction of tangible property, including loss of use resulting there from; any or all of which claims may arise out of, or result from, the services, work and operations carried out pursuant to and under the requirements of the Agreement, whether such services, work and operations are performed by the Contractor, its employees, or by any Sub-Contractor(s), Subcontractor(s), or anyone employed by or under the supervision of any of them, or for whose acts any of them may be legally liable.

6.10 The insurance protection set forth hereinabove shall be obtained and written for not less than the limits of liability specified hereinafter, or as required by law, whichever is greater.

6.11 The Contractor, throughout the time the Agreement is in effect, shall require and ensure that any and all of its Sub-Contractors and/or Sub-Contractors obtain, have, and maintain the insurance coverages required by law to be provided.

6.12 The Contractor shall obtain, have and maintain during the entire period of the Agreement, all such insurance policies as are set forth and required herein.

6.13 In the event that the Contractor engages Sub-Contractors to assist the Contractor in providing or performing services or work pursuant to the requirements of this Agreement, the insurance coverages required under this Article to be provided by the Contractor shall cover all of the services or work to be provided or performed by all of the Subcontractors engaged by the Contractor. However, in the event the services or work of Sub-Contractors is not covered by the Contractor's insurance policy or policies, it shall be the responsibility of the Contractor to ensure that all Sub-Contractors have fully complied with the Town insurance requirements for: (1) Worker's Compensation; (2) Comprehensive General Liability; (3) Comprehensive Automobile Liability; and (4) Commercial General Liability as required and set forth in this Article.

6.14 The insurance coverages to be obtained by the Contractor or by Sub-Contractors as set forth in this Article for: (1) Workers' Compensation; (2) Comprehensive General Liability; (3) Comprehensive Automobile Liability; and (4) Commercial General Liability is understood and agreed to cover any and all of the services or work set forth in the Agreement. In the event the Town shall execute and issue written Change Order(s) authorizing the Contractor to provide or perform services or work in addition to those set forth in the Agreement, it is agreed that the Town has the right to change the amount of insurance coverages required to cover the additional services or work. If the additional insurance coverages established exceeds the amount of insurance coverage carried by the Contractor, the compensation established for the Change Order(s) shall include consideration of any increased premium cost incurred by the Contractor to obtain same.

Contractor Required to File Insurance Certificate(s)

6.15 The Contractor shall submit to the Town's RISK MANAGEMENT DIVISION all required insurance certificates for review and approval. After approval by the RISK MANAGER, the Town

will execute the Agreement and issue a written Notice to Proceed. The Contractor may then commence any service or work pursuant to the Agreement. All such Insurance Certificates shall be attached to the Agreement and be incorporated by reference thereto.

6.16 All such insurance certificates shall be in a form and underwritten by an insurance company(s) acceptable to the Town and licensed in the State of Florida.

6.17 Each Certificate of Insurance submitted to the Town shall be an original and shall be executed by an authorized representative of the insurance company affording coverage.

6.18 Each Certificate of Insurance shall be addressed to the TOWN OF FORT MYERS BEACH, ATTN: TOWN MANAGER, at the address listed at the beginning of this Agreement.

6.19 Each Certificate of Insurance shall specifically include all of the following:

6.19.1 The name and type of policy and coverages provided; and

6.19.2 The amount or limit applicable to each coverage provided and the deductible amount, if any, applicable to each type of insurance coverage being provided; and

6.19.3 The date of expiration of coverage; and

6.19.4 The designation of the TOWN OF FORT MYERS BEACH both as an additional insured and as a certificate holder. (This requirement is excepted for Commercial General Liability Insurance and for Workers' Compensation Insurance); and

6.19.5 A specific reference to the Agreement and the Project to which it pertains. (This requirement may be excepted for Commercial General Liability Insurance).

6.20 The following clause must appear on the Certificate of Insurance:

"Cancellation - Should any of the above described policies be cancelled before the expiration date thereof, the issuing company will endeavor to mail 30 days written notice to the Certificate Holder named."

6.21 A statement indicating any services or work included in or required under the Agreement that is specifically excluded or exempted from coverage under the provisions, terms, conditions or endorsements of the Contractor's insurance policy(s). A statement which indicates any and all deductible amounts applicable to each type of insurance coverage required. In the absence of any such statements, the Town will proceed with the understanding, stipulation and condition that there are no deductible amount(s), or exclusions or exemptions to the insurance coverage(s) provided.

6.22 Each Certificate of Insurance shall be issued by an insurance agent and/or agency duly authorized to do so by and on behalf of the insurance company affording the insurance coverage(s) indicated on each Certificate of Insurance.

6.23 If the initial or any subsequently issued Certificate of Insurance expires prior to the completion of the work or termination of the Agreement, the Contractor shall furnish to the Town renewal or replacement Certificate(s) of Insurance, or Certified Binder(s), not later than fifteen (15) calendar days prior to the date of their expiration. Failure of the Contractor to provide the

Town with such renewal certificate(s) shall be considered justification for the Town to terminate the Agreement.

6.24 If any of the required insurance coverage(s) expire on the date indicated on the approved Certificate(s) of Insurance without the Town having received satisfactory evidence of renewal or replacement, the Contractor shall automatically and without further notice stop performing all previously authorized services and work. During any time period that the Contractor's services or work is suspended for failure to comply with the insurance requirements set forth in the Agreement, the Contractor shall not be entitled to any additional compensation or time to provide and perform the required services or work and the Town shall not be required to make payment on any invoices submitted by the Contractor. Upon receipt and approval of renewal or replacement Certificates of Insurance, payment for any such invoices shall be made promptly by the Town.

Insurance Coverages Required

6.25 The Contractor shall obtain and maintain the following insurance coverages as provided hereinbefore, and in the type, amounts and in conformance with the following minimum requirements:

6.25.1 WORKERS' COMPENSATION

Coverage to comply for all employees for statutory limits in compliance with the applicable State and Federal laws. In addition, the policy must include the following:

6.25.1.1 Employer's Liability with a minimum limit per accident in accordance with statutory requirements, or a minimum limit of \$500,000 for each accident, whichever limit is greater.

6.25.1.2 Notice of Cancellation and/or Restriction - the policy must be endorsed to provide the Town with thirty (30) days prior written notice of cancellation and/or restriction.

6.25.2 COMMERCIAL GENERAL LIABILITY

Coverage must be afforded on a form no more restrictive than the last edition of the Commercial General Liability Policy filed by the Insurance Services Office and must include the following:

6.25.2.1 Minimum limits of \$3,000,000 per occurrence and \$3,000,000 aggregate for Bodily Injury Liability and a minimum limit of \$3,000,000 for Property Damage Liability, or a minimum combined single limit of \$3,000,000.

6.25.2.2 Contractual coverage applicable to this specific Agreement including any hold harmless and/or such indemnification agreement.

6.25.2.3 This shall include Premises and/or Operations, Independent Contractors and Products and/or Completed Operations, Broad Form Property damage, XCU Coverage, and a Contractual Liability Endorsement. Said coverage must be on an occurrence basis. Town of Fort Myers Beach, its officers and employees shall be included as an Additional Insured.

6.25.2.4 Such additional requirements as may be set forth in the Agreement.

6.25.3 BUSINESS AUTOMOBILE LIABILITY

Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability Policy filed by the Insurance Services Office and must include the following:

6.25.3.1 Minimum limits of \$3,000,000 per person and \$3,000,000 per accident for Bodily Injury Liability and a minimum limit of \$3,000,000 for Property Damage Liability, or a minimum combined single limit of \$3,000,000.

6.25.3.2 Coverage shall include owned vehicles, hired and leased, or non-owned vehicles.

6.25.3.3 Such additional requirements as are set forth in the Agreement above.

6.25.4 ALL RISK BUILDERS RISK OR INSTALLATION FLOATER (If Applicable)

All Risk coverage, with the limits of insurance to equal 100% of the completed contract amount of such addition(s), buildings(s), or structure(s). Any deductible is the responsibility of the CONTRACTOR. The TOWN shall be named as an additional insured.

6.25.5 MARITIME INSURANCE COVERAGE

Maritime coverages with limits of liability of \$1,000,000 per occurrence for general maritime law, including but not limited to: Maintenance & Cure; Unseaworthiness, Wrongful death.

6.25.6 SUBCONTRACTORS

It shall be the responsibility of the CONTRACTOR to ensure that all subcontractors carry Automobile Liability, General Liability and Workers' Compensation in compliance with statutory limits.

6.26 The CONTRACTOR agrees that the requested insurance coverages are not intended to and shall not, in any manner, limit or reduce the liabilities and obligations assumed by the CONTRACTOR, its agents, employees, subcontractors, etc.

ARTICLE 7. CONTRACTOR'S RESPONSIBILITIES

Supervision and Superintendence

7.1 The CONTRACTOR will supervise and direct the Work efficiently. CONTRACTOR will be solely responsible for the means, methods, techniques, sequences, safety, and procedure of construction, unless otherwise specified. The CONTRACTOR will be responsible to see that the finished Work complies with the Contract Documents.

7.2 The CONTRACTOR will keep on the site at all times when work is being performed, a competent, resident superintendent who shall not be replaced without prior written notice to the OWNER'S REPRESENTATIVE. The superintendent will be the CONTRACTOR'S representative at the site and shall have authority to act on behalf of the CONTRACTOR. All communications given to the superintendent shall be binding as if given to the CONTRACTOR.

Labor Material and Equipment

7.3 The CONTRACTOR will provide competent, suitable, qualified personnel to lay out the Work and perform construction as required by the Contract Documents and will at all times maintain good discipline and order at the site.

7.4 The CONTRACTOR will furnish all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, heat, light, telephone, water and sanitary facilities and incidentals necessary for the execution, testing, initial operation and completion of the Work unless otherwise specified.

7.5 All materials and equipment will be new except as otherwise provided in the Contract Documents. If required by the OWNER'S REPRESENTATIVE, the CONTRACTOR will furnish satisfactory evidence as to the kind and quality of materials and equipment furnished.

7.6 All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturers, fabricator or processors except as otherwise provided in the Contract Documents.

7.7 In instances where applicable due to the nature of the bid, all material, equipment, etc., as proposed and offered by CONTRACTOR must meet and conform to all O.S.H.A. requirements; the CONTRACTOR'S signature upon the bid proposal form (Part D) being by this reference considered a certification of such fact.

Adjusting the Progress Schedule

7.8 The CONTRACTOR shall submit to the OWNER'S REPRESENTATIVE, for acceptance, any adjustments in the progress schedule to reflect the impact thereon of new developments; these will conform generally to the progress schedule then in effect and, in addition, will comply with any provisions of the Contract Documents applicable thereto. The TOWN reserves the right to reject any progress schedule from the CONTRACTOR which, in its judgment, does not appear to devote sufficient resources or manpower to enable the timely completion of the project. If the Town requests that the progress schedule be adjusted, the CONTRACTOR shall do so and perform the work according to the adjusted schedule at no additional cost to the TOWN.

Substitute Materials or Equipment

7.9 If it is indicated in the specifications that the CONTRACTOR may furnish or use a substitute that is equal to any material or equipment specified, and if the CONTRACTOR wishes to furnish or use a proposed substitute, he will, within thirty (30) calendar days after the award of the Contract, make written application to the OWNER'S REPRESENTATIVE for approval of such a substitute, certifying in writing that the proposed substitute will perform adequately the requirements imposed by the general design, be similar and of equal substance to that specified and be suited to the same use and capable of performing the same function as that specified. No substitute shall be ordered or installed without the written approval of the TOWN who shall be the sole judge of quality. Whether or not the TOWN accepts a proposed substitute, the CONTRACTOR shall reimburse the TOWN for any charges or cost for evaluating any proposed substitute.

Concerning Subcontractors

7.10 The CONTRACTOR will be fully responsible for all acts and omissions of his or her SUBCONTRACTORS and of persons directly or indirectly employed by them and of persons for whose acts they may be liable to the same extent that they are employed by him. Nothing in the

Contract Documents shall create any contractual relationship between any SUBCONTRACTOR and the TOWN. The TOWN may, upon request, furnish to any SUBCONTRACTOR, to the extent practicable, evidence of amounts paid to the CONTRACTOR on account of specific Work done. T

7.10.1 The divisions and sections of the specifications and the identifications of any Drawings shall not control the CONTRACTOR in dividing the Work among SUBCONTRACTORS or delineating the Work to be performed by any specific trade.

7.10.2 The CONTRACTOR agrees to specifically bind every SUBCONTRACTOR to the applicable terms and conditions of these Contract Documents for the benefit of the TOWN.

7.10.3 All Work performed for the CONTRACTOR by a SUBCONTRACTOR shall be pursuant to an appropriate written agreement between the CONTRACTOR and the SUBCONTRACTOR which shall contain provisions that waive all rights the contracting parties may have against one another for damages caused by fire or perils covered by insurance, except such rights as they may have to the proceeds of such insurance held by the TOWN as trustee.

Patent Fees and Royalties

7.11 The costs involved in fees, royalties, or claims for any patented invention, article, process or method that may be used upon, or in a manner connected with the work under the contract, shall be paid by the CONTRACTOR. The CONTRACTOR and its sureties, together with its officers, agents, and employees, shall protect and hold the TOWN harmless against any and all demands made for such fees or claims brought or made by holder of any invention or patent. Before final payment is made on the account of this Contract, the CONTRACTOR shall, if requested by the TOWN, furnish acceptable proof of a proper release from all such fees or claims.

7.11.1 Should the CONTRACTOR, its agents, employee, or any of them be enjoined from furnishing or using any invention, article, material or plans supplied or required to be supplied or used under this contract, the CONTRACTOR shall promptly pay such royalties and secure the requisite licenses; or, subject to acceptance by the TOWN, substitute other articles, materials or appliances in lieu thereof which are of equal efficiency, quality, finish, suitability and market value to those planned or required under the contract. Descriptive information of these substitutions shall be submitted to the OWNER'S REPRESENTATIVE for determination of general conformance to the design concept and the construction contract. Should the TOWN elect to use the substitution, the CONTRACTOR agrees to pay such royalties and secure such valid licenses as may be requisite for the TOWN, its officers, agents, and employees, or any of them, to use such invention, article, material, or appliance without being disturbed or in any way interfered with by any proceeding in law or equity on account thereof.

Permits

7.12 Unless otherwise specified herein, the CONTRACTOR will secure and pay for all permits, impact fees, and licenses and will pay all governmental charges and inspections' fees necessary for the prosecution of the Work which are applicable at the time of the bid. The CONTRACTOR will also pay all public utility charges and connection fees except as provided for in the Contract Documents. Permits and licenses of regulatory agencies which are necessary to be maintained

after completion of the guarantee period shall be secured and paid for by the TOWN.

7.12.1 Pursuant to the requirements of F.S. 218.80, the following Town permits and fees are required to be obtained by the contractor.

Building Permit - Fees Paid by Town of Fort Myers Beach

Vehicles on the Beach Permit – Fees Paid by Town of Fort Myers Beach

This is a disclosure of permits and fees required by the Town of Fort Myers Beach for this project and does not relieve the CONTRACTOR of its responsibility to obtain and pay for permits required by other governmental entities as specified elsewhere in this document.

7.13 The CONTRACTOR will give all notices and comply with all laws, ordinances, rules and regulations applicable to the Work. If the CONTRACTOR observes that the Specifications or Drawings are at a variance therewith, CONTRACTOR will give the OWNER'S REPRESENTATIVE prompt written notice thereof, and any necessary changes shall be adjusted by an appropriate modification. If the CONTRACTOR performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations and without such notice to the OWNER'S REPRESENTATIVE, CONTRACTOR will bear all cost arising there from; however, it shall not be CONTRACTOR'S primary responsibility to make certain that the Drawings and Specifications are in accordance with such laws, ordinances, rules and regulations.

Licenses

7.14 The CONTRACTOR must be properly licensed and have the proper business tax receipt, within the jurisdiction where the project is to be constructed, to perform the work specified in the Scope of Work at the time of bid submittal.

Use of Premises

7.15 The CONTRACTOR will confine its equipment, the storage of materials and equipment, and the operations of its workmen to the areas permitted by law, ordinances, permits or the requirements of the Contract Documents and shall not unreasonably encumber the premises with materials or equipment.

Record Drawings

7.16 The CONTRACTOR will keep one record copy of all Specifications, Drawings, Addenda, Modifications and Shop Drawings at the site in good order, and annotated to show all changes made during the construction process or addition and exact location of underground or otherwise concealed components such as, but not limited to, plumbing, air conditioning, electric, and conduit which were not installed exactly as shown on the contract drawings. These shall be available to the OWNER'S REPRESENTATIVE and shall be verified by the OWNER'S REPRESENTATIVE at 30%, 60%, and 100% completion of the Project. The CONTRACTOR shall submit to the OWNER'S REPRESENTATIVE one (1) complete dated set of all changes made during Construction entitled "Record Drawings". Submittals shall be made in accordance with the above and shall be submitted at the time of substantial completion.

Safety and Protection

7.17 The CONTRACTOR will be responsible for initiating, maintaining and supervising all safety

precautions and programs in connection with the Work. CONTRACTOR will take all necessary precautions for the safety of and will provide the necessary protection to prevent damage, injury or loss to:

7.17.1 All employees on the Project and other persons who may be affected thereby;

7.17.2 All the Work and all materials or equipment to be incorporated therein, whether in storage on or off the site; and

7.17.3 Other property at the site or adjacent thereto including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

7.18 The CONTRACTOR will comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. CONTRACTOR will erect and maintain, as required by the conditions and progress of the Work, all necessary safeguards for safety and protection and, in addition, CONTRACTOR will comply with all applicable recommendations of the "Manual of Accident Prevention in Construction" published by the Associated General Contractors of America, Inc.; "Roadway and Traffic Design Standards" latest edition published by the Florida Department of Transportation, specifically Index 600-650; and Occupational Safety and Health Administration published by the United States Department of Labor. CONTRACTOR will notify owners of adjacent utilities when prosecution of the Work may affect them. All damage, injury or loss to any property referred to in 7.17.2 and 7.17.3 caused directly or indirectly, in whole or in part by the

CONTRACTOR, any SUBCONTRACTOR, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable will be remedied by the CONTRACTOR; except any damage or loss attributable to the fault of the Drawings or the Specifications or to the acts or omissions of the TOWN, and not attributable, directly or indirectly, in whole or in part, to the fault of negligence of the CONTRACTOR.

7.19 The CONTRACTOR will designate a member of his or her organization whose responsibility will be to plan for the prevention of accidents at the site. This person shall be the CONTRACTOR'S Superintendent unless otherwise designated in writing by the CONTRACTOR to the OWNER'S REPRESENTATIVE.

Emergencies

7.20 In the event of emergencies affecting the safety of persons, the Work or property at the site or adjacent thereto, the CONTRACTOR, without special instruction or authorization from the TOWN, is obligated to act at its discretion to prevent threatened damage, injury or loss. CONTRACTOR will give the OWNER'S REPRESENTATIVE prompt written notice of any significant changes in the Work or deviations from the Contract Documents caused thereby. If the TOWN and the OWNER'S REPRESENTATIVE determine that a change to the Contract Documents is required because of the action taken in response to an emergency, a Field Directive Change or Change Order shall thereupon be issued covering the changes and deviations involved.

Shop Drawings and Samples

7.21 After checking and verifying all field measurements, the CONTRACTOR will submit to the OWNER'S REPRESENTATIVE for approval, in accordance with the acceptable schedule of Shop Drawing submission, five copies (or at the option of the OWNER'S REPRESENTATIVE, one reproducible copy) of all Shop Drawings, which shall have been checked by and stamped with the approval of the CONTRACTOR and identified as the OWNER'S REPRESENTATIVE may require. The data shown on the Shop Drawings will be complete with respect to dimensions, design criteria, materials of construction and the like to enable the OWNER'S REPRESENTATIVE to review the information as required.

7.22 The CONTRACTOR will also submit to the OWNER'S REPRESENTATIVE for approval with such promptness as to cause no delay in the Work, all samples required by the Contract Documents. All samples will have been checked by and stamped with the approval of the CONTRACTOR, identified clearly as to material, manufacturer, any pertinent numbers and the use for which intended.

7.22.1 At the time of each submission, the CONTRACTOR will, in writing, call the OWNER'S REPRESENTATIVE'S attention to any deviations that the Shop Drawing or sample may have from the requirements of the Contract Documents and, in addition, shall cause a specific notation to be made on each shop drawing submitted for review and approval of each such variation.

7.23 The OWNER'S REPRESENTATIVE will review and approve with reasonable promptness Shop Drawings and Samples, but its review and approval shall be only for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents. The approval of a separate item as such will not indicate approval of the assembly in which the item functions. The CONTRACTOR will make any corrections required by the OWNER'S REPRESENTATIVE and will return the required number of corrected copies of Shop Drawings and re-submit new samples until approved. All cost incurred by the TOWN for the review of a shop drawing in excess of two (2) reviews shall be the CONTRACTORS responsibility. The CONTRACTOR'S stamp of approval on any Shop Drawing or sample shall constitute a representation to the OWNER'S REPRESENTATIVE that the CONTRACTOR has either determined and verified all quantities, dimensions, field construction criteria, materials, catalog numbers and similar data or CONTRACTOR assumes full responsibility for doing so, and that CONTRACTOR has reviewed or coordinated each Shop Drawing or sample with the requirements of the Work and the Contract Document.

7.24 No work requiring a Shop Drawing or sample submissions shall be commenced until the submission has been approved by the OWNER'S REPRESENTATIVE. Any related Work performed prior to review and approval by the TOWN of the pertinent submission will be the sole expense and responsibility of the CONTRACTOR. A copy of each approved Shop Drawing and each approved sample shall be kept in good order by the CONTRACTOR at the site and shall be available to the OWNER'S REPRESENTATIVE.

7.25 The OWNER'S REPRESENTATIVE's approval of Shop Drawings or samples shall not relieve the CONTRACTOR from its responsibility for any deviations from the requirements of the Contract Documents, unless the CONTRACTOR has in writing called the OWNER'S REPRESENTATIVE's attention to such deviation at the time of submission and the TOWN and the OWNER'S REPRESENTATIVE have given written approval to the specific deviation; nor shall any approval by the OWNER'S REPRESENTATIVE relieve the CONTRACTOR from responsibility for errors or omissions in the Shop Drawings.

Indemnification

7.26 The CONTRACTOR shall indemnify and hold harmless the TOWN, its officers, agents, and employees from and against all liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the CONTRACTOR and persons employed or utilized by the CONTRACTOR in the performance of the construction contract.

7.27 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 CONTRACTOR causes to any property of the TOWN. 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. CONTRACTOR shall repair any damage that may have occurred to any adjoining building, structure, utility or private property in the course of this work.

7.28 The CONTRACTOR will keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work; at the completion of the Work CONTRACTOR will remove all waste materials, rubbish and debris from and about the premises as well as all tools, construction equipment and machinery, and surplus materials, and will leave the site clean and ready for occupancy by the TOWN. The CONTRACTOR will restore to their original condition those portions of the site not designated for alteration by the Contract Documents.

7.28.1 Storm Preparation – The CONTRACTOR shall cease all construction activities and prepare the project site when a storm event is anticipated to affect the locality. The CONTRACTOR shall respond immediately to the notice given by the TOWN for such preparation. Site preparation shall consist of but not limited to the following

- a. Remove all construction signs
- b. Portable latrines should be removed from the site. If the latrines cannot be removed from the site, they must be laid down on their right side (looking from the front) to prevent waste from leaking out.
- c. The construction site must be clear of all loose tools, lumber, metal, aluminum and any other miscellaneous items that could create a hazard during strong wind conditions and/or storm surges. All other construction materials shall be adequately secured on-site.
- d. All chains, poles and weights used to block off construction sites, vacant lots and parking lots shall be removed as to not create a hazard during strong wind conditions and/or storm surges.
- e. Silt fence posts shall be secured in the ground ten inches (10") as to reduce the potential hazard of the post being uprooted, the silt fence meshing must be a minimum of four inches (4") below ground properly back filled. Other erosion control devices shall be adequately secured so as to not wash out or become a hazard.

7.28.2 If the CONTRACTOR fails to secure the site as provided in the Contract Documents, the TOWN may do so and the cost thereof shall be deducted from the final retainage due the

CONTRACTOR.

Continuing the Work

7.29 The CONTRACTOR shall carry on the Work and adhere to the progress schedule during all disputes and disagreements with the TOWN. No work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by paragraph 13.7 (The TOWN May Stop Work) or as the CONTRACTOR and the TOWN may otherwise agree in writing.

Anti-Discrimination

7.30 The CONTRACTOR for itself, its successors in interest, and assignees, as part of the consideration thereof covenant and agree that:

7.30.1 In the furnishing of services to the TOWN hereunder, no person shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination on the grounds of race, religion, color, age, sex, national origin, handicap or marital status.

7.30.2 The CONTRACTOR will not discriminate against any employee or applicant for employment because of race, religion, color, age, sex, national origin, handicap or marital status. The CONTRACTOR will make affirmative efforts to insure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, age, sex, national origin, handicap or marital status. Such action shall include, but not be limited to, acts of employment, upgrading, demotion or transfer; recruitment advertising; layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeships.

7.30.3 CONTRACTOR agrees to post in a conspicuous place, available to employees and applicants for employment, notices setting forth the provisions of this anti-discrimination clause.

7.30.4 CONTRACTOR will provide all information and reports required by relevant regulations and/or applicable directives. In addition, the CONTRACTOR shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the TOWN to be pertinent to ascertain compliance. The CONTRACTOR shall maintain and make available relevant data showing the extent to which members of minority groups are beneficiaries under these contracts.

Where any information required of the CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish this information, the CONTRACTOR shall so certify to the TOWN its efforts made toward obtaining said information. The CONTRACTOR shall remain obligated under this paragraph until the expiration of three (3) years after the termination of this CONTRACT.

7.30.5 In the event of breach of any of the above anti-discrimination covenants, the TOWN shall have the right to impose sanctions as it may determine to be appropriate, including withholding payment to the CONTRACTOR or canceling, terminating or suspending this CONTRACT, in whole or in part.

Additionally, the CONTRACTOR may be declared ineligible for further TOWN contracts by rule, regulation or order of the Town of Fort Myers Beach, or as otherwise provided by law.

7.30.6 The CONTRACTOR will send to each labor union, or representative of workers with which the CONTRACTOR has a collective bargaining agreement or other contract of understanding, a notice informing the labor union or worker's representative of the CONTRACTOR'S commitments under this assurance, and shall post copies of the notice in conspicuous places available to the employees and the applicants for employment.

7.30.7 The CONTRACTOR will include the provisions of paragraphs 7.30.1 through 7.30.6 in every sub-contract under this contract to insure its provisions will be binding upon each Subcontractor. The CONTRACTOR will take such action with respect to any Subcontractor, as the contracting agency may direct, as a means of enforcing such provisions, including sanctions for non-compliance.

Misplaced Material

7.31 Should the CONTRACTOR, during the progress of the Work, lose, dump, throw overboard, sink, or misplace any material, plant, or equipment, which in the opinion of the TOWN may be dangerous to, or obstruct navigation, the CONTRACTOR shall recover and remove the same with the utmost dispatch. The CONTRACTOR shall give immediate notice, with description and location of such obstructions, to the U.S. Coast Guard, TOWN and when required, shall mark or buoy such obstructions until the same are removed. In the event of refusal, neglect, or delay in compliance with the above requirements, such obstructions may be removed by the TOWN, and the cost of such removal may be deducted from any money due or to become due to the CONTRACTOR or may be recovered under his bond.

ARTICLE 8. WORK BY OTHERS

8.1 The TOWN may perform additional Work related to the Project by itself, or it may let other direct contracts which shall contain General Conditions similar to these.

8.2 The CONTRACTOR will afford the other Contractors who are parties to such direct contracts (or the TOWN, if it is performing the additional Work itself), reasonable opportunity for the introduction and storage of materials and equipment and the execution of the Work, and shall properly connect and coordinate his work with theirs. Should the Contract entail relocation of facilities not a part of this Contract, the CONTRACTOR will coordinate and cooperate with the applicable entity responsible for this portion of the work.

8.3 Water lines, gas lines, wire lines, service connections, water and gas meter boxes, water and gas valve boxes, light standards, cableways, signals, and all other utility appurtenances within the limits of the proposed construction which are to be relocated or adjusted are to be moved by the owners at their expense, unless otherwise provided in the Contract. It is understood and agreed that the CONTRACTOR has considered in its bid all of the permanent and temporary utility appurtenances in their present or relocated positions as shown on the plans and that no additional compensation will be allowed for any delays, inconveniences, or damage sustained to it due to any interference from the said utility appurtenances or the operation of moving them. If any part of the CONTRACTOR'S work depends (for proper execution) upon the Work of any such other Contractor (or the TOWN), the CONTRACTOR will inspect and promptly report to the OWNER'S REPRESENTATIVE in writing, any defects, deficiencies or delays in such Work that render it unsuitable for such proper execution and results. CONTRACTOR's failure to report shall constitute an acceptance of the Work, except as to defects, deficiencies and delays which may appear in the other Work after the execution of his Work.

8.4 The CONTRACTOR will do all cutting, fitting and patching of its Work, which is consistent with the Contract Documents that may be required to make its several parts come together properly and enable it to receive or be received by such other Work. The CONTRACTOR will not endanger any Work of others by cutting, excavating or otherwise altering such other Work and will only cut or alter such other work with the written consent of the OWNER'S REPRESENTATIVE.

8.5 If the performance of additional Work by other Contractors or the TOWN is not noted in the Contract Documents prior to the execution of the Contract, written notice thereof shall be given to the CONTRACTOR prior to starting any such additional Work.

ARTICLE 9. OWNER'S REPRESENTATIVE STATUS DURING CONSTRUCTION

Town's Representatives

9.1 The TOWN shall issue all communications to the CONTRACTOR.

Clarifications and Interpretations

9.2 The TOWN will issue, with reasonable promptness, such written clarifications or interpretations of the requirements of the Contract Documents (in the form of Drawings or otherwise) as the TOWN may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. If the CONTRACTOR believes that a written clarification or interpretation justifies an increase in the Contract Price or an extension of the Contract Time and the parties are unable to agree to the amount or extent thereof, the CONTRACTOR may make a claim therefore as provided in Article 11 or Article 12.

Authorized Variations in Work

9.3 The OWNER'S REPRESENTATIVE may authorize, with prior approval from the TOWN, minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Time and are consistent with the overall intent of the Contract Documents. These may be accomplished by a Field Change Order on form FMB:010 and the CONTRACTOR shall perform the Work involved promptly. If the CONTRACTOR believes that a Field Change Order justifies an increase in the Contract Price or an extension of the Contract Time and the parties are unable to agree as to the amount or extent thereof, the CONTRACTOR may make a claim therefore as provided in Article 11 or Article 12.

ARTICLE 10. CHANGES IN WORK

10.1 Without invalidating the Agreement, the TOWN may unilaterally and at any time or from time to time order additions, deletions or revisions in the Work; these will be authorized by Change Orders or Field Directive Change. Upon receipt of a Change Order on form FMB:009 or Field Directive Change on form FMB:010, the CONTRACTOR will proceed with the Work involved.

10.1.1 All such Work shall be executed under the applicable conditions of the Contract Documents.

10.1.2 If any Change Order or Field Directive Change causes an increase or decrease in the Contract Price or any extension or shortening of the Contract Time, an equitable adjustment will be made as provided in Article 11 or Article 12.

10.2 Additional Work performed by the CONTRACTOR without written authorization of a change in the form of an approved Change Order will not entitle CONTRACTOR to an increase in the Contract Price or any extension of the Contract Time, except in the case of an emergency as provided in Article 7.20.

10.3 It is the CONTRACTOR'S responsibility to notify the Surety of any changes affecting the general scope of the Work or change of the Contract Price and the amount of the applicable Bonds shall be adjusted accordingly. The Surety's Acceptance must be submitted to the OWNER'S REPRESENTATIVE, by the CONTRACTOR, within ten (10) calendar days of the initiation of the change.

10.4 If additions in the work requested by the TOWN involve addition of a new subcontract or of additional scope of work such that the Town considers it in its best interests, the CONTRACTOR shall:

10.4.1 Obtain cost proposals from multiple potential subcontractors, suppliers or vendors, at Contractor's sole expense, if so required by the Town, in order to help ensure competitive pricing.

10.4.2 Obtain TOWN's prior written approval of any proposed Subcontractor, including Sub-subcontractors, to be utilized who are not already included on the approved list of Subcontractors.

ARTICLE 11. CHANGE IN CONTRACT PRICE

11.1 The Contract Price constitutes the total compensation payable to the CONTRACTOR for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by the CONTRACTOR shall be at CONTRACTOR's expense without change in the Contract Price.

11.2 The Contract Price may only be changed by a written amendment to the Contract. Any claim for an increase or decrease in the Contract Price shall be in writing and delivered to the OWNER'S REPRESENTATIVE within fifteen (15) calendar days of the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the amount of the claim with supporting data shall be delivered within fifty (50) calendar days after such occurrence (unless TOWN allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by the CONTRACTOR'S written statement that the amount claimed covers all known amounts (direct, indirect, and consequential) to which the CONTRACTOR has reason to believe it is entitled as a result of the occurrence of said event. No claim for an adjustment in the Contract Price will be valid if not submitted in accordance with paragraph 11.2. All claims for adjustment in the Contract Price shall be reviewed by the OWNER'S REPRESENTATIVE. Any change in the Contract Price shall be incorporated in a Contract Amendment and approved by the Town Council. No claim by the CONTRACTOR for an equitable adjustment hereunder shall be allowed if asserted after final payment under this Contract.

11.3 The value of any Work covered by a Change Order or of any claim for an increase or decrease in the Contract Price shall be determined in one of the following ways:

11.3.1 Where the Work involved is covered by unit prices contained in the Contract Documents or subsequently agreed upon, by application of unit prices to the quantities of the items involved.

11.3.2 By mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation.

11.3.3 By cost of the Work and mutually acceptable fixed amount for overhead and profit agreed upon by the parties.

11.3.4 If none of the above methods is agreed upon, the value shall be determined by the TOWN on the basis of cost of the Work and a percentage for overhead and profit. Cost shall only include labor (payroll, payroll taxes, fringe benefits, worker's compensation, etc.), materials, equipment, and other incidentals directly related to the Work involved.

In such cases the CONTRACTOR will submit, in the form prescribed by the TOWN, an itemized cost breakdown together with supporting data. The amount of credit to be allowed by the CONTRACTOR to the TOWN for any such change which results in a net decrease in cost, will be the amount of the actual net decrease as determined by the TOWN. When both additions and credits are involved in any one change, the combined overhead and profit shall be figured on the basis of the net decrease, if any.

Cash Allowances

11.4 It is understood that the CONTRACTOR has included in the Contract Price any allowances so named in the Contract Documents and shall cause the Work so covered to be done by such materialmen, suppliers, or SUBCONTRACTORS and for such sums within the limit of the allowances as the TOWN may approve. Upon final payment, the Contract Price shall be adjusted as required and an appropriate Change Order issued. The CONTRACTOR agrees that the original Contract Price includes such sums as CONTRACTOR deems proper for cost and profit on account of cash allowances. No demand for an additional sum for overhead or profit in connection therewith will be allowed.

Unit Price Work

11.5 Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the established unit prices for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price.

11.6 Each unit price will be deemed to include an amount considered by the CONTRACTOR to be adequate to cover the CONTRACTOR's overhead and profit for each separately identified item.

11.7 The unit price of an item of Unit Price Work shall be subject to revaluation and adjustment under the following conditions:

11.7.1 if the total cost of a particular item of Unit Price Work amounts to 5% or more of the Contract Price and the variation in the quantity of that particular item of Unit Price Work performed by the CONTRACTOR differs by more than 15% from the estimated quantity of such item indicated in the Agreement; and

11.7.2 if there is no corresponding adjustment with respect to any other item of Work; and

11.7.3 if the CONTRACTOR believes that it has incurred additional expense as a result thereof;
or

11.7.4 if the TOWN believes that the quantity variation entitles it to an adjustment in the unit price, either the TOWN or the CONTRACTOR may make a claim for an adjustment in the Contract Price in accordance with Article 11 if the parties are unable to agree as to the effect of any such variations in the quantity of Unit Price Work performed.

ARTICLE 12. CHANGE IN CONTRACT TIME

12.1 The Contract Time may only be changed by a Change Order on form FMB:009. Any claim for an extension in the Contract Time shall be in writing and delivered to the OWNER'S REPRESENTATIVE within fifteen (15) calendar days of the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the extent of the claim with supporting data (analysis and documentation) shall be delivered within sixty (60) calendar days after such occurrence (unless the OWNER'S REPRESENTATIVE allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by the CONTRACTOR's written statement that the adjustment claimed is the entire adjustment to which the CONTRACTOR has reason to believe it is entitled as a result of the occurrence of said event. If adverse weather conditions are the basis of a claim for additional time, such claim shall be documented by data substantiating that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that the weather conditions had an adverse effect on the scheduled construction. No claim by the CONTRACTOR under this provision shall be allowed unless the CONTRACTOR has given the notice and the analysis and documentation required in this paragraph. All claims for adjustment in the Contract Time shall be determined by the OWNER'S REPRESENTATIVE. Any change in the Contract Time resulting from any such claim shall be incorporated in a Change Order.

12.2 The TOWN shall not be responsible for any delay in the completion of the project where the delay is beyond the control or without fault or negligence on behalf of the TOWN. The TOWN shall not be held accountable for extra compensation or an extension of time due to default by the CONTRACTOR, subcontractors, or suppliers in the furnishing of labor or materials for the project, or having to replace defective materials.

12.3 The CONTRACTOR shall be entitled to a claim for an extension of time when a delay or hindrance is caused by an act of God, or any act or omission on the part of the TOWN, provided the CONTRACTOR gives notice to the OWNER'S REPRESENTATIVE within fifteen (15) calendar days of the occurrence of the event giving rise to the claim and having stated the general nature of the claim. The CONTRACTOR'S sole remedy shall be an extension of Contract Time.

12.4 No extension of Contract Time or increases in Contract Price shall be granted for any delay caused either by (1) inadequate crewing, default or bankruptcy of lower tier contract, slow submittals, etc., or (2) by severe though not unusual weather conditions (other than hurricanes and tornadoes) or (3) any delay impacting a portion of the Work within the available total float or slack time and not necessarily preventing completion of the Work within the Contract Time unless otherwise agreed to by the TOWN in its sole discretion or (4) for any delay which is caused by the CONTRACTOR having to replace defective material or equipment or (5) delays attributable to the lack of performance by Subcontractors regardless of the reasons.

12.5 All time limits stated in the Contract Documents are of the essence of the Agreement.

ARTICLE 13. WARRANTY GUARANTEE / ACCEPTANCE OF DEFECTIVE WORK

Warranty and Guarantee

13.1 The CONTRACTOR warrants and guarantees to the TOWN that all materials and equipment will be new unless otherwise specified and that all Work will be of good quality, free from faults or defects and in accordance with the requirements of the Contract Documents and any inspections, test or approvals referred to in this Article for a period of twelve months following final completion and acceptance by the Town. All unsatisfactory Work, all faulty Work, and all Work not conforming to the requirements of the Contract Documents or such inspections, tests or approvals shall be considered defective. Prompt notice of all defects shall be given to the CONTRACTOR. All defective Work, whether or not in place, may be rejected, corrected or accepted as provided in this Article. Contractor is to assign any and all warranties or guarantees on equipment, materials, etc. to the TOWN.

Test and Inspections

13.2 If the Contract Documents, laws, ordinances, rules, regulations or order of any public authority having jurisdiction require any Work to specifically be inspected, tested or approved by someone other than the CONTRACTOR, the CONTRACTOR will give the OWNER'S REPRESENTATIVE timely notice of readiness therefore. The CONTRACTOR will furnish the OWNER'S REPRESENTATIVE with the required certificates of inspection, testing or approval. All such tests will be in accordance with the methods prescribed by the American Society for Testing and Materials or such other applicable organizations as may be required by law or the Contract Documents. If any such Work required to be inspected, tested or approved is covered without written approval of the OWNER'S REPRESENTATIVE, it shall, if requested by the OWNER'S REPRESENTATIVE, be uncovered for observation at the CONTRACTOR'S expense. The cost of all such inspections, tests and approvals shall be borne by the CONTRACTOR unless otherwise provided.

13.3 Neither observations by the OWNER'S REPRESENTATIVE, nor inspections, tests or approvals by persons other than the CONTRACTOR shall relieve the CONTRACTOR from his obligations to perform the Work in accordance with the requirements of the Contract Documents.

Close Out Procedure

13.4 General Operating/Maintenance Instructions & Manuals

13.4.1 The CONTRACTOR shall organize maintenance operating manual information into four (4) suitable sets of manageable size, and bind into individual binders properly identified and indexed (thumb-tabbed). Emergency instructions, spare parts listing, warranties, wiring diagrams, recommended "turn around" cycles, inspection procedures, shop drawings, product data, and similar acceptable information shall be included. The CONTRACTOR shall bind each manual of each set in a heavy duty, 3-ring vinyl covered binder, and include pocket folders for folded sheet information. Mark identification on both front and spine of each binder.

13.4.2 CONTRACTOR shall arrange for each installer of work requiring continuing maintenance (by the OWNER) or operation, to meet with the OWNER'S personnel, at the project site, to provide basic instructions needed for proper operation and maintenance of the

entire work. CONTRACTOR shall include instructions by manufacturer's representatives where installers are not expert in the required procedures. CONTRACTOR shall review maintenance manuals, record documentation, tools, spare parts and materials, lubricants, fuels, identification system, control sequences, hazards, cleaning and similar procedures and facilities. For operational equipment, CONTRACTOR shall demonstrate start-up, shut-down, emergency operations, noise and vibration adjustments, safety, economy/efficiency adjustments, and similar operations. CONTRACTOR shall review maintenance and operations in relation to applicable guarantees, warranties, agreements to maintain, bonds, and similar continuing commitments.

Access to the Work

13.5 The TOWN and the OWNER'S REPRESENTATIVE shall at all times have access to the Work. The CONTRACTOR shall provide proper facilities for such access and observation of the Work and also for any inspection or testing thereof by others.

Uncovering the Work

13.6 If any work has been covered which the OWNER'S REPRESENTATIVE has not specifically requested to observe prior to its being covered, or if the OWNER'S REPRESENTATIVE considers it necessary or advisable that covered Work be inspected or tested by others, the CONTRACTOR, at the OWNER'S REPRESENTATIVE'S request, will uncover, expose or otherwise make available for observation, inspection or testing as the OWNER'S REPRESENTATIVE may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, the CONTRACTOR will bear all the expense of such uncovering, exposure, observation, inspection and testing, and of satisfactory reconstruction. If, however, such Work is not found to be defective, the CONTRACTOR will be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction, if he makes a claim therefore as provided in Article 11 and 12.

Town May Stop the Work

13.7 If the Work is defective, if the CONTRACTOR fails to supply sufficient skilled workers or suitable materials or equipment, or if the CONTRACTOR fails to make prompt payments to SUBCONTRACTORS for labor, materials or equipment, the TOWN may order the CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has been eliminated: however, this right of the TOWN to stop the work shall not give rise to any duty on the part of the TOWN to exercise this right for the benefit of the CONTRACTOR or any other party.

Correction or Removal of Defective Work

13.8 If required by the OWNER'S REPRESENTATIVE prior to approval of final payment, the CONTRACTOR will, promptly, without cost to the TOWN and as specified by the OWNER'S REPRESENTATIVE, either correct any defective Work whether or not fabricated, installed or completed or, if the Work has been rejected by the OWNER'S REPRESENTATIVE, remove it from the site and replace it with non-defective Work. If the CONTRACTOR does not correct such defective Work or remove and replace such rejected Work within ten (10) calendar days, all as specified in a written notice from the OWNER'S REPRESENTATIVE, the OWNER'S REPRESENTATIVE may have the deficiency corrected or the rejected Work removed and

replaced. All direct or indirect costs of such correction or removal and replacement shall be paid by the CONTRACTOR. The CONTRACTOR will also bear the expense of making good all Work of others destroyed or damaged by his or her correction, removal or replacement of his defective Work.

One (1) Year Correction Period

13.9 If, after the approval of the final payment and prior to the expiration of one (1) year after the date of Final Completion or such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Contract Documents, any Work is found to be defective, the CONTRACTOR will promptly, without cost to the TOWN, and in accordance with the OWNER'S REPRESENTATIVE'S written instructions, either correct such defective Work or, if it has been rejected by the OWNER'S REPRESENTATIVE, remove it from the site and replace it with non-defective Work. If, within seven (7) calendar days, the CONTRACTOR does not comply with the terms of such instructions, the Bonding Company shall be notified of default and requested to make repairs or replacement, the TOWN may have the defective Work corrected or the rejected Work removed and replaced. All direct and indirect costs of such removal and replacement shall be paid by the CONTRACTOR. This shall be in addition to, and not in substitution for, the warranty requirement set forth elsewhere in these Contract Documents.

Acceptance of Defective Work

13.10 If, instead of requiring correction or removal and replacement of defective Work, the TOWN prefers to accept it, the TOWN may do so. In such case, if acceptance occurs prior to approval of final payment, a Change Order shall be issued incorporating the appropriate revisions to the Contract Documents including an appropriate reduction in the Contract Price. If the acceptance occurs after approval of the final payment, an appropriate amount shall be paid by the CONTRACTOR to the TOWN.

Neglected Work By Contractor

13.11 If the CONTRACTOR should neglect to prosecute the Work in accordance with the Contract Documents, including any requirements of the progress schedule, the TOWN may, after three (3) calendar days written notice to the CONTRACTOR and without prejudice to any other remedy it may have, make good such deficiency and the cost thereof shall be charged against the CONTRACTOR. A Change Order shall be issued incorporating the appropriate revision to the Contract Documents including an appropriate reduction in the Contract Price. If the payments then or thereafter due the CONTRACTOR are not sufficient to cover such amount, the CONTRACTOR shall pay the difference to the TOWN.

ARTICLE 14. PAYMENT AND COMPLETION

Schedule of Values

14.1 Within ten (10) calendar days after the effective date of the Agreement, the CONTRACTOR will submit a schedule of values of the Work including quantities and unit prices totaling to the Contract Price. This schedule shall be satisfactory in form and substance to the TOWN and shall subdivide the Work into sufficient detail to serve as the basis for progress payments during construction. Upon approval of the schedule of values by the OWNER'S REPRESENTATIVE, it shall be incorporated into the Estimate and Requisition for Payment form No. FMB:013 prescribed by the TOWN. Unit Price Contracts shall have the bid proposal prices incorporated into the

Estimate and Requisition for Payment.

Application for Progress Payment

14.2 Not more often than once a month, nor less often than specified in the approved payment schedule 1.4.3, and on a date established at the Project Pre-Construction Conference, the CONTRACTOR will submit to the OWNER'S REPRESENTATIVE for review the Estimate and Requisition for Payment form No. FMB:011 filled out and signed by the CONTRACTOR covering the Work completed as of the date of the Application and supported by such data as the OWNER'S REPRESENTATIVE may reasonably require. Also, if payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the site or at another location agreed to in writing, the Application for Payment shall also be accompanied by such supporting data, satisfactory to the OWNER'S REPRESENTATIVE, as will establish the TOWN'S title to the material and equipment and protect its interest therein, including applicable insurance. All progress payments will be subject to the retainage percentage specified in the Contract Documents. Such retainage shall be paid and will be issued in the final payment after acceptance by the TOWN of the Work.

Contractor's Warranty of Title

14.3 The CONTRACTOR warrants and guarantees that title to all Work, materials and equipment covered by an application for progress payment, whether incorporated in the Project or not, will be passed to the TOWN prior to the next making of application for progress payment, free and clear of all liens, claims, security interest and encumbrances; and that no Work, materials or equipment covered by an Application for Payment will have been acquired by the CONTRACTOR or by any other person performing the Work at the site or furnishing materials and equipment for the Project subject to an agreement under which an interest therein or encumbrance thereon is retained by the seller or otherwise imposed by the CONTRACTOR or such other person.

Approval of Payments

14.4 The OWNER'S REPRESENTATIVE will, within fifteen (15) calendar days after receipt of each Application for Payment, either indicate approval of payment and deliver the application to the TOWN or return the Application to the CONTRACTOR indicating in writing the reason for refusing to approve payment. In the latter case, the CONTRACTOR may make the necessary corrections and re-submit the Application. The TOWN will, within fifteen (15) calendar days after receipt of each approved application for payment, either indicate their approval of payment and pay the CONTRACTOR the amount approved or return the application to the CONTRACTOR through the OWNER'S REPRESENTATIVE indicating in writing the reason for refusing to approve payment. In the latter case, the CONTRACTOR may make the necessary corrections and resubmit the application to the OWNER'S REPRESENTATIVE.

14.4.1 The OWNER'S REPRESENTATIVE's approval of any payment requested in an Application for Payment shall constitute a representation by the OWNER'S REPRESENTATIVE to the TOWN, based on the OWNER'S REPRESENTATIVE'S on-site observations of the Work in progress and on his review of the Application for Payment and the supporting data that the CONTRACTOR is entitled to payment of the amount approved.

14.4.2 The OWNER'S REPRESENTATIVE'S approval of final payment shall constitute an additional representation by the OWNER'S REPRESENTATIVE to the TOWN that the conditions precedent to the CONTRACTOR'S being entitled to final payment as set forth in this

Article 14 have been fulfilled.

14.4.3 The OWNER'S REPRESENTATIVE may refuse to approve the whole or any part of any payment if the OWNER'S REPRESENTATIVE is unable to make such representations to the TOWN. OWNER'S REPRESENTATIVE may then refuse to approve any such payment because of subsequently discovered evidence or the results of subsequent inspections or test, nullify any such payment previously approved, to such extent as may be necessary in his opinion to protect the TOWN from loss because:

14.4.3.1 The Work is defective;

14.4.3.2 A portion of such payment is the subject of a dispute or claim that has been filed.

14.4.3.3 The Contract Price has been reduced because of Modifications;

14.4.3.4 The TOWN has been required to correct defective Work or complete the Work in accordance with Article 13, or

14.4.3.5 Of unsatisfactory prosecution of the Work, including failure to clean up as required by Article 7.

Substantial Completion

14.5 Prior to final payment, the CONTRACTOR shall, in writing to the OWNER'S REPRESENTATIVE, certify that the entire Project is substantially complete and request that the OWNER'S REPRESENTATIVE issue a Certificate of Substantial Completion. Within fourteen (14) calendar days thereafter, the OWNER'S REPRESENTATIVE and the CONTRACTOR will make an inspection of the Project to determine the status of completion. If the TOWN does not consider the Project substantially complete, it will notify the CONTRACTOR in writing giving the reasons therefore. If the TOWN considers the Project substantially complete, a Certificate of Substantial Completion (Form No. FMB:012) will be issued. This certificate shall fix the date of Substantial Completion and the responsibilities between the TOWN and the CONTRACTOR for maintenance, heat and utilities. The Certificate of Substantial Completion will also include a punch list of items to be completed or corrected, said time to be within the Contract Time. The TOWN shall have the right to exclude the CONTRACTOR from the Project after the date of Substantial Completion but the TOWN will allow the CONTRACTOR reasonable access to complete items on the punch list.

Partial Utilization

14.6 Prior to final payment, the OWNER'S REPRESENTATIVE may request the CONTRACTOR to permit the use of a specified part of the Project which the TOWN believes it may use without significant interference with construction of the other parts of the Project. If the CONTRACTOR agrees, he will certify to the OWNER'S REPRESENTATIVE that said part of the Project is substantially complete and request the OWNER'S REPRESENTATIVE to issue a Certificate of Substantial Completion for that part of the Project. Within fourteen (14) calendar days thereafter, the OWNER'S REPRESENTATIVE and the CONTRACTOR will make an inspection of that part of the Project to determine its status of completion. If the TOWN considers that part of the Project to be substantially complete, the OWNER'S REPRESENTATIVE will deliver to the CONTRACTOR a certificate to that effect, fixing the date of Substantial Completion as to that part of the Project, and listing the punch list of items to be completed or corrected before final payment

and fixing the responsibility between the TOWN and the CONTRACTOR for maintenance, heat and utilities as to that part of the Project. The TOWN shall have the right to exclude the CONTRACTOR from any part of the Project which is so certified to be substantially complete but the TOWN will allow the CONTRACTOR reasonable access to complete or correct items on the punch list.

Final Inspection

14.7 Upon written notice from the CONTRACTOR that the Project is complete, the OWNER'S REPRESENTATIVE will make a final inspection with the CONTRACTOR and will notify the CONTRACTOR in writing of any particulars which this inspection reveals that the Work is defective. The CONTRACTOR shall immediately make such corrections as are necessary to remedy the defects within a reasonable time.

Final Inspection for Payment

14.8 After the CONTRACTOR has completed any such corrections to the satisfaction of the OWNER'S REPRESENTATIVE and delivered all maintenance and operating instructions, schedules, guarantees, bonds, Certificates of Inspection and other documents as required by the Contract Documents, he may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied by legally effective final releases or waivers of liens from the CONTRACTOR and all SUBCONTRACTORS which performed services for the CONTRACTOR pursuant to the Contract Documents and the consent of surety, if applicable to final payment.

Approval of Final Payment

14.9 If, on the basis of its observations and review of the Work during construction, its final inspection and its review of the final Estimate and Requisition for Payment, all as required by the Contract Documents, the OWNER'S REPRESENTATIVE is satisfied that the Work has been completed and the CONTRACTOR has fulfilled all of his obligations under the Contract Documents, it will, within fifteen (15) calendar days after receipt of the final Application for Payment, indicate in writing its approval of payment and deliver the application to the TOWN. Otherwise, it will return the Application to the CONTRACTOR, indicating in writing its reason for refusing to approve final payment, in which case the CONTRACTOR will make the necessary corrections and re-submit the Application. The TOWN will, within fifteen (15) calendar days after receipt of approved application for final payment, either indicate their approval of the estimate and requisition application for payment pay the CONTRACTOR the amount approved by the TOWN and issue a Certificate of Final Completion or return the application thru the OWNER'S REPRESENTATIVE indicating in writing the reason for refusing to approve payment. In the latter case, the CONTRACTOR may make the necessary corrections and resubmit the application to the OWNER'S REPRESENTATIVE.

14.10 If, after substantial Completion of the Work, final completion is materially delayed through no fault of the CONTRACTOR, and the OWNER'S REPRESENTATIVE so confirms, the TOWN shall and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if bonds have been furnished as required in Article 6, the written consent of the Surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the CONTRACTOR to the OWNER'S REPRESENTATIVE, prior to certification of such payment.

Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

14.11 If liquidated damages are to be deducted from the final payment, the TOWN shall so notify the CONTRACTOR in writing at least seven (7) calendar days prior to the TOWN'S submittal to Finance.

14.12 The Contractor will be required to submit with his or her final payment documents a DBE Participation Certification, Form No. FMB:016 indicating all DBE sub-contractor(s) and amount(s) utilized for the project, if applicable.

If the CONTRACTOR did not utilize the DBE firm(s) listed on the Bid Proposal, Schedule D, a letter of justification, as to why shall be submitted along with the DBE Participation Certification if appropriate.

14.13 Upon receipt of the Contractor Performance Evaluation, the CONTRACTOR will have seven (7) calendar days, from the date received, to review, comment, sign and return back to the project manager. If the evaluation has not been received back from the CONTRACTOR within the seven (7) calendar days, the TOWN will assume the CONTRACTOR fully agrees with and has no comments to the evaluation. The evaluation will then be placed on file with Town of Fort Myers Beach Contracts Management.

Contractor's Continuing Obligation

14.14 The CONTRACTOR'S obligation to perform the Work and complete the Project in accordance with the Contract Documents shall be absolute. Neither approval of any progress or final payment by the TOWN, the issuance of the Certificates of Completion, any payment by the TOWN to the CONTRACTOR under the Contract Documents, any use or occupancy of the Project or any part thereof by the TOWN, any act of acceptance by the TOWN, any failure to do so, nor any correction of defective Work by the TOWN shall constitute an acceptance of Work not in accordance with the Contract Documents.

Waiver of Claims

14.15 The making and acceptance of final payment shall constitute:

14.15.1 A waiver of all claims by the TOWN against the CONTRACTOR other than those arising from unsettled liens, from defective Work appearing after final payment or from failure to comply with the requirements of the Contract Documents, or from the terms of any guarantees specified therein, and,

14.15.2 A waiver of all claims by the CONTRACTOR against the TOWN other than those previously made in writing and still unsettled.

ARTICLE 15. SUSPENSION OF WORK AND TERMINATION

Town May Suspend Work

15.1 The TOWN may at any time and without cause suspend the Work or any portion thereof for a period of not more than ninety (90) calendar days by notice in writing to the CONTRACTOR. The TOWN shall fix the date on which Work shall be resumed and the CONTRACTOR will resume

the Work on the date so fixed. The CONTRACTOR will be allowed an increase in the Contract Price, an extension of the Contract Time or both, if such increases are justified and directly attributable to any TOWN suspension and if he makes a claim thereof as provided in Articles 11 and 12.

Town May Terminate

15.2 If the CONTRACTOR is adjudged bankrupt or insolvent, if CONTRACTOR makes a general assignment for the benefit of his creditors, if a trustee or receiver is appointed for the CONTRACTOR or for any of its property, if he or she files a petition to take advantage of any debtor's act or reorganizes under the bankruptcy or similar laws, if CONTRACTOR repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment, if CONTRACTOR repeatedly fails to make prompt payments to SUBCONTRACTORS for labor, materials or equipment, if CONTRACTOR disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction, if he or she disregards the authority of the OWNER'S REPRESENTATIVE, or if CONTRACTOR otherwise substantially violates any provisions of the Contract Documents, then the TOWN may, without prejudice to any other right or remedy and after giving the CONTRACTOR and CONTRACTOR's surety seven (7) calendar days written notice, terminate the services of the CONTRACTOR and take possession of the Project and all materials, equipment, tools, construction equipment and machinery thereon owned by the CONTRACTOR and finish the Work by whatever method the TOWN may deem expedient or arrange with the Surety to complete the project. The CONTRACTOR, if notified by the TOWN to do so, shall promptly remove any part of his or her equipment and supplies from the property of the TOWN; failing, the TOWN shall have the right to remove such equipment and supplies at the expense of the CONTRACTOR.

15.2.1 In such case the CONTRACTOR shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds the direct and indirect cost of completing the Project, including compensation for additional professional services, such excess shall be paid to the CONTRACTOR. If such cost exceeds such unpaid balance, the CONTRACTOR will pay the difference to the TOWN. Such cost incurred by the TOWN will be determined by the TOWN and incorporated in a Change Order.

15.2.2 Where the CONTRACTOR'S services have been so terminated by the TOWN, said termination shall not affect any rights of the TOWN against the CONTRACTOR then existing or which may thereafter accrue.

15.2.3 If so terminated, any retention or payment of monies by the TOWN due the CONTRACTOR will not release the CONTRACTOR from liability accruing under this Contract.

15.2.4 If after notice of termination of the CONTRACTOR'S right to proceed under the provisions of this clause, it is determined for any reason that the CONTRACTOR was not in default under the provisions of Article 15.2 or that the delay was excusable, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Article 15.3.

Contractor May Stop Work or Terminate the Contract

15.3 If through no fault of the CONTRACTOR, or a Subcontractor, Sub-Subcontractor or their agents or employees or any other persons performing portions of the Work under Contract with the CONTRACTOR, the WORK is suspended for a period of more than ninety (90) calendar days

by the TOWN or under an order of court or other public authority, or the OWNER'S REPRESENTATIVE has not issued a certificate for payment and has not notified the CONTRACTOR of the reason for withholding certification as provided in 14.4 or because the TOWN has not made payment on a certificate for payment within the time stated in the Contract Documents, than the CONTRACTOR may, upon seven (7) calendar days written notice to the TOWN and the OWNER'S REPRESENTATIVE, terminate the Agreement and recover from the TOWN payment for all Work executed and proven loss with respect to materials, equipment, tools and construction equipment and machinery, including reasonable overhead, profit and damages.

15.4 In addition and in lieu of terminating the Agreement, if the OWNER'S REPRESENTATIVE has failed to act on an application for payment or the TOWN has failed to make any payment as aforesaid, the CONTRACTOR may upon seven (7) calendar days written notice to the TOWN and the OWNER'S REPRESENTATIVE stop the Work until payment of all amounts then due. The provisions of this paragraph shall not relieve the CONTRACTOR of the obligation to carry on the Work in accordance with the progress schedule and without delay during disputes and disagreements with the TOWN.

15.5 If subcontracts are to be let, the prime contractor is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible."

ARTICLE 16. MISCELLANEOUS

General

16.1 All Specifications, Drawings and copies thereof furnished by the TOWN, to the CONTRACTOR, shall remain the TOWN'S property. They shall not be used on another Project.

16.2 The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon the CONTRACTOR and the rights and remedies available to the TOWN thereunder shall be in addition to and not a limitation of any otherwise imposed or available by law, by special guarantee or other provisions of the Contract Documents.

16.3 Should the TOWN or the CONTRACTOR suffer injury or damage to its person or property because of any error, omission or act of the other or any of his employees, agents, or others for whose acts a party is legally liable, a claim should be made in writing to the other party within seven (7) calendar days of the first observance of such injury or damage. This shall not be deemed to waive any immunity from claim on the part of the TOWN, whether it be through sovereign immunity or due to specific provisions set forth in these Contract Documents.

16.4 The Contract Documents shall be governed by the laws of the State of Florida, the County of Lee, and the Fort Myers Beach Code of Ordinances.

Computation of Time

16.5 When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

ARTICLE 17. MAINTENANCE OF RECORDS

17.1 The CONTRACTOR shall keep adequate records and supporting documents applicable to this contractual matter. Said records and documentation will be retained by the CONTRACTOR for a minimum of five (5) years from the date of termination of this Contract. The TOWN and its authorized agents shall have the right to audit, inspect and copy records and documentation as often as the TOWN deems necessary during the period of this Contract and during the period of five (5) years hereafter; provided, however, such activity shall be conducted only during normal business hours. The TOWN, during the period of time expressed by the preceding sentence, shall also have the right to obtain a copy of and otherwise inspect any audit made at the direction of the CONTRACTOR as concerns the aforesaid records and documentation.

ARTICLE 18. FEDERAL REQUIREMENTS

18.1 In the event this Contract is paid in whole or in part from any Federal Governmental agency or source, including but not limited to FEMA, it is the intent of the parties to incorporate the specific terms, regulations and requirements governing the disbursement of these funds as provided in the Contract Documents or as may be incorporated by reference and made a part of this Contract as if attached and a part of this Article. The parties acknowledge that FEMA financial assistance will be used to fund all or a portion of this Contract. The CONTRACTOR agrees to and will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives. The parties acknowledge the federal government is not a party to this Contract and is not subject to any obligations or liabilities to the TOWN, CONTRACTOR, or any other party pertaining to any matter resulting from the contract. CONTRACTOR acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the CONTRACTOR'S actions pertaining to this contract."

18.1.1 **Remedies for Breach of Contract.** See Article 5 of the Agreement and Article 10 herein.

18.1.2 **Termination for Cause and Convenience.** See Article 8 of the Agreement and Article 15 herein.

18.1.3 **Equal Employment.** During the performance of this Contract, the CONTRACTOR agrees as follows:

(1) The CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The CONTRACTOR will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The CONTRACTOR will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The CONTRACTOR will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the CONTRACTOR'S commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The CONTRACTOR will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The CONTRACTOR will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the CONTRACTOR'S noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the CONTRACTOR may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The CONTRACTOR will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The CONTRACTOR will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States. The TOWN further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that the above equal opportunity clause is not applicable which does not participate in work on or under the Contract. The TOWN agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of CONTRACTOR and its subcontractors with the equal opportunity clause and the rules,

regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance. The TOWN further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the TOWN agrees that if it fails or refuses to comply with these undertakings, FEMA or the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

18.1.4 Davis-Bacon Act.

(1) *Minimum wages.*

(i) ***Wage rates and fringe benefits.*** All laborers and mechanics employed or working upon the site of the work (or otherwise working in construction or development of the project under a development statute), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act ([29 CFR part 3](#))), the full amount of basic hourly wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. As provided in this section, the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract. Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act ([40 U.S.C. 3141\(2\)\(B\)](#)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics must be paid the appropriate wage rate and fringe benefits on the wage determination for the classification(s) of work actually performed, without regard to skill, except as provided in this section. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under this section) and the Davis-Bacon poster (WH-1321) must be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii) ***Frequently recurring classifications.***

(A) In addition to wage and fringe benefit rates that have been determined to be prevailing

under the procedures set forth in [29 CFR part 1](#), a wage determination may contain, pursuant to [§ 1.3\(f\)](#), wage and fringe benefit rates for classifications of laborers and mechanics for which conformance requests are regularly submitted pursuant to section, provided that:

- (1) The work performed by the classification is not performed by a classification in the wage determination for which a prevailing wage rate has been determined;
- (2) The classification is used in the area by the construction industry; and
- (3) The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.

(B) The Administrator will establish wage rates for such classifications in accordance with this section. Work performed in such a classification must be paid at no less than the wage and fringe benefit rate listed on the wage determination for such classification.

(iii) **Conformance.**

(A) The CONTRACTOR must require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract be classified in conformance with the wage determination. Conformance of an additional classification and wage rate and fringe benefits is appropriate only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is used in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) The conformance process may not be used to split, subdivide, or otherwise avoid application of classifications listed in the wage determination.

(C) If the CONTRACTOR and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken will be sent by the CONTRACTOR to DBAconformance@dol.gov. The Contract Representative, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) In the event the CONTRACTOR, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer will, by email to DBAconformance@dol.gov, refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(E) The contracting officer must promptly notify the CONTRACTOR of the action taken by the Wage and Hour Division under this section. The CONTRACTOR must furnish a written copy

of such determination to each affected worker or it must be posted as a part of the wage determination. The wage rate (including fringe benefits where appropriate) determined pursuant to this section must be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iv) **Fringe benefits not expressed as an hourly rate.** Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the CONTRACTOR may either pay the benefit as stated in the wage determination or may pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(v) **Unfunded plans.** If the CONTRACTOR does not make payments to a trustee or other third person, the CONTRACTOR may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, in accordance with the criteria set forth in the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the CONTRACTOR to set aside in a separate account assets for the meeting of obligations under the plan or program.

(vi) **Interest.** In the event of a failure to pay all or part of the wages required by the Contract, the CONTRACTOR will be required to pay interest on any underpayment of wages.

(2) **Withholding —**

(i) **Withholding requirements.** The TOWN may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the CONTRACTOR so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the CONTRACTOR or any subcontractor for the full amount of wages and monetary relief, including interest, required by the clauses set forth in this section for violations of this Contract, or to satisfy any such liabilities required by any other Federal contract, or federally assisted contract subject to Davis-Bacon labor standards, that is held by the same CONTRACTOR. The necessary funds may be withheld from the CONTRACTOR under this contract, any other Federal contract with the same CONTRACTOR, or any other federally assisted Contract that is subject to Davis-Bacon labor standards requirements and is held by the same CONTRACTOR, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the CONTRACTOR liability for which the funds were withheld. In the event of the CONTRACTOR'S failure to pay any laborer or mechanic, including any apprentice or helper working on the site of the work (or otherwise working in construction or development of the project under a development statute) all or part of the wages required by the contract, or upon the CONTRACTOR'S failure to submit the required records as discussed in this section, the TOWN may on its own initiative and after written notice to the CONTRACTOR, sponsor, applicant, owner, or other entity, as the case may be, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(ii) **Priority to withheld funds.** The Department has priority to funds withheld or to be withheld in accordance with this section, or both, over claims to those funds by:

(A) A CONTRACTOR'S surety(ies), including without limitation performance bond sureties and payment bond sureties;

(B) The TOWN for its procurement costs;

(C) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;

(D) A CONTRACTOR'S assignee(s);

(E) A CONTRACTOR'S successor(s); or

(F) A claim asserted under the Prompt Payment Act, [31 U.S.C. 3901–3907](#).

(3) Records and certified payrolls —

(i) Basic record requirements —

(A) **Length of record retention.** All regular payrolls and other basic records must be maintained by the CONTRACTOR and any subcontractor during the course of the work and preserved for all laborers and mechanics working at the site of the work (or otherwise working in construction or development of the project under a development statute) for a period of at least 3 years after all the work on the prime contract is completed.

(B) **Information required.** Such records must contain the name; Social Security number; last known address, telephone number, and email address of each such worker; each worker's correct classification(s) of work actually performed; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act); daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.

(C) **Additional records relating to fringe benefits.** Whenever the Secretary of Labor has found under [paragraph \(a\)\(1\)\(v\)](#) of this section that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act, the CONTRACTOR must maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

(D) **Additional records relating to apprenticeship.** Contractors with apprentices working under approved programs must maintain written evidence of the registration of apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

(ii) Certified payroll requirements —

(A) **Frequency and method of submission.** The CONTRACTOR or subcontractor must submit weekly, for each week in which any DBA- or Related Acts-covered work is performed, certified payrolls to FEMA if the agency is a party to the Contract, but if the agency is not such a party, the CONTRACTOR will submit the certified payrolls to the TOWN, sponsor, owner, or other entity, as the case may be, that maintains such records, for transmission to FEMA. The CONTRACTOR is responsible for the submission of all certified payrolls by all subcontractors.

FEMA or CONTRACTOR may permit or require subcontractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature; the system allows the CONTRACTOR, the TOWN, and the Department of Labor to access the certified payrolls upon request for at least 3 years after the work on the Contract has been completed; and the TOWN or CONTRACTOR permits other methods of submission in situations where the CONTRACTOR is unable or limited in its ability to use or access the electronic system.

(B) **Information required.** The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under this section, except that full Social Security numbers and last known addresses, telephone numbers, and email addresses must not be included on weekly transmittals. Instead, the certified payrolls need only include an individually identifying number for each worker (e.g., the last four digits of the worker's Social Security number). The required weekly certified payroll information may be submitted using Optional Form WH-347 or in any other format desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division website at <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh347.pdf> or its successor website. It is not a violation of this section for a CONTRACTOR to require a subcontractor to provide full Social Security numbers and last known addresses, telephone numbers, and email addresses to the prime contractor for its own records, without weekly submission by the subcontractor to the TOWN that maintains such records).

(B) **Statement of Compliance.** Each certified payroll submitted must be accompanied by a "Statement of Compliance," signed by the CONTRACTOR or subcontractor, or the CONTRACTOR or subcontractor's agent who pays or supervises the payment of the persons working on the contract, and must certify the following:

(1) That the certified payroll for the payroll period contains the information required to be provided under this section, the appropriate information and basic records are being maintained under this section, and such information and records are correct and complete;

(2) That each laborer or mechanic (including each helper and apprentice) working on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in [29 CFR part 3](#); and

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification(s) of work actually performed, as specified in the applicable wage determination incorporated into the contract.

(D) **Use of Optional Form WH-347.** The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 will satisfy the requirement for submission of the "Statement of Compliance" required by this section.

(E) **Signature.** The signature by the CONTRACTOR, subcontractor, or the contractor's or subcontractor's agent must be an original handwritten signature or a legally valid electronic signature.

(F) **Falsification.** The falsification of any of the above certifications may subject the CONTRACTOR or subcontractor to civil or criminal prosecution under [18 U.S.C. 1001](#) and [31](#)

[U.S.C. 3729.](#)

(G) **Length of certified payroll retention.** The CONTRACTOR or subcontractor must preserve all certified payrolls during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

(iii) **Contracts, subcontracts, and related documents.** The CONTRACTOR or subcontractor must maintain this Contract or subcontract and related documents including, without limitation, bids, proposals, amendments, modifications, and extensions. The CONTRACTOR or subcontractor must preserve these contracts, subcontracts, and related documents during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

(iv) **Required disclosures and access —**

(A) **Required record disclosures and access to workers.** The CONTRACTOR or subcontractor must make the records required under this section, and any other documents that the TOWN or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable statutes referenced by [§ 5.1](#), available for inspection, copying, or transcription by authorized representatives of the TOWN or the Department of Labor, and must permit such representatives to interview workers during working hours on the job.

(B) **Sanctions for non-compliance with records and worker access requirements.** If the CONTRACTOR or subcontractor fails to submit the required records or to make them available, or refuses to permit worker interviews during working hours on the job, the Federal agency may, after written notice to the CONTRACTOR, sponsor, applicant, owner, or other entity, as the case may be, that maintains such records or that employs such workers, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available, or to permit worker interviews during working hours on the job, may be grounds for debarment action. In addition, any CONTRACTOR or other person that fails to submit the required records or make those records available to the TOWN within the time TOWN requests that the records be produced will be precluded from introducing as evidence in an administrative proceeding under [29 CFR part 6](#) any of the required records that were not provided or made available to TOWN. TOWN will take into consideration a reasonable request from the CONTRACTOR or person for an extension of the time for submission of records. TOWN will determine the reasonableness of the request and may consider, among other things, the location of the records and the volume of production.

(C) **Required information disclosures.** CONTRACTOR and its subcontractors must maintain the full Social Security number and last known address, telephone number, and email address of each covered worker, and must provide them upon request to the TOWN and FEMA if FEMA is a party to the Contract, or to the Wage and Hour Division of the Department of Labor. If the Federal agency is not such a party to the Contract, the CONTRACTOR, subcontractor, or both, must, upon request, provide the full Social Security number and last known address, telephone number, and email address of each covered worker to the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records, for transmission to FEMA, the CONTRACTOR, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

(4) **Apprentices and equal employment opportunity —**

(i) **Apprentices** —

(A) **Rate of pay.** Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship (OA), or with a State Apprenticeship Agency recognized by the OA. A person who is not individually registered in the program, but who has been certified by the OA or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the first 90 days of probationary employment as an apprentice in such a program. In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship program, the contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(B) **Fringe benefits.** Apprentices must be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits must be paid in accordance with that determination.

(C) **Apprenticeship ratio.** The allowable ratio of apprentices to journey workers on the job site in any craft classification must not be greater than the ratio permitted to the contractor as to the entire work force under the registered program or the ratio applicable to the locality of the project pursuant to this section. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in this section, must be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under this section must be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(D) **Reciprocity of ratios and wage rates.** Where a CONTRACTOR is performing construction on a project in a locality other than the locality in which its program is registered, the ratios and wage rates (expressed in percentages of the journey worker's hourly rate) applicable within the locality in which the construction is being performed must be observed. If there is no applicable ratio or wage rate for the locality of the project, the ratio and wage rate specified in the contractor's registered program must be observed.

(ii) **Equal employment opportunity.** The use of apprentices and journey workers under this part must be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and [29 CFR part 30](#).

(5) **Compliance with Copeland Act requirements.** The CONTRACTOR shall comply with the requirements of [29 CFR part 3](#), which are incorporated by reference in this contract.

(6) **Subcontracts.** The CONTRACTOR or its subcontractor must insert in any subcontracts the clauses contained in this section, along with the applicable wage determination(s) and such other clauses or contract modifications as FEMA may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The CONTRACTOR is responsible for the compliance by any subcontractor or

lower tier subcontractor with all the Contract clauses in this section. In the event of any violations of these clauses, the CONTRACTOR and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and may be subject to debarment, as appropriate.

(7) **Contract termination: debarment.** A breach of the contract clauses in [29 CFR 5.5](#) may be grounds for termination of the contract, and for debarment as a CONTRACTOR and a subcontractor as provided in [29 CFR 5.12](#).

(8) **Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in [29 CFR parts 1, 3, and 5](#) are herein incorporated by reference in this contract.

(9) **Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in [29 CFR parts 5, 6, and 7](#). Disputes within the meaning of this clause include disputes between the CONTRACTOR (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) **Certification of eligibility.**

- (i) By entering into this contract, CONTRACTOR certifies that neither it nor any person or firm who has an interest in the CONTRACTOR'S firm is a person or firm ineligible to be awarded Government contracts by virtue of [40 U.S.C. 3144\(b\)](#) or [§ 5.12\(a\)](#).
- (ii) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of [40 U.S.C. 3144\(b\)](#) or [§ 5.12\(a\)](#).
- (iii) The penalty for making false statements is prescribed in the U.S. Code, Title 18 Crimes and Criminal Procedure, [18 U.S.C. 1001](#).

(11) **Anti-retaliation.** It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

- (i) Notifying any CONTRACTOR of any conduct which the worker reasonably believes constitutes a violation of the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#);
- (ii) Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#);
- (iii) Cooperating in any investigation or other compliance action, or testifying in any proceeding under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#); or
- (iv) Informing any other person about their rights under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#). per the standard described above, TOWN must include the provisions at 29 C.F.R. § 5.5(a)(1)-(10)

18.1.5 Copeland "Anti-Kickback Act" - CONTRACTOR and its subcontractors shall comply with

18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. Part 3 as may be applicable, which are incorporated by reference into this Agreement. CONTRACTOR shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses. A breach of these contract clauses may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

18.1.6 Contract Work Hours and Safety Standards

(1) Overtime requirements. No CONTRACTOR or its 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 work week in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth above the CONTRACTOR and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such CONTRACTOR and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The TOWN 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 its subcontractor under any such contract or any other federal contract with CONTRACTOR, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by CONTRACTOR, such sums as may be determined to be necessary to satisfy any liabilities of CONTRACTOR or its subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. CONTRACTOR and its subcontractors 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. 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.

(5) CONTRACTOR and its subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

(6) Records to be maintained under this provision shall be made available by the CONTRACTOR or its subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Homeland Security, the Federal Emergency Management Agency, and the

Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.”

18.1. 7 Clean Air Act - 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. The CONTRACTOR agrees to report each violation to TOWN and understands and agrees that the TOWN will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office. The CONTRACTOR agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA

18.1.8 Federal Water Pollution Control Act – 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. The CONTRACTOR agrees to report each violation to the TOWN and understands and agrees that the TOWN will, in turn, report each violation as required to FEMA, and the appropriate Environmental Protection Agency Regional Office. The CONTRACTOR agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA.”

18.1.9 Debarment - This Contract is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 3000. As such, the CONTRACTOR is required to verify that none of the CONTRACTOR'S 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). The CONTRACTOR must comply with 2 C.F.R. Part 180, subpart C and 2C.F.R. Part 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into. This certification is a material representation of fact relied upon by the TOWN. If it is later determined that the CONTRACTOR did not comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, in addition to remedies available to TOWN, the federal government may pursue available remedies, including but not limited to suspension and/or debarment. CONTRACTOR agrees to comply with the requirements of 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C while this offer is valid and throughout the period of any Contract that may arise from this offer. CONTRACTOR further agrees to include a provision requiring such compliance in its lower tier covered transactions.”

18.1.10 Bryd Anti-Lobbying Act – CONTRACTOR shall file the required certification. Each tier certifies to the tier above that it will not and has not used federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the federal awarding agency.

CONTRACTOR certifies, to the best of its knowledge and belief, that: No federal appropriated funds have been paid or will be paid, by or on behalf of CONTRACTOR, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement. If any funds other than federal appropriated funds have been paid or will be paid to any person for

influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. CONTRACTOR shall require that the language of the certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. CONTRACTOR'S certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of a certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U.S.C. 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

18.1.11 Procurement of Recovered Materials - In the performance of this Contract, the CONTRACTOR shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired competitively within a timeframe providing for compliance with the Contract performance schedule; meeting contract performance requirements; or at a reasonable price. CONTRACTOR also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

18.1.12 Prohibition on Contracting for Covered Telecommunications Equipment or Services.

(a) Definitions. As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause—

(b) Prohibitions.

(1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

(2) Unless an exception in paragraph (c) of this clause applies, CONTRACTOR and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to: (i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system; (ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system; (iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or (iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(c) Exceptions.

(1) This clause does not prohibit contractors from providing— (i) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or Contract Provisions Guide 28 (ii) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) By necessary implication and regulation, the prohibitions also do not apply to: (i) Covered telecommunications equipment or services that: i. Are not used as a substantial or essential component of any system; and ii. Are not used as critical technology of any system. (ii) Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(d) Reporting requirement.

(1) In the event the CONTRACTOR identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the CONTRACTOR is notified of such by a subcontractor at any tier or by any other source, the CONTRACTOR shall report the information in paragraph (d)(2) of this clause to the TOWN, unless elsewhere in this contract are established procedures for reporting the information.

(2) The CONTRACTOR shall report the following information pursuant to paragraph (d)(1) of this clause: (i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended. (ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the CONTRACTOR shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services. (e) Subcontracts. The CONTRACTOR shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.

18.1.13 Domestic Preference - As appropriate, and to the extent consistent with law, the CONTRACTOR should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products. For purposes of this clause: Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. Manufactured products mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

18.1.14 Audit - In compliance with section 1225 of the Disaster Recovery Reform Act of 2018, the TOWN and CONTRACTOR acknowledge and agree that no language in this Contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the

United States.”

18.1.15 DHS Seal, Flags, etc - THE CONTRACTOR shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval. The CONTRACTOR shall include this provision in any subcontracts.

EXHIBIT "2" - SPECIFICATIONS AND DRAWINGS

ESTERO ISLAND BEACH NOURISHMENT TECHNICAL SPECIFICATIONS

TS-01 MOBILIZATION:

A. GENERAL – The Work specified in this section consists of the preparatory efforts and operations in mobilizing for beginning Work on the Project, including, but not limited to, those operations necessary for the movement of personnel, equipment, supplies and incidentals to the Project area, and for the establishment of temporary offices, buildings, safety equipment and first-aid supplies, water supply, electric power, sanitary facilities, transportation facilities, and other facilities as required by the General Conditions; the Special Provisions; and Federal, State and local laws and regulations. All costs for providing the bond and insurance required for this Project shall be included within the bid item for Mobilization. Mobilization involves the moving of all equipment, including, but not limited to, dredges and other excavation equipment; pipeline; barges and tugs; and support vessels; to the Project area. It also includes arrangements for on-site storage and maintenance of said equipment, as well as access to the Work Areas for all equipment. Further, it includes construction access and staging, construction access and staging restoration, and maintenance of traffic.

B. WORK AREAS

1. Limits of Construction – The Project is located in Lee County, Florida. The Work Areas include the North-Central Beach Fill (NCBF) between approximate Stations 1+00 and 240+00; South Beach Fill (SBF) between approximately Stations 296+00 and 340+00; Nearshore and Offshore Borrow Areas; and Pipeline Corridors in the Gulf of Mexico. The Project area contains sensitive environmental habitats such as hardbottom, seagrass beds, mangroves, and oyster beds. The Contractor shall avoid these habitats and is responsible for environmental protection.

The limits of construction available to the Contractor for accomplishing the Work include the construction access and staging areas, Beach Fill templates from the landward limit of fill to the toe of fill, Borrow Areas, Pump-Out Areas, and Pipeline Corridors. The Contractor may not store plant or equipment including pipeline in excess of what is needed for this Contract. Furthermore, the Contractor shall not place said material or equipment landward of the Beach Fill templates except within the designated and approved construction access and staging areas. No Work Zones are shown on the Contract Plans. The Contractor shall not conduct any Work nor transit through the No Work Zones.

The Contractor shall not store or stockpile tools, equipment, materials, within littoral zones, wetlands, or elsewhere within surface waters of the State without prior written approval from the Town and Federal and State agencies unless designated on the Contract Plans. Storing, stockpiling, or accessing of equipment on, in, over, or through areas with benthic biological resources (including beds of submerged aquatic vegetation, wetlands, oyster reefs or hardbottom) is prohibited unless it occurs within a Work Area or ingress/egress corridor that is specifically approved by the Permits. Anchoring or spudding of vessels and barges within areas with benthic biological resources is also prohibited. The Contractor shall not conduct their operations or store Project-related equipment in, on or over dunes, or otherwise impact dune vegetation.

2. No Work Zones – No Work Zones are shown on the Contract Plans that correspond to property owners who have not provided the Owner with temporary construction easements. The Contractor shall not encroach into the No Work Zones with any Work, equipment, pipeline, personnel or materials. The Contractor shall stake-out the No Work Zones prior to fill placement and maintain the stakes until acceptance of Work, removal of pipeline, final dressing, and tilling. The Town will provide the Contractor with electronic files (e.g. CADD drawings or GIS shapefiles) of the No Work Zones. The Town is continuing to pursue construction easements and will update the beach fill limits and final No Work Zones accordingly upon issuance of the pre-construction survey.

Property owners own to the mean high-water line between approximate Stations 245+00 to 282+00. For yellow equipment transit between the NCBF and SBF, the contractor must stake-out and maintain the

stakes along the mean high-water line and any travel of yellow equipment must be seaward of the mean high-water line between approximate Stations 245+00 to 282+00.

3. Environmental Window – All Work including final grading and tilling and pipeline removal for the SBF sections must be completed between September 1 and March 1, outside of shorebird nesting season, to comply with the Permits. Work between Stations 296+00 and 320+00 shall be completed first within the SBF and work between Stations 320+00 to 340+00 shall be completed second within the SBF to try and limit the number of sea turtle nests that have to be relocated by the Town's monitor. All Work shall be subject to the environmental protection plans defined in the Permits and these Specifications.

4. Security – The Contractor is permitted to exclude the public from their Work Areas as necessary to perform the Work. The Contractor shall exclude the public from access to the discharge end of their pipeline. Enforcement shall be the Contractor's responsibility at the Contractor's expense. The enforcement shall be coordinated with local enforcement agencies and will be subject to approval of the Town. The Contractor shall erect, maintain, and move as necessary, a restrictive barrier around the discharge of the hydraulic pipeline. The barrier shall be constructed so as to prevent the public from approaching the discharge and any dike area from any direction closer than 100 feet. The Contractor shall post signs in a conspicuous manner stating: "DANGER - HIGH PRESSURE DISCHARGE FROM DREDGE." Additionally, the Contractor shall place a safety person at the discharge end of the disposal pipeline. The safety person shall be present at all times during discharge operations and will maintain radio communication between the dredge and the disposal operation.

5. Construction Access and Staging – The temporary construction access and staging areas are shown on the Contract Plans. They include the Bowditch Point Beach Park (North segment), Newton Park Beach Park (Central segment), and 6890 Estero Boulevard (aka Wyndham property) (SBF). The Town has obtained permission from the private property owners and County for their respective properties. The Contractor shall work cooperatively with the Town, County, and private property owners for usage of the construction access and staging areas. Designated contractor parking spaces and pipeline storage and assembly areas will be determined at the pre-construction meeting. The Bowditch Point Beach Park will remain open during construction and the Contractor will have to conduct their Work accordingly. Due to the narrowness of the ingress/egress to this park, the Contractor shall confine their load in and load out schedule to avoid impacting the trolley and tram access into the park.

The Contractor shall confine their plant, equipment and operations of personnel to areas permitted by law, ordinances, permits and the requirements of the Contract Documents and shall not unreasonably encumber the premises with plant or equipment. The Contractor must control noise and must control wind-blown sand, silt, and dust while using each construction access and staging area. The Contractor is responsible for the preparation and restoration of each area. The Contractor is required to submit a construction access and staging plan and construction access and staging restoration plan prior to its usage. Disposal of any cleared vegetation, debris and rubbish shall be in a manner acceptable to the Town. All construction areas shall be restored to pre-construction conditions, or better, as part of demobilization. Sites shall be graded to prevent standing water. All permits or surveys necessary to utilize each property for the construction access and / or staging are solely the responsibility of the Contractor to obtain. A pre-construction video shall be collected by the Contractor to document the existing conditions of the land-based construction access and staging areas prior to the Contractor accessing these areas. The Contractor shall provide a copy of the video to the Town or County upon request. A minimum of 48-hour written notice shall be provided to the Town for delivery of large equipment including, but not limited to, dozers, graders, backhoes, loaders, and excavators, and sediment pipeline.

Alternative and/or additional access and staging areas may be proposed by the Contractor. Procurement of additional temporary upland construction access areas shall be obtained by and at the expense of the Contractor. The Contractor is required to submit a signed agreement with any private property owner to the Town, and a construction access plan and construction access restoration plan for review and approval by the Town for each alternate construction access obtained by the Contractor prior to its usage in accordance with the Special Provisions.

The Contractor shall minimize vehicle tracking of sediment from the Work Areas by use of Best Management Practices (BMPs) such as stone pads, concrete or steel wash racks, or equivalent systems. Street sweeping must be used if such BMPs are not adequate to prevent sediment from being tracked onto roadways.

6. Noise – The Contractor shall conduct their operations so as to comply with all Federal, State, and local laws pertaining to noise. The Contractor shall use a decibel meter and keep records as necessary to verify the Work is being conducted accordingly. Dredges and booster pumps used on this Work shall be equipped with satisfactory mufflers or other sound abatement devices to reduce engine noise. Selection of booster pump locations shall be approved by the Town prior to placement. The selected locations shall minimize impacts to navigation and residential areas to the greatest extent possible. If a booster pump is placed within 250 feet of a residential structure, a temporary berm must be constructed between the booster pump and the structure. The berm shall be of sufficient height to abate the noise level of the booster pump and shall be restored to pre-construction conditions prior to Beach Fill acceptance. All hauling and excavating equipment shall also be equipped with satisfactory mufflers or other noise abatement devices.

7. Lighting – The Contractor shall conduct their operations so as to comply with all Federal, State, and local laws including, but not limited to, pertaining to lighting including sea turtle protection safeguards during sea turtle nesting season described in the Permits.

8. Protection of Existing Facilities – During staging, construction access, excavation, sediment transport, sediment placement, and site restoration, the Contractor shall implement BMPs to protect the facilities within and adjacent to the Work Areas and to prevent damage thereto by the Contractor's operations. The Contractor shall provide the Town in their Work Plan how they will accomplish this Work including, but not limited to, use of small equipment and hand labor as necessary to protect the structures. The Contractor will be responsible for the cost to repair any damage to existing structures (e.g., utilities, seawalls, revetments, sandbags, upland development, landscaping, aids to navigation) caused by the Work in accordance with all Federal, State, and local regulations. Final payment shall be withheld until the repairs are made and approved by the Town.

9. Truck Haul Project – The Town is implementing a truck haul project scheduled to begin February 2024 and be completed summer 2024. The Town will perform additional work related to sand placement and hurricane recovery and will let another direct contract to a general contractor which shall contain conditions similar to these. The Contractor shall work cooperatively with the Town and their general contractor to accomplish the Work concurrently with the two projects.

C. DREDGING AND NAVIGATIONAL AIDS

1. General – Signal lights, signage, and aids shall be utilized to designate the Work Areas and shall be displayed and operated in accordance with the regulations of the U.S. Coast Guard (USCG) as set forth in Commandant USCG Instruction M16672.2, Navigation Rules: International-Inland (COMDTINST M16672.2), or 33 CFR 81 Appendix A (International) and 33 CFR 84 through 33 CFR 89 (Inland), as applicable.

2. Relocation of Navigational Aids – Temporary removal of any navigational aids (e.g., piles, buoys, markers, signs) located within or near the areas required to be dredged or filled and any material stockpile areas shall be coordinated by Contractor with the Town, County, and USCG prior to removal. The Contractor shall coordinate with the Town and USCG concerning the position and manner to which the navigational aids shall be relocated. The Contractor shall not otherwise remove, change the location of, obstruct, willfully damage, make fast to, or interfere with any navigational aid. The Contractor shall notify, in writing, the Town and the USCG seven (7) days prior to dredging or conducting Work adjacent to any navigational aids which shall require relocation of the aid to facilitate the Work. A copy of the notification and any USCG responses shall be provided to the Town. Temporary removal, storage, and reinstallation of any navigational aid shall be at the Contractor's expense.

3. Dredging Aids – The Contractor shall obtain approval from the USCG for all dredging aids, including, but not limited to, temporary navigational aids, warning signs, buoys, and lights that are required in conducting the Work specified in this Contract. Dredging aid markers shall not be colored or placed in a manner that they will obstruct or be confused with navigational aids. All dredging aids, signs, buoys, and or lights must meet USCG regulations referenced herein. The Contractor shall obtain a temporary Permit from the USCG for all buoys or dredging aid markers to be placed in the water prior to installation. The Permit application submitted to the USCG shall state the position, color, and the date to be installed and removed for all dredging aid markers. Copies of application and Permit shall be submitted to the Town seven (7) days prior to commencement of operations.

Lighted dredging aids to navigation shall be installed prior to any dredging equipment entering the Borrow Areas. Lighted dredging aids shall be installed at intervals required by the USCG. The Contractor shall notify the USCG in accordance with these Specifications. The notification shall contain maps and descriptions of lighted dredging aids to navigation for inclusion in the Local Notice to Mariners. Copies shall be provided to the Town.

The Contractor shall operate and maintain all the lighted aids. If buoys are used, they shall be sufficiently anchored to prevent movement by normal wave and current action and vessel wakes. All dredging aids shall be checked daily for any that may be missing, damaged, incorrectly positioned, or have inoperable lighting. All dredging aids that are found to be missing, damaged, or inoperable shall be replaced within twenty-four (24) hours. Should dredging aids leave positioned locations, the Contractor shall relocate immediately and adjust anchoring to prevent subsequent movement.

The Contractor shall prepare and maintain a method of inventory for all dredging aids used in the construction of the Project. The log shall include information concerning the location, installation, maintenance, and recovery of all dredging aids. The Contractor shall make this log available for review by the Town upon request. Upon completion of the Work, the Contractor shall furnish the log to the Town.

The Contractor shall remove all lighted dredging aids, piles, chains, and anchors from the Work Areas upon completion and acceptance of the Work.

D. SEDIMENT PIPELINE MARKERS – Pipeline Corridors have been identified in the Contract Plans. Deviations from or relocation of these corridors are subject to review and approval by the Federal and State agencies. Should the Contractor request a deviation or relocation of these corridors, it shall be the responsibility of the Contractor to apply for and obtain the required Permit modifications from the Florida Department of Environmental Protection (FDEP) and U.S. Army Corps of Engineers (USACE). The Contractor shall provide the approved permit modifications and approvals to the Town prior to installing the sediment pipeline and/or booster pumps.

No anchoring shall be allowed outside of the approved limits of anchoring and corridors unless approved by the Town. If pilings are used for anchorage, the pilings shall be well marked and removed in their entirety upon completion of the Contractor's operations. If the piles cannot be removed completely, they must be removed to a minimum of 10 (ten) feet below the existing seafloor. Any damages to private or public property resulting from the Contractor's operations shall be repaired by the Contractor at their own expense.

All sediment pipeline markers must meet USCG regulations as set forth in Commandant USCG Instruction M16672.2, Navigation Rules: International-Inland (COMDTINST M16672.2), or 33 CFR 81 Appendix A (International) and 33 CFR 84 through 33 CFR 89 (Inland), as applicable. The Contractor shall obtain a temporary Permit from the USCG for all buoys or markers to be placed in the water prior to installation. The Permit application shall state the position, color, date to be installed and removed for all sediment pipeline markers and be submitted to the USCG. Copies of application and Permit shall be submitted to the Town seven (7) calendar days prior to commencement of operations.

All submerged pipelines installed within or crossing navigable waters shall be marked in accordance with USCG regulations referenced herein. Lights shall be installed and maintained on the floating pipeline in accordance with USCG regulations referenced herein. The sediment pipeline markers shall be lighted for

24-hour operation. The Contractor shall notify the USCG in accordance with these Specifications. The notification shall contain maps and descriptions of lighted sediment pipeline markers for inclusion in the Notice to Mariners. No requirements of these Specifications shall supersede the USCG regulations.

The Contractor shall operate and maintain all the sediment pipeline markers. Sediment pipeline markers shall be checked daily for any that may be missing, damaged, incorrectly positioned, or have inoperable lighting. Missing, damaged, or inoperable markers shall be replaced within twenty-four (24) hours. Should markers leave positioned locations, the Contractor shall relocate immediately and adjust anchoring to prevent subsequent movement.

The Contractor shall prepare and maintain a method of inventory for all sediment pipeline markers used in the construction of the Project. The log shall include information concerning the location, installation, maintenance, and recovery of all sediment pipeline markers. The Contractor shall make this log available for review by the Town upon request. Upon completion of the Work, the Contractor shall furnish the log to the Town.

The Contractor shall remove all sediment pipeline markers, piles, chains, anchors, and concrete mats from the Work Areas upon completion and acceptance of the Work.

E. ARBITRARY DEMOBILIZATION – The Town will pay for mobilization and demobilization only once. Should the Contractor demobilize prior to completing the Project, such demobilization and subsequent remobilization shall be at no cost to the Town. If the Contractor elects to demobilize prior to completing the Work, except for the protection of personnel, plant, or equipment prior to a storm or relocation to another fill template within the Project, and the Work Areas are impacted by a Major Storm, defined as a storm given a name by the National Oceanic and Atmospheric Administration in the vicinity of the Work Area requiring demobilization of personnel and equipment for safety, the Town shall re-survey the same survey transects as prescribed for the pre-construction survey and such expense shall be deducted from monies owed to the Contractor.

If arbitrary demobilization should occur during construction, upon return to the Project area from an arbitrary demobilization, the Contractor shall fill the templates for a distance of 500 linear feet from the last point of sediment discharge in the direction(s) of the previously accepted sections. If a segment is discontinuous, this requirement shall apply to both ends of the discontinuous fill that had previously been accepted. It shall be the responsibility of the Contractor, at no cost to the Town, to refill any previously accepted fill sections back to the minimum acceptance elevations and slopes within the 500-foot area surveyed. If an additional survey(s) are required due to arbitrary demobilization by the Contractor, then the cost of the Town conducting the survey(s) shall be deducted from the monies owed to the Contractor.

F. METHOD OF MEASUREMENT – The lump sum quantity for Mobilization shall be the lump sum amount and shall include all items, devices, materials, labor, operations, and all Work as described herein.

G. BASIS OF PAYMENT – The Work and incidental costs specified herein shall be paid at the Contract Lump Sum Price for the Bid Item “Mobilization.” Thirty percent (30%) of the lump sum price will be paid to the Contractor upon placement of the sediment pipeline from the Nearshore Borrow Area or Pump-Out Area to the first Beach Fill. Thirty percent (30%) of the lump sum price will be paid to the Contractor after commencement and placement of 7,500 cubic yards of sediment in a 24-hour period. Ten percent (10%) of the lump sum price will be paid to the Contractor upon placement of the sediment pipeline to the second Beach Fill. The remaining thirty percent (30%) of the lump sum price will be paid to the Contractor upon completion of all punch list items and demobilization of the plant and equipment, and upon final completion and acceptance of all Work. Acceptance shall be at the sole discretion of the Town and may be based on one or more of the following: Contractor’s Daily Reports, observations by the Town representative, and Surveys.

Bid Item No. 1

Mobilization

Lump Sum (LS)

TS-02 BEACH FILL:

A. BEACH FILL CONSTRUCTION

1. General – The Contractor shall, prior to placement of fill, remove from the Beach Fills all snags, trees, stumps, driftwood, sharp objects, manmade and similar debris lying within the limits of the Beach Fills. Manmade debris includes, but is not limited to, concrete, rebar, timber piles, tiebacks, broken concrete sheet pile, broken steel sheet pile, etc. This does not include the Fort Myers Beach Fishing Pier pilings and components which shall remain in place.

There are approximately fifteen (15) timber piles within the fill template located near STA 118+80. The timber pilings shall be pulled and treated as debris. If the entire piling cannot be removed, the pilings shall be cut a minimum of three (3) feet below the existing (pre-construction) grade at the time of construction.

All materials and debris removed shall be disposed of in areas provided by and at the expense of the Contractor and approved by the Town. The Contractor shall not stockpile pipe, any other equipment, or debris outside of the Contractor's Work Area.

The Contractor shall provide and maintain ten (10) foot wide sand ramps over the pipeline, spaced at a maximum of every 100 feet and at existing beach access points, to allow public access from the uplands to the shoreline.

The cross sections shown on the Contract Plans are for the purpose of estimating the theoretical amount of fill needed and will be used in making any changes in the lines and grades. The beach is subject to changes and the elevations on the beach at the time the Work is done may vary from the elevations shown on the Contract Plans. The Town reserves the right to vary the width and grade of the template from the lines and grades shown on the Contract Plans in order to establish a uniform beach and/or dune for the entire length of the Project. The Town reserves the right to vary the width and grade of the template from the lines and grades shown on the Contract Plans based upon the final construction easements and corresponding No Work Zones. The Town reserves the right to vary the dune template location along the profile per individual acceptance section.

All sediment excavated from the Borrow Areas shall be transported to and deposited on the beach within the lines, grades, and cross sections shown on the Contract Plans except as may be modified by these Specifications. Except as specified herein, the Contractor shall maintain and protect the fill in a satisfactory condition at all times until acceptance of the Work. The fill shall be free of clay lenses, rock, or silt pockets.

Per the Special Provisions, the Contractor shall protect and/or support the utilities which may be in conflict with the construction of the Project. Per these Specifications, the Contractor shall protect the existing facilities within and adjacent to the Work Area.

The sediment shall be placed and brought to rest on the beach to the lines, grades, and cross sections indicated on the Contract Plans unless otherwise provided for herein or at the direction of the Town. Tapers with minimum lengths indicated on the Contract Plans shall be constructed at the ends of each Beach Fill wherein construction grades shall be transitioned to meet existing grades.

Placement of sediment shall not encroach landward beyond the existing seaward edge of the continuous vegetation line or structures encountered adjacent to the Beach Fills. The Contractor shall exercise due caution when placing sediment near structures/vegetation so as not to damage the structures/vegetation. The Contractor shall complete the Beach Fill templates adjacent to the structures located within the Beach Fill limits. The Contractor shall provide the Town in their Work Plan how they will accomplish this Work including, but not limited to, use of small equipment and hand labor as necessary to protect the structures. The Contractor will be responsible for the cost to repair any damage caused by the Work. Final payment shall be withheld until the repairs are made and approved in writing by the Town.

If any material is deposited other than in places designated or approved, the Contractor may be required to remove such misplaced material and redeposit it where directed at the Contractor's expense in accordance with these Specifications and the Special Provisions.

Throughout fill placement, the Contractor shall level escarpments that exceed eighteen inches (18") in height for a length of 100 feet or more. Escarpment leveling shall be coordinated with the Town and sea turtle monitors.

Any grade stakes used in the Work Areas shall be made of steel pipe or rebar that shall be completely removed intact by the Contractor after filled cross sections have been accepted by the Town. Any excavation required to remove the stakes shall be backfilled. Grade stakes shall be flagged to increase visibility. The Contractor shall prepare and maintain a method of inventory for all grade stakes used in the construction of the Project. The log shall include information concerning the location, installation, and recovery of all grade stakes. The Contractor shall make this log available for review by the Town upon request. Upon completion of the Work, the Contractor shall furnish the log to the Town. Upon full acceptance by the Town of a section of the Work Area, the Contractor shall conduct a search to find each and every grade stake placed by the Contractor. Sections of the Work Area upon which the search for, and removal of grade stakes shall be documented in the Daily Progress Report form. Any grade stakes left in the Beach Fill will be the sole responsibility and liability of the Contractor. Any injuries to people or damage to property which may occur because grades stakes were left in the Beach Fill by the Contractor will be the responsibility and the liability of the Contractor. If the Contractor fails to remove grade stakes in a timely manner, the Town may have the stakes removed and deduct the cost associated with such removal from the Contractor's payment.

After excavating and transporting sediment from a Borrow Area to a Beach Fill template, the Contractor may use mechanical means to transport sediment to construct other sections of a Beach Fill template subject to the Permits, environmental protection plans, Environmental Window, No Work Zones, and these Specifications.

2. Bowditch Point Park Dune Construction – The Contractor shall construct dunes along the Bowditch Point Park shoreline between approximate Stations 1+00 to 10+50. Dunes will be built in approximate 300-foot long segments, staggered in two rows providing 50-foot offsets and 50-foot overlaps, to allow at-grade pedestrian access from the uplands to the beach through the dunes. Dune template includes 10-foot-wide crest at +6.0 NAVD88 and side slopes of 1V:5H. The Contractor may utilize in-situ sand (temporary in-situ borrow cuts) within the Park Boundary and restore grade (fill in temporary in-situ borrow cuts) to pre-construction conditions or better utilizing sand from the Borrow Areas.

3. Fill Stabilization – Temporary longitudinal dikes and spreader/pocket pipe shall be used as necessary to prevent gulying and erosion of the sediment and to retain the sediment on the beach within the limits of the fill cross section as required by the Permits and these Specifications. As the Work progresses, dikes or mounds shall be constructed as necessary to direct the pipeline discharge longitudinally along the beach to avoid transverse gulying directly from the discharge point to the Gulf, to build the new berm to design grade, to meet water quality standards, and to keep material within the construction toe of fill. More than one series of longitudinal dikes may be required to meet these requirements. When discharging slurried sediment onto the beach from a pipeline, the Contractor shall employ BMPs to reduce turbidity. At a minimum, these BMPs shall include the use of shore-parallel sediment dikes to promote settlement of suspended sediment on the beach before return water from the dredged discharge reenters the Gulf of Mexico. The pipeline discharge location shall have a minimum set-back of 50 feet from open water, or at the landward end of the beach berm (without disturbing the dune), whichever is less. The Contractor will not be held responsible for erosion caused by waves after the sediment has been satisfactorily placed and Beach Fill accepted except that the Contractor will be required to perform the dressing specified herein. No undrained pockets shall be left in any fill section during or upon completion of the Work. The Contractor shall not allow pipeline discharge water to flow landward of the fill section or water to pond between the fill and upland.

4. Protection Conditions – The following protection conditions are specified in the Permits and relate to construction of the Beach Fills.

Between February 15 and October 31, the Contractor shall inspect the Work Area that have excavations and temporary alterations of beach topography each day, to determine which areas have deviations (such as depressions, ruts, holes and vehicle tracks) capable of trapping flightless shorebird chicks or marine turtle hatchlings. If so, the deviations shall be filled or leveled from the natural beach profile prior to 9:00 p.m. each day. The beach surface shall also be inspected subsequent to completion of the Work, and all tracks, mounds, ridges or impressions, etc. left by construction equipment on the beach shall be leveled. All debris found on the Beach Fills shall be removed from the beach during daylight hours only and shall not commence until completion of daily monitoring surveys, to the maximum extent practicable prior to any placement of sediment.

Between February 15 and October 31, staging areas and temporary storage for construction equipment and pipes shall be located off the beach to the maximum extent practicable. Nighttime storage of construction equipment that is not in use shall be located off the beach. All construction pipes that are in use on the beach shall be located as far landward as possible without compromising the integrity of the existing or reconstructed dune system. Pipes placed parallel to an existing dune shall be 5 to 10 feet away from the toe of the dune. If it is necessary to extend construction pipes past known shorebird nesting sites shown on the Contract Plans, then those pipes shall be placed landward of the site before birds are active in that area. No pipe or sediment shall be placed seaward of a shorebird nesting site during the shorebird nesting season.

Between February 15 and October 31, all vehicles shall operate in accordance with the Florida Fish and Wildlife Conservation Commission (FWC) BMPs for Operating Vehicles on the Beach (<http://myfwc.com/conservation/you-serve/wildlife/beachdriving/>). Specifically, the vehicle shall be operated at speeds less than six (6) miles per hour and run at or below the high-tide line (wet sand beach). All personnel associated with the Contractor shall be instructed about the potential presence of protected species, and the need to avoid injury and disturbance to these species. When flightless chicks are present within or adjacent to travel corridors, construction-related vehicles shall not be driven through the corridor unless an approved shorebird monitor is present and accompanies the vehicle.

Between February 15 and August 31, the Town's Bird Monitors shall establish a disturbance-free buffer zone around any location within the Work Area where the Bird Monitor has observed shorebirds engaged in breeding behavior, including territory defense. A 300-foot buffer shall be established around each nest or around the perimeter of each colonial nesting area. A 300-foot buffer shall also be placed around the perimeter of areas where shorebirds are seen digging nest scrapes or defending nest territories. All construction activities, movement of vehicles, stockpiling of equipment, and pedestrian traffic are prohibited in the buffer zone. Smaller, site-specific buffers may be established if approved in writing by the FWC Regional Biologist. Travel corridors shall be designated and marked outside the buffer areas for pedestrian, equipment or vehicular traffic. The Bird Monitors shall keep breeding sites under sufficient surveillance to determine if birds appear agitated or disturbed by construction or other activities in adjacent areas. If birds appear to be agitated or disturbed by these activities, then the Bird Monitors shall immediately widen the buffer zone to a sufficient size to protect breeding birds. Heavy equipment, other vehicles, or pedestrians may transit past breeding areas in these corridors. However, other activities such as stopping or turning heavy equipment and vehicles shall be prohibited within the designated travel corridors adjacent to the breeding site. When flightless chicks are present within or adjacent to travel corridors, movement of vehicles shall be adequately monitored by the Contractor's shorebird personnel or the Town's Bird Monitors. The Contractor, with the oversight of their shorebird personnel or the Town's Bird Monitors, shall avoid any chicks that may be in the path of moving vehicles and to level any tracks, ruts or holes that may be capable of trapping flightless chicks, while avoiding any impacts to the chicks. Any injury or death of a shorebird (including crushing eggs or young) resulting from construction activities shall be reported immediately to the FWC Regional Biologist.

Between April 15 and October 31, the Contractor shall not advance the fill more than 500 feet along the shoreline between dusk and the following day, until the daily marine turtle nesting survey is completed, and the beach has been cleared for fill advancement. The Contractor shall work cooperatively with the Town and their sea turtle monitors for reporting and clearing of the beach; and for sea turtle nest relocations. Direct lighting of the beach and nearshore waters shall be limited to the immediate area of active

construction. Lighting on offshore and onshore equipment shall be minimized by reducing the number of fixtures, shielding, lowering the height and appropriately placing fixtures to avoid excessive illumination of the water's surface and sea turtle nesting beach. The intensity of lighting shall be reduced to the minimum standard required for general construction area safety. Shields shall be affixed to the light housing on dredges, booster pumps, and land-based lights and shall be large enough to block lamp light from being transmitted outside the construction area or to the adjacent marine sea turtle nesting beach. The Contractor may also consider use of long wavelength (greater than 560 nanometers and absent wavelengths below 560 nanometers) light sources such as amber, orange, or red LEDs without the use of filters, gels, or lenses to help minimize lighting impacts on sea turtle nesting.

5. Tilling, Dressing and Final Cleanup – Upon completion of construction operations in each Beach Fill, the beach above mean high water (MHW) shall be graded and dressed throughout the Contractor's Work Area to remove ruts, humps, and depressions in the beach surface resulting from construction operations. A positive uniform slope shall be created from the continuous vegetation/armoring line to MHW.

In accordance with the Permits, immediately after completion and acceptance by the Town of each Beach Fill, the Contractor shall perform the following Work. Till the fill area from the seaward edge of the continuous vegetation\structure line to MHW with equipment operated so as to penetrate and loosen beach sediment (a) to a depth of thirty-six inches (36") and (b) laterally without leaving unloosened compact sediment between the adjacent paths of tines or penetrating part of the equipment in accordance with the Permits. Suitable equipment is Caterpillar D9L/No. 9 Adjustable Parallelogram Multi-shank Ripper or approved equal. Either during or upon completion of any tilling, the beach shall be dragged using a non-compacting tow to remove any ruts created by the tilling process. No tilling is required landward of any dunes independent of vegetation.

Final clean-up shall include the removal of all the Contractor's plant and equipment either for disposal or re-use and, if required, restoration of landscaping. Plant and/or equipment to be disposed of shall only be disposed of in a manner and at locations approved by the Town. Except as noted herein, the final clean-up within the Contractor's Work Area shall be completed within the Contract Time or Environmental Window, whichever is more restrictive. If not done by the Contractor within five (5) days of the conclusion of the Contract Time or Environmental Window, whichever is more restrictive, then the Town may have the said Work completed at the Contractor's expense. Unless otherwise approved in writing by the Town, the Contractor shall not be permitted to abandon their plant or equipment.

B. BORROW AREA DREDGING

1. Excavation – The permitted method for excavation of sediment is a cutterhead dredge with direct sediment pipeline to the Beach Fills from the Nearshore Borrow Area and hopper dredge or hydraulic cutterhead dredge with scow barge with discharge at the Pump-Out Areas from the Offshore Borrow Area. All excavation shall be performed within the limits of the Borrow Areas as depicted on the Contract Plans. Pump-Out Areas and waterborne booster locations shall be located within the limits of the Borrow Areas, Pump-Out Areas, and Pipeline Corridors shown on the Contract Plans. Variations in the composition, grain size, shell content, and silt content of the dredge material should be expected.

Excavation and filling operations shall be done in a manner that will minimize turbidity of the water at the dredge sites and at the discharge from the Beach Fills and adhere to State water quality standards. If excess turbidity occurs, the Contractor shall change the operating procedure to reduce the degree of turbidity. Stringent turbidity controls and monitoring are required and described in the Permits and these Specifications. The Contractor shall implement BMPs to meet water quality standards and as necessary employ selective discharge and/or alternating pumping locations or other methods in the event turbidity generated during the construction approaches the limits of water quality standards.

From April 15 through November 15, all lighting aboard dredges and booster barges operating within three (3) nautical miles (NM) of sea turtle nesting beaches shall be limited to the minimal lighting necessary to comply with USCG and/or OSHA requirements. All non-essential lighting on the equipment shall be minimized through reduction, shielding, lowering, and appropriate placement of lights to minimize

illumination of the water to reduce potential disorientation effects on female sea turtles approaching the nesting beaches and sea turtle hatchlings making their way seaward from their natal beaches. The Contractor may also consider use of long wavelength (greater than 560 nanometers and absent wavelengths below 560 nanometers) light sources such as amber, orange, or red LEDs without the use of filters, gels, or lenses to help minimize lighting impacts on sea turtle nesting.

2. Character of Materials – The sediment within the Borrow Areas is documented by interpretation of geophysical data including sidescan sonar and seismic subbottom surveys, vibracore samples, and classifications by laboratory tests on samples from the cores. These data are included with the Contract Documents. While the cores are representative of subsurface conditions at their respective locations and vertical reaches, local variations in the characteristics of the subsurface materials within the Borrow Areas are to be expected. Accordingly, prospective bidders shall form their own conclusions based on the geophysical and geotechnical information provided. Refer to the Permits, Contract Plans, and these Specifications for Borrow Area restrictions. The Contractor shall immediately notify the Town of any differing site conditions in accordance with the Contract Documents. The Contractor is put on notice that materials outside and below the Borrow Area limits may contain rock fragments and/or continuous rock surfaces. Vibracore samples are available for inspection upon request.

The Borrow Areas contain substantial quantities of fine-grained sediment. The Contractor should note that the fine-grained portion of the sediment may remain in suspension generating turbidity. The Contractor may have to adjust their production rate to control turbidity and meet stringent water quality standards. The Borrow Areas also contain substantial quantities of coarse-grained sand and shell. The Contractor should note that the coarse material may require special handling procedures to transport it the required distance to the fill templates, and to avoid placing coarse material in excess of the standards defined in the Permits.

3. Sediment Quality Assurance/Quality Control Plan – A Sediment Quality Assurance/Quality Control Plan (Sediment QA/QC Plan) is included in the Permits and is incorporated into these Specifications by reference. Sediment quality specifications are provided for the dredge sediment within a range of acceptable quality values which must be met for final acceptance. The sediment quality specifications take into account the variability of sediment within the Borrow Areas and represent values which may reasonably be attained given what is known about the sediment to be dredged. The Sediment QA/QC Plan defines the responsibilities for both the Town and Contractor with respect to providing compatible sediment to construct the Beach Fills.

Compatible sediment is defined in the Sediment QA/QC Plan as follows. All sediment placed on or near the beach shall be sand that is similar to that already existing at the beach site in both coloration and grain size distribution. All such sediment shall be free of construction debris, rocks, or other foreign matter, and shall not contain, on average, greater than 5% fines (i.e., silt and clay passing the #230 sieve), and shall not contain, on average, greater than 5% coarse material (retained on the #4 sieve) as described in the Permits.

As part of their quality control, the Contractor's onsite personnel shall be trained and experienced in beach nourishment and construction inspection and be knowledgeable of the Project design and sediment characteristics. The sediment quality and the quality control measures to be implemented by the Contractor defined in the Sediment QA/QC Plan shall be discussed as a matter of importance at the pre-construction meeting. The Contractor shall work cooperatively with the Town to implement the Sediment QA/QC Plan and avoid the placement of non-compatible sediment within the Beach Fills.

The Town shall have the authority to interpret the provisions of the Sediment QA/QC Plan, regulatory requirements, and other criteria in order to determine whether the sediment being placed in the fill template is acceptable or unsatisfactory. However, the Contractor shall be responsible for assuring the quality of the placed sediment complies with the determination.

The Quality Control provisions of the Sediment QA/QC Plan specify the Contract requirements placed on the Contractor to perform all Work within the construction tolerances of the proposed dredge cuts, to promptly modify dredging activity should non-compatible sediment be encountered, and to take remedial actions should non-compatible sediment be placed. The Town reserves the right to relocate the Contractor

within the dredge limits to avoid placement of non-compatible sediment. Relocations to avoid non-compatible sediment shall be at no additional cost to the Town and shall not be a basis of claim for additional cost or time.

If non-compatible sediment is encountered during excavation or sediment placement, the Contractor shall immediately notify the Town verbally, providing the time, location, and source of the non-compatible sediment. The Contractor shall adjust their dredging operations including but not limited to raising elevation and observing the quality of the sediment being excavated at that time. The Contractor shall continue to adjust elevation until compatible sediment is dredged. If the Contractor is still unable to find compatible sediment at higher elevations in the same portion of the Borrow Area, the Contractor shall (a) notify the Town verbally and report the encounter with the non-compatible sediment on their Daily Progress Report, providing the location in Florida State Plane Coordinates of the area of rock, rubble or debris, and (b) move the Contractor's dredging operations to another area within the Borrow Area. The Town reserves the right to conduct a survey of the Borrow Areas to determine compliance with the Sediment QA/QC Plan. The Contractor shall cooperate with the Town to shut down their dredging operation during this survey to allow for safe operations of the survey vessel and crew.

If the Contractor fails to comply with the Sediment QA/QC Plan and these Specifications to avoid non-compatible sediment, then rock, rubble or debris which is excavated and placed on the beach may be required by the Town to be removed from the Beach Fill by the Contractor, totally at the Contractor's expense. If the Contractor fails to remove the rock, rubble or debris, to the satisfaction of the Town, such debris may be removed by the Town, and the cost of such removal may be deducted from any payment due or to become due to the Contractor or may be recovered under the Contractor's bond.

No sediment removal shall occur below the permitted dredging depth or outside the permitted dredging limits defined in the Contract and Permits. This provision does not apply to the slopes of the dredge cuts; that is, the Contractor will not be held responsible for sediment running from outside the limits when they are excavating at an edge of the Borrow Area. Material that is excavated from unpermitted areas will not be paid for under this Contract. Excavation in such an area is a violation of Permits for this Work. The Town will perform pre-dredge and post-dredge surveys of the Borrow Areas. If surveys and construction observations determine that sediment removal has been performed outside or below the permitted limits resulting in placement of non-compatible sediment, the quantity of material dredged from these areas will be computed and subtracted from the pay quantity. Locations outside and below the permitted limits may contain material deposits that are undesirable for beach nourishment. Further, the Contractor shall remediate the Beach Fills to remove non-compatible sediment excavated from unpermitted areas as required by the permitting agencies and at the Contractor's expense.

Non-compatible sediment shall be determined by the Permit agencies and Town based on the compatible sediment definition. The Contractor will be required to compensate the Town for any costs, fines, or other expenses related to Permit violations resulting from Contractor failure to comply with the Permits and/or associated with dredging outside or below the permitted dredge limits. Compensation will be in the form of a deduction from any payment due or to become due to the Contractor or may be recovered under the Contractor's bond.

In accordance with the Sediment QA/QC Plan and these Specifications, the Contractor shall provide in their Work Plan a Noncompliant Contingency Plan to handle the removal and disposal of non-compatible sediment in the event it is encountered during dredging and fill placement. The Noncompliant Contingency Plan is subject to review and approval by the Permit agencies. The method by which the Contractor removes the non-compatible sediment shall be of their own design and shall be constructed to ensure the removal of all such rock, rubble, or debris. Crushing of rock and dispersing it within the Beach Fill shall not be allowed. The Plan shall include at a minimum how the Contractor will properly notify the Town if non-compatible sediment is encountered; how the Contractor will report the encounters in their Daily Progress Report such as approximate elevation and position in the Project datums as well as station and offset from the survey baselines (Borrow Areas and Beach Fill Templates); who will conduct the laboratory testing and analyses; control measures to adjust operations; and remedial actions such as blending, screening, removal, and disposal.

4. Dredge Quality Management Program (DQM) – The Contractor is required to implement a DQM that is consistent with these Specifications and Permits. The Contractor's DQM shall be submitted with their Work Plan for review and approval by the Town prior to mobilization. This includes sediment excavation, transport, and pump-out. The location of the master global positioning system (GPS) antenna on the dredge and the distance and direction from the master GPS antenna to the bottom of the excavation device shall be reported on the Daily Reports.

The Contractor is required to have continuously operated electronic positioning equipment that will locate the dredge when operating in the Borrow Areas. The Contractor shall keep this equipment functioning on the dredge at all times during construction. The Contractor is required to calibrate the equipment as required by the manufacturer. Proof of calibration shall be submitted to the Town. Continuous locations of the dredge shall be made at all times during dredging operations. The location is to be by computed coordinates in the Florida State Plane West grid coordinates, North American Datum of 1983 (NAD 83), GEOID18, U.S. survey feet with a probable range error not to exceed +/-3 feet. Positions shall be recorded at least every two (2) minutes along the track of cutterhead dredge and at least every 10 seconds along the track of a hopper dredge. The Contractor's method of location of the dredge shall be submitted to the Town for review and approval with the Work Plan.

The Contractor is also required to have a continuously operated dredging depth indicator capable of gauging the depth being dredged at all times for the cutter of a cutterhead dredge or draghead for a hopper dredge. The instrument shall be of an electronic recorder type. The indicators shall be in plain view of operators and be adjusted to the reference datum, North American Vertical Datum of 1988 (NAVD88), GEOID18, U.S. survey feet. The Contractor shall use surveying equipment and methodology in accordance with the State of Florida requirements for topographic and hydrographic surveys to achieve this vertical datum. The vertical positioning equipment will maintain a vertical accuracy of +/-0.5 feet with continuous applicable tidal corrections measured at the Borrow Area. Proposed tide correction methods and measurements must be included in the DQM. Data shall be recorded at intervals to correspond with horizontal location control reporting.

For cutterhead dredges the Contractor shall compile from the silent inspector (DQM computer) a daily electronic dredge log providing at a minimum the date (mm/dd/yy), time (hh:mm:ss), cutterhead location (NAD 83 X-Y, feet), cutterhead elevation (NAVD88, feet), the tide (NAVD88, feet), pump rpm, slurry density, and slurry velocity. For hopper dredges the Contractor shall compile from the silent inspector a daily electronic dredge log providing at a minimum the date (mm/dd/yy), time (hh:mm:ss), dredge location (NAD 83, X-Y, feet), port dragarm location (NAD 83, X-Y, feet), port dragarm elevation (NAVD88, feet), port pump rpm, port dragarm slurry density, port dragarm slurry velocity, starboard dragarm location (NAD 83, X-Y, feet), starboard dragarm elevation (NAVD88, feet), starboard pump rpm, starboard dragarm slurry density, and starboard dragarm slurry velocity.

The Contractor shall prepare a daily plot of the locational fixes collected that includes the Florida State Plane Coordinate grid system and the Borrow Area limits. The Contractor shall prepare daily graphs depicting the cutterhead and/or dragarm elevations corrected for tide elevation and referenced to NAVD88 and referenced to time. The format of the plot and graphs may be subject to approval by the Town. A printout of the cutterhead and/or dragarm horizontal positions in Florida State Plane Coordinates, the cutterhead and/or dragarm depths corrected for tide elevation and referenced to NAVD88 and the time, will be maintained for each printed fix. A computer file (in ASCII format) copy of the position data will be provided to the Town as part of the Daily Report.

The Contractor shall provide the daily electronic dredge logs, printouts of the dredge logs, daily locational plots, and daily cutterhead/dragarm elevation graphs by 1:00 pm the following day to the Town. The Contractor shall notify the Town immediately of any violation of the permitted Borrow Area limits, both horizontal and vertical.

Should the Contractor, during dredging operations, encounter any objects within the Borrow Areas which could be a hazard to navigation, they will notify the Town and the USCG Marine Safety Office immediately as to the location of said object for the USCG to put out a Notice to Mariners. The Contractor shall furnish

a description of the object, the latitude and longitude of the reported object, and any pertinent information necessary to alert mariners in the Project Area.

5. Cut Sequence – The Contractor must submit a proposed cut sequence with their Work Plan for approval by the Town prior to mobilization. Excavation of sediment from the Borrow Areas shall be in accordance with these Specifications and Permits, and in conformity to the lines, grades, and elevations shown on the Contract Plans or as directed by the Town. Utilization and sequence of the Borrow Areas are at the Contractor's discretion subject to Town's review and approval of the cut sequence and the Environmental Window. In order to ensure that the Borrow Areas are used efficiently, and the sediment left in the Borrow Areas is practicable to dredge in a subsequent event, the Contractor is required to adhere to the following parameters contained in the Borrow Area Conservation Plan described herein when developing their cut sequence. The cut sequence shall reflect consideration of these parameters. Deviations from the parameters may be proposed in the Contractor's Work Plan subject to review and approval by the County.

- All work in the Offshore Borrow Area must be complete by October 31, 2024 as it will be utilized for a different project beginning November 1, 2024.
- Borrow Area cuts shall parallel each other.
- Borrow Area cuts may consist of pairs of corresponding cuts. For example, Cut 1a could be oriented towards the southwest following the azimuth of the southern boundary while Cut 1b could be oriented towards the northwest following the azimuth of the eastern boundary. This option is provided to allow dredging along different headings as wind, wave, and current patterns necessitate.
- Each Borrow Area cut must be completed prior to proceeding to the next cut. If pairs of cuts are sequenced, then corresponding cuts such as Cut 1a and Cut 1b, shall be completed concurrently. This shall be repeated until the design grade is achieved, or the Work is completed during the final cut.
- All dredging shall be performed in a uniform and continuous manner to avoid creating multiple holes, valleys, or ridges.
- The permitted volume of sediment exceeds the volume required to complete the Project. The remaining volume of sediment within the Borrow Areas will be utilized to complete future beach nourishment projects.

The Town desires to have the Borrow Areas excavated to remove the significant majority of the compatible sediment within the permitted dredge depths. There is no allowance for the excavator to go below the bottom of the maximum permitted dredge cut within the Offshore Borrow Area. No operation of the plant and equipment within the Offshore Borrow Area below this limit is authorized. Specific to the Nearshore Borrow Area, the tip of the cutterhead may extend up to 1.0 feet (approximate) below the permitted dredge depths (defined as the limit of disturbance) to achieve the design dredge depths upon completion of excavation. No sediment removal below the permitted dredge depths within the Nearshore Borrow Area is authorized. Detailed geophysical surveys including bathymetry, magnetometer, side-scan sonar, and subbottom surveys were conducted of the Borrow Areas and described in the consulting reports contained in the Contract Documents.

6. Hopper Dredge Equipment and Operational Procedures – If the Contractor elects to utilize hopper dredges in the Offshore Borrow Area, they shall comply with the requirements of the Permits and these Specifications. The Contractor shall ensure that all personnel involved in operating hopper dredges receive thorough training on measures of dredge operation that will minimize takes of sea turtles. It shall be the goal of each hopper dredging operation to establish operating procedures that are consistent with those that have been used successfully during hopper dredging in other regions of the coastal United States, and which have proven effective in reducing turtle/dredge interactions.

Hopper dredge dragheads shall be equipped with sea turtle deflectors which are rigidly attached. Deflectors shall be solid with no openings in the face. The Contractor shall submit in their Work Plan detailed drawings showing the proposed device and its attachment to their equipment for review and approval by the Town prior to mobilization. Other designs will be considered provided sufficient information is included indicating a particular modification is effective in minimizing potential sea turtle takes. The Contractor shall submit in writing any alternative deflector design they wish to be considered to the Town three (3) weeks in advance of the proposed utilization of such design or within the Work Plan. The Town will coordinate with the National

Marine Fisheries Service (NMFS) on the effectiveness of this alternate design. The NMFS shall make the approval or disapproval of the alternate design. The Contractor shall not presume that a decision on an alternative design will be provided during the contracting period. The Contractor's unit price shall be based on the original, solid faced deflector design. No adjustment in Unit Price will be made for the approval or denial of an alternate deflector design. No dredging shall be performed by a hopper dredge without an installed sea turtle deflector device approved by the Town.

The leading vee-shaped portion of the deflector shall have an included angle of less than 90 degrees. Internal reinforcement shall be installed in the deflector to prevent structural failure of the device. The leading edge of the deflector shall be designed to have a plowing effect of at least six-inch (6") depth when the drag head is being operated. Appropriate instrumentation or indicator shall be used and kept in proper calibration to insure the critical "approach angle". (Information Only Note: The design "approach angle" or the angle of lower drag head pipe relative to the average sediment plane is very important to the proper operation of a deflector. If the lower drag head pipe angle in actual dredging conditions varies tremendously from the design angle of approach used in the development of the deflector, the six-inch (6") plowing effect does not occur. Therefore, every effort should be made to ensure this design "approach angle" is maintained with the lower drag pipe.)

If adjustable depth deflectors are installed, they shall be rigidly attached to the draghead using either a hinged aft attachment point or an aft trunnion attachment point in association with an adjustable pin front attachment point or cable front attachment point with a stop set to obtain the six-inch (6") plowing effect. This arrangement allows fine-tuning the six-inch (6") plowing effect for varying depths. After the deflector is properly adjusted there shall be NO openings between the deflector and the draghead more than four-inches by four-inches (4" x 4").

100% inflow screening of dredged material is required, and 100% overflow screening is recommended. If conditions prevent 100% inflow screening, inflow screening may be reduced gradually, as further detailed herein, but 100% overflow screening is then required.

The hopper's inflow screens should have four-inch by four-inch (4" x 4") screening. If the Contractor, in consultation with observers and the draghead operator, determines that the draghead is clogging and reducing production substantially, the screens may be modified sequentially: mesh size may be increased to six-inch by six-inch (6" x 6"), then nine-inch by nine-inch (9" x 9"), then twelve-inch by twelve-inch (12" x 12") openings. Clogging should be greatly reduced with these flexible options; however, further clogging may compel removal of the screening altogether, in which case effective 100% overflow screening is mandatory. The Contractor shall notify Town beforehand if inflow screening is going to be reduced or eliminated and provide details of how effective overflow screening will be achieved.

Standard operating procedure shall be that dredging pumps shall be disengaged by the operator when the dragheads are not firmly on the bottom, to prevent impingement or entrainment of sea turtles within the water column. This precaution is especially important during the cleanup phase of dredging operations when the draghead frequently comes off the bottom and can suck in turtles resting in the shallow depressions between the high spots the draghead is trimming off.

The Contractor shall notify the Town and the Sea Turtle Stranding and Salvage Network state representative (1-904-573-3930 or Allen.Foley@myfwc.com) (STSSN) of the start-up and completion of hopper dredging and relocation trawling operations. Further, in the event of learning of any sea turtle strandings that bear signs of potential draghead impingement or entrainment in the Project area, the Contractor shall notify the Town and STSSN within 48 hours. Information on any such strandings will be reported by the Town in writing within 30 days of Project completion to the NMFS Southeast Regional Office. Because the deaths of these turtles, if hopper dredge related, have already been accounted for in the NMFS jeopardy analysis, these strandings will not be counted against the take limit.

C. PIPELINE CORRIDORS

1. General – The Pipeline Corridors are defined as the Work Areas for sediment pipeline installation and operation between the Nearshore Borrow Area or Pump-Out Areas and Beach Fills, for equipment anchoring, and for pump-out operations. Allowable anchor area limits vary by location and are shown on the Contract Plans. There shall be no bottom disturbing activity, including anchoring, spudding, or surface penetrations outside of the permitted limits. Excess plant, equipment, and materials shall not be stored within the permitted limits.

2. Sediment Pipeline Installation – The sediment pipeline shall be placed within the limits of the Pipeline Corridors. No excavation or trenching is permitted in the installation of the sediment pipeline. The sediment pipeline shall be marked in accordance with USCG regulations and these Specifications at all times. In the event the Contractor elects to submerge their pipeline, the pipeline shall rest on the bottom, and the top of the submerged pipeline and any anchor securing the submerged pipeline shall be no higher than the authorized depth for any navigation channel in which the submerged pipeline is placed. Should the Contractor elect to use a pipeline material which is buoyant or semi-buoyant, such as HDPE pipe or similar low-density materials, the Contractor shall securely anchor the pipeline to prevent the pipeline from lifting off the bottom under all conditions. Should any portion of the sediment pipeline not rest on the bottom, it will be considered a floating pipeline and shall be required to be made visible on the water's surface and clearly marked. Unless otherwise provided for herein, in no case shall the pipeline be allowed to fluctuate between the surface and the bottom or lie partly submerged except in the immediate vicinity of a booster pump.

3. Operation And Maintenance – The Contractor shall maintain a tight sediment pipeline at all times. The joints shall be so constructed as to preclude spillage and leakage. The Pipeline Corridors shall be visually inspected by the Contractor daily during the period of active pump-out operations for signs of slicks, plumes, boils, or other surface anomalies that would indicate leaks, seepage, ruptures, or failures. The Contractor shall report the results of the inspections and indicate all occurrences in the Contractor's Daily Progress Report. All leaks shall be promptly repaired, and the dredging operations shall be suspended until complete repair has been made to the satisfaction of the Town. The Contractor will transport the Town to the leak repair site for visual observation if so requested by the Town. Failure to repair leaks or change the method of operation which is resulting in significant leakage will result in suspension of dredging operations and require prompt repair or change of operation to prevent leakage as a prerequisite to the resumption of dredging. Suspension of dredging due to a leak shall not be a basis of claim for additional cost or time. Significant leakage shall be defined as such that it exceeds turbidity and water quality standards or results in loss of material as may be considered significant by the Town. Sediment loss as a result of leaks in the sediment pipeline may be determined by the Town as misplaced materials and subject to removal in accordance with these Specifications.

D. MEASUREMENT, PAYMENT, AND ACCEPTANCE

1. General – The Contractor will receive no payment for any sediment which is not contained within the limits of the Beach Fills shown on the Contract Plans, and not contiguous to the fill template and above the pre-construction profile. The Contractor must place a minimum of 95% of the design volume between pay profile lines in order to be considered for payment of each individual acceptance section, unless otherwise accepted by the Town in writing.

Payment will be authorized only for sediment placement (a) within the fill template plus tolerances specified herein, and (b) for compensating slope adjustment if allowed as specified herein. The Town shall require the Contractor to refill any deficient section of beach to at least meet the template within the vertical tolerances. The Town will withhold payment for those acceptance sections of beach which do not meet the minimum fill requirement until the appropriate fill placement, grading, and dressing have been completed by the Contractor and accepted by the Town. Any material placed more than 0.5 feet above the template may be left in place at the discretion of the Town; however, this volume will not be included in the pay quantities.

The constructed beach contour lines between pay profiles will be approximately parallel and straight line, indicating that the Contractor attempted to construct a uniform (non-cuspate) beach between the profile lines. If the Town observe or believe they have observed any attempt to under-fill the beach between pay profile lines, a survey may be conducted by the Town to quantify the amount of under-filling. In the event under-filling has been found to occur, the cost of additional surveys shall be deducted from payment to the Contractor. The Contractor will place additional fill until the beach is uniform in appearance and dimensions between pay profile lines provides a minimum of 95% of the design fill in order to qualify for payment of that acceptance section.

2. Tolerance – A tolerance of five-tenths (0.5) of one foot above or below the prescribed berm grade and slopes shall be allowed, subject to a minimum of 95% of the design volume between pay profile lines. The tolerances are provided to accommodate construction inaccuracies but shall not be used to increase the pay volume above that prescribed on the Bid Schedule in each individual Beach Fill acceptance section.

3. Compensating Slope – It is recognized that during placement of the fill, waves, currents and other conditions may, to some degree or another, adjust the slope of the placed fill to some geometry different than the design fill template. However, the Town does not desire to allow in advance for consideration of a compensating slope payment. Following placement and pay surveys of sufficient fill to assess the actual slope adjustment, the Contractor may request that review and revisit this specification. If payment for compensating slope is subsequently authorized by the Town, such payments will be made under the procedures outlined as follows.

Fill placed outside the Beach Fill templates will be credited under the following circumstance. Seaward of the berm, sediment measured outside the template can be counted towards the pay quantity to the extent that it compensates for a deficit within the design template. This applies only to sediment measured contiguous to the construction profile seaward of the berm and the quantity cannot exceed the deficit volume. This provision is a tolerance in the measurement of sediment provided to accommodate for construction inaccuracies and variability but shall not be used to increase the pay volume. This provision, allowing for compensating volumes on the seaward face of the construction profile, shall be applied only within individual acceptance sections and not from one acceptance section to another. All other requirements of this specification for measurement and payment remain in effect.

4. Beach Fill Acceptance Sections – Beach Fill acceptance sections shall be 1,000 feet in continuous length unless otherwise noted herein. The basis of measurement will be the pre-placement cross sections and the post-placement cross sections of the Beach Fills. From the gross quantities so determined, the quantity of sediment lying beyond the theoretical cross section templates and outside the tolerance specified herein and subject to adjustment by “Compensating Slope” described herein for the completed acceptance section will be deducted and the net amount used for payment on a per cubic yard basis at the unit price per cubic yard for Bid Items “North-Central Estro Island Beach Fill” and “South Beach Fill.

The Contractor is required to make his own measurements and observations of each completed acceptance section to ensure they have achieved the design grades, slopes, and elevations as shown on the Contract Plans, then contact the Town and request the acceptance survey. The Contractor shall contact the Town in writing a minimum of forty-eight (48) hours in advance to request each acceptance survey. The Town shall conduct the surveys as soon as practical subject to weather conditions. In the event the Town's acceptance survey indicates that the Contractor has not achieved the completed beach section in accordance with the Contract Documents, the Contractor shall refill the section and request a resurvey. The cost of an acceptance section re-survey, equal to \$2,800 per acceptance section, shall be at the expense of the Contractor, until the Work is accepted, which shall be deducted from the progress payments accordingly.

At the sole discretion of the Town, Contractor surveys conducted in accordance with the most recent State of Florida and USACE requirements for topographic and hydrographic surveys may be used as acceptance surveys. The Contractor surveys may be used for any acceptance section, or for none; and the use of such surveys by the Town at one or more sections shall not be taken as an indication that the Contractor surveys will be relied upon in other areas.

The intent of the activities described in these Specifications is to measure quantities of sediment placed on the beach for payment and acceptance. Because of the natural movement of the placed sediment by waves, tides and currents, and the possibility of substantial movement during severe weather events, the Town reserves the right to survey at the Town's cost the completed and uncompleted sections of the Beach Fills for the purpose of computing quantities of sediment which may have been naturally transported from a completed section to an uncompleted section, or vice versa, and to incorporate those quantities in the computation of pay quantities.

5. Method of Measurement – The Beach Fill quantities, as shown on the bid form, are approximate and are given only as a basis of calculation for award of the Contract. The actual quantity may vary substantially from the estimated amount; however, the Contractor shall not exceed bid quantity without written approval from the Town. The quantity to be paid for in this specification shall be paid for in cubic yards once satisfactorily completed and accepted. The Beach Fill volumes (cubic yards) shall be calculated by the Town using a Triangulated Irregular Network surface to surface comparison method (Civil3D or Hypack).

6. Basis of Payment – Payment shall be made for materials and Work specified in connection with debris removal from the Beach Fills prior to sediment placement and proper disposal; security; layout of the Work and construction stake-out; Borrow Area excavation; sediment QA/QC; transport to and placement of sediment on the Beach Fills; sand ramps; removal, separation, and disposal of any debris encountered while dredging; escarpment removal; beach tilling, dressing and final clean-up; and all other appropriate costs in connection therewith or incidental thereto; which shall also include all other items of cost required by the Contract for which a separate payment is not provided for herein. This Work shall be included in the applicable Contract unit price per cubic yard for Bid Items “North-Central Estro Island Beach Fill” and “South Beach Fill.

Bid Item No. 2	Beach Fill	Cubic Yard (CY)
----------------	------------	-----------------

TS-03 ENVIRONMENTAL PROTECTION:

A. GENERAL – For the purpose of these Specifications, environmental protection is defined as the retention of the environment in its natural state to the greatest possible extent during Project construction and to enhance the natural appearance in its final condition. Environmental protection requires consideration of air, water, and land, and involves noise, solid waste-management as well as other pollutants. Solid wastes (including clearing debris) shall be placed in Contractor-provided containers that are emptied on a regular schedule. The Contractor will empty containers when three-quarters full and will avoid overflow conditions. All handling and disposal shall be conducted to prevent contamination. In order to prevent any environmental pollution arising from the construction activities in the performance of this Contract, the Contractor and their Subcontractors shall comply with all applicable Federal, State and local laws and regulations concerning environmental pollution control and abatement. Compliance by Subcontractors will be the responsibility of the Contractor.

B. LANDSCAPE PROTECTION – The environmental resources within the Project area and those affected outside the limits of permanent Work under this Contract shall be protected during the entire period of this Contract. The Contractor shall confine their activities to areas defined by the Contract Documents. Prior to the beginning of any construction, the Contractor shall identify all land resources to be preserved within the Contractor's Work Area. The Contractor shall not remove, cut, deface, injure, or destroy land resources, including trees, shrubs, vines, grasses, topsoil, and landforms without special permission from the Town. trees damaged beyond restoration shall be removed and disposed of by the Contractor in a manner approved by the Town. Trees that are to be removed because of damage shall be replaced at the Contractor's expense by nursery-grown trees of the same species or a species approved by the Town. The size and quality of nursery-grown trees shall also be approved by the Town. No ropes, cables, or guy wires shall be fastened to or attached to any trees for anchorage unless specifically authorized. Where such special emergency use is permitted, the Contractor shall provide effective protection for land and vegetation resources at all times.

Prior to any construction, the Contractor shall mark the areas that are not required to accomplish all Work to be performed under this Contract. Isolated areas within the general Work Area which are to be saved and protected shall also be marked or fenced. The Contractor shall protect from damage all existing trees designated to remain and protect tree roots from noxious materials in solution caused by run-off or spillage. No materials, trailers, or equipment shall be stored within the dripline of any protected tree. Survey monuments and markers shall be protected before construction operations commence. The Contractor shall convey to their personnel the purpose of marking and/or protection of all necessary objects.

C. LOCATION OF STORAGE FACILITIES – The Contractor's storage areas required in the performance of the Work shall be located upon existing cleared portions of the job site or areas to be cleared and shall require written approval of the Town. The Contractor shall not store oil or fuel on-site, or equipment that is not required for the daily construction activities. A metal pan with sides a minimum of four inches (4") high shall be placed under the equipment or adjacent area during refueling or lubrication refilling activities. The pan shall have a capacity equal to the capacity of the fuel/lubrication oil supply cans used and catch any spills or leaks during the refueling/refilling activity. Fluids caught in the pan shall be contained and either transported off-site or used in the equipment. Under no condition shall the materials be discharged on-site or into adjacent waters.

No storage of equipment or materials shall take place outside of the areas of impact as authorized by these Specifications or the Permits. The Contractor shall ensure that no impacts to wetlands or other surface waters occur during all ingress and egress activities. Those properties adjacent to the waterways that are considered surface waters or wetlands shall be left in their natural state. These areas shall not be used for parking, equipment storage, materials storage or as a staging area for construction. These areas shall not be filled or cleared.

D. EROSION CONTROL, CLEANUP AND RESTORATION – The Contractor shall implement BMPs to control off-site tracking of soil by vehicles and construction equipment and a procedure for cleanup and reporting of non-storm water discharges, such as contaminated groundwater or accidental spills. Contractor shall be responsible for management and implementation of all associated Permit conditions and requirements. The Contractor shall not begin any soil disturbing activities until the Town approves of the Contractor's Environmental Protection and Pollution Control Plan, including all required signed certification statements. Special measures shall be taken by the Contractor to prevent bilge pump discharge, chemicals, fuels, oils, greases, bituminous materials, waste, herbicides and insecticides, or other effluents from entering public waters. In the event of a spill, the Contractor shall immediately implement their spill plan and containment equipment, and immediately notify the applicable Federal, State and local agencies, as well as the Town.

Disposal of any materials, wastes, effluent, trash, garbage, oil, grease, chemicals, etc., in areas adjacent to streams or other waters of the State shall not be permitted. If any waste material is dumped in unauthorized areas, the Contractor shall remove the material and restore the area to its original condition before being disturbed. If necessary, contaminated ground shall be excavated, disposed of in an approved off-site facility, then replaced with suitable fill material, compacted and finished with topsoil and planted as required to re-establish vegetation by the Contractor at the Contractor's expense as directed by the Town. The Contractor shall obliterate all signs of construction Work Areas, waste materials, or any other vestiges of construction as directed by Town. The Work Areas shall be restored by the Contractor to near natural conditions.

E. ENDANGERED SPECIES PROTECTION

1. General – The Contractor shall comply with Federal, State, and local regulations and the Permits, as applicable to the time of actual construction activities.

2. Marine Animals – In order to ensure that marine animals including, but not limited to, whales, dolphins, manatees, marine turtles, giant manta ray, and smalltooth sawfish, are not adversely affected by the construction activities, the Contractor shall comply with the Protection Conditions for Construction required by the Permits. The Contractor is responsible for the monitoring and reporting requirements

required by the Permits. The Contractor is responsible for all on-site Project personnel and shall require them to observe water-related activities for the presence of marine animals and the need to avoid collisions with (and injury to) the protected marine species. The Contractor shall be responsible for harm to these resources and shall advise all construction personnel that there are civil and criminal penalties for harming, harassing, or killing marine animals, which are protected under the Endangered Species Act, Marine Mammal Protection Act, Marine Turtle Protection Act, and Florida Manatee Sanctuary Act.

For a vessel underway, such as a hopper dredge or support vessel, traveling within or between operations must follow these speed and distance requirements while ensuring vessel safety: all personnel working onboard will report ESA-listed species observed in the area to the vessel captain; if an ESA-listed species is spotted within the vessel's path, initiate evasive maneuvers to avoid collision.

If a North Atlantic right whale is spotted, the vessel shall slow to 10 knots and maintain a distance of at least 1,500 ft in accordance with the North Atlantic Right Whale Protection Rule (62 FR 6729 provides a distance of 500 yards, which is equal to 1,500 ft). The Contractor shall report the observation to 1-877-WHALE-HELP. If a whale (other than a North Atlantic right whale) is spotted, the vessel shall maintain a distance of at least 300 ft.

The Contractor shall report sightings (not encountered, collided with, or injured by a project covered SERO-2023-00260 00268 Batch 2 Nourishment) of the following species:

- Giant manta ray: report sightings by E-mail at: manta.ray@noaa.gov.
- Whale: report all whale sightings to the NMFS Southeast Marine Mammal Stranding Hotline at (877) WHALE-HELP (877-942-5343).
- Smalltooth sawfish: Report sightings to 1-844-SAWFISH or email Sawfish@MyFWC.com.

The Contractor shall immediately report any collision with an ESA-listed species to the USACE and Bureau of Ocean Energy Management (BOEM) according to the Permits and to NMFS consistent with the reporting requirements in the NMFS BO. A vessel collision with an ESA-listed species is counted as take for the Project.

The Contractor shall immediately report a take of specific species as listed below. A link to the most current contact information may also be available at (<https://dqm.usace.army.mil/odess/##technicalInfo>).

- Sea turtle take: Report to the appropriate state species representative (<https://www.fisheries.noaa.gov/state-coordinators-sea-turtle-stranding-and-salvage-network>).
- Smalltooth sawfish take: report to 1-844-4SAWFISH or email Sawfish@MyFWC.com.

The Contractor shall immediately report any collision with a marine mammal to the Southeast Regional Marine Mammal Stranding hotline at 1-877-WHALE-HELP (1-877-942-5343) for guidance. This includes both ESA and non-ESA listed marine mammals.

3. Nesting Sea Turtles – The Contractor shall comply with the Protection Conditions for Construction required by the Permits and these Specifications. Specific dates relevant to increased sea turtle protection conditions on the Beach Fills begin on April 15 and continue until the last nest has hatched. The Contractor shall cooperate fully with the Town and their monitors to comply with Federal, State, and local regulations, and the Permits. The Town is responsible for the sea turtle monitoring, nest relocations, and reporting as required by Federal, State and local regulations. The Contractor shall attend the Permit required pre-construction meeting specific to nesting sea turtle protection.

4. Shorebirds – In order to ensure that shorebirds are not adversely affected by the construction activities, the Contractor shall comply with the Protection Conditions for Construction required by the Permits and these Specifications. Specific dates relevant to increased protection conditions begin on February 15 and end on September 1 or when there is no more breeding activity, whichever is later. The Contractor shall cooperate fully with the Town and their Bird Monitors to comply with the Permits. The Town is responsible for the shorebird monitoring and reporting as required by Federal, State, and local regulations. The Contractor is responsible for shorebird protection described in these Specifications.

5. Gopher Tortoises – The Contractor shall advise all construction personnel that gopher tortoises are listed by the State of Florida as a Threatened Species and protected. The Contractor shall construct the Project in such a manner as not to impact gopher tortoises. Construction access and staging at the Bowditch Point Beach Park cannot commence until the Contractor has surveyed and cleared the Work area shown on the Contract Plans for gopher tortoises. If a gopher tortoise is found that cannot be avoided and protected throughout construction activities, the Contractor shall work cooperatively with the Town and County to either identify a new Work area or the Town can successfully relocate the gopher tortoise(s). The Contractor shall keep construction activities under surveillance, management, and control to prevent impacts to gopher tortoises and their burrows. The Contractor shall stay at least 25 feet from the entrance of individual burrows.

F. METHOD OF MEASUREMENT – The Environmental Protection quantity shall be the lump sum amount and shall include all items, devices, materials, labor, operations, and all Work as described herein. Progress payments may be made based on the volume dredged and accepted divided by the total volume to be dredged.

G. BASIS OF PAYMENT – Payment shall be made for materials and Work specified in connection with implementing Federal and State endangered and threatened species protection conditions; implementing habitat and resource protection measures; and environmental permit compliance; and all other appropriate costs in connection therewith or incidental thereto. This Work shall be included in the applicable Contract lump sum price for Bid Item “Environmental Protection”.

Bid Item No. 3	Environmental Protection	Lump Sum (LS)
-----------------------	---------------------------------	----------------------

TS-04 ENDANGERED SPECIES OBSERVERS (HOPPER DREDGING):

A. GENERAL – The Contractor shall conduct their Work and operate their equipment to minimize the possibility of taking sea turtles and giant manta rays and to comply with the requirements of the Permits and these Specifications.

B. OBSERVERS – The Contractor shall arrange for FWC and NMFS approved Endangered Species Observers (Observers) to live aboard the hopper dredges to monitor every load, 24 hours per day, for evidence of dredge-related impacts to protected species, particularly sea turtles and giant manta rays and their remains. Observer coverage sufficient for 100% monitoring (e.g., two observers) of hopper dredging operations is required aboard the hopper dredges during Project construction. When the dredge is transiting, observers will maintain a bridge watch for protected species and keep a logbook noting the date, time, location, species, number of animals, distance and bearing from dredge, direction of travel, and other information, for all sightings.

Observers must be trained and have experience to operate on the specific equipment they are aboard (e.g., hopper dredge, relocation trawler). Observers must have training and/or experience to identify and handle all species that may occur in the geographic area of the Project. Observers must be trained to safely install the specific tags being used and/or collect genetic samples required under the NMFS Gulf Regional Biological Opinion (GRBO). ESA-listed species specific safe handling procedures, tagging procedures, and genetic sampling procedures must be followed, as outlined in the NMFS Biological Opinion (BO) and GRBO. The Observers must carry a copy of the applicable Permits while on the vessel for easy reference. The NMFS BO and GRBO serves as the authority for the Observers to handle, tag, and genetic sample ESA-listed species for the Project. The Observers must not be assigned any other task (i.e. captain or other vessel crew position or task) while performing their role of Observer. The Observers must stand watch to detect ESA-listed species in the area and to alert the captain of their presence to avoid vessel collision whenever the vessel is moving. The on-duty Observer will only be responsible for standing watch and not performing other tasks such as inspecting or handling captures when the vessel is in motion.

C. OBSERVATION FORMS – The results of the monitoring shall be recorded by the Observers on the Endangered Species Observer Program Load Data Form, Endangered Species Observer Program Daily Report, and Endangered Species Observer Program Weekly Summary. The observations forms and

reports will be completed regardless of whether any takes occur. Unless otherwise specified herein, the observation forms and reports shall be submitted to the Town at each Progress Meeting.

D. DREDGING TAKE – The NMFS GRBO authorizes the annual lethal or injurious incidental take of eight (8) loggerhead turtles, four (4) Kemp's ridley turtles, three (3) green turtles, and one (1) Hawksbill turtle for all hopper dredging projects in the Gulf of Mexico. Handling of captured marine turtles during hopper dredging activities shall be conducted only by the Observers and who are duly authorized to conduct such activities through NMFS approval and a valid Marine Turtle Permit issued by the FWC, pursuant to Chapter 68E-1, F.A.C. The Observers shall immediately notify the Town; NMFS Protected Resources Division (PRD) via phone at 727-824-5312 or fax at 727-824-5309 and e-mail at takereport.omfsser@noaa.gov; and STSSN Coordinator via e-mail at Allen.Foley@myfwc.com if the dredge takes a sea turtle, or other threatened or endangered species.

E. DREDGE TAKE REPORTING –The Observers shall prepare and submit a dredge take report for any incidental take by hopper dredges to the NMFS PRD via phone at 727-824-5312 or fax at 727-824-5309, and e-mail at takereport.omfsser@noaa.gov, STSSN Coordinator via e-mail at Allen.Foley@myfwc.com, BOEM at dredgeinfo@boem.gov and the Town within 24 hours of any sea turtle or other listed species take observed. The Observers shall prepare and submit a final report summarizing the results of the hopper dredging and any documented sea turtle takes to the NMFS Southeast Regional Office via e-mail at takereport.omfsser@noaa.gov, STSSN Coordinator via e-mail at Allen.Foley@myfwc.com, BOEM at dredgeinfo@boem.gov, and the Town within 30 working days of completion of the dredging and trawling operations. The report shall contain information on the location (specific channel/area dredged), start-up and completion dates, cubic yards of material dredged, problems encountered, incidental takes and sightings of protected species, mitigative actions taken (if relocation trawling, the number and species of turtles relocated), screening type (inflow, overflow) utilized, daily water temperatures, name of dredge, names of endangered species observers, percent observer coverage, and any other information the observer deems relevant.

F. GIANT MANTA RAYS – In accordance with the NMFS Biological Opinion for this Project, the Contractor shall provide take reports regarding all interactions with giant manta ray that occur during the Project. The Contractor shall minimize the likelihood of injury or mortality to giant manta ray resulting from relocation trawling and subsequent handling of animals.

The Observers shall report all known captures of ESA-listed species and any other takes of ESA-listed species to the NMFS SERO PRD. If and when the Contractor becomes aware of any known reported capture, entanglement, stranding, or other take of giant manta ray, the Observers shall report it to NMFS SERO PRD via the NMFS SERO Endangered Species Take Report Form (<https://forms.gle/85fP2da4Ds9jEL829>). The Observers shall reference this Opinion by the NMFS tracking number (SERO-2023-00260 Batch 2 Beach Nourishment) and date of issuance – August 25, 2023. The form shall be completed for each individual known reported capture, entanglement, stranding, or other take incident for giant manta ray. The form shall include the species name, state the date and time of the incident, general location and activity resulting in capture, condition of the species (i.e., alive, dead, sent to rehabilitation), size of the individual, behavior, identifying features (i.e., presence of tags, scars, or distinguishing marks), and any photos that may have been taken.

G. METHOD OF MEASUREMENT – The Endangered Species Observers (Hopper Dredging) quantity shall be the number of days and shall include all items, devices, materials, labor, operations, reporting, and all Work as described herein.

H. BASIS OF PAYMENT – Payment shall be made for materials and Work specified in connection with Endangered Species Observers (Hopper Dredging) and all other appropriate costs in connection therewith or incidental thereto. This Work shall be included in the applicable Contract unit price per day for Bid Item “Endangered Species Observers (Hopper Dredging)”.

Bid Item No. 4	Endangered Species Observers (Hopper Dredging)	Days
----------------	--	------

TS-05 RELOCATION TRAWLING (HOPPER DREDGING):

A. GENERAL - Any activity involving the use of nets to harass and/or to capture and handle marine turtles and giant manta rays in Florida waters requires a Marine Turtle Permit from the FWC and approval by the NMFS prior to trawling. The Contractor shall conduct their Work and operate their equipment to minimize the possibility of taking sea turtles and giant manta rays and to comply with the requirements of the Permits and these Specifications.

The Contractor shall arrange for FWC and NMFS approved Observers to live aboard the trawlers at all times to monitor all tows for endangered and threatened species, and record water temperatures, bycatch information, and any sightings of protected species in the area. The Observers are responsible for all handling and reporting of ESA-listed species. Trawling crew may assist in the general removal of species from the nets and data recording only and the Observers are responsible for all tagging, genetic sampling, and assuring information reported is accurate. All crew aboard the vessel are responsible for monitoring for the presence of ESA-listed species in the area and reporting to the vessel captain and Observers.

B. RELOCATION TRAWLING TAKE LIMITS – The NMFS GRBO authorizes the annual non-lethal take of 300 sea turtles (of loggerhead, green, Kemp's ridley, leatherback, and hawksbill or combination of) and an annual lethal or injurious take of up to two (2) sea turtles by trawlers conducting relocation trawling for all dredging projects covered under the NMFS GRBO including, but not limited to, the Contract.

C. RELOCATION TRAWLING REQUIREMENTS – Relocation trawling shall be conducted for hopper dredging operations during Project construction as follows:

1. Relocation Trawling: Relocation trawling (a minimum of twelve (12) hours/day) shall be conducted for the three (3) days (72 hours) immediately prior to commencement of hopper dredging operations, to reduce the abundance of sea turtles in and adjacent to the Work Area, and continue throughout hopper dredging operations for the duration of the Project.

2. Trawl Time: Trawl tow-time duration shall not exceed 42 minutes (doors in-doors out) and trawl speeds shall not exceed 3.5 knots.

3. Handling During Trawling: Sea turtles and giant manta rays captured pursuant to relocation trawling shall be handled in a manner designed to ensure their safety and viability, and shall be released over the side of the vessel, away from the propeller, and only after ensuring that the vessel's propeller is in the neutral, or disengaged, position (i.e., not rotating).

4. Captured Turtle Holding Conditions: Sea turtles may be held briefly for the collection of important scientific measurements, prior to their release. Captured sea turtles shall be kept moist, and shaded whenever possible, until they are released, according to the requirements specified herein.

5. Scientific Measurements: When safely possible, all sea turtles shall be measured (standard carapace measurements including body depth), tagged, weighed, and a tissue sample taken prior to release. When safely possible, all giant manta ray shall be measured (fork length and total length), tagged, weighed, and a tissue sample taken prior to release. Any external tags shall be noted and data recorded into the Observer's log. Only NMFS and FWS approved Observers shall conduct the tagging/measuring/weighing/tissue sampling operations.

6. Take and Release Time During Trawling: Sea turtles shall be kept no longer than 12 hours prior to release and shall be released not less than three (3) NM from the dredge site. If two or more released sea turtles are later recaptured, subsequent sea turtle captures shall be released not less than five (5) NM away. If it can be done safely and without injury to the sea turtle, sea turtles may be transferred onto another vessel for transport to the release area to enable the relocation trawler to keep sweeping the dredge site without interruption.

7. Injuries and Incidental Take Limits: Any protected species injured or killed during or as a consequence of relocation trawling shall count toward the Gulf-wide limit for injurious or lethal takes during relocation trawling. Minor skin abrasions resulting from trawl capture are considered non-injurious. Injured sea turtles shall be immediately transported to the nearest sea turtle rehabilitation facility.

8. Turtle Flipper External Tagging: All sea turtles captured by relocation trawling shall be flipper-tagged prior to release with external tags which shall be obtained prior to construction from the University of Florida's Archie Carr Center for Sea Turtle Research, <http://accstr.ufl.edu/cmttp.html>, by contacting Alan Bolten, Archie Carr Center for Sea Turtle Research, University of Florida, PO Box 118525, Gainesville, FL 32611, 352-392-5194, abolten@ufl.edu. This opinion serves as the permitting authority for the Observers aboard these relocation trawlers to flipper-tag with external-type tags (e.g., Inconel tags) captured sea turtles. Columbus crabs or other organisms living on external sea turtle surfaces may also be sampled and removed under this authority.

9. PIT Tagging: This opinion serves as the permitting authority for the Observers aboard a relocation trawler to PIT tag captured sea turtles. PIT tagging of sea turtles is not required to be done, if the Observers do not have prior training or experience in said activity; however, if the observer has received prior training in PIT tagging procedures, then the Observers shall PIT tag the animal prior to release (in addition to the standard external tagging).

Sea turtle PIT tagging must then be performed in accordance with the NMFS Southeast Fisheries Science Center (SEFSC) protocols. PIT tags used must be sterile, individually-wrapped tags to prevent disease transmission. PIT tags should be 125-kHz, glass-encapsulated tags-the smallest ones made. Note: If scanning reveals a PIT tag and it was not difficult to find, then do not insert another PIT tag; simply record the tag number and location, and frequency, if known. If for some reason the tag is difficult to detect (e.g., tag is embedded deep in muscle), then insert one in the other shoulder.

10. Other Sampling Procedures: All other tagging and external or internal sampling procedures (e.g., bloodletting, laparoscopies, anal and gastric lavages, mounting satellite or radio transmitters, etc.) performed on live sea turtles are not permitted under this opinion unless the Observers hold a valid sea turtle research permit authorizing the activity.

11. PIT-Tag Scanning Requirements: All sea turtles captured by relocation trawling or dredges shall be thoroughly scanned for the presence of PIT tags prior to release using a multi-frequency scanner powerful enough to read multiple frequencies (including 125- and 134-kHz tags) and read tags deeply embedded in muscle tissue (e.g., manufactured by Trovan, Biomark, or Avid). Sea turtles whose scans show they have been previously PIT tagged shall nevertheless be externally flipper tagged.

12. Handling Fibropapillomatose Turtles: The Observers are not required to handle or sample viral fibropapilloma tumors if they believe there is a health hazard to themselves and choose not to. When handling sea turtles infected with fibropapilloma tumors, observers must either: 1) Clean all equipment that comes in contact with the turtle (i.e., tagging equipment, tape measures) with mild bleach solution, between the processing of each turtle; or 2) maintain a separate set of sampling equipment for handling animals displaying fibropapilloma tumors or lesions.

13. Requirement and Authority to Conduct Tissue Sampling/or Genetic Analyses: The NMFS Biological Opinion serves as the permitting authority for the Observers aboard a relocation trawler or hopper dredge to tissue-sample live- or dead-captured sea turtles without the need for an ESA section 10 permit. All live or dead sea turtles captured by relocation trawling and hopper dredging shall be tissue-sampled prior to release. Sampling shall continue uninterrupted until such time as NMFS determines and notifies in writing that it has sufficient samples from specific areas across the Gulf of Mexico in order to obtain reliable genetic information on the nesting or sub-population identity of sea turtles being captured or lethally taken, to improve the effectiveness of future consultations.

Sea turtle tissue samples shall be taken in accordance with the NMFS SEFSC procedures for sea turtle genetic analyses. The Contractor shall ensure that tissue samples taken are collected and stored properly

and mailed by the Observers within 60 days of the completion of dredging to: NOAA, National Marine Fisheries Service, Southeast Fisheries Science Center, Attn: Lisa Belskis, 75 Virginia Beach Drive, Miami, Florida 33149. Proof of delivery shall be provided to the Town.

14. Giant manta ray captured by relocation trawling will be handled by the Observers aboard the trawler who will be responsible for collecting measurements, recording and reporting data, tagging, and taking genetic samples of the captured species in accordance with the Permits.

D. REPORTING – Sea turtle data collected (PIT tag scan data and external tagging data) shall be submitted by the Observers to the NMFS Southeast Fisheries Science Center, Attn: Lisa Belskis, 75 Virginia Beach Drive, Miami, Florida 33149. All sea turtle data collected shall be submitted by the Observers in electronic format within 60 days of Project completion to Lisa.Belskis@noaa.gov and Sheryan.Epperly@noaa.gov. Sea turtle external flipper tag and PIT tag data generated and collected by relocation trawlers shall also be submitted to the Cooperative Marine Turtle Tagging Program (CMTTP), on the appropriate CMTTP form, at the University of Florida's Archie Carr Center for Sea Turtle Research.

The Observers shall e-mail reports to the FWC's Imperiled Species Management Section (MTP@MyFWC.com) and the Town on Friday of each week that trawling is conducted in Florida waters. These weekly reports shall include the species and number of turtles captured, their general health, and release information. A summary report of all trawling activity (including non-capture trawling) shall be submitted by the Observers to MTP@myfwc.com and the Town within 30 days of completion of the dredging and trawling operations. The summary report shall be recorded on a FWC-approved Excel spreadsheet (available at <http://myfwc.com/media/3168/Trawl-Report-Template.pdf>), and shall list all sea turtles captured, the measurements of all captured turtles, the location of captures (latitude and longitude in decimal degrees), the location of tow start-stop points (latitude and longitude in decimal degrees), and times for the start-stop points of the tows (including tows when no sea turtles are captured).

After the final relocation trawling event, the Observers shall submit a summary report of capture, entanglement, stranding, or other take of giant manta ray to NMFS SERO PRD by email: nmfs.ser.esa.consultations@noaa.gov. Emails and reports shall reference this NMFS Biological Opinion by the NMFS tracking number (SERO-2023-00260 Batch 2 Beach Nourishment) and date of issuance – August 25, 2023. The report shall contain the following information: the total number of giant manta ray captures, entanglements, strandings, or other take that was reported during the relocation trawling.

E. METHOD OF MEASUREMENT – The Relocation Trawling (Hopper Dredging) quantity shall be the number of days and shall include all items, devices, materials, labor, operations, sampling, testing, reporting, and all Work as described herein.

F. BASIS OF PAYMENT – Payment shall be made for materials and Work specified in connection with Relocation Trawling (Hopper Dredging), reporting, tissue sampling; and all other appropriate costs in connection therewith or incidental thereto. This Work shall be included in the applicable Contract unit price per day for Bid Item "Relocation Trawling (Hopper Dredging)."

Bid Item No. 5	Relocation Trawling (Hopper Dredging)	Days
----------------	---------------------------------------	------

TS-06 SHOREBIRD PROTECTION:

A. PROTECTION – Beginning February 15 and ending on September 1 or when there is no more breeding activity, whichever is later, the Contractor shall carefully mark and stake the boundaries of the Work Areas prior to construction in the respective fill area. During construction the Contractor shall work cooperatively with the Town to establish, mark, and sign disturbance-free buffer zones, pedestrian accesses, and travel corridors. The Contractor is responsible for all markers and signs which shall be constructed with materials to be highly visible and semi-permanent and shall meet the requirements of the Permits. The Contractor shall submit within the Work Plan the materials proposed for the markers and signs for approval by the Town. The Contractor shall maintain the markers and signs in good order for the duration of construction. The Contractor shall install predator-proof trash receptacles as required by the Permits. All

markers, signs, and trash receptacles shall be removed from the Work Areas and properly disposed of in the proper facility provided by the Contractor prior to demobilization. Historical nesting areas and Critical Wildlife Area (also a historical nesting area) are shown on the Contract Plans. However, nesting may occur outside of these areas. All markers shall be removed from the Work Areas and properly disposed of by the Contractor within 1 week of the final construction acceptance survey.

B. NON-INJURIOUS DETERRENTS – Between February 15 and ending on September 1 or or when there is no more breeding activity, whichever is later, non-injurious deterrents may be deployed by the Contractor within the Work Area, including, but not limited to, Beach Fills, travel corridors along the beach, and travel corridors to and from the construction access and staging areas; but outside the historical nesting areas. Non-injurious deterrents such as the placement of predator decoys, pennants, pinwheels, inflatable tubes, flagging, or orange fencing material on the beach or continued human presence may be used. The types of non-injurious deterrents, as well as their spatial and temporal deployment, shall be changed frequently to reduce the chances that birds become habituated to the methods. Timing, persistence, organization, and diversity of non-injurious deterrents are crucial in deterring birds from establishing active nests. The Contractor's proposed non-injurious deterrents are subject to approval by the Federal and State agencies. All non-injurious deterrents shall be coordinated with the Town prior to use.

C. PERSONNEL – To minimize impacts to birds, the Contractor shall employ FWC pre-approved biologists familiar with protected birds to allow for easy identification of birds encountered during the execution of Work under this Contract. Non-injurious deterrents should be conducted by experienced personnel who are familiar with shorebird ecology and are familiar with the proposed non-injurious deterrents. The Contractor shall provide the Town with the credentials of the personnel and Non-injurious deterrent techniques for approval by the Federal and State agencies prior to mobilization. All Non-injurious deterrents shall be conducted by or under supervision of the approved biologists who are familiar with the methods.

D. NOTIFICATIONS AND REPORTING – When nesting occurs within the Project Area, the Contractor shall maintain a notification system and shall include maps showing the location of the Work Area, bird nesting buffers, approved travel corridors, and avoidance areas. The notifications shall clearly indicate the current status of avoidance areas, any marking schemes, and any other information needed to ensure Work continues without disturbance to the nesting birds. Notifications shall be issued to the Town and construction crew daily while bird nests are present in the Work Areas. In the event that an egg is spotted, the Town shall be contacted immediately. A 150 ft nest buffer area shall be established by the approved personnel and all activities within the buffer area, including deterrents, must cease.

In the event that the Contractor discovers the initiation of bird nesting within 300 ft of the Work Area, then the Town must be contacted immediately, required nest buffers established, and more measures deployed within the remaining Work Area outside the established nest buffer. The Contractor should evaluate impacts to the Work, if applicable, and inform the Town of plans to adjust construction activities. For situations that may require temporary adjustments, the Contractor may make recommendations as to what potential nesting buffer encroachment is required to ensure the nesting birds are not disturbed or harassed from their nest, but still allows the continuation of Work. Recommendations shall include documented justification and be provided to the Town as soon as possible following identification of a nest. Determination of any nest buffer encroachments are at the Town's discretion and will be based on coordination with FWC.

The Contractor shall submit daily reports including maps for all activities at the Work Area including, but not limited to, bird surveys, nest locations, weather conditions, deterrent activities, manpower, equipment, deterrent techniques, etc. In addition, photographs and GPS coordinates shall be provided for each identified nest and other pertinent feature. Deliverable of a spreadsheet in Microsoft Excel format with nest locations, dates of nest discovery, dates of nest examinations including the last date checked, and the nest fate shall be provided to the Town on a weekly basis.

E. METHOD OF MEASUREMENT – The Shorebird Protection quantity shall be the number of days and shall include all items, devices, materials, labor, operations, and all Work as described herein. Progress

payments may be made based on the volume dredged and accepted divided by the total volume to be dredged.

F. BASIS OF PAYMENT – Payment shall be made for materials and Work specified in connection with; implementing Federal and State shorebird protection conditions; non-injurious deterrents; installation and removal of Work Area markers; signage; installation and removal of predator-proof trash receptacles; and all other appropriate costs in connection therewith or incidental thereto. This Work shall be included in the applicable Contract unit price per day for Bid Item “Shorebird Protection.”

Bid Item No. 6	Shorebird Protection	Days
----------------	----------------------	------

TS-07 SUBMERGED SEDIMENT PIPELINE MONITORING:

A. GENERAL – Any submerged sediment pipelines installed within the Pipeline Corridors shall be surveyed with side scan sonar, multibeam bathymetry, or swath bathymetry for movement, breakage, or leaks resulting in sediment discharge on the water bottom. Surveys shall be conducted at intervals consistent with the Permits including pre-construction (post-pipeline installation), to coincide with the placement of 50% of the combined fill volume, and post-construction (post-pipeline removal) for each Pipeline Corridor utilized.

Additional inspection surveys shall be conducted immediately upon detection of any loss of pressure indicative of leaks, the passage of a severe storm event, and/or evidence of pipeline disturbance by other activities such as fishing vessels, etc. Inspection survey reports with quality control analysis must be submitted to the Town for acceptance within 14 calendar days of completion of each survey. If, prior to Project completion and final demobilization, the dredge plant and supporting equipment (e.g. booster pumps) are temporarily or arbitrarily demobilized from the Work Area for more than 14 calendar days, a monitoring survey of the sediment pipeline shall be conducted within 21 calendar days of the temporary or arbitrary demobilization.

All surveying Work listed in this section shall be performed under the direct supervision of a qualified hydrographic surveyor approved by the Town and BOEM.

B. ACCURACY AND METHODOLOGY – Surveys, error analysis, and reporting associated with the Pipeline Corridors shall be performed in accordance with the most recent edition of NOAA’s Office of Coast Survey Hydrographic Survey Field Procedure Manual. Survey standards and requirements are specified and can be found on the Coast Survey Document Library.
(<https://nauticalcharts.noaa.gov/publications/standards-and-requirements.html>)

All multibeam surveys shall have one hundred percent coverage. All survey lines shall extend a minimum of 200 ft beyond the allowable anchor area limits of the Pipeline Corridors. All bathymetric data will be roll, pitch, heave, and tide corrected using BMPs. Sound velocity corrections will be applied based on measurements made during and throughout the duration of the survey using a profiling sound velocity meter to obtain water column sound velocities with casts that log the entire water column to the seafloor.

Surveys shall be conducted using kinematic GPS referenced to a GPS base station occupying an established (NAVD88 vertical control) monument within ten (10) miles of the survey area or a National Geodetic Survey real-time network; or referenced to a water-level gauge deployed within the vicinity of the Work Area, unless alternative methods are approved by the Town and BOEM. Surveys shall be referenced to the same water-level gauge, tide gauge, real-time network and/or benchmark, etc. Surveys not tide corrected in real-time or by water-level gauge collecting tide correction at an appropriate time interval during the survey will not be accepted.

The surveys shall be repeatable and compared to prior surveys for any alignment, stability, and integrity issues.

C. REPORTING – An uncertainty or error analysis shall be conducted on the bathymetric dataset based on calculated differences of measured elevations at all transect crossings. Other BMPs typically employed to identify potential errors or quantify uncertainty, such as daily bar-checks, shall be conducted and documented. An inspection survey report, uncertainty analysis report, field notes, and metadata shall be submitted to the Town with the processed bathymetric data products must be submitted to the Town for acceptance within 14 calendar days of completion of each survey.

D. METHOD OF MEASUREMENT – The Submerged Sediment Pipeline Monitoring quantity shall be the number of surveys and shall include all items, devices, materials, labor, operations, and all Work as described herein.

E. BASIS OF PAYMENT – Payment shall be made Work specified in connection with the submerged sediment pipeline monitoring and all other appropriate costs in connection therewith or incidental thereto. This Work shall be included in the applicable Contract unit price per survey for Bid Item “Submerged Sediment Pipeline Monitoring.”

Bid Item No. 7 Submerged Sediment Pipeline Monitoring Surveys

TS-08 TURBIDITY MONITORING:

A. GENERAL – The Contractor is responsible for the turbidity monitoring and reporting subject to the requirements of the Permits. Specifically, in order to assure that turbidity levels do not exceed the compliance standards established in the Permits, construction at the Project shall be monitored closely by an independent third party with formal training in water quality monitoring and professional experience in turbidity monitoring for coastal construction projects. An individual familiar with beach construction techniques and turbidity monitoring shall be present at all times when fill material is discharged on the Beach Fills. This individual shall have authority to alter construction techniques or shut down the dredging or beach construction operations if turbidity levels exceed the compliance standards established in the Permits. The names and qualifications of those individuals performing these functions, along with 24-hour contact information, shall be submitted to the Town and FDEP for approval by the Federal and State agencies prior to commencement of Work. The submittal shall also include the scope of work for the turbidity monitoring to ensure that the right equipment is available to conduct the monitoring correctly at any location and under any conditions; and an example of the geo-referenced map that will be provided with turbidity reports, including aerial photography and the boundaries for benthic resources.

B. TURBIDITY MONITORING – The Work covered by this section consists of furnishing all labor, materials, and equipment, and performing all Work required to obtain, analyze, and report the results of monitoring for turbidity. Turbidity levels may not exceed State Water Quality Standards as prescribed in the Permits. Analysis of turbidity samples shall be performed in compliance with DEP-SOP-001/01 FT 1600 Field Measurement of Turbidity:

<http://publicfiles.dep.state.fl.us/dear/sas/sopdoc/2008sops/ft1600.pdf>.

The Contractor is responsible for the turbidity monitoring and reporting as required by the Permits. Failure to comply with this requirement is grounds for suspension of dredging operations. The Contractor shall retain a pre-approved independent third party with formal training in water quality monitoring and professional experience in turbidity monitoring for coastal construction projects in Florida. An individual familiar with beach construction techniques and turbidity monitoring shall be present at all times when turbidity generating activities are occurring.

1. Procedures – Turbidity monitoring procedures are as stated in the Permits. Turbidity is to be measured in Nephelometric Turbidity Units (NTUs) and shall be analyzed on site as soon as possible after collection.

Frequency: Monitoring for a cutterhead dredge shall be conducted 3 times daily, approximately 4 hours apart, and at any other time that there is a likelihood of an exceedance of the turbidity standard, during all dredging and sediment placement operations. Monitoring for a hopper dredge shall be conducted for each

hopper dredge load during daylight hours. At the dredge site, sampling shall be conducted after overflow from the hopper begins and the associated turbidity plume has reached the edge of the mixing zone. At the fill placement site, sampling shall be conducted after discharge from the hopper begins and the associated turbidity plume has reached the edge of the mixing zone. Sampling shall be conducted while the highest Project-related turbidity levels are crossing the edge of the mixing zone. Since turbidity levels can be related to pumping rates, the dredge pumping rates shall be recorded, and provided to the FDEP upon request. The compliance samples and the corresponding background samples shall be collected at approximately the same time, i.e., one shall immediately follow the other.

Background Locations: Sampling shall occur at surface (approximately one foot below the surface), mid-depth (for sites with depths greater than 6 feet), and bottom (approximately 6 feet above the bottom for sites with depths greater than 25 feet). All background sampling shall occur clearly outside the influence of any artificially generated turbidity plume or the influence of an outgoing inlet plume.

Borrow Areas: Samples shall be collected at least 980 feet up-current from source of turbidity at the dredge site.

Beach Fills: Samples shall be collected at least 1,640 feet up-current from any portion of the beach that has been, or is being, filled during the current construction event, at the same distances offshore as the associated compliance and intermediate samples.

Compliance Locations: Sampling shall occur at surface (approximately one foot below the surface), mid-depth (for sites with depths greater than 6 feet), and bottom (approximately 6 feet above the bottom for sites with depths greater than 25 feet).

Borrow Area: Samples shall be collected 500 feet down-current from the cutterhead or the hopper dredge overflow point, and from any other source of turbidity generated by the dredge, in the densest portion of any visible turbidity plume. If no plume is visible, follow the likely direction of flow.

Beach Fills: Samples shall be collected where the densest portion of the turbidity plume crosses the edge of the mixing zone polygon, which measures up to 500 feet offshore and up to 3,280 feet alongshore from the point where the return water from the dredged discharge reenters the Gulf of Mexico. Note: If the plume flows parallel to the shoreline, the densest portion of the plume may cross the mixing zone polygon at a distance less than the maximum offshore dimension of the mixing zone. In that case, it may be necessary to access the sampling location from the shore, in water that is too shallow for a boat.

Calibration: The instruments used to measure turbidity shall be fully calibrated with primary standards within one month of the commencement of the Project, and at least once a month throughout the Project. Calibration with secondary standards shall be verified each morning prior to use, after each time the instrument is turned on, and after field sampling using two secondary turbidity “standards” that bracket the anticipated turbidity samples. If the post-sampling calibration value deviates more than 8% from the previous calibration value, results shall be reported as estimated and a description of the problem shall be included in the field notes.

Modifications: If the turbidity monitoring protocol specified above prevents the collection of accurate data, the person in charge of the turbidity monitoring shall contact the FDEP JCP Compliance Officer to establish a more appropriate protocol. Once approved in writing by the FDEP, the new protocol shall be implemented through an administrative permit modification.

2. **Compliance** – The compliance locations given above shall be considered the limits of the temporary mixing zone for turbidity allowed during construction. If monitoring reveals turbidity levels at the compliance sites that are greater than 29 NTUs above the corresponding background turbidity levels, construction activities shall **cease immediately** and not resume until corrective measures have been taken and turbidity has returned to acceptable levels. This turbidity monitoring shall continue every hour until background turbidity levels are restored or until otherwise directed by the Town or FDEP.

Any Project-associated turbidity source other than dredging or sediment placement in the Beach Fills (e.g., scow or pipeline leakage) shall be monitored as close to the source as possible. If the turbidity level exceeds 29 NTUs above background, the construction activities related to the exceedance shall cease immediately and not resume until corrective measures have been taken and turbidity has returned to acceptable levels. This turbidity monitoring shall continue every hour until background turbidity levels are restored or until otherwise directed by the Town or FDEP.

C. TURBIDITY REPORTING – All reporting shall be via email to the FDEP at JCPCCompliance@dep.state.fl.us and the Town and include in the subject line, “This information is provided in partial fulfillment of the monitoring requirements for the Estero Island Beach Nourishment Project, Permit No. 0413684-001-JC.”

1. Weekly Reporting – All turbidity monitoring data shall be submitted within one (1) week of analysis. The data shall be presented in tabular format, indicating the measured turbidity levels at the compliance sites for each depth, the corresponding background levels at each depth and the number of NTUs over background at each depth. Any exceedances of the turbidity standard (29 NTUs above background) shall be highlighted in the table. In addition to the raw and processed data, the reports shall also contain the following information: time of day samples were taken; dates of sampling and analysis; GPS location of sample (when possible, coordinates should be provided in decimal degrees with a 5 decimal level of precision (i.e., 0.00001) and the datum); depth of water body; depth of each sample; antecedent weather conditions, including wind direction and velocity; tidal stage and direction of flow; and water temperature; geo-referenced map, overlaid on an aerial photograph (Beach Fills) or nautical chart (Borrow Area), indicating the sampling locations, dredging and discharge locations, direction of flow, and benthic resources; statement describing the methods used in collection, handling, storage and analysis of the samples; statement by the individual responsible for implementation of the sampling program concerning the authenticity, precision, limits of detection, calibration of the meter, accuracy of the data and precision of the GPS measurements; and when samples cannot be collected, an explanation in the report shall be included. If the Contractor's independent monitor is unable to collect samples due to severe weather conditions, they shall include a copy of a current report from a reliable, independent source, such as an online weather service.

2. Exceedances – If the turbidity level exceeds 29 NTUs above background during dredging or sediment placement, the Contractor shall immediately report the occurrence via email to the Town and FDEP JCPCCompliance@dep.state.fl.us. The subject line of the email shall state “TURBIDITY EXCEEDANCE for the Estero Island Beach Nourishment Project, Permit No. 0413684-001-JC.” If the Project-associated turbidity level exceeds 29 NTUs above background outside of dredging or sediment placement areas, the Contractor shall report the occurrence via email to the Town and FDEP JCPCCompliance@dep.state.fl.us within 24 hours of the time the Contractor first becomes aware of the discharge. The subject line of the email shall state “OTHER PROJECT-ASSOCIATED DISCHARGE, TURBIDITY EXCEEDANCE.”

When reporting a turbidity exceedance, the following information shall be included: Project Name; Permit Number; location and level (NTUs above background) of the turbidity exceedance; time and date that the exceedance occurred; and time and date that construction ceased. Prior to re-commencing the construction, a report shall be emailed to the Town and FDEP with the same information that was included in the “Exceedance Report”, plus the following information: turbidity monitoring data collected during the shutdown documenting the decline in turbidity levels and achievement of acceptable levels; corrective measures that were taken; and cause of the exceedance.

D. METHOD OF MEASUREMENT – The Turbidity Monitoring quantity shall be the lump sum amount and shall include all items, devices, materials, labor, operations, and all Work as described herein. Progress payments may be made based on the volume dredged and accepted divided by the total volume to be dredged.

E. BASIS OF PAYMENT – Payment shall be made for materials and Work specified in connection with installation and maintenance of turbidity controls; best management practices; turbidity monitoring; and

environmental permit compliance; and all other appropriate costs in connection therewith or incidental thereto. This Work shall be included in the applicable Contract lump sum price for Bid Item "Turbidity Monitoring."

Bid Item No. 8

Turbidity Monitoring

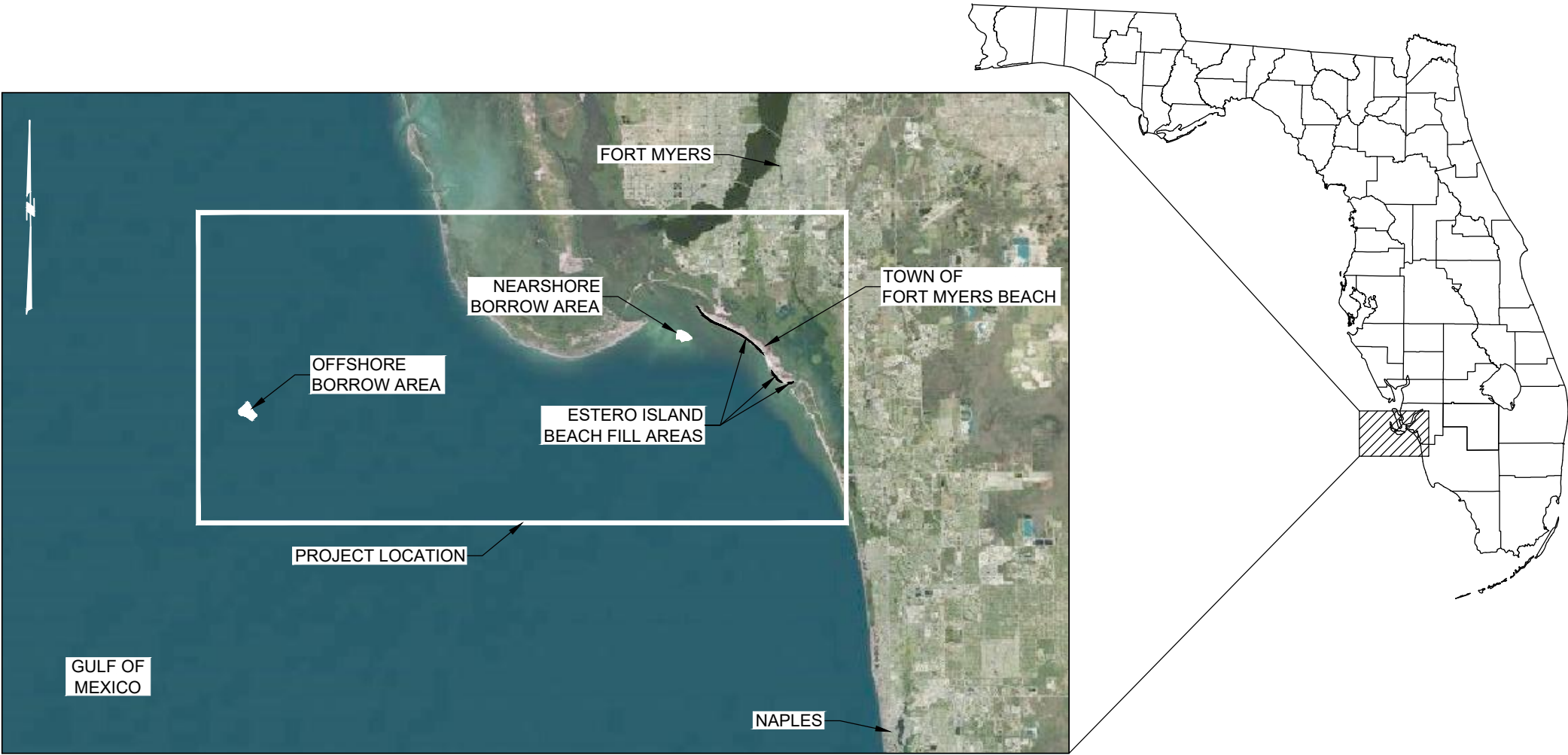
Lump Sum (LS)

ESTERO ISLAND SHORE PROTECTION PROJECT

CONTRACT PLANS

SHEET INDEX

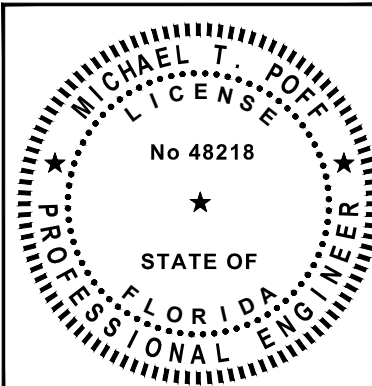
- 1 COVER SHEET
- 2 PROJECT LOCATION MAP
- 3 SURVEY CONTROL
- 4-5 NORTH-CENTRAL ESTERO ISLAND BEACH FILL PLAN VIEW
- 6-9 NORTH-CENTRAL ESTERO ISLAND BEACH FILL TEMPLATE PROFILES
- 10 SOUTH ESTERO ISLAND BEACH FILL PLAN VIEW
- 11 SOUTH ESTERO ISLAND BEACH FILL TEMPLATE PROFILES
- 12 NEARSHORE BORROW AREA PLAN VIEW
- 13-15 NEARSHORE BORROW AREA SECTIONS
- 16 NEARSHORE PIPELINE CORRIDORS OVERVIEW
- 17 OFFSHORE BORROW AREA PLAN VIEW
- 18-21 OFFSHORE BORROW AREA SECTIONS
- 22 OFFSHORE PIPELINE CORRIDORS OVERVIEW
- 23 OFFSHORE PIPELINE CORRIDOR - MAIN PLAN VIEW
- 24 OFFSHORE PIPELINE CORRIDORS - NORTH AND SOUTH PLAN VIEW
- 25-26 ALIGNMENT AND COORDINATE TABLES



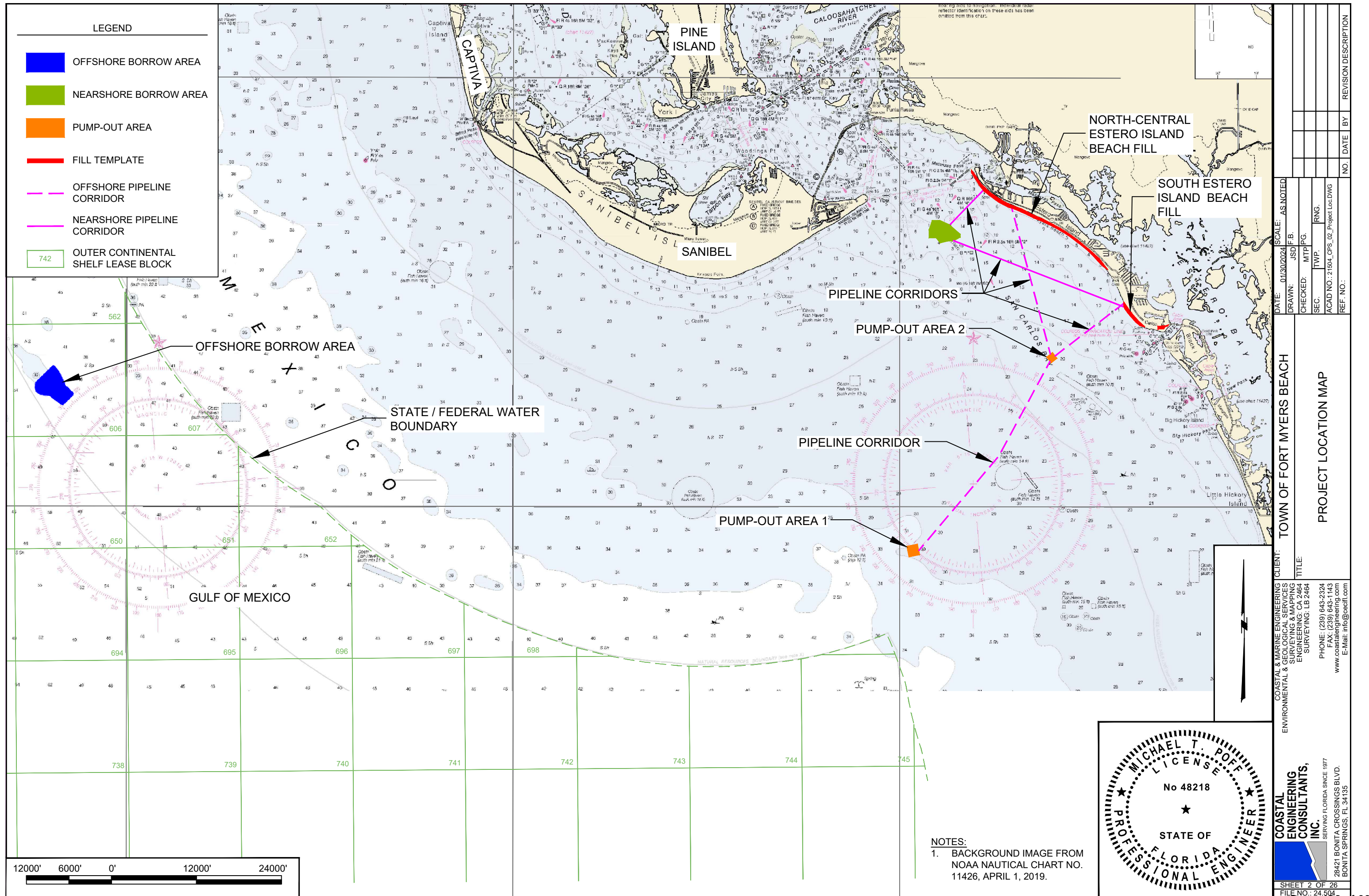
PROJECT LOCATION
N.T.S.

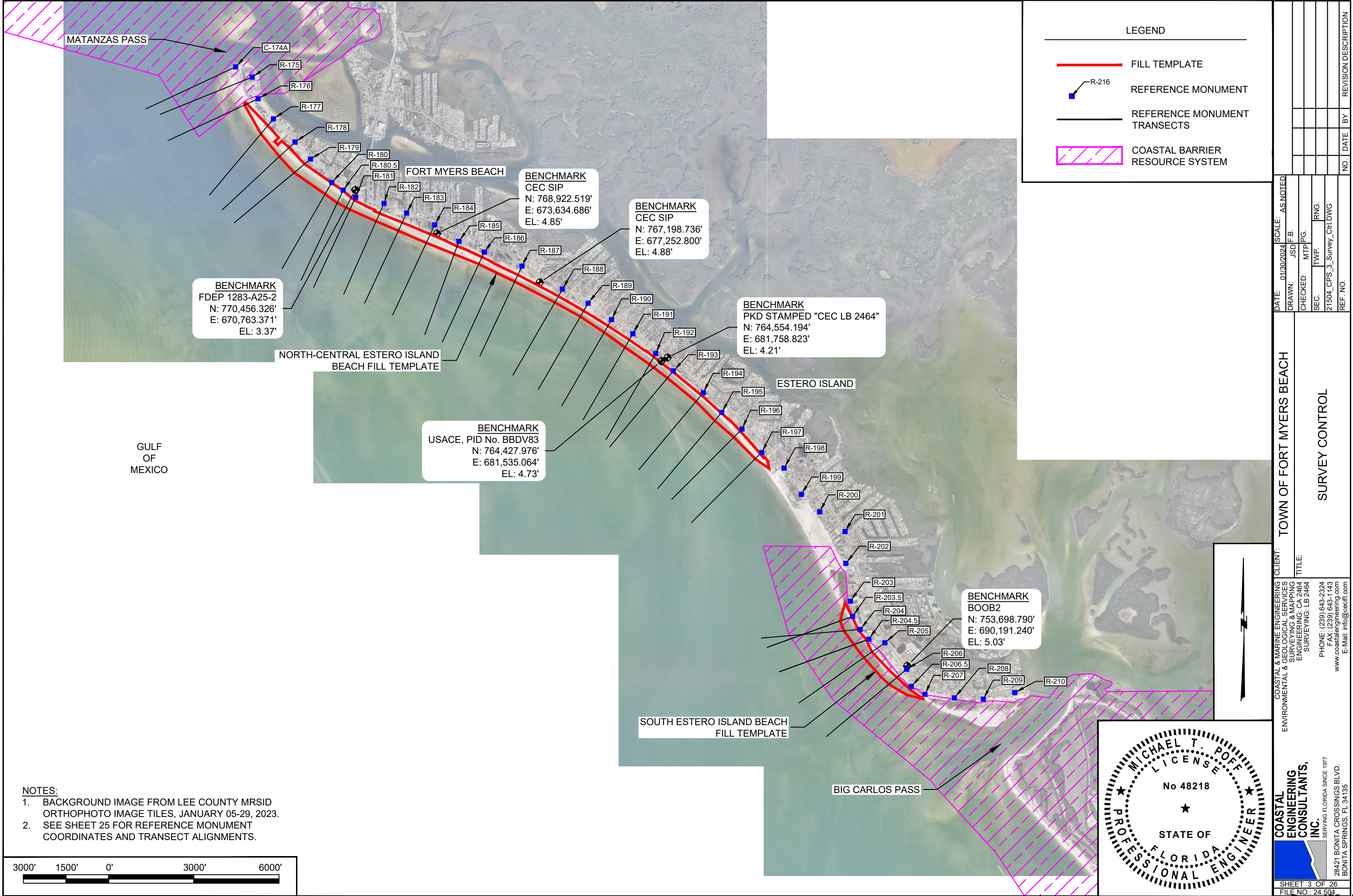
NOTES

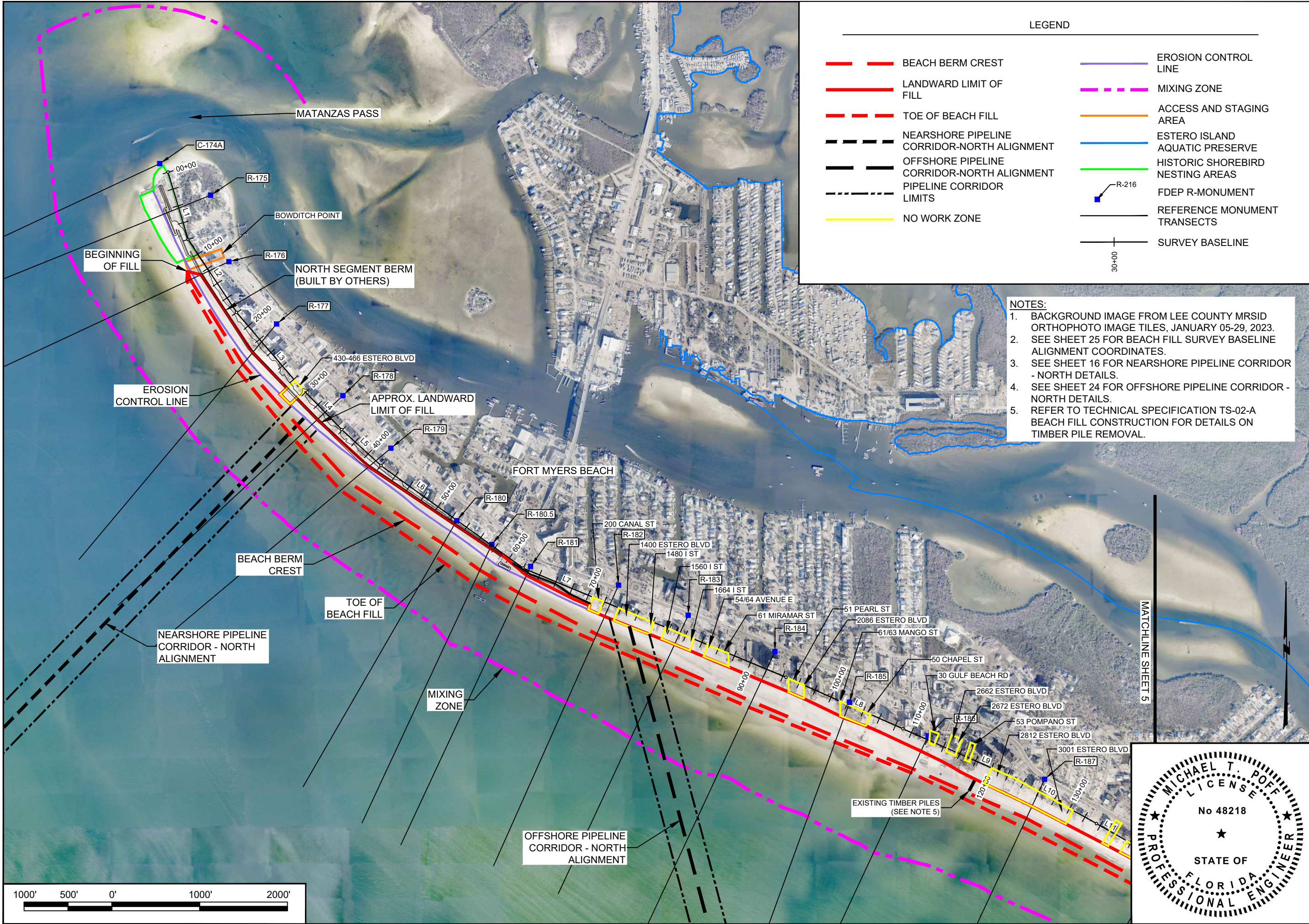
1. SURVEYS FOR NORTH-CENTRAL AND SOUTH ESTERO ISLAND CONDUCTED BY COASTAL ENGINEERING CONSULTANTS, INC. (CEC), JUNE 2023.
2. OFFSHORE BORROW AREA SURVEY CONDUCTED BY OCEAN SURVEYS, INC. (OSI), JULY 2021. NEARSHORE BORROW AREA SURVEY CONDUCTED BY OSI, NOVEMBER 2021.
3. OFFSHORE BORROW AREA GEOTECHNICAL INVESTIGATION CONDUCTED BY GFA INTERNATIONAL (GFA) AND AMDRILL, INC., 2020 AND 2021.
4. NEARSHORE PIPELINE CORRIDOR - NORTH BATHYMETRIC SURVEY CONDUCTED BY OSI, JULY 2021. NEARSHORE PIPELINE CORRIDOR - SOUTH BATHYMETRIC SURVEY CONDUCTED BY OSI, NOVEMBER 2021.
5. OFFSHORE PIPELINE CORRIDOR - MAIN BATHYMETRIC SURVEYS CONDUCTED BY OSI IN JULY 2021. OFFSHORE PIPELINE CORRIDOR - NORTH AND SOUTH BATHYMETRIC SURVEYS CONDUCTED BY SONOGRAPHICS INC. IN JUNE 2023.
6. NEARSHORE BORROW AREA GEOTECHNICAL INVESTIGATION CONDUCTED BY COASTAL PLANNING AND ENGINEERING, INC (CPE), AUGUST 2000.
7. PLANE COORDINATES ARE BASED ON THE TRANSVERSE MERCATOR PROJECTION FOR THE WEST ZONE OF FLORIDA AND REFERENCED TO THE NORTH AMERICAN DATUM OF 1988 (NAD83).
8. ELEVATIONS SHOWN HEREON ARE IN FEET AND TENTHS AND REFERENCED TO THE NORTH AMERICAN VERTICAL DATUM (NAVD) 1988 GEOID18
9. MEAN HIGH WATER ELEVATION OF +0.3 FEET NAVD88 IS BASED ON THE INFORMATION FROM THE FDEP AND TIDE STATION ID NUMBER 8727366.
10. EROSION CONTROL LINE (ECL) OBTAINED FROM THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION ON 1/28/2020, FILE NAME: ECL2505.SHP.
11. BACKGROUND IMAGE FROM LEE COUNTY MRSID ORTHOPHOTO IMAGE TILES, JANUARY 05-29, 2023.
12. HYDROGRAPHIC SURVEY ACCURACIES AND PROCEDURES ARE IN ACCORDANCE WITH GENERAL SURVEY STANDARDS, AS DEFINED BY THE U.S. ARMY CORPS OF ENGINEERS, HYDROGRAPHIC SURVEY MANUAL.
13. INFORMATION SHOWN HEREON REFLECTS CONDITIONS AS THEY EXISTED ON THE SURVEY DATES SHOWN AND CAN ONLY BE CONSIDERED INDICATIVE OF CONDITIONS AT THAT TIME.



DATE: 01/30/2024		SCALE: AS NOTED	
DRAWN: JSD		F.B.	
CHECKED: MTP		PG.	
SEC.		TWP.	
ACAD NO.: 21504		GPS_01_Cover-Notes.DWG	
REF. NO.:			
NO.		DATE	
BY		REVISION DESCRIPTION	
TOWN OF FORT MYERS BEACH			
TITLE: COVER SHEET			
COASTAL ENGINEERING CONSULTANTS, INC.			
SERVING FLORIDA SINCE 1977			
28421 BONITA CROSSINGS BLVD.			
BONITA SPRINGS, FL 34135			
PHONE: (239) 643-2324			
FAX: (239) 643-1143			
www.coastalengineering.com			
E-Mail: info@cecfl.com			
SHEET 1 OF 26			
FILE NO.: 24-504			







LEGEND

BEACH BERM CREST	EROSION CONTROL LINE
LANDWARD LIMIT OF FILL	MIXING ZONE
TOE OF BEACH FILL	ACCESS AND STAGING AREA
NEARSHORE PIPELINE CORRIDOR-NORTH ALIGNMENT	ESTERO ISLAND AQUATIC PRESERVE
OFFSHORE PIPELINE CORRIDOR-NORTH ALIGNMENT	HISTORIC SHOREBIRD NESTING AREAS
PIPELINE CORRIDOR LIMITS	FDEP R-MONUMENT
NO WORK ZONE	REFERENCE MONUMENT TRANSECTS
	SURVEY BASELINE

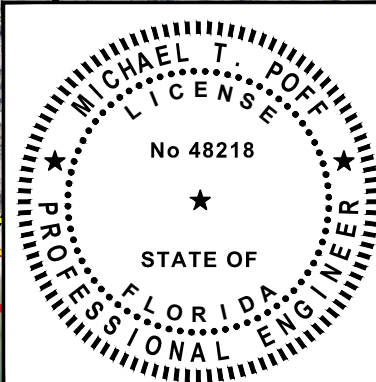
- NOTES:
1. BACKGROUND IMAGE FROM LEE COUNTY MRSID ORTHOPHOTO IMAGE TILES, JANUARY 05-29, 2023.
 2. SEE SHEET 25 FOR BEACH FILL SURVEY BASELINE ALIGNMENT COORDINATES.
 3. SEE SHEET 16 FOR NEARSHORE PIPELINE CORRIDOR - NORTH DETAILS.
 4. SEE SHEET 24 FOR OFFSHORE PIPELINE CORRIDOR - NORTH DETAILS.
 5. REFER TO TECHNICAL SPECIFICATION TS-02-A BEACH FILL CONSTRUCTION FOR DETAILS ON TIMBER PILE REMOVAL.

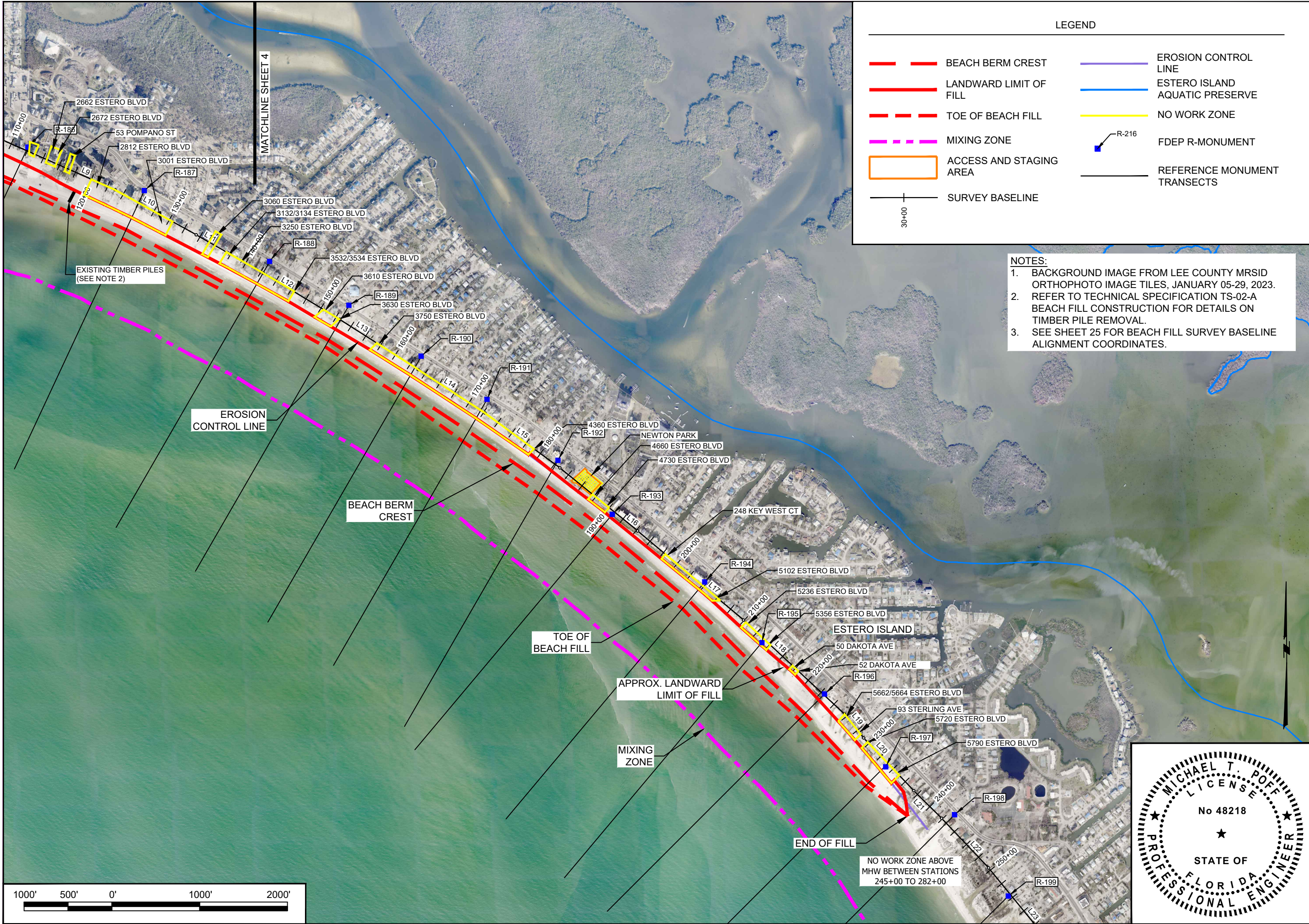
DATE: 1/30/2024	SCALE: AS NOTED	CLIENT: TOWN OF FORT MYERS BEACH
DRAWN: JSD/F.B.		TITLE: NORTH-CENTRAL ESTERO ISLAND BEACH FILL PLAN VIEW
CHECKED: MTP/RNG		
SEC: TWP		
ACAD NO.: 21504_CPS_04-12_EIBF_PV.XS.DWG		
REF. NO.		
NO. 1	DATE 4/4/24	BY MTP
		REVISION DESCRIPTION

COASTAL & MARINE ENGINEERING ENVIRONMENTAL & GEOLOGICAL SERVICES SURVEYING & MAPPING ENGINEERING: CA 2464 SURVEYING: LB 2464
PHONE: (239) 643-2324 FAX: (239) 643-1143 www.coastalengineering.com E-Mail: info@cecifl.com

COASTAL ENGINEERING CONSULTANTS, INC. SERVING FLORIDA SINCE 1977 28421 BONITA CROSSINGS BLVD. BONITA SPRINGS, FL 34135

SHEET 4 OF 26 FILE NO.: 24-504





LEGEND

	BEACH BERM CREST		EROSION CONTROL LINE
	LANDWARD LIMIT OF FILL		ESTERO ISLAND AQUATIC PRESERVE
	TOE OF BEACH FILL		NO WORK ZONE
	MIXING ZONE		FDEP R-MONUMENT
	ACCESS AND STAGING AREA		REFERENCE MONUMENT TRANSECTS
	SURVEY BASELINE		

- NOTES:
1. BACKGROUND IMAGE FROM LEE COUNTY MRSID ORTHOPHOTO IMAGE TILES, JANUARY 05-29, 2023.
 2. REFER TO TECHNICAL SPECIFICATION TS-02-A BEACH FILL CONSTRUCTION FOR DETAILS ON TIMBER PILE REMOVAL.
 3. SEE SHEET 25 FOR BEACH FILL SURVEY BASELINE ALIGNMENT COORDINATES.

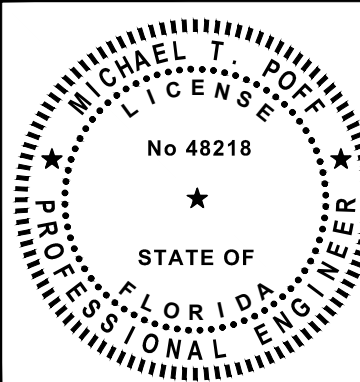
DATE: 1/30/2024	SCALE: AS NOTED	CLIENT: TOWN OF FORT MYERS BEACH
DRAWN: JSD/F.B.		TITLE: NORTH-CENTRAL ESTERO ISLAND BEACH FILL PLAN VIEW
CHECKED: MTP/P.G.		
SEC: TWP	RNG:	
ACAD NO.: 21504_CPS_04-12_EBIF_PV.XS.DWG		
REF. NO.	NO.	BY
		DATE
		REVISION DESCRIPTION

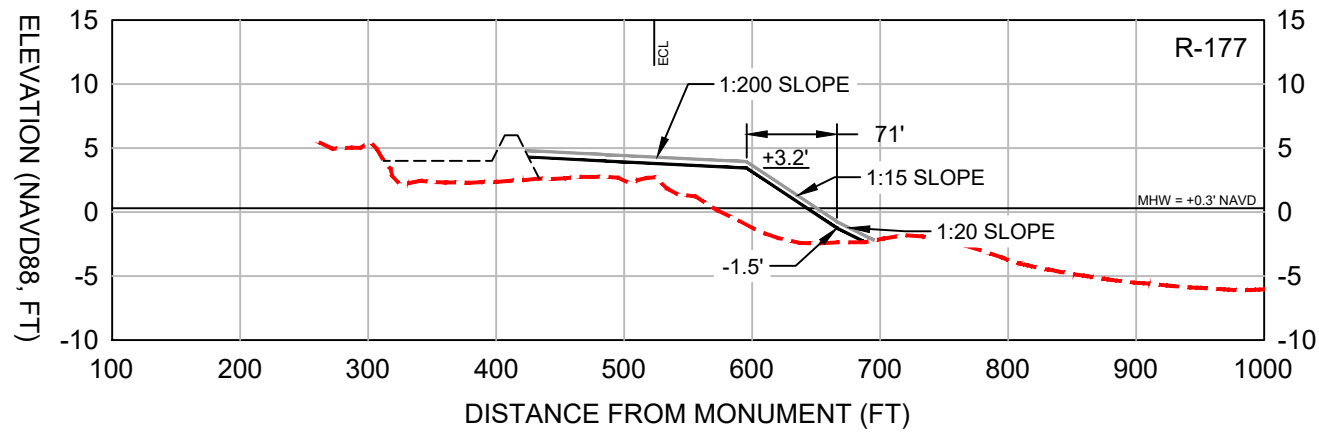
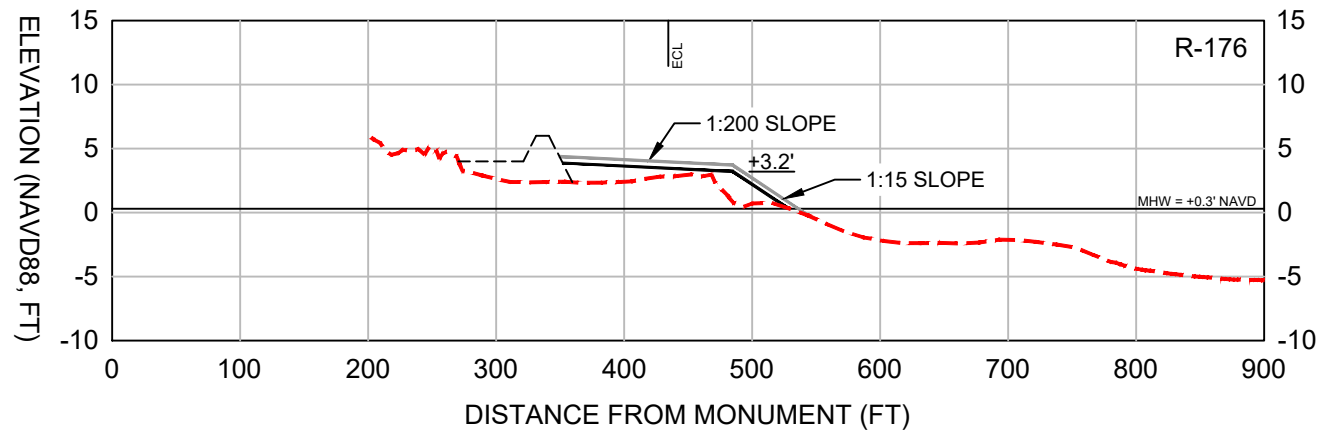
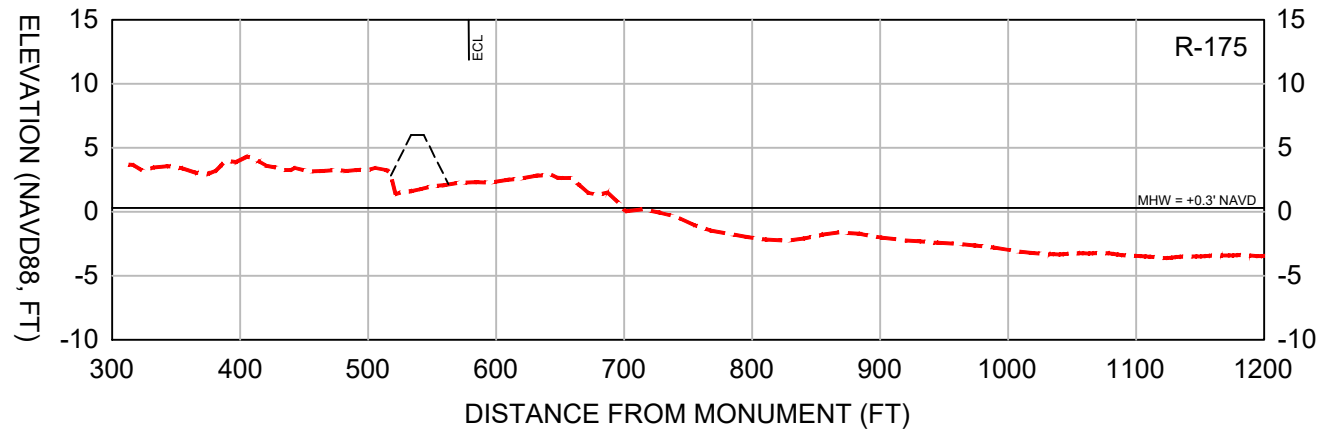
COASTAL & MARINE ENGINEERING
ENVIRONMENTAL & GEOLOGICAL SERVICES
SURVEYING & MAPPING
ENGINEERING: CA 2464
SURVEYING: LB 2464

PHONE: (239) 643-2324
FAX: (239) 643-1143
www.coastalengineering.com
E-Mail: info@cecifl.com

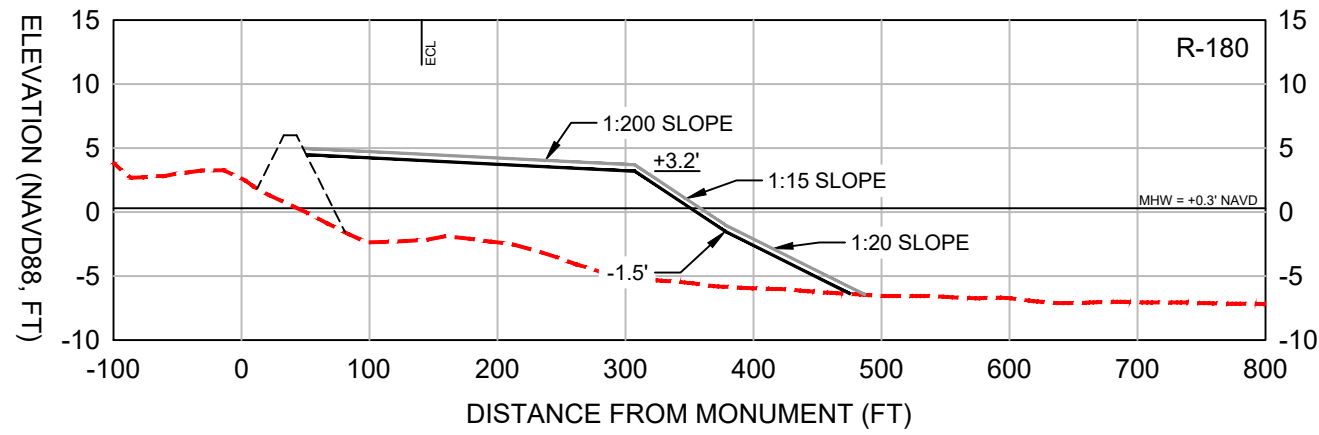
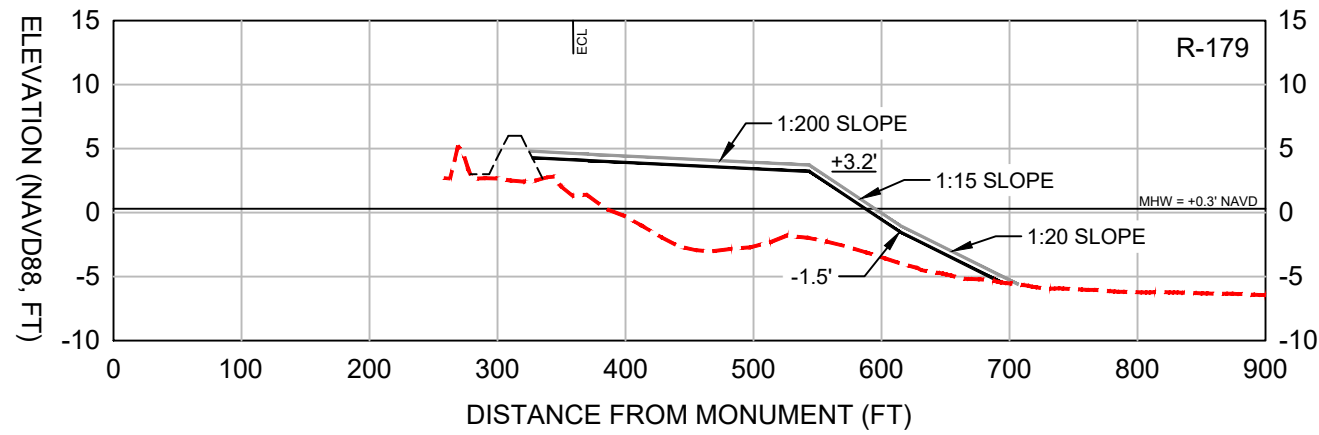
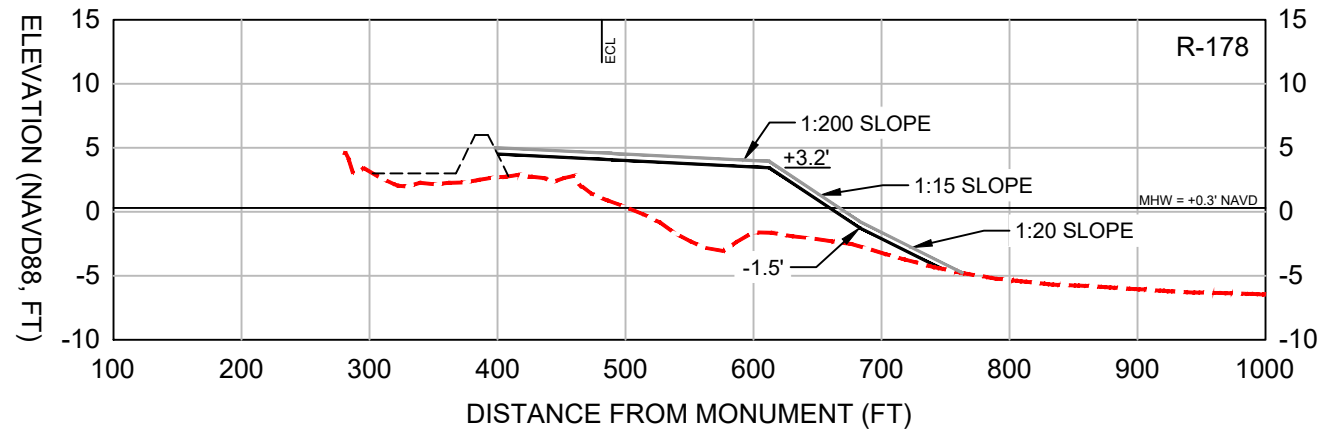
COASTAL ENGINEERING CONSULTANTS, INC.
SERVING FLORIDA SINCE 1977
28421 BONITA CROSSINGS BLVD.
BONITA SPRINGS, FL 34135

SHEET 5 OF 26
FILE NO.: 24.504

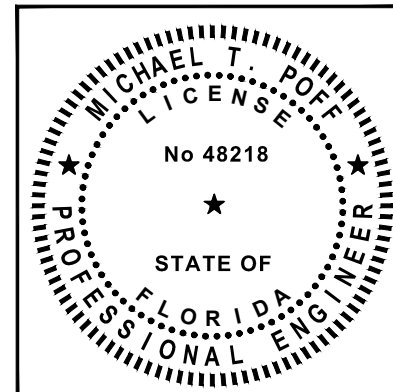




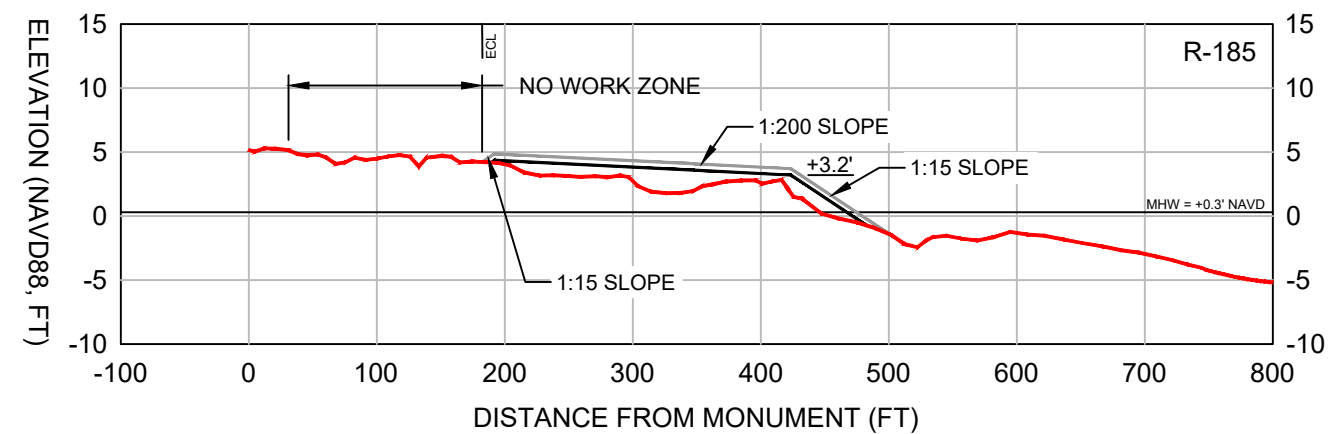
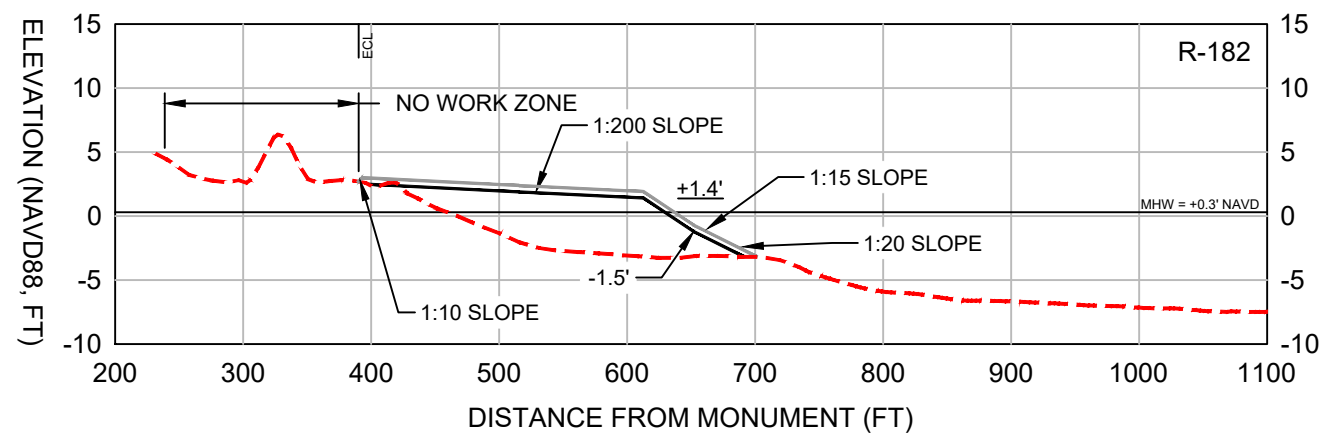
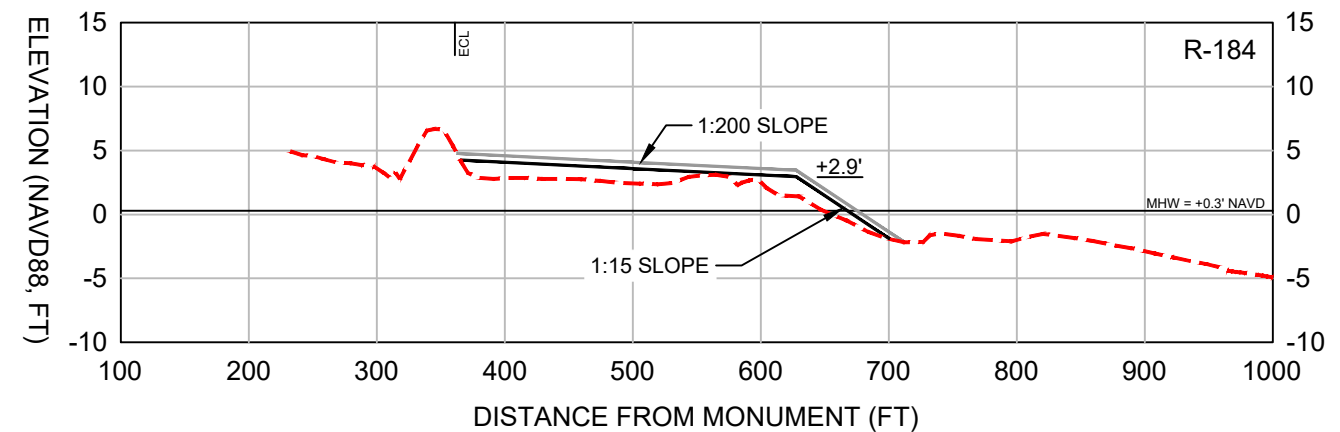
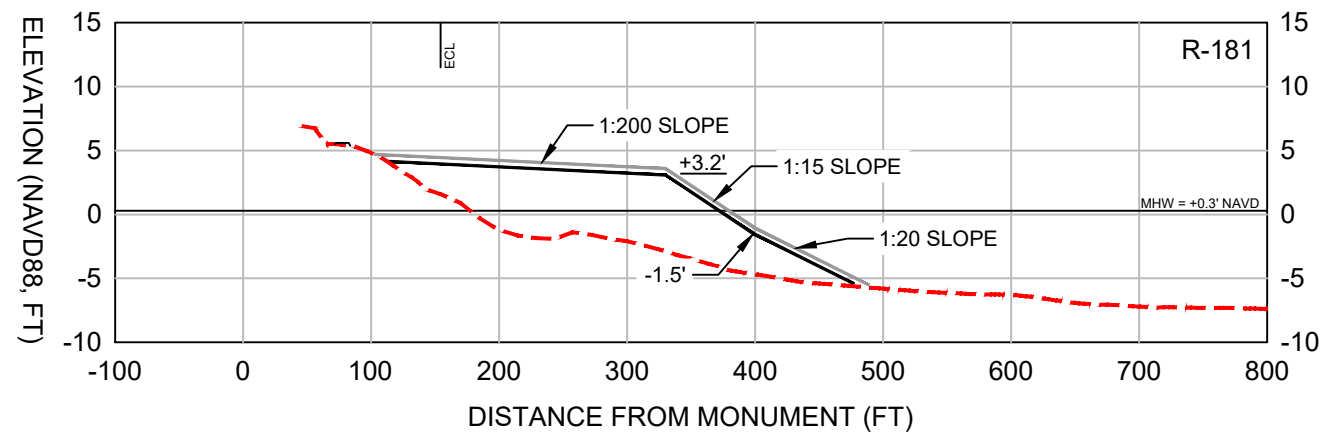
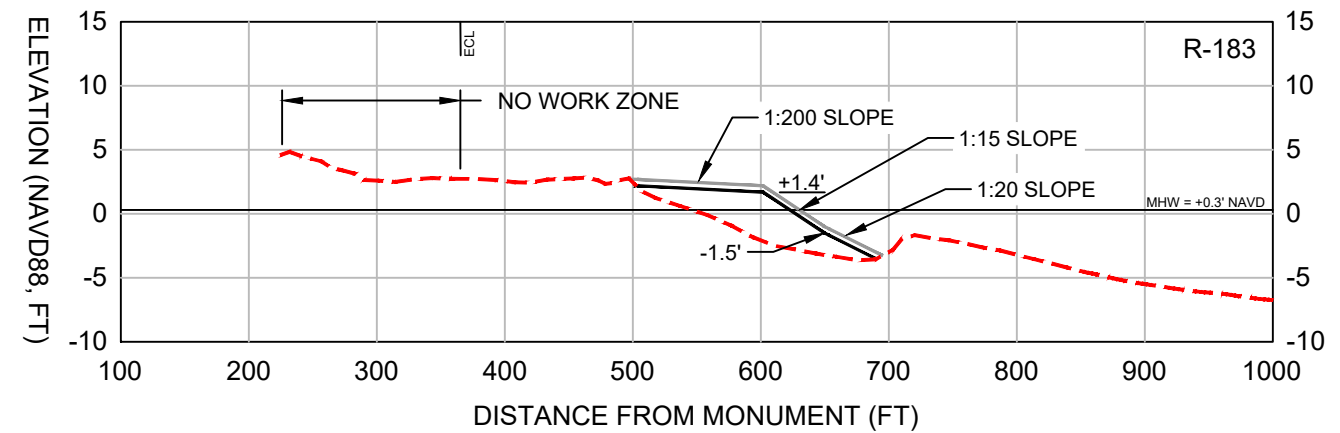
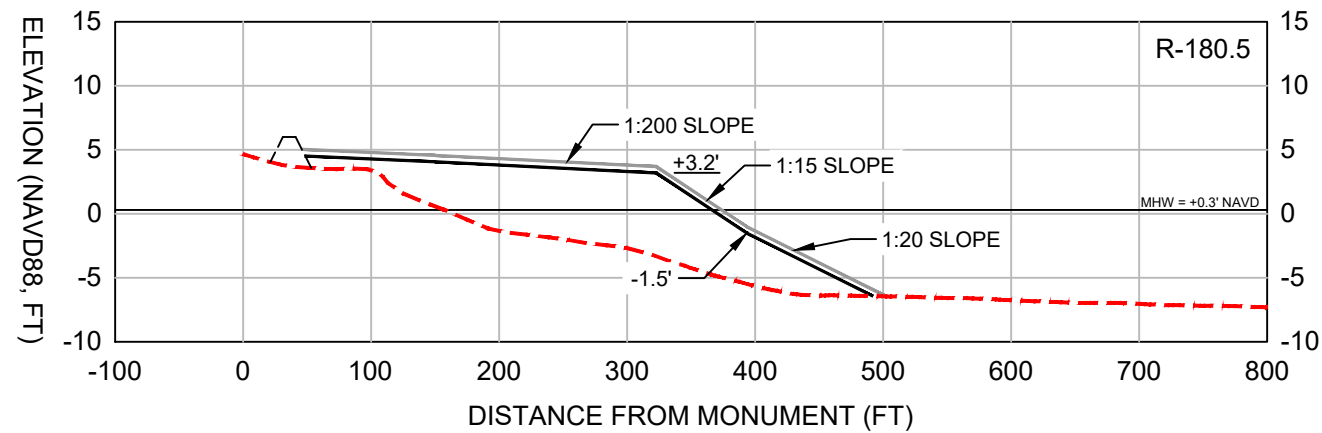
SCALE:
H: 1" = 150'
V: 1" = 15'



- NOTES:
1. TOPOGRAPHIC AND BATHYMETRIC DATA COLLECTED BY CEC, JUNE 2023.
 2. SEE SHEETS 3 AND 25 FOR SURVEY TRANSECT ALIGNMENT.



DATE: 1/30/2024		SCALE: AS NOTED		CLIENT: TOWN OF FORT MYERS BEACH	
DRAWN: JSD		F.B.		TITLE: NORTH ESTERO ISLAND FILL TEMPLATE PROFILES	
CHECKED: MTP		PG.		ENVIRONMENTAL & MARINE ENGINEERING	
SEC.		TWP.		SURVEYING & MAPPING	
ACAD NO.: 21504		RNG.		ENGINEERING: CA 2464	
REF. NO.		NO.		SURVEYING: LB 2464	
		DATE		PHONE: (239) 643-2324	
		BY		FAX: (239) 643-1143	
		NO.		www.coastalengineering.com	
		DATE		E-Mail: info@cecfl.com	
		DATE		SHEET 6 OF 26	
		DATE		FILE NO.: 24-504	



LEGEND:

 DESIGN

———— +0.5 FT CONSTRUCTION TOLERANCE

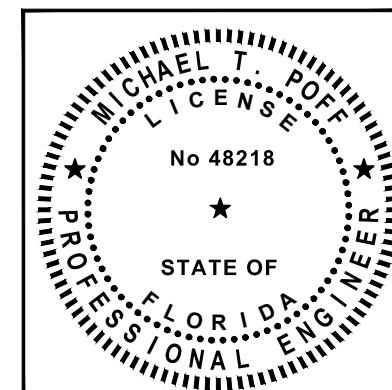
--- EXISTING GRADE (2023)

----- NORTH SEGMENT BERM (BUILT BY OTHERS)

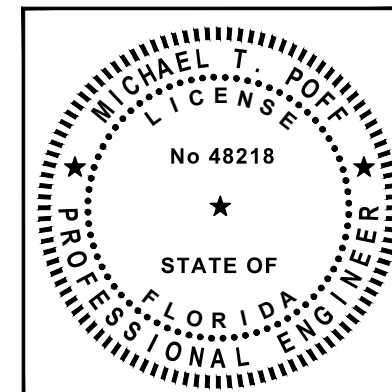
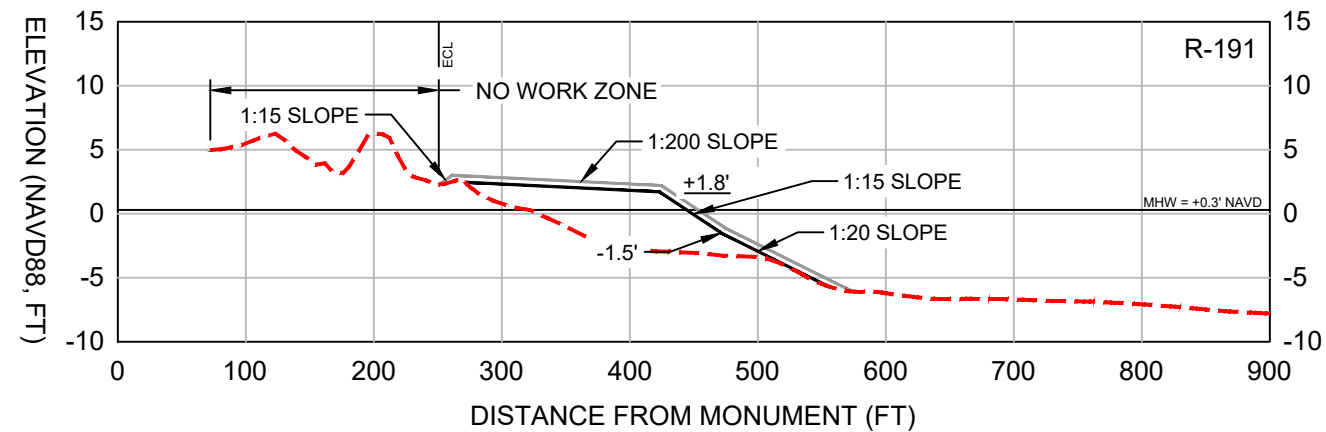
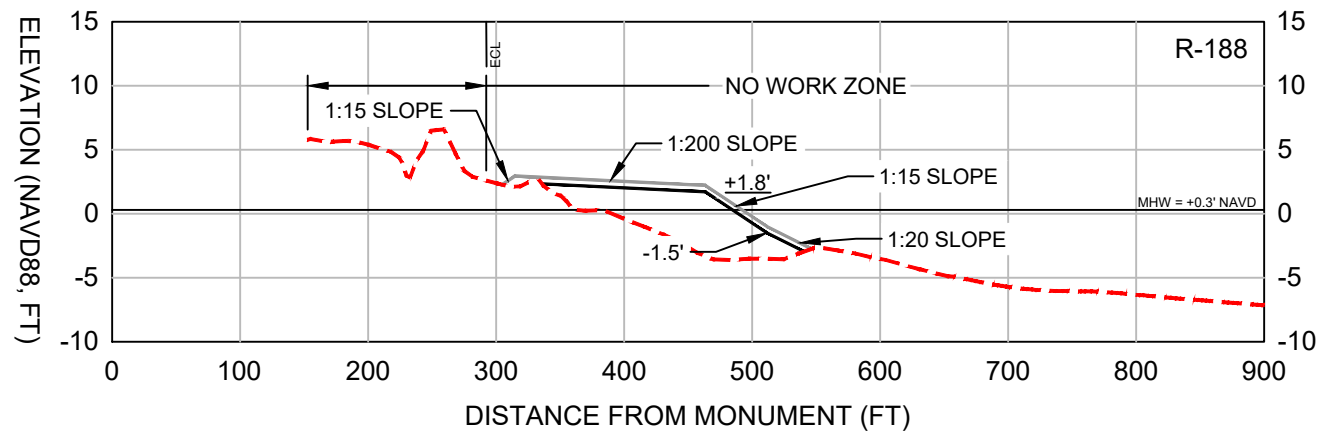
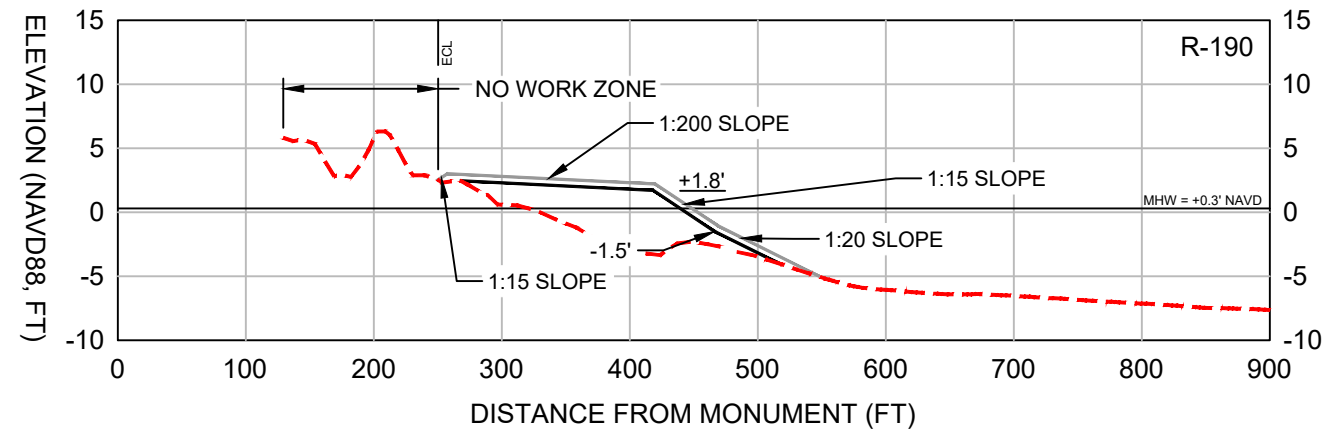
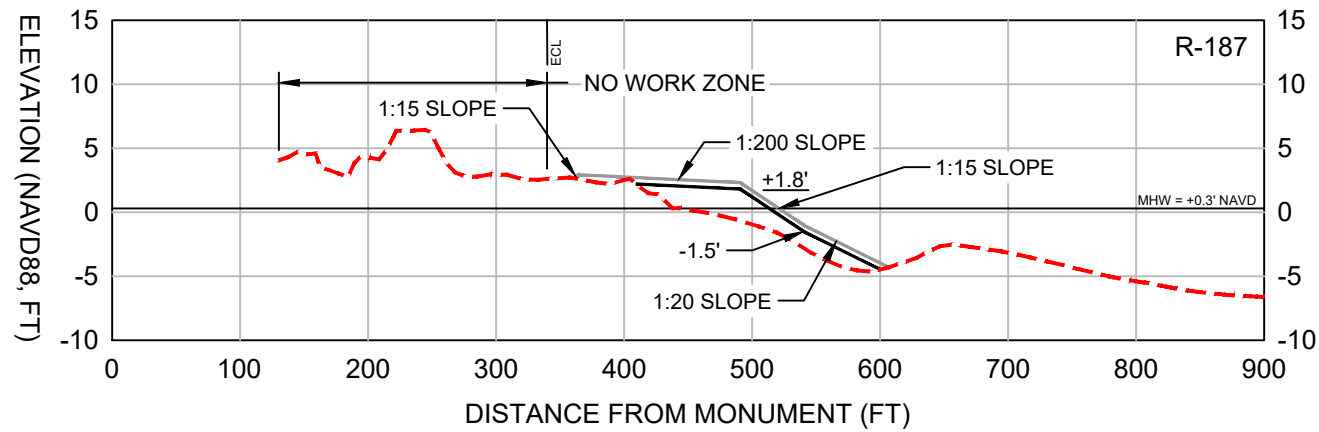
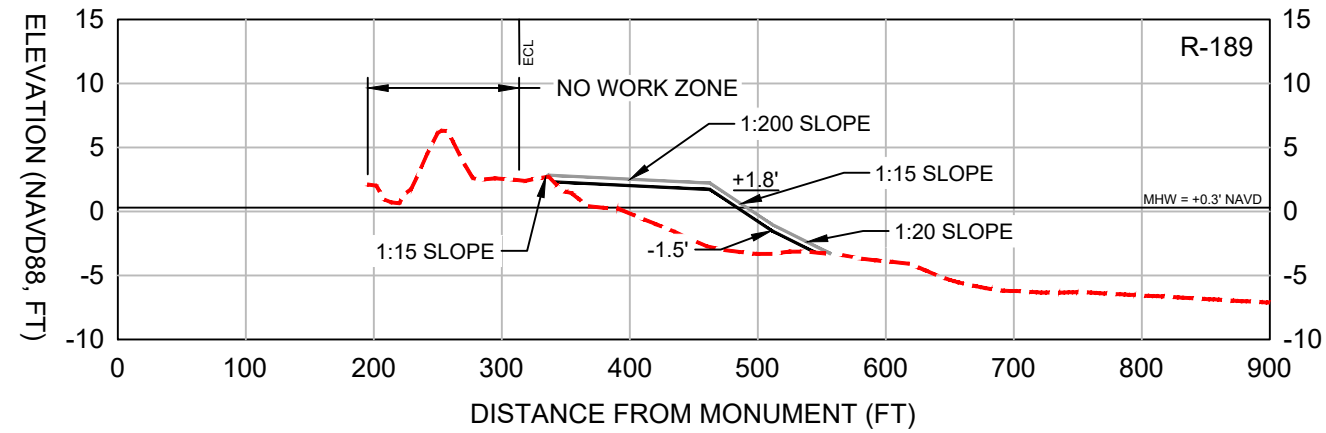
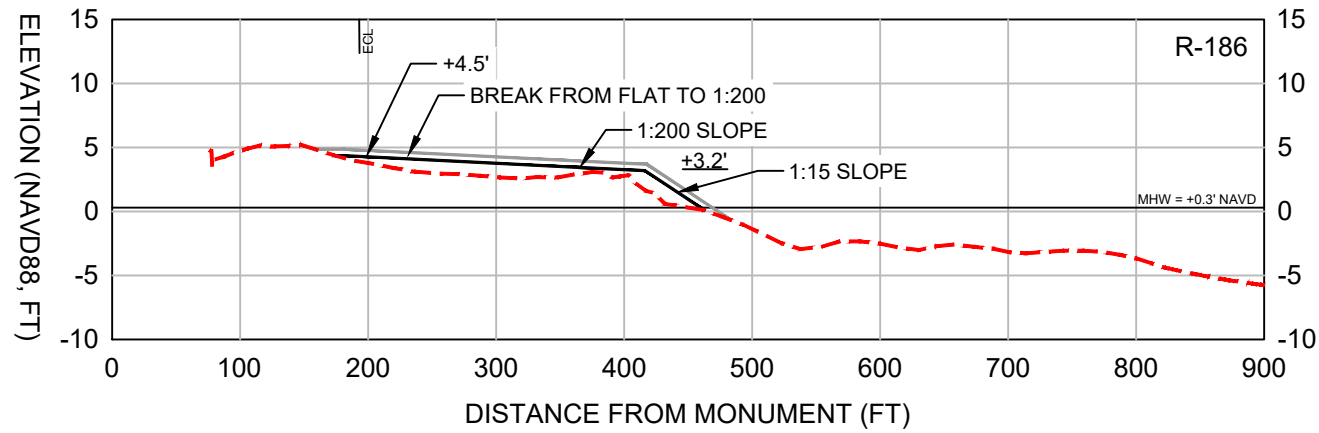
SCALE:
H: 1" = 150'
V: 1" = 15'

NOTES:

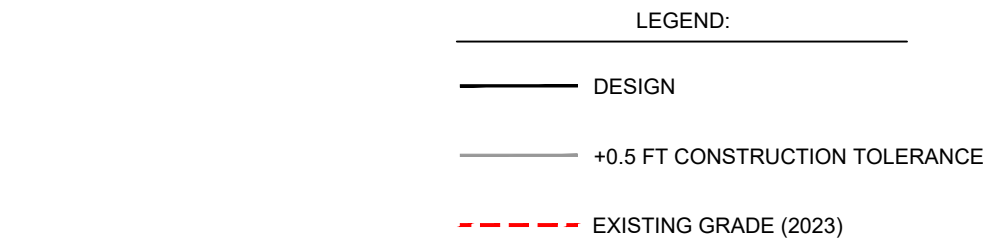
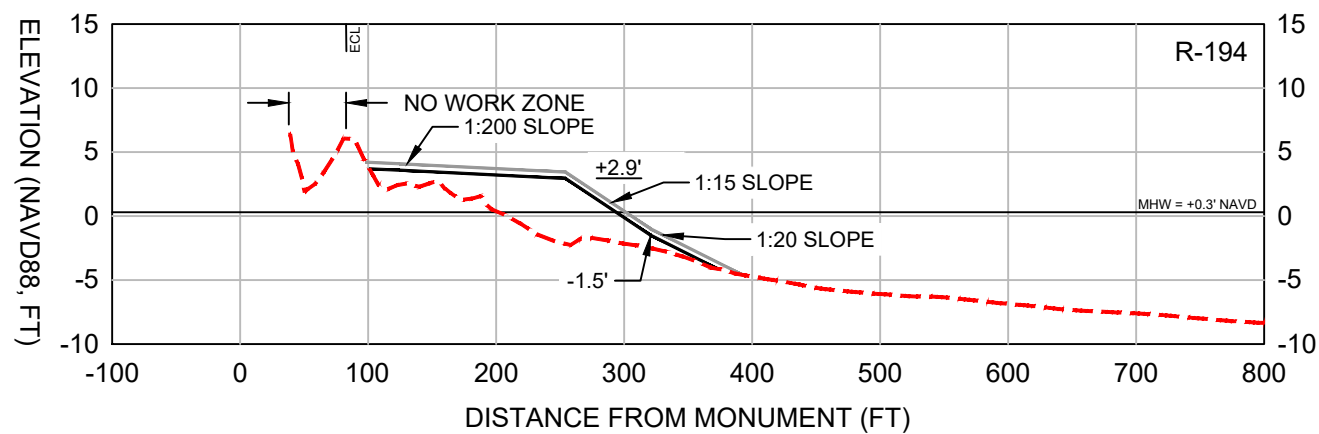
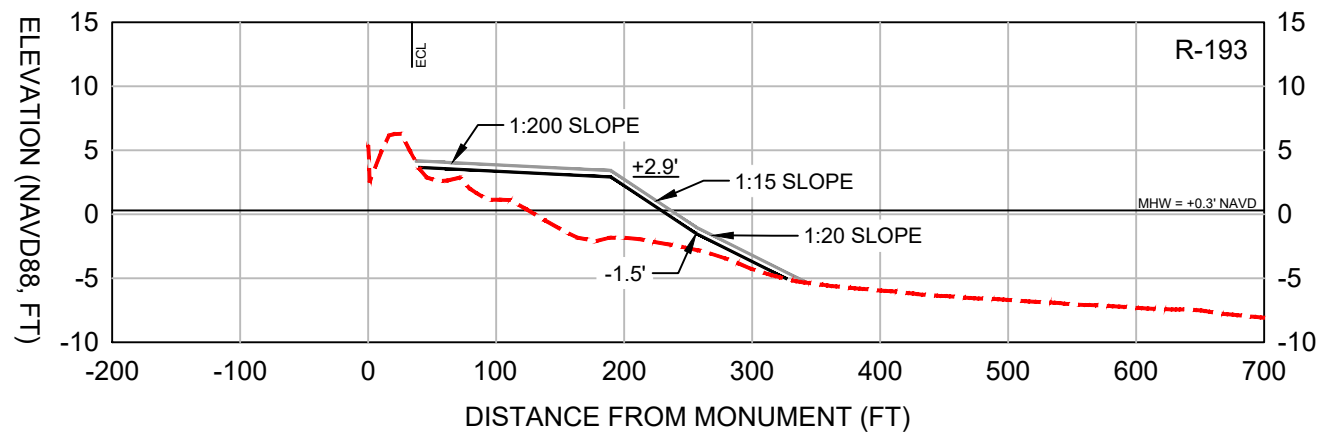
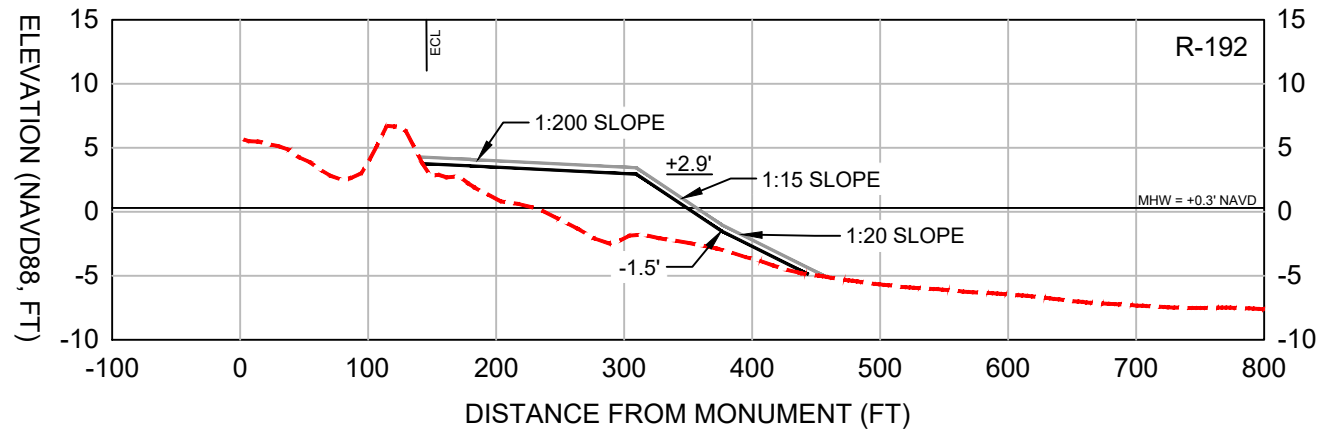
- NOTES:**
1. TOPOGRAPHIC AND BATHYMETRIC DATA COLLECTED BY CEC, JUNE 2023.
 2. SEE SHEETS 3 AND 25 FOR SURVEY TRANSECT ALIGNMENT.



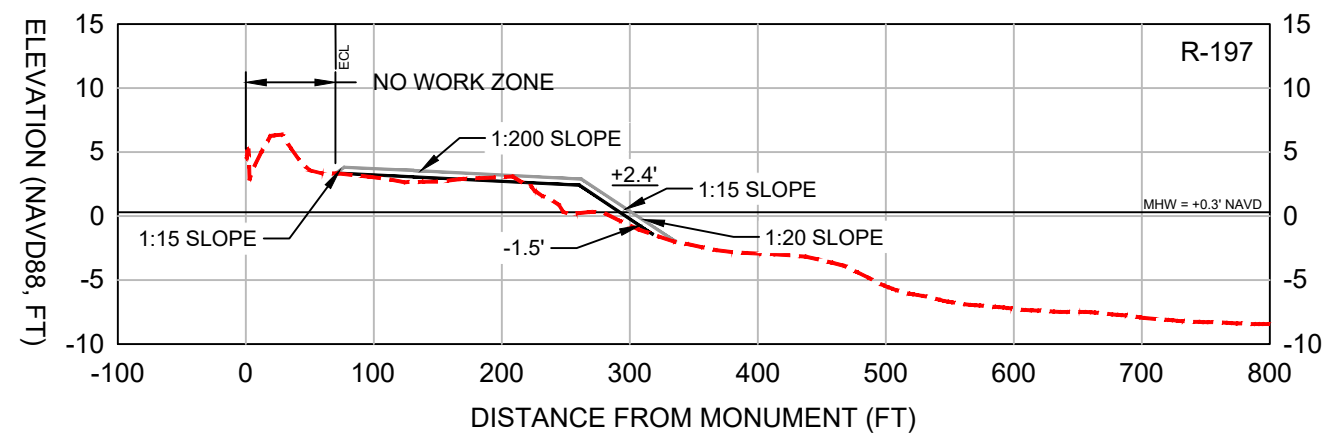
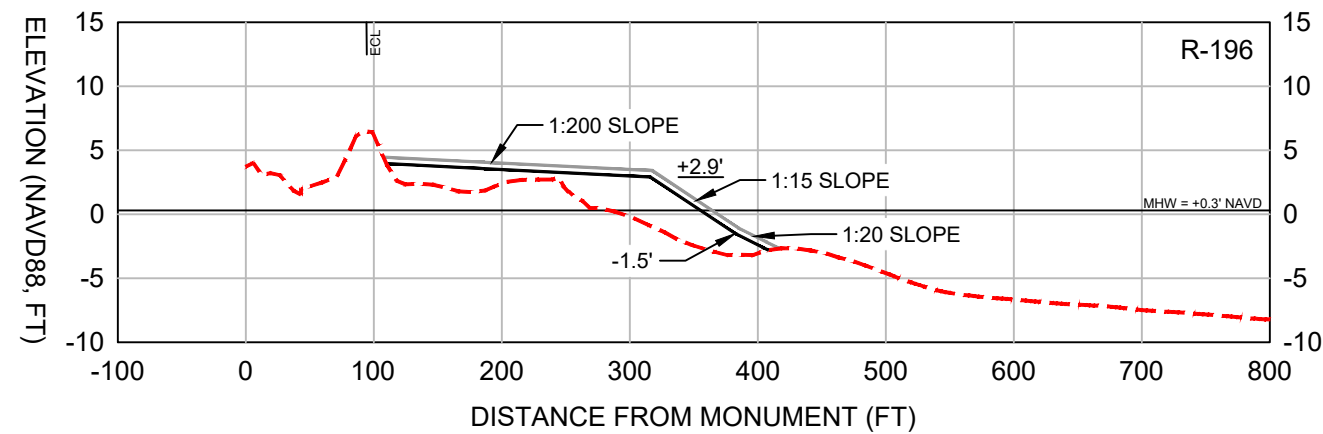
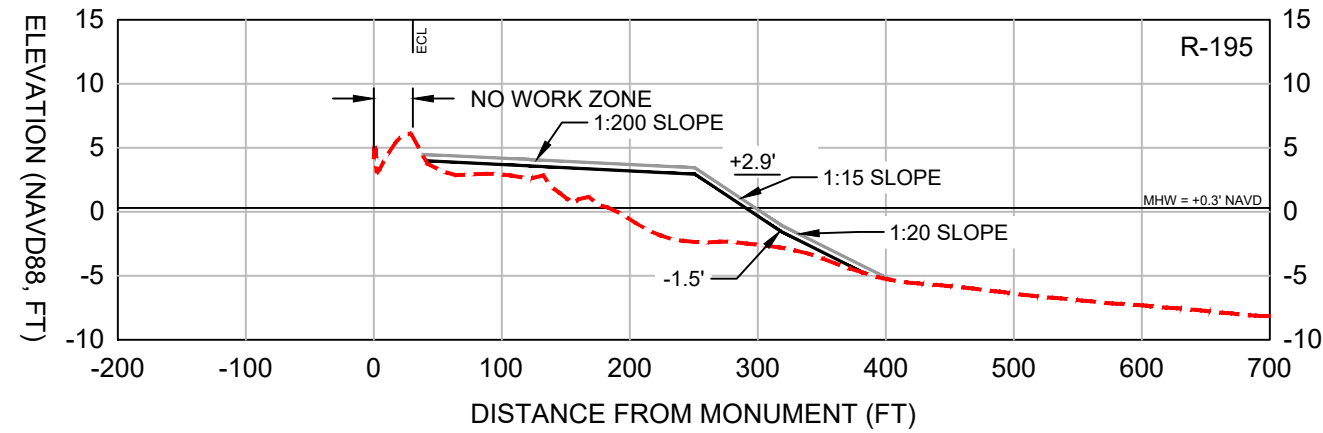
 COASTAL ENGINEERING CONSULTANTS, INC. SERVING FLORIDA SINCE 1977 28421 BONITA CROSSINGS BLVD. BONITA SPRINGS, FL 34135	COASTAL & MARINE ENGINEERING ENVIRONMENTAL & GEOLOGICAL SERVICES SURVEYING & MAPPING ENGINEERING: CA 2464 SURVEYING: LB 2464 PHONE: (239) 643-2324 FAX: (239) 643-1143 www.coastalengineering.com E-Mail: info@cecifl.com	CLIENT: TOWN OF FORT MYERS BEACH		DATE: 1/30/2024		SCALE: AS NOTED	
		TITLE: NORTH-CENTRAL ESTERO ISLAND FILL TEMPLATE PROFILES		DRAWN: JSD		F.B.	
				CHECKED: MTP		PG.	
				SEC.		TWP. RNG.	
		ACAD NO. 21504_04S_04S_12_EBF_PV-AS DWG		1		4/4/24 MTP NORTH SEGMENT BERM	
		REF. NO.		NO.		DATE BY REVISION DESCRIPTION	



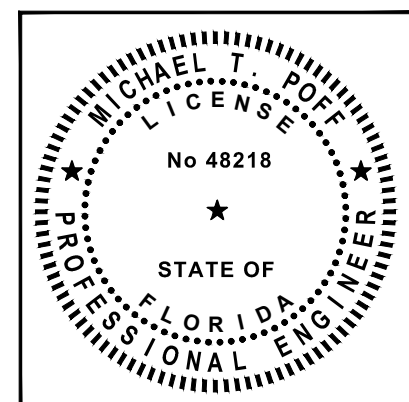
DATE: 1/30/2024	SCALE: AS NOTED	CLIENT: TOWN OF FORT MYERS BEACH	COASTAL & MARINE ENGINEERING
DRAWN: JSD	F.B.	TITLE: CENTRAL ESTERO ISLAND FILL TEMPLATE PROFILES	ENVIRONMENTAL & GEOLOGICAL SERVICES
CHECKED: MTP	PG.		SURVEYING & MAPPING
SEC. TWP.	RNG.		ENGINEERING: CA 2464
ACAD NO.: 21504	CPS: 04-12		SURVEYING: LB 2464
REF. NO.			PHONE: (239) 643-2324
			FAX: (239) 643-1143
			www.coastalengineering.com
			E-Mail: info@cecfl.com
			SHEET 8 OF 26
			FILE NO.: 22-504



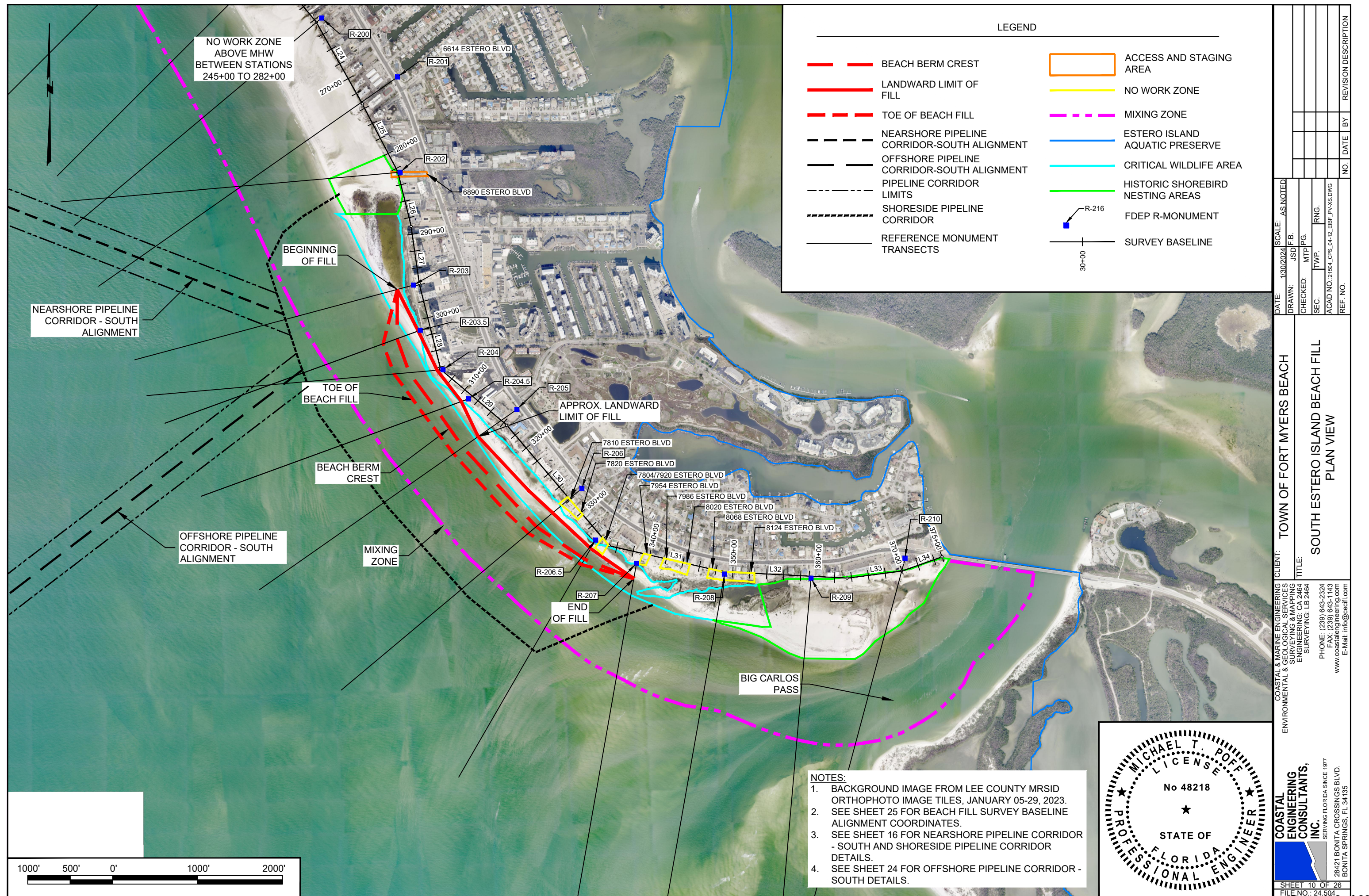
SCALE:
H: 1" = 150'
V: 1" = 15'

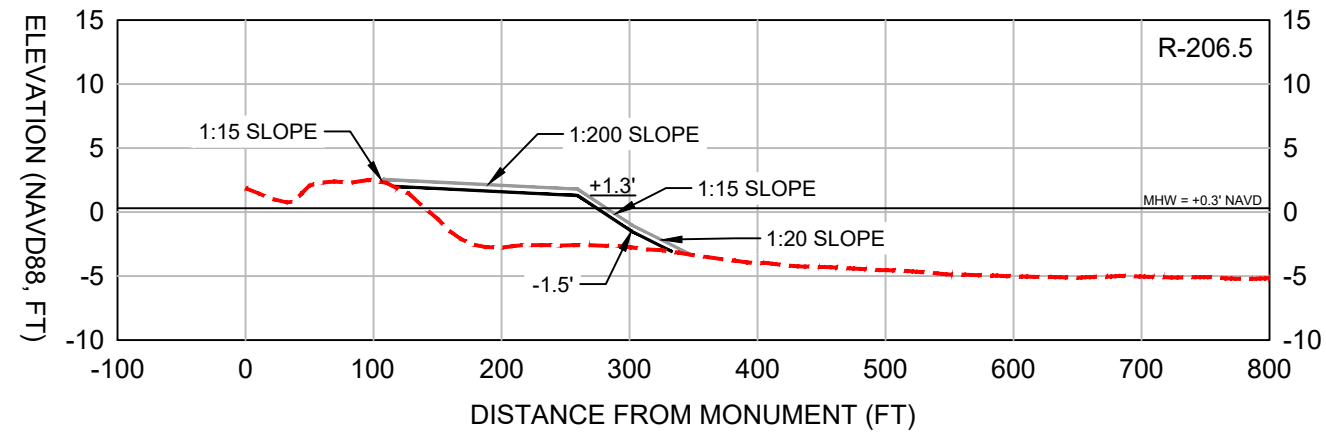
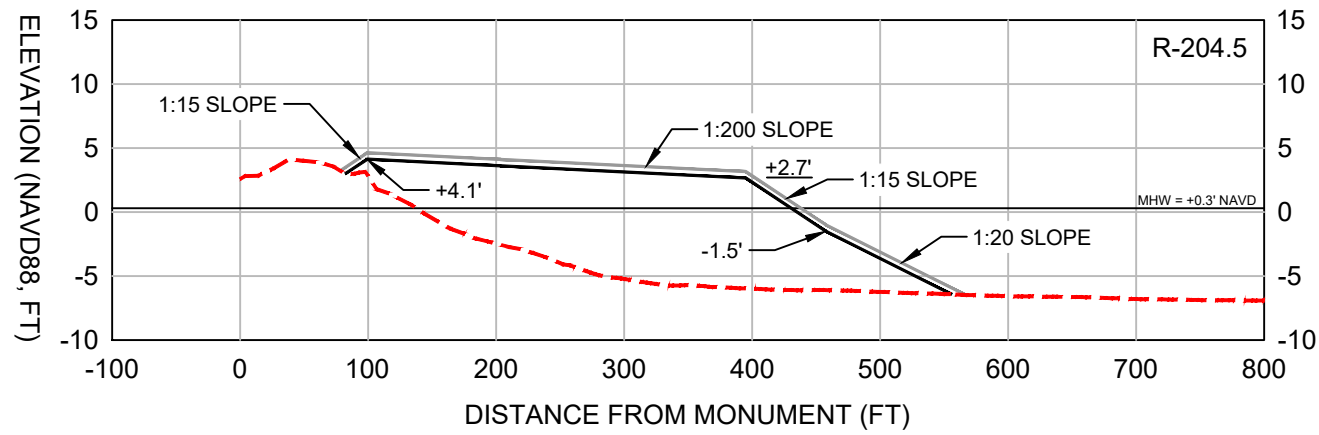
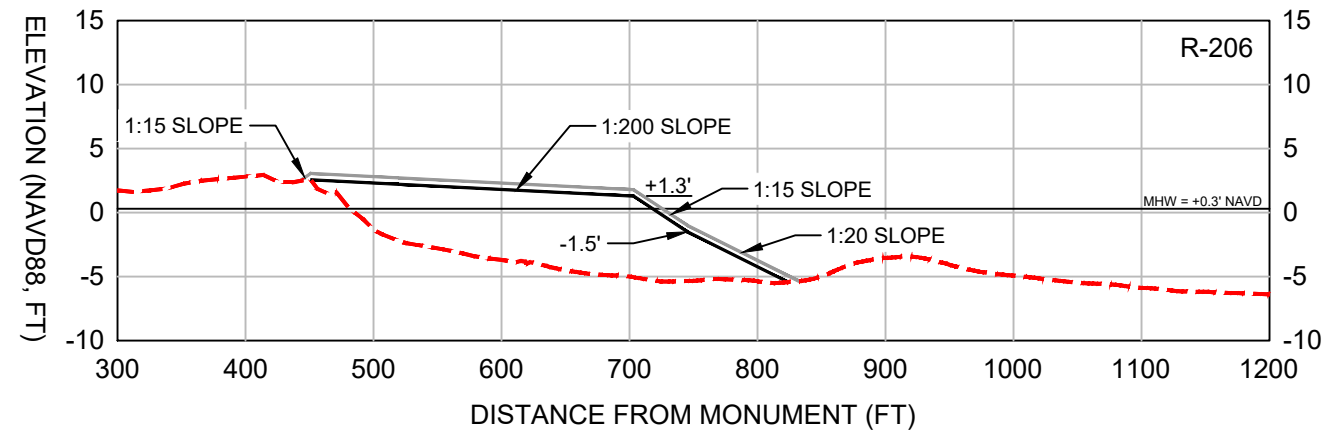
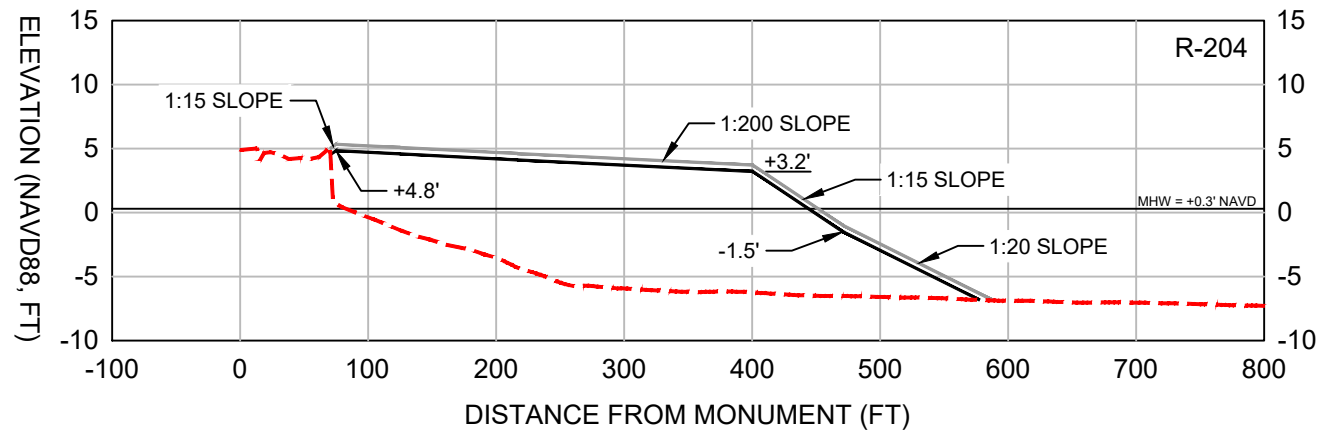
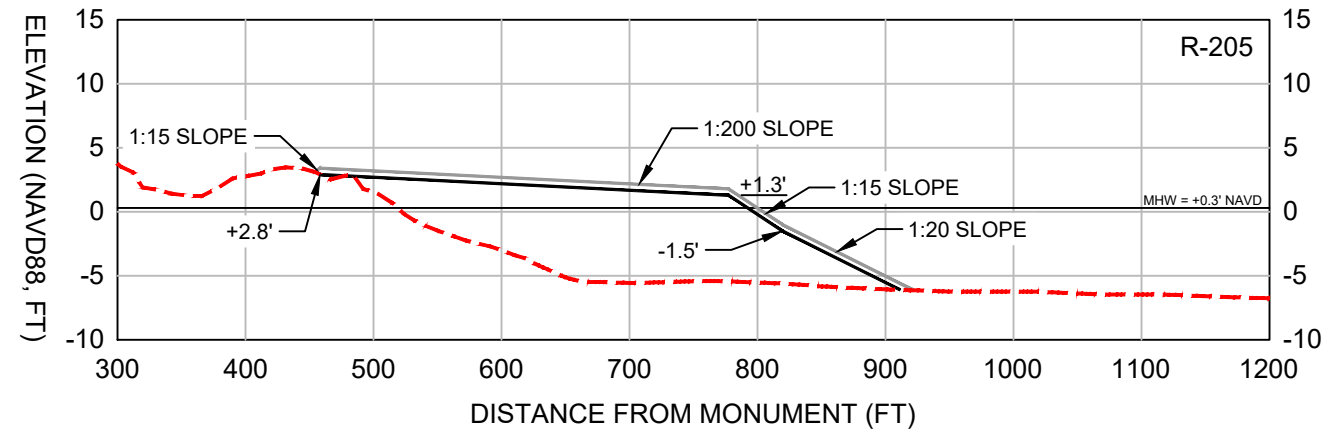
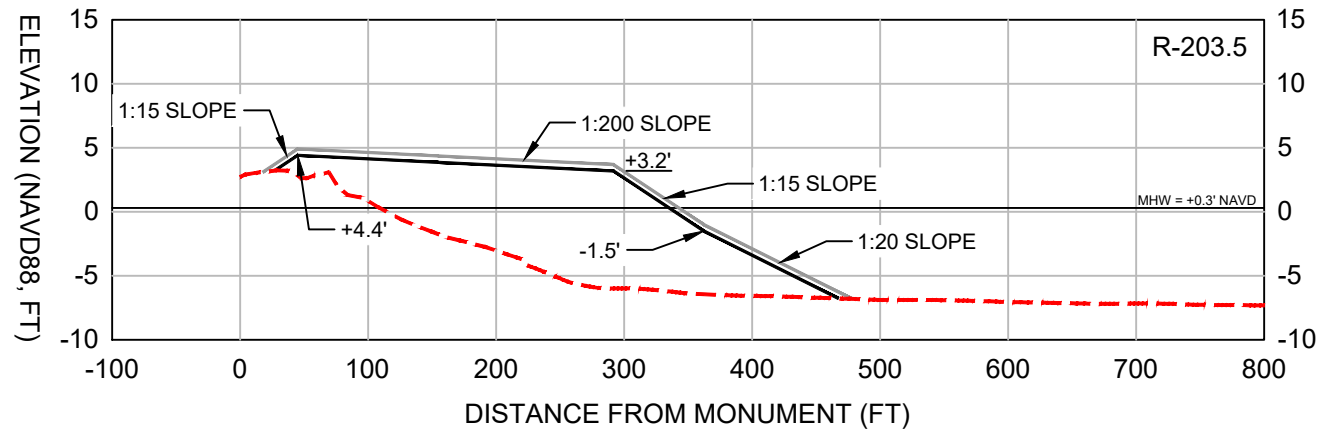


- NOTES:
1. TOPOGRAPHIC AND BATHYMETRIC DATA COLLECTED BY CEC, JUNE 2023.
 2. SEE SHEETS 3 AND 25 FOR SURVEY TRANSECT ALIGNMENT.



DATE: 1/30/2024	SCALE: AS NOTED	CLIENT: TOWN OF FORT MYERS BEACH	COASTAL & MARINE ENGINEERING
DRAWN: JSD	F.B.	TITLE: CENTRAL ESTERO ISLAND FILL TEMPLATE PROFILES	ENVIRONMENTAL & GEOLOGICAL SERVICES
CHECKED: MTP	PG.		SURVEYING & MAPPING
SEC. TWP.	RNG.		ENGINEERING: CA 2464
ACAD NO.: 21504	CPS: 04-12		SURVEYING: LB 2464
REF. NO.			PHONE: (239) 643-2324
			FAX: (239) 643-1143
			www.coastalengineering.com
			E-Mail: info@cecfl.com
			INC.
			SERVING FLORIDA SINCE 1977
			28421 BONITA CROSSINGS BLVD.
			BONITA SPRINGS, FL 34135
			SHEET 9 OF 26
			FILE NO.: 24-504





LEGEND:

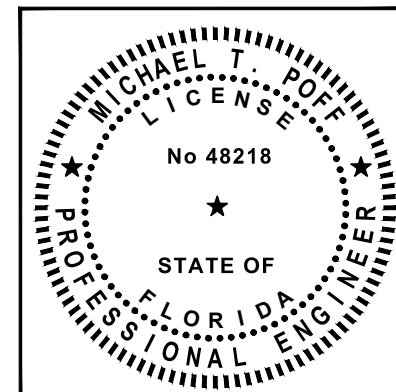
— DESIGN

— +0.5 FT CONSTRUCTION TOLERANCE

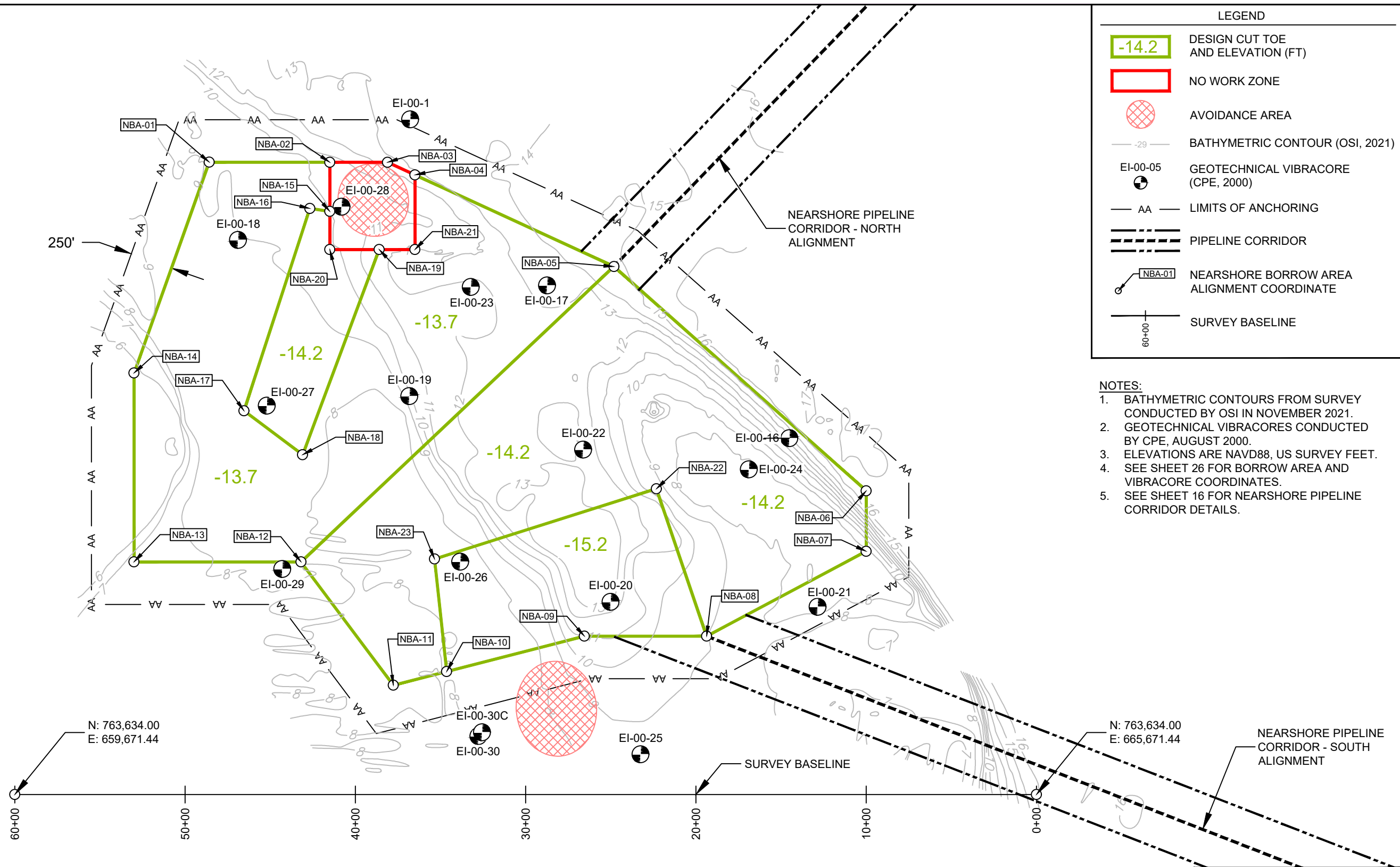
- - - EXISTING GRADE (2023)

SCALE:
H: 1" = 150'
V: 1" = 15'

- NOTES:
1. TOPOGRAPHIC AND BATHYMETRIC DATA COLLECTED BY CEC, JUNE 2023.
 2. SEE SHEETS 3 AND 25 FOR SURVEY TRANSECT ALIGNMENT.



DATE: 1/30/2024	SCALE: AS NOTED	CLIENT: TOWN OF FORT MYERS BEACH	COASTAL & MARINE ENGINEERING ENVIRONMENTAL & GEOLOGICAL SERVICES SURVEYING & MAPPING ENGINEERING: CA 2464 SURVEYING: LB 2464
DRAWN: JSD	F.B.	TITLE: SOUTH ESTERO ISLAND FILL TEMPLATE PROFILES	PHONE: (239) 643-2324 FAX: (239) 643-1143 www.coastalengineering.com E-Mail: info@cecfl.com
CHECKED: MTP	PG.		
SEC. TWP.	RNG.		
ACAD NO.: 21504	CPS: 04-12	EEB: PVXS.DWG	
REF. NO.			
NO.	DATE	BY	REVISION DESCRIPTION



LEGEND

- 14.2 DESIGN CUT TOE AND ELEVATION (FT)
- NO WORK ZONE
- AVOIDANCE AREA
- -29 — BATHYMETRIC CONTOUR (OSI, 2021)
- EI-00-05 GEOTECHNICAL VIBRACORE (CPE, 2000)
- AA — LIMITS OF ANCHORING
- — — — — PIPELINE CORRIDOR
- NBA-01 NEARSHORE BORROW AREA ALIGNMENT COORDINATE
- — — — — SURVEY BASELINE

- NOTES:
- BATHYMETRIC CONTOURS FROM SURVEY CONDUCTED BY OSI IN NOVEMBER 2021.
 - GEOTECHNICAL VIBRACORES CONDUCTED BY CPE, AUGUST 2000.
 - ELEVATIONS ARE NAVD88, US SURVEY FEET.
 - SEE SHEET 26 FOR BORROW AREA AND VIBRACORE COORDINATES.
 - SEE SHEET 16 FOR NEARSHORE PIPELINE CORRIDOR DETAILS.

CLIENT: TOWN OF FORT MYERS BEACH		DATE: 1/30/2024		SCALE: AS NOTED	
TITLE: NEARSHORE BORROW AREA PLAN VIEW		DRAWN: JSD		F.B.	
CHECKED: MTP		PG.		RNG.	
SEC.		TWP.		MTP	
ACAD NO.: 21504_CPS_13-16_Nearshore BA.DWG		1		4/4/24	
REF. NO.		NO.		DATE	
BY		MTP		NORTH SEGMENT BERM	
REVISION DESCRIPTION		BY		REVISION	

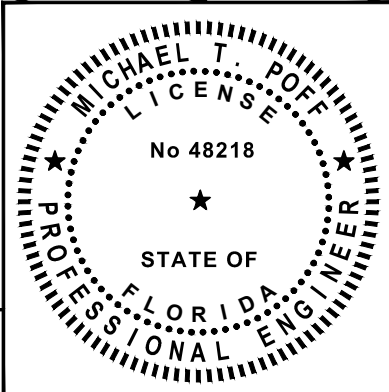
COASTAL & MARINE ENGINEERING
ENVIRONMENTAL & GEOLOGICAL SERVICES
SURVEYING & MAPPING
ENGINEERING: CA 2464
SURVEYING: LB 2464

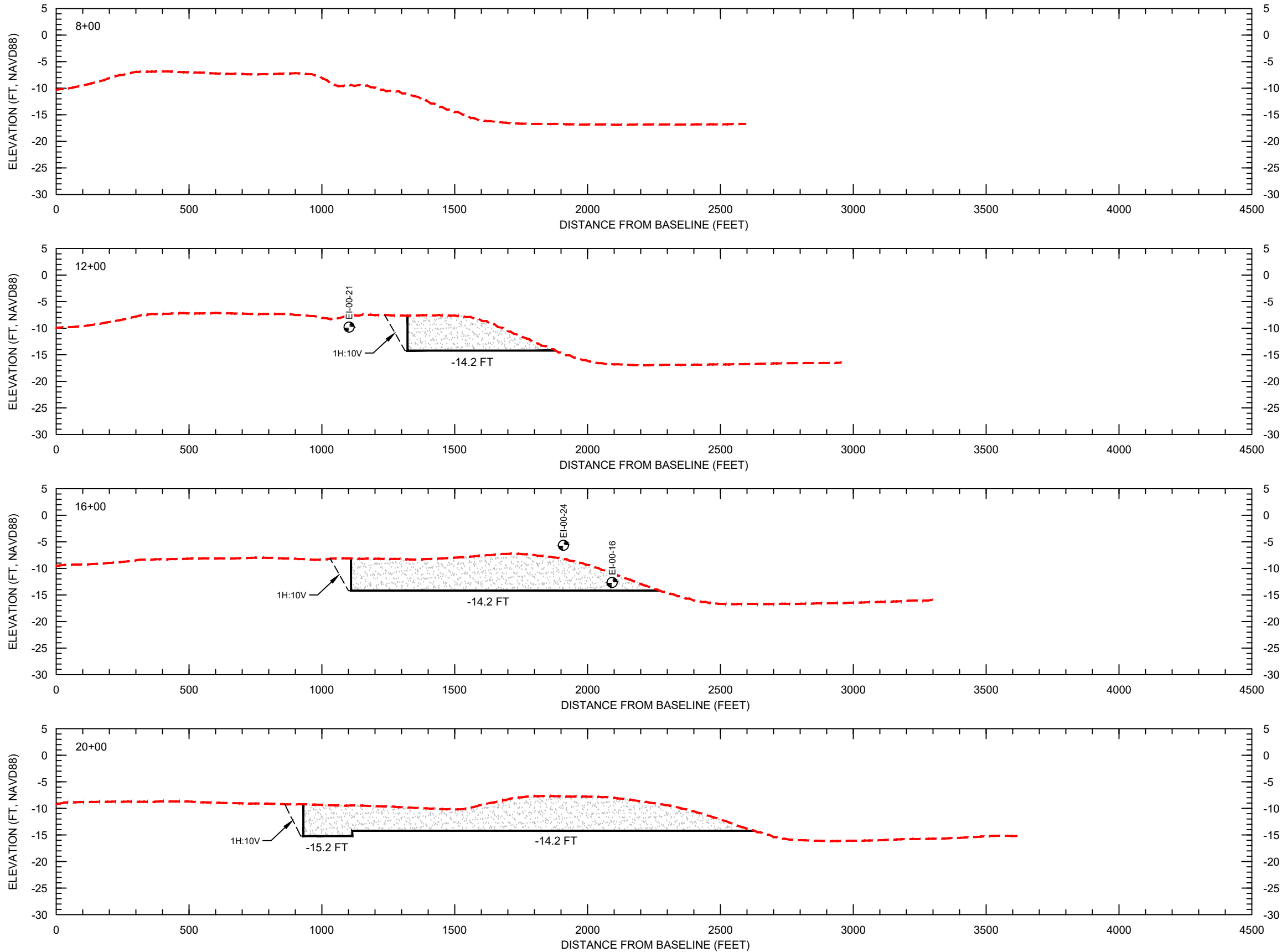
PHONE: (239) 643-2324
FAX: (239) 643-1143
www.coastalengineering.com
E-Mail: info@cecifi.com

COASTAL
ENGINEERING
CONSULTANTS,
INC.

SERVING FLORIDA SINCE 1977
28421 BONITA CROSSINGS BLVD.
BONITA SPRINGS, FL 34135

SHEET 12 OF 26
FILE NO.: 24.504





- NOTES:
- BATHYMETRIC SURVEY FROM OSI, NOVEMBER 2021.
 - GEOTECHNICAL VIBRACORES CONDUCTED BY CPE, AUGUST 2020.
 - ELEVATIONS ARE SHOWN IN NAVD88 U.S. SURVEY FEET.

SCALE:
H: 1" = 400'
V: 1" = 20'

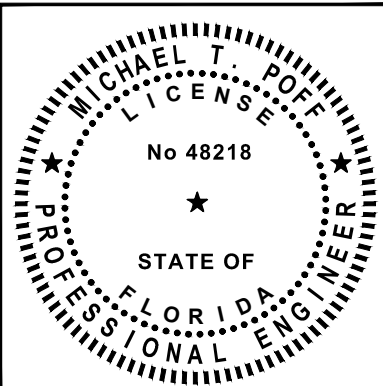
LEGEND:

--- EXISTING GRADE

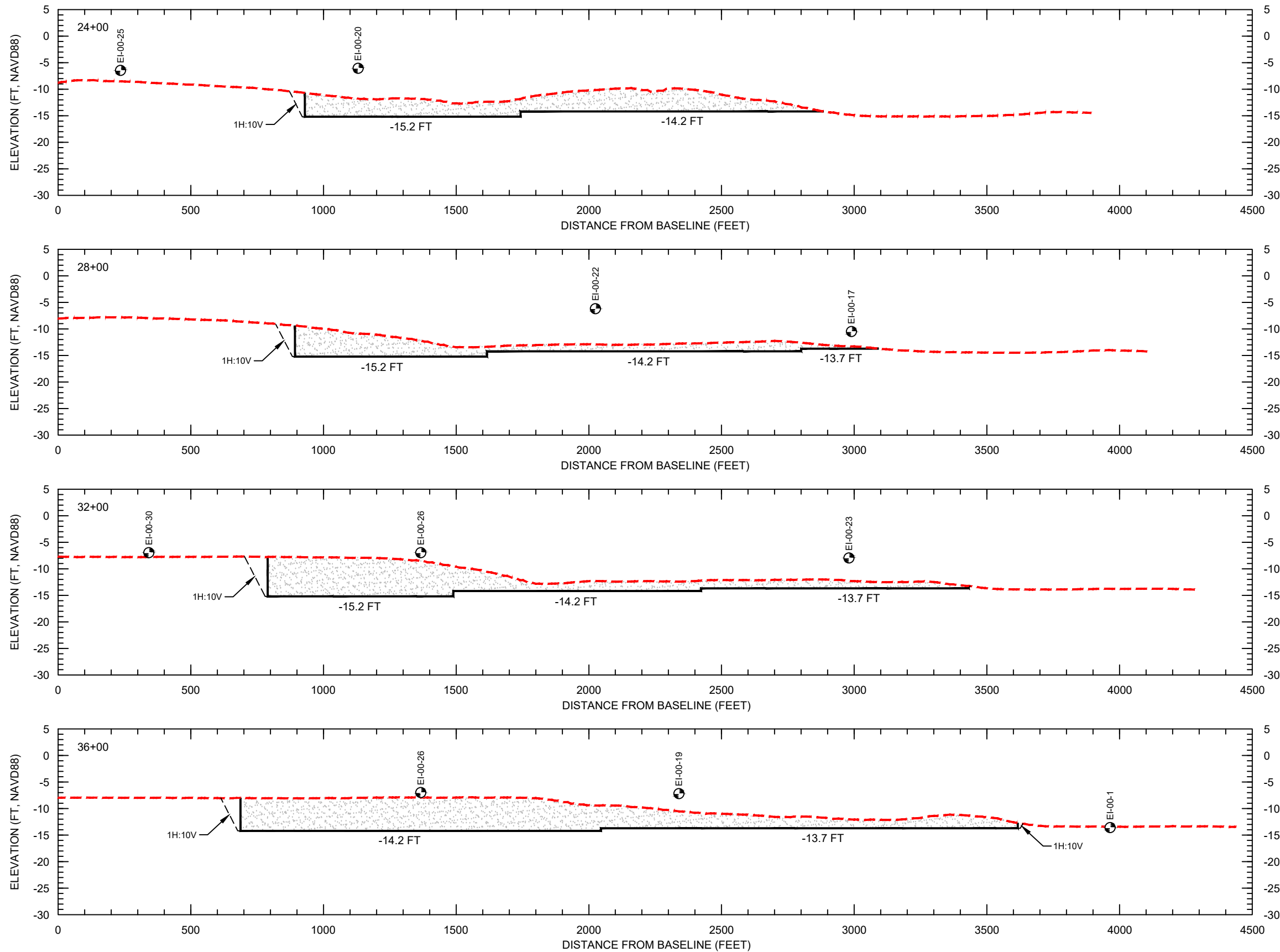
--- BORROW AREA DREDGE TOLERANCE

DESIGN DREDGE CUT

EI-00-27 VIBRACORE

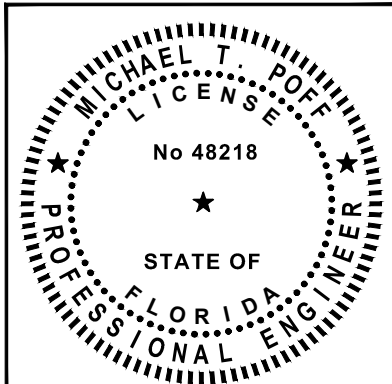
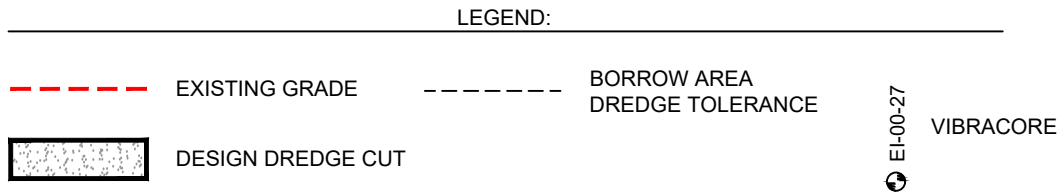


COASTAL & MARINE ENGINEERING ENVIRONMENTAL & GEOLOGICAL SERVICES SURVEYING & MAPPING ENGINEERING: CA 2464 SURVEYING: LB 2464		CLIENT: TOWN OF FORT MYERS BEACH		DATE: 1/30/2024		SCALE: AS NOTED	
COASTAL ENGINEERING CONSULTANTS, INC.		TITLE: NEARSHORE BORROW AREA SECTIONS		DRAWN: JSD		F.B.	
SERVING FLORIDA SINCE 1977				CHECKED: MTP		PG.	
28421 BONITA CROSSINGS BLVD. BONITA SPRINGS, FL 34135				SEC.		TWP.	
				ACAD NO.: 21504_CPS_13-16_Nearshore BA.DWG		RNG.	
				REF. NO.		NO.	
				BY		DATE	
				REVISION DESCRIPTION			

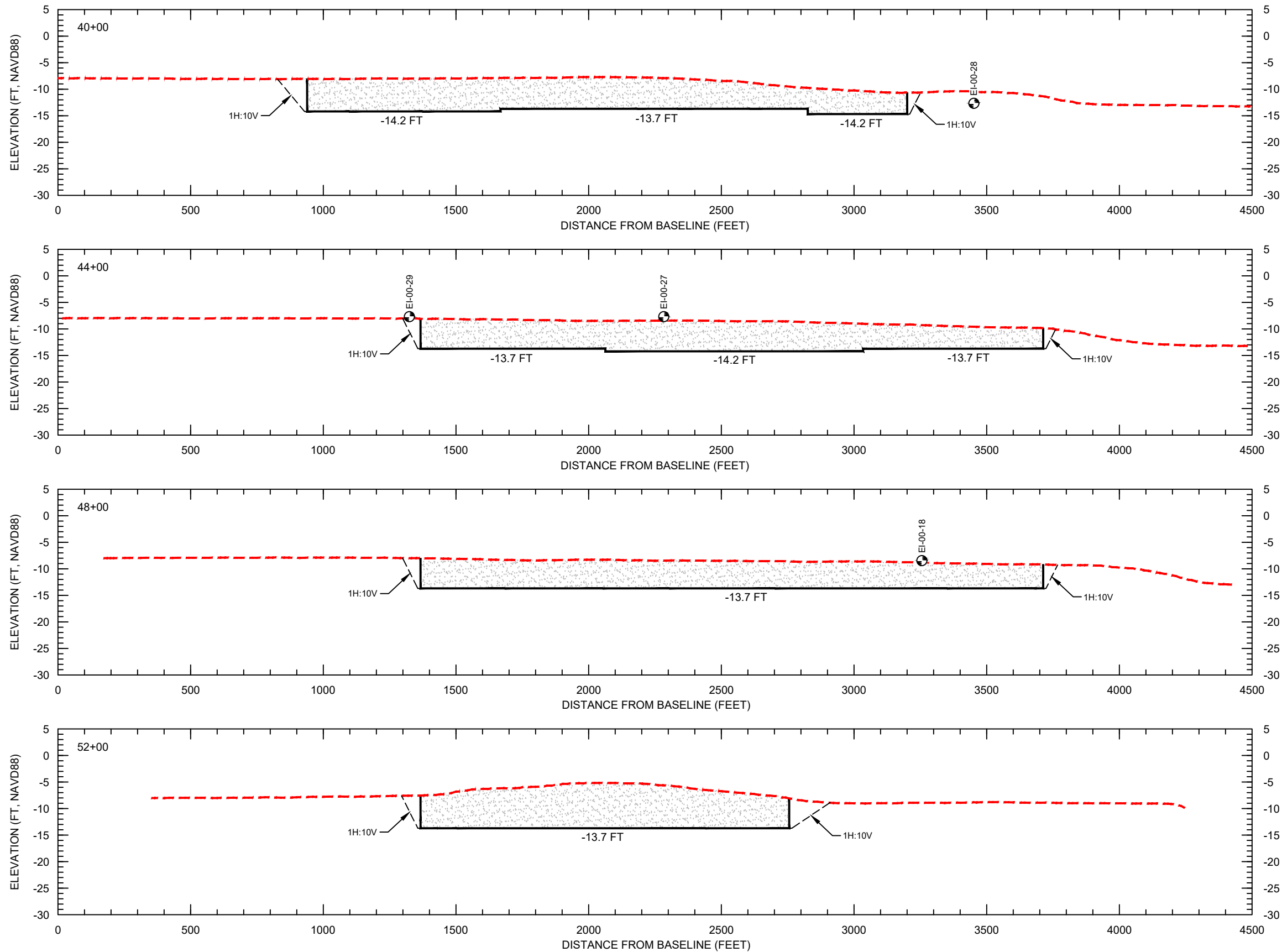


- NOTES:
- BATHYMETRIC SURVEY FROM OSI, NOVEMBER 2021.
 - GEOTECHNICAL VIBRACORES CONDUCTED BY CPE, AUGUST 2020.
 - ELEVATIONS ARE SHOWN IN NAVD88 U.S. SURVEY FEET.

SCALE:
H: 1" = 400'
V: 1" = 20'



COASTAL & MARINE ENGINEERING ENVIRONMENTAL & GEOLOGICAL SERVICES SURVEYING & MAPPING ENGINEERING: CA 2464 SURVEYING: LB 2464		CLIENT: TOWN OF FORT MYERS BEACH		DATE: 1/30/2024		SCALE: AS NOTED	
COASTAL ENGINEERING CONSULTANTS, INC.		TITLE: NEARSHORE BORROW AREA SECTIONS		DRAWN: JSD F.B.		CHECKED: MTP PG.	
28421 BONITA CROSSINGS BLVD. BONITA SPRINGS, FL 34135		PHONE: (239) 643-2324 FAX: (239) 643-1143 www.coastalengineering.com E-Mail: info@cecfl.com		SEC. TWP. RING.		ACAD NO.: 21504_CPS_13-16_Nearshore BA.DWG	
SHEET 14 OF 26		FILE NO.: 24-504		REF. NO.		NO. DATE BY	
						REVISION DESCRIPTION	

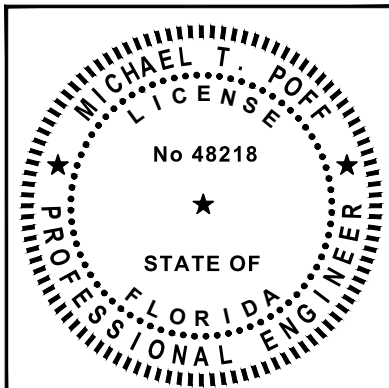


- NOTES:
- BATHYMETRIC SURVEY FROM OSI, NOVEMBER 2021.
 - GEOTECHNICAL VIBRACORES CONDUCTED BY CPE, AUGUST 2020.
 - ELEVATIONS ARE SHOWN IN NAVD88 U.S. SURVEY FEET.

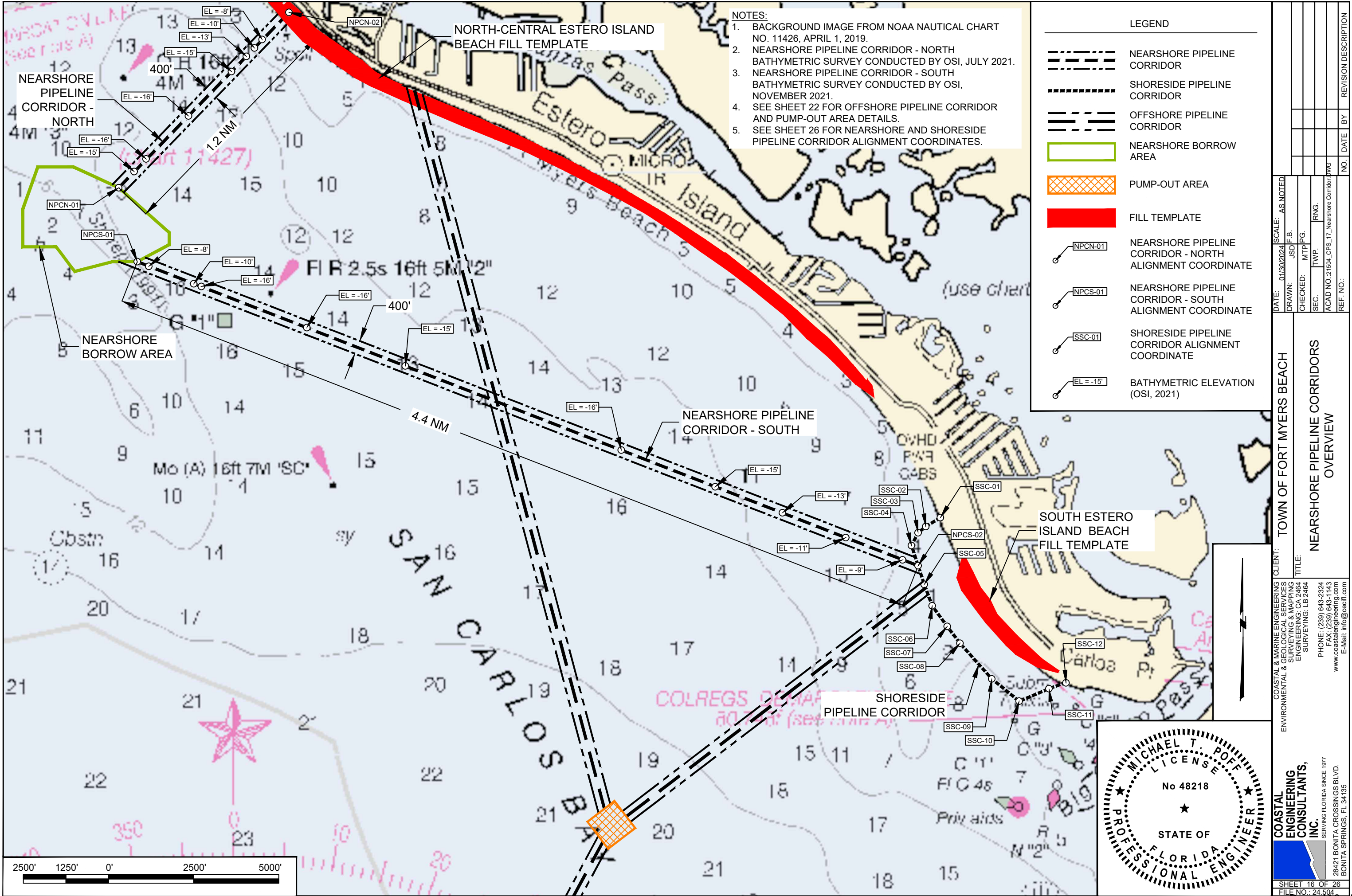
SCALE:
H: 1" = 400'
V: 1" = 20'

LEGEND:

	EXISTING GRADE		BORROW AREA DREDGE TOLERANCE
	DESIGN DREDGE CUT		VIBRACORE



COASTAL & MARINE ENGINEERING ENVIRONMENTAL & GEOLOGICAL SERVICES SURVEYING & MAPPING ENGINEERING: CA 2464 SURVEYING: LB 2464		CLIENT: TOWN OF FORT MYERS BEACH		DATE: 1/30/2024		SCALE: AS NOTED	
COASTAL ENGINEERING CONSULTANTS, INC.		TITLE: NEARSHORE BORROW AREA SECTIONS		DRAWN: JSD		F.B.	
SERVING FLORIDA SINCE 1977		CHECKED: MTP		PG.		RNG.	
28421 BONITA CROSSINGS BLVD. BONITA SPRINGS, FL 34135		SEC.		TWP.		ACAD NO.: 21504_CPS_13-16_Nearshore BA.DWG	
SHEET 15 OF 26		REF. NO.		NO.		DATE	
FILE NO.: 24-504		BY		REVISION DESCRIPTION			



- NOTES:
1. BACKGROUND IMAGE FROM NOAA NAUTICAL CHART NO. 11426, APRIL 1, 2019.
 2. NEARSHORE PIPELINE CORRIDOR - NORTH BATHYMETRIC SURVEY CONDUCTED BY OSI, JULY 2021.
 3. NEARSHORE PIPELINE CORRIDOR - SOUTH BATHYMETRIC SURVEY CONDUCTED BY OSI, NOVEMBER 2021.
 4. SEE SHEET 22 FOR OFFSHORE PIPELINE CORRIDOR AND PUMP-OUT AREA DETAILS.
 5. SEE SHEET 26 FOR NEARSHORE AND SHORESIDE PIPELINE CORRIDOR ALIGNMENT COORDINATES.

LEGEND	
	NEARSHORE PIPELINE CORRIDOR
	SHORESIDE PIPELINE CORRIDOR
	OFFSHORE PIPELINE CORRIDOR
	NEARSHORE BORROW AREA
	PUMP-OUT AREA
	FILL TEMPLATE
	NEARSHORE PIPELINE CORRIDOR - NORTH ALIGNMENT COORDINATE
	NEARSHORE PIPELINE CORRIDOR - SOUTH ALIGNMENT COORDINATE
	SHORESIDE PIPELINE CORRIDOR ALIGNMENT COORDINATE
	BATHYMETRIC ELEVATION (OSI, 2021)

CLIENT: TOWN OF FORT MYERS BEACH		DATE: 01/30/2024	SCALE: AS NOTED
TITLE: NEARSHORE PIPELINE CORRIDORS OVERVIEW		DRAWN: JSD	AS NOTED
		CHECKED: MTP	PG. 1
		SEC. 1	RNG. 1
		ACAD NO.: 21504	CPS. 17, Nearshore Corridor
		REF. NO.:	
		NO.	BY
		DATE	REVISION DESCRIPTION

COASTAL & MARINE ENGINEERING
ENVIRONMENTAL & GEOLOGICAL SERVICES
SURVEYING & MAPPING
ENGINEERING: CA 2464
SURVEYING: LB 2464

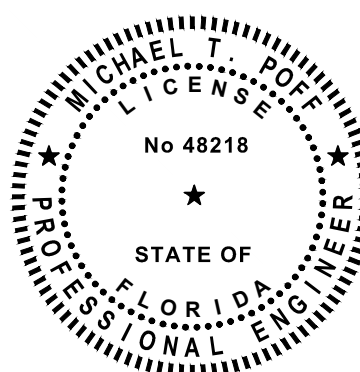
PHONE: (239) 643-2324
FAX: (239) 643-1143
www.coastalengineering.com
E-Mail: info@cecfl.com

COASTAL
ENGINEERING
CONSULTANTS,
INC.

SERVING FLORIDA SINCE 1977

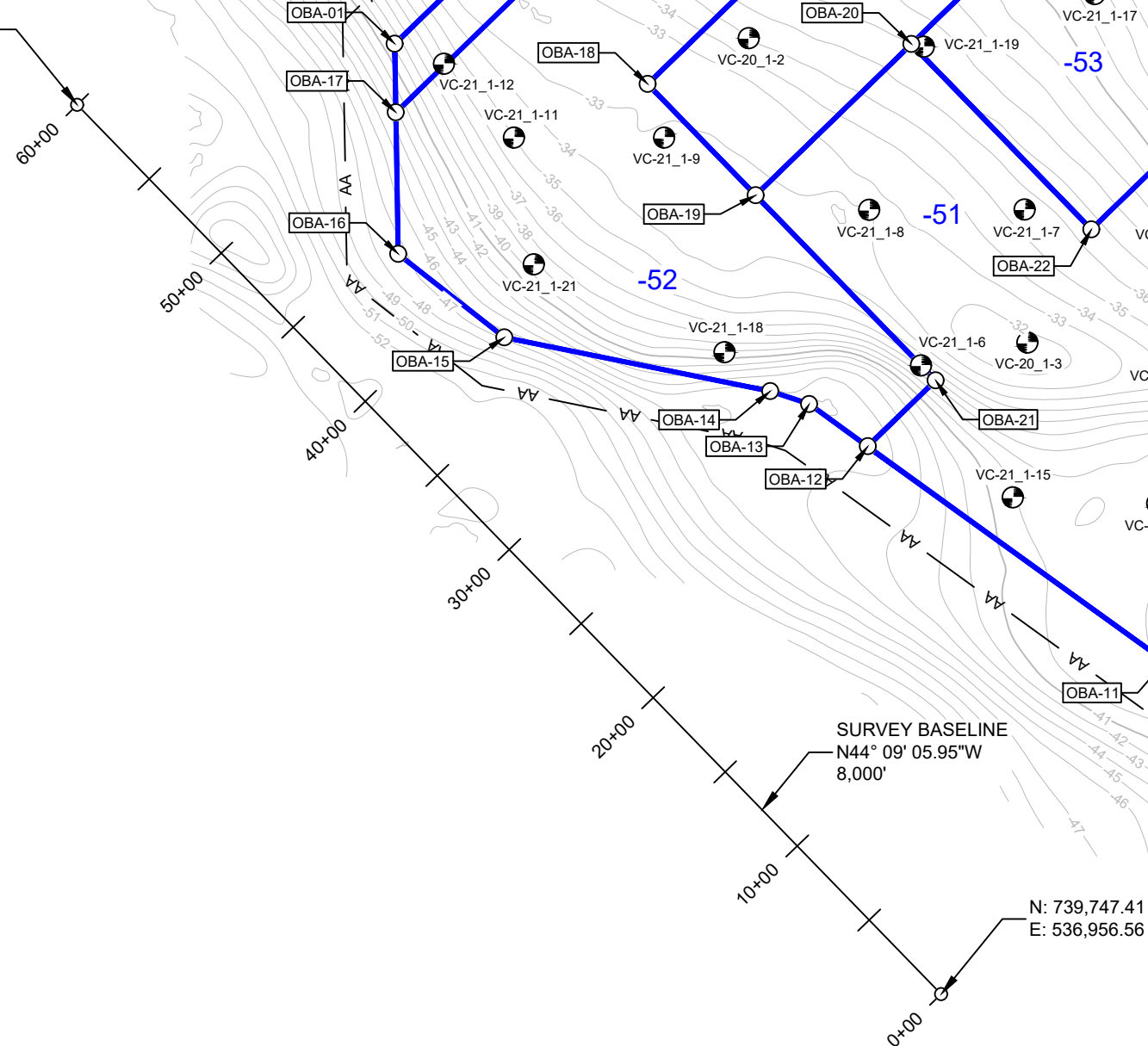
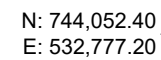
28421 BONITA CROSSINGS BLVD.
BONITA SPRINGS, FL 34135

SHEET 16 OF 26
FILE NO.: 24.504



- NOTES:

1. BATHYMETRIC CONTOURS FROM SURVEY CONDUCTED BY OSI IN JULY 2021.
2. GEOTECHNICAL INVESTIGATION CONDUCTED BY GFA AND AMDRILL 2020 AND 2021.
3. ELEVATIONS ARE NAVD88, US SURVEY FEET.
4. SEE SHEET 26 FOR BORROW AREA AND VIBRACORE COORDINATES.



LEGEND

-55

DESIGN CUT TOE
AND ELEVATION (FT)

— -29 —

BATHYMETRIC CONTOUR (OSI, 2021)

VC-20_1-1



GEOTECHNICAL VIBRACORE
(AMDRILL, 2020)

VC-21_1-4



GEOTECHNICAL VIBRACORE
(AMDRILL, 2021)

— AA —

LIMITS OF ANCHORING

OBA-0



OFFSHORE BORROW AREA
ALIGNMENT COORDINATE

SURVEY BASELINE

CLIENT: TOWN OF FORT MYERS BEACH

COASTAL & MARINE ENGINEERING
ENVIRONMENTAL & GEOLOGICAL SERVICES
SURVEYING & MAPPING
ENGINEERING: CA 2464
SURVEYING: LB 2464

**COASTAL
ENGINEERING
CONSULTANTS,
INC.**



SHEET 17 OF 26
FILE NO.: 24.504

OFFSHORE BORROW AREA PLAN VIEW

DATE:	1/30/2024	SCALE:	AS NOTED
DRAWN:	1/30/2024	FR	

[illegible]

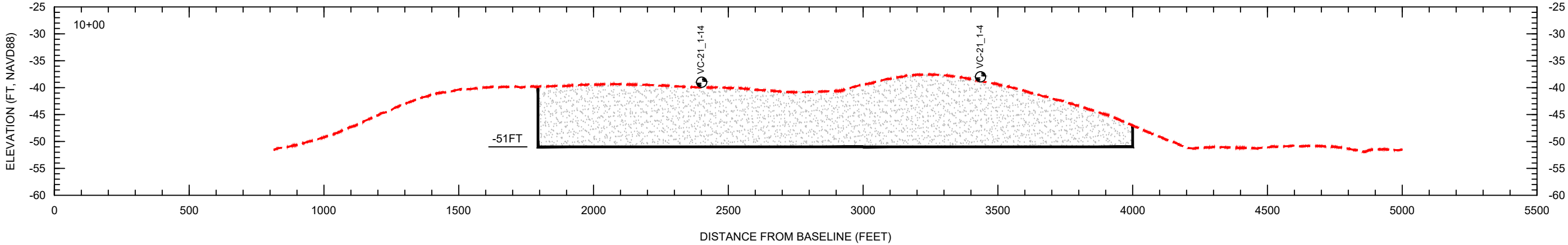
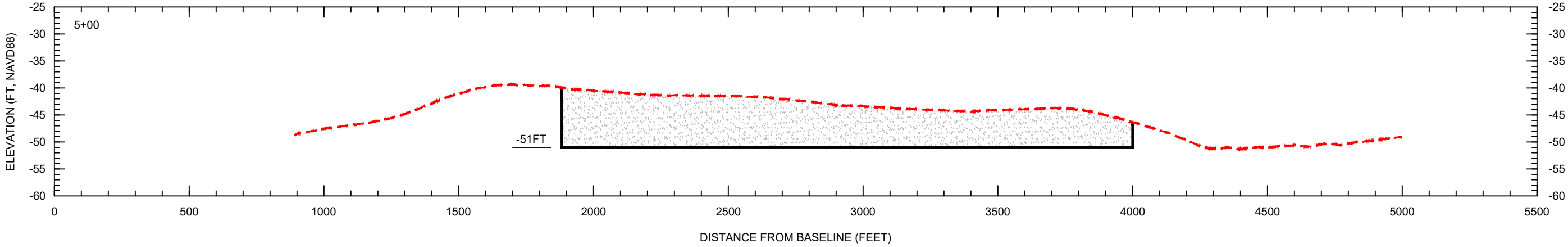
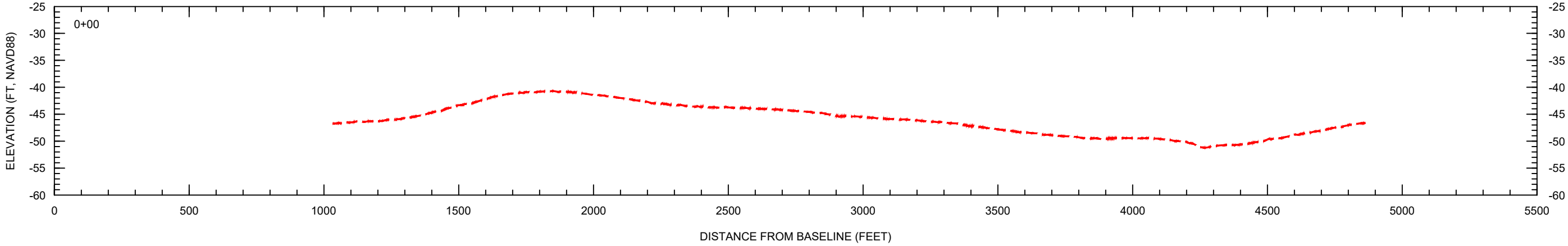
DRAWN:	JSD	P.
CHECKED:	MTP	PG.

--	--

SEC.	TWP.	RNG.
ACAD NO.:21504_CPS_18-22_Offshore BA.DWG		

REF. NO.

Page 417 of 605



- NOTES:
1. GEOPHYSICAL DATA FROM OSI, 2021.
 2. GEOTECHNICAL INVESTIGATION CONDUCTED BY GFA AND AMDRILL, 2020 AND 2021.
 3. ELEVATIONS ARE SHOWN IN NAVD88 U.S. SURVEY FEET.

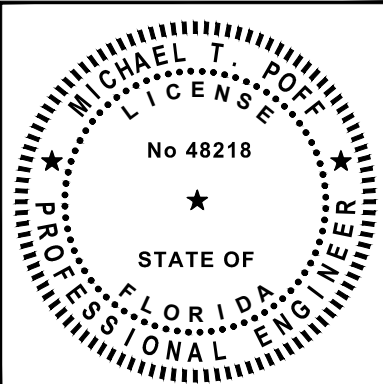
SCALE:
H: 1" = 400'
V: 1" = 20'

LEGEND:

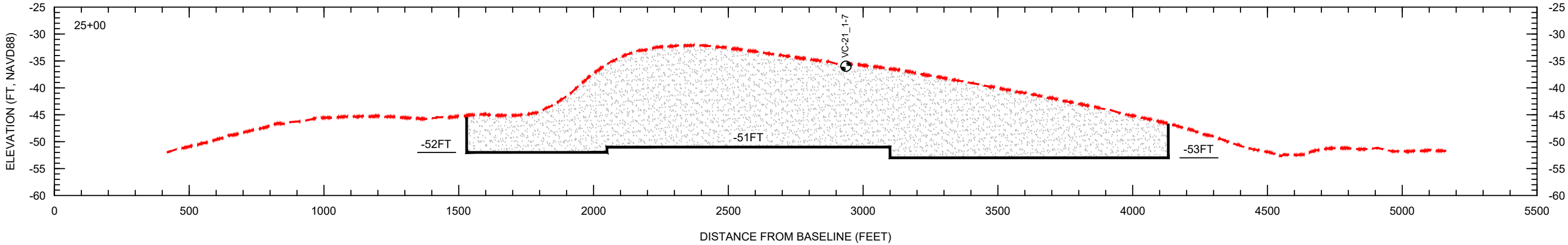
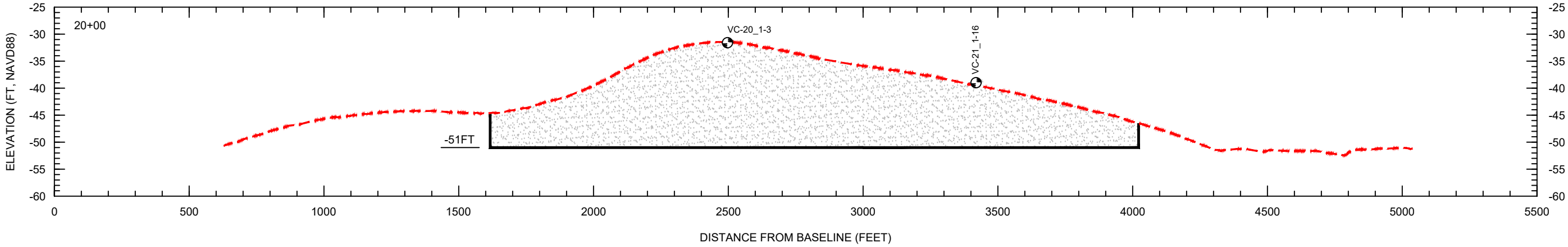
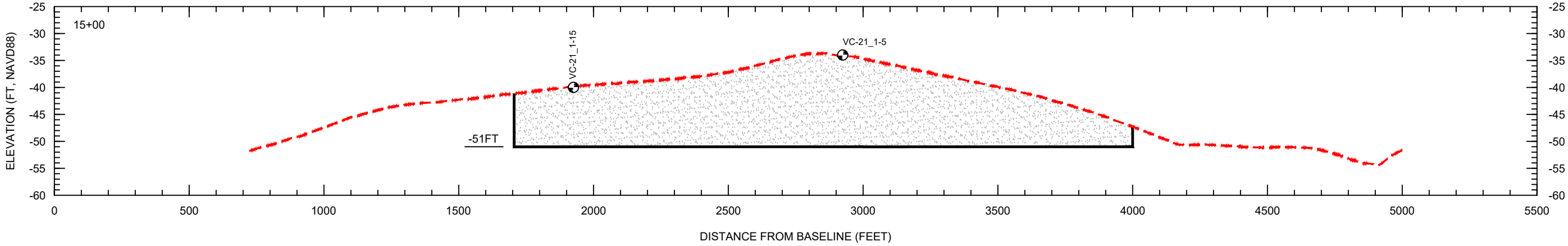
--- EXISTING GRADE

DESIGN DREDGE CUT

VC-21_1-4
VIBRACORE



COASTAL & MARINE ENGINEERING ENVIRONMENTAL & GEOLOGICAL SERVICES SURVEYING & MAPPING ENGINEERING: CA 2464 SURVEYING: LB 2464		CLIENT: TOWN OF FORT MYERS BEACH		DATE: 1/30/2024		SCALE: AS NOTED	
COASTAL ENGINEERING CONSULTANTS, INC.		TITLE: OFFSHORE BORROW AREA SECTIONS		DRAWN: JSD		F.B.	
SERVING FLORIDA SINCE 1977		CHECKED: MTP		PG.		RNG.	
28421 BONITA CROSSINGS BLVD. BONITA SPRINGS, FL 34135		SEC.		TWP.		ACAD NO.: 21504_CPS_18-22, Offshore BA.DWG	
SHEET 18 OF 26		REF. NO.		NO.		BY	
FILE NO.: 24-504		DATE		NO.		REVISION DESCRIPTION	



SCALE:
H: 1" = 400'
V: 1" = 20'

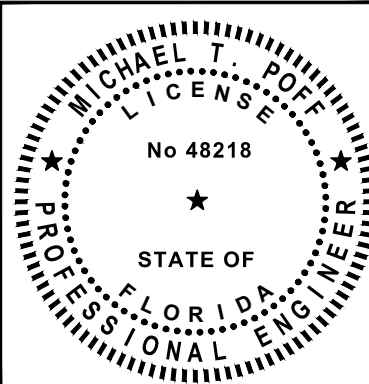
LEGEND:

--- EXISTING GRADE

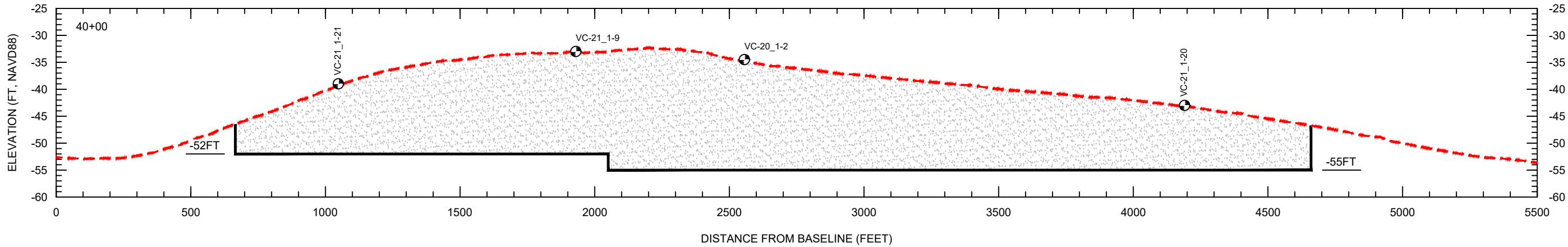
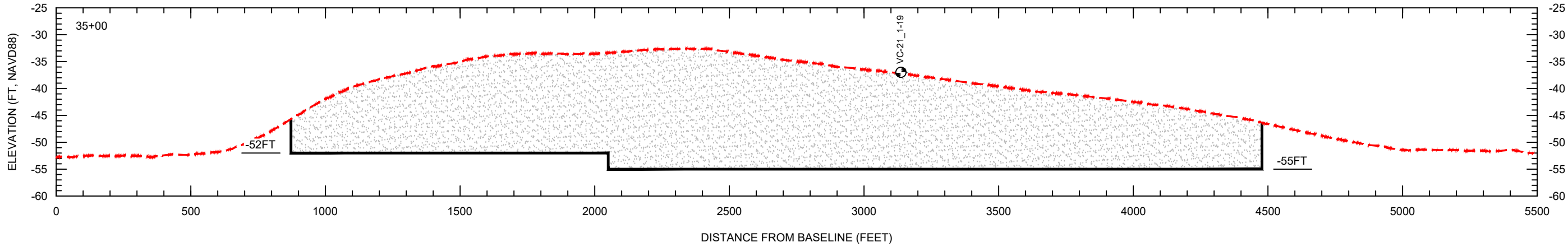
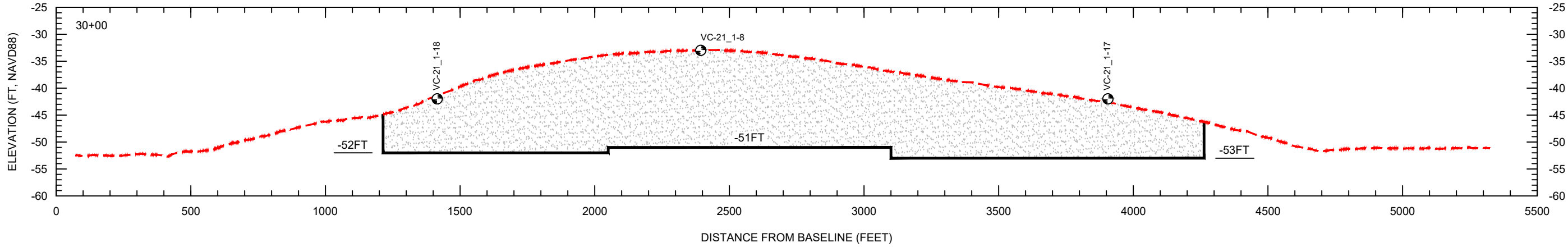
DESIGN DREDGE CUT

VC-21_1-16
VIBRACORE

- NOTES:
1. GEOPHYSICAL DATA FROM OSI, 2021.
 2. GEOTECHNICAL INVESTIGATION CONDUCTED BY GFA AND AMDRILL, 2020 AND 2021.
 3. ELEVATIONS ARE SHOWN IN NAVD88 U.S. SURVEY FEET.



COASTAL & MARINE ENGINEERING ENVIRONMENTAL & GEOLOGICAL SERVICES SURVEYING & MAPPING ENGINEERING: CA 2464 SURVEYING: LB 2464		CLIENT: TOWN OF FORT MYERS BEACH		DATE: 1/30/2024		SCALE: AS NOTED	
COASTAL ENGINEERING CONSULTANTS, INC.		TITLE: OFFSHORE BORROW AREA SECTIONS		DRAWN: JSD		F.B.	
SERVING FLORIDA SINCE 1977		CHECKED: MTP		PG.		RNG.	
28421 BONITA CROSSINGS BLVD. BONITA SPRINGS, FL 34135		SEC.		TWP.		ACAD NO.: 21504_CPS_18-22, Offshore BA DWG	
PHONE: (239) 643-2324 FAX: (239) 643-1143 www.coastalengineering.com E-Mail: info@cecfl.com		REF. NO.		NO.		DATE	
SHEET 19 OF 26 FILE NO.: 24-504		BY		REVISION DESCRIPTION			



- NOTES:
1. GEOPHYSICAL DATA FROM OSI, 2021.
 2. GEOTECHNICAL INVESTIGATION CONDUCTED BY GFA AND AMDRILL, 2020 AND 2021.
 3. ELEVATIONS ARE SHOWN IN NAVD88 U.S. SURVEY FEET.

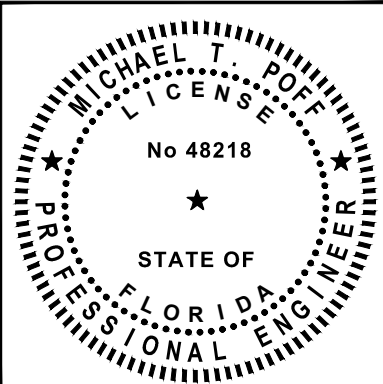
SCALE:
H: 1" = 400'
V: 1" = 20'

LEGEND:

--- EXISTING GRADE

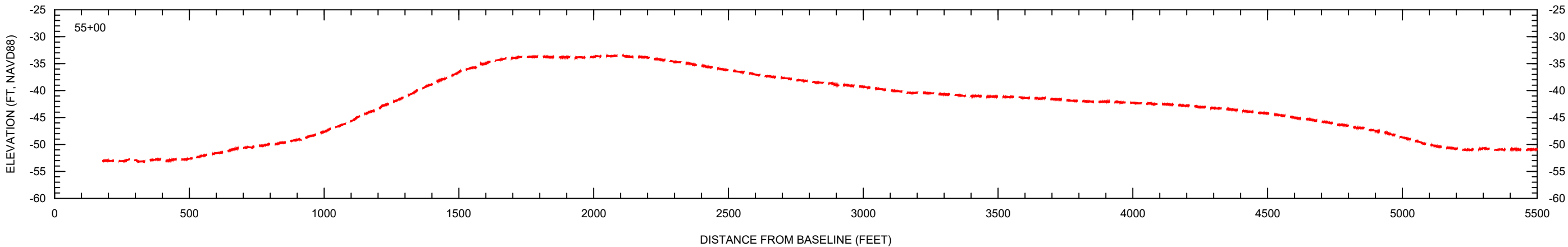
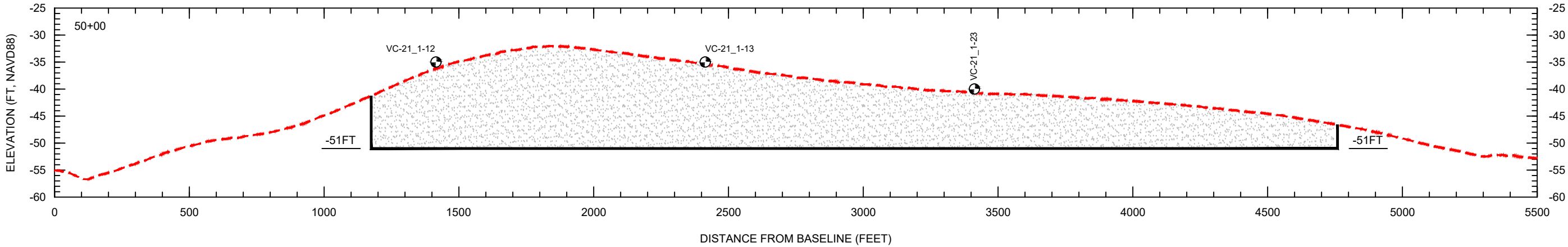
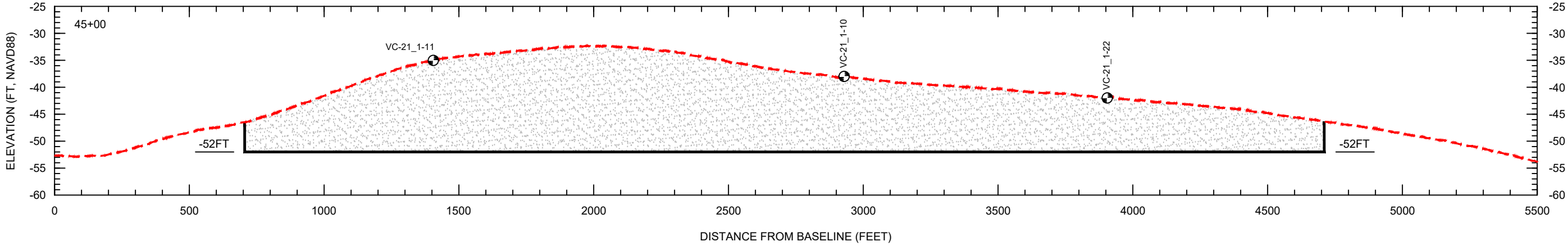
 DESIGN DREDGE CUT

 VC-21_1-20 VIBRACORE



COASTAL & MARINE ENGINEERING ENVIRONMENTAL & GEOLOGICAL SERVICES SURVEYING & MAPPING ENGINEERING: CA 2464 SURVEYING: LB 2464		CLIENT: TOWN OF FORT MYERS BEACH		DATE: 1/30/2024		SCALE: AS NOTED	
COASTAL ENGINEERING CONSULTANTS, INC.		TITLE: OFFSHORE BORROW AREA SECTIONS		DRAWN: JSD		F.B.	
SERVING FLORIDA SINCE 1977				CHECKED: MTP		PG.	
28421 BONITA CROSSINGS BLVD. BONITA SPRINGS, FL 34135				SEC. TWP.		RNG.	
				ACAD NO.: 21504_CPS_18-22, Offshore BA.DWG			
				REF. NO.			
				NO.		DATE	
				BY		REVISION DESCRIPTION	

SHEET 20 OF 26
FILE NO.: 24.504



- NOTES:
1. GEOPHYSICAL DATA FROM OSI, 2021.
 2. GEOTECHNICAL INVESTIGATION CONDUCTED BY GFA AND AMDRILL, 2020 AND 2021.
 3. ELEVATIONS ARE SHOWN IN NAVD88 U.S. SURVEY FEET.

SCALE:
H: 1" = 400'
V: 1" = 20'

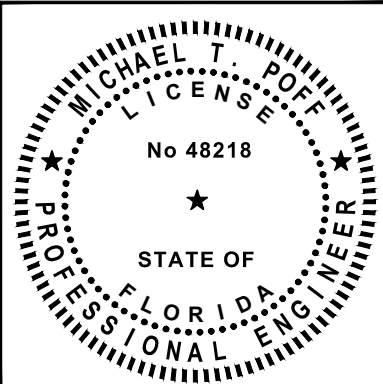
LEGEND:

EXISTING GRADE

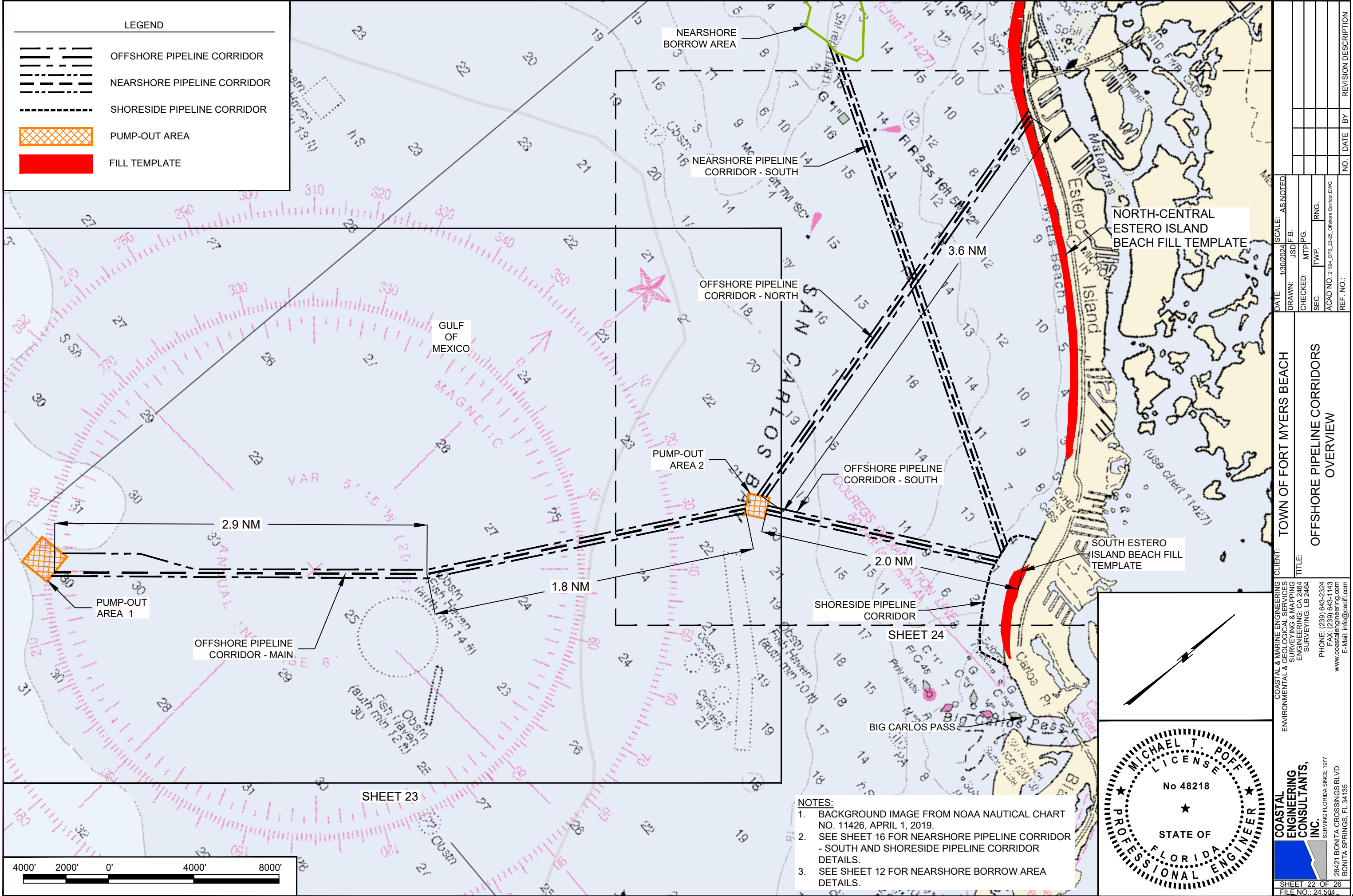
DESIGN DREDGE CUT

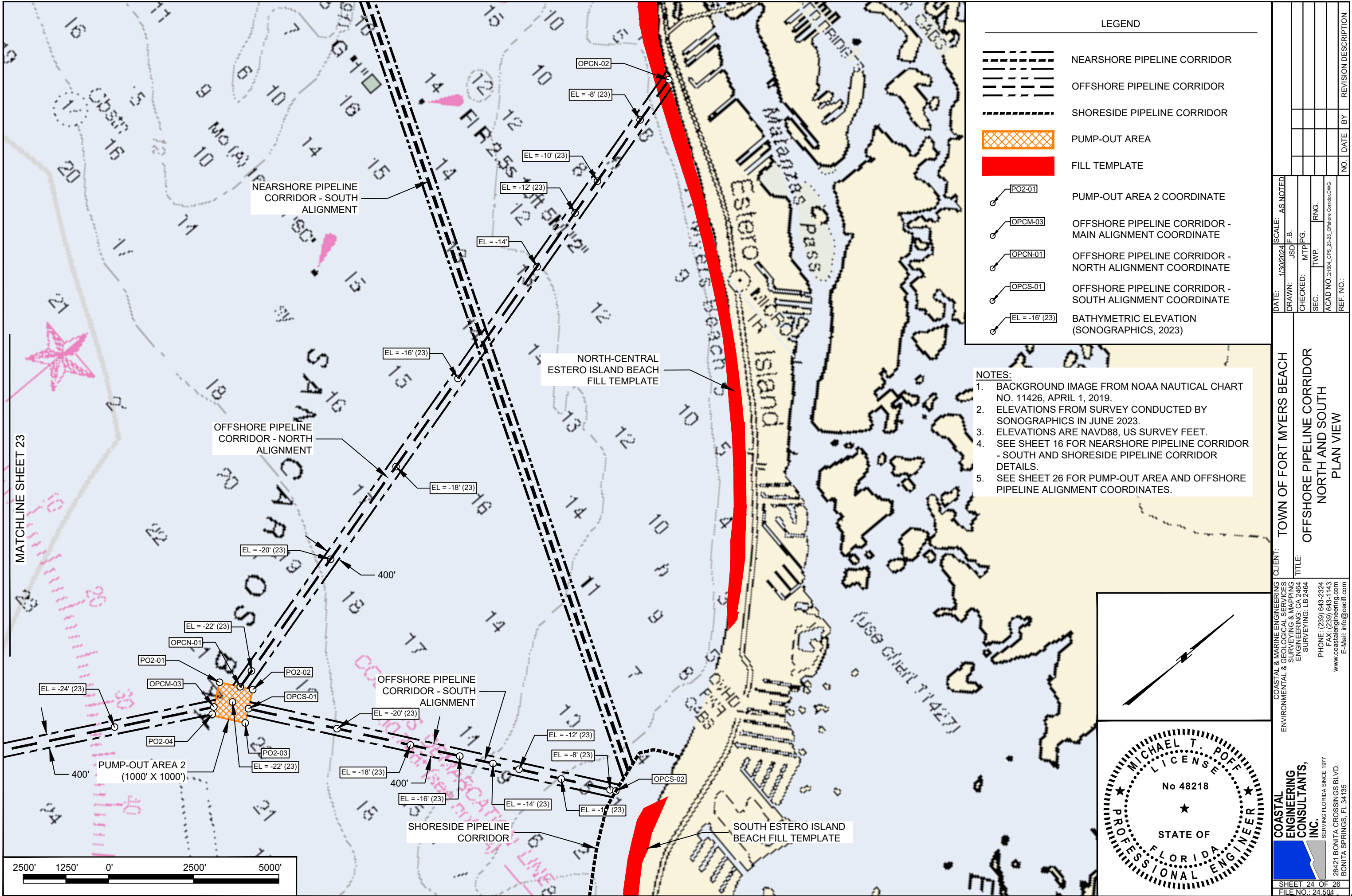
VC-21_1-23

VIBRACORE



COASTAL & MARINE ENGINEERING ENVIRONMENTAL & GEOLOGICAL SERVICES SURVEYING & MAPPING ENGINEERING: CA 2464 SURVEYING: LB 2464		CLIENT: TOWN OF FORT MYERS BEACH		DATE: 1/30/2024		SCALE: AS NOTED	
COASTAL ENGINEERING CONSULTANTS, INC.		TITLE: OFFSHORE BORROW AREA SECTIONS		DRAWN: JSD		F.B.	
SERVING FLORIDA SINCE 1977				CHECKED: MTP		PG.	
28421 BONITA CROSSINGS BLVD. BONITA SPRINGS, FL 34135				SEC.		TWP.	
				ACAD NO.: 21504_CPS_18-22, Offshore BA DWG		RNG.	
SHEET 21 OF 26 FILE NO.: 24-504				REF. NO.		NO. DATE BY	
				REVISION DESCRIPTION			



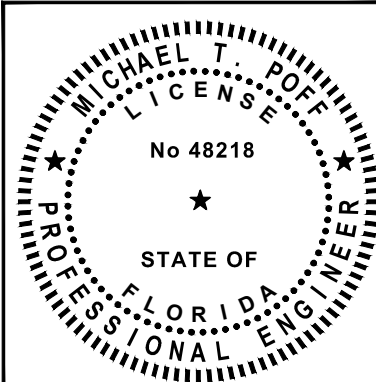


ESTERO ISLAND REFERENCE MONUMENT TRAVERSE ALIGNMENT COORDINATES							
REFERENCE MONUMENT	NORTHING	EASTING	AZ	REFERENCE MONUMENT	NORTHING	EASTING	AZ
C-174A	774,787.69	666,547.88	205	R-189	766,467.06	678,956.91	240
R-175	774,428.13	667,127.38	202	R-190	765,885.99	679,781.22	240
R-176	773,671.13	667,335.63	205	R-191	765,395.55	680,530.91	240
R-177	772,960.31	667,878.69	230	R-192	764,699.35	681,338.71	240
R-178	772,145.13	668,634.38	223	R-193	764,083.95	681,957.91	230
R-179	771,546.13	669,180.00	220	R-194	763,314.31	683,011.24	230
R-180	770,720.50	669,931.13	240	R-195	762,622.48	683,662.44	230
R-181	770,198.63	670,772.88	245	R-196	762,037.10	684,376.00	225
R-182	769,985.63	671,773.88	246	R-197	761,206.97	685,072.25	225
R-183	769,642.63	672,566.88	245	R-203.5	755,443.56	688,271.43	200
R-184	769,229.63	673,555.38	245	R-204	754,979.51	688,538.88	185
R-185	768,650.13	674,405.88	250	R-204.5	754,635.06	688,839.02	200
R-186	768,269.13	675,299.88	245	R-205	754,510.91	689,408.68	215
R-187	767,772.86	676,626.59	245	R-206	753,582.41	690,173.98	220
R-188	766,966.33	678,054.07	240	R-206.5	752,972.21	690,335.33	240

BEACH FILL SURVEY BASELINE LINE COORDINATES									
LINE #	LENGTH (FT)	DIRECTION	START POINT (X, Y)	END POINT (X, Y)	LINE #	LENGTH (FT)	DIRECTION	START POINT (X, Y)	END POINT (X, Y)
L1	800.00	S16° 36' 17.99"E	666642.45, 774690.63	666871.07, 773923.99	L18	1057.00	S53° 46' 57.17"E	680509.67, 765237.50	681362.44, 764612.97
L2	997.00	S33° 35' 51.73"E	666871.07, 773923.99	667422.77, 773093.55	L19	1140.00	S50° 57' 37.21"E	681362.44, 764612.97	682247.89, 763894.93
L3	1089.00	S40° 26' 40.02"E	667422.77, 773093.55	668129.22, 772264.78	L20	1576.00	S49° 54' 15.79"E	682247.89, 763894.93	683453.48, 762879.89
L4	707.00	S44° 04' 49.02"E	668129.22, 772264.78	668621.05, 771756.90	L21	1572.00	S47° 02' 18.42"E	683453.48, 762879.89	684603.89, 761808.56
L5	607.00	S47° 31' 42.82"E	668621.05, 771756.90	669068.78, 771347.04	L22	350.00	S38° 43' 48.44"E	684603.89, 761808.56	684822.87, 761535.52
L6	1996.00	S54° 10' 12.47"E	669068.78, 771347.04	670687.06, 770178.62	L23	828.00	S43° 34' 01.01"E	684822.87, 761535.52	685393.52, 760935.58
L7	1368.00	S67° 10' 39.64"E	670687.06, 770178.62	671947.96, 769648.00	L24	447.00	S45° 11' 49.48"E	685393.52, 760935.58	685710.69, 760620.59
LS	1075.00	S67° 38' 47.46"E	671947.96, 769648.00	672942.18, 769239.16	L25	777.00	S43° 26' 34.18"E	685710.69, 760620.59	686244.98, 760056.44
L9	800.00	S67° 38' 48.00"E	672942.18, 769239.16	673682.06, 768934.91	L26	1273.00	S39° 10' 39.13"E	686244.98, 760056.44	687049.16, 759069.62
L10	779.00	S66° 13' 55.08"E	673682.06, 768934.91	674394.99, 768620.94	L27	1102.00	S29° 22' 44.24"E	687049.16, 759069.62	687589.78, 758109.35
L11	677.00	S66° 13' 53.99"E	674394.99, 768620.94	675014.57, 768348.09	L28	908.00	S27° 33' 24.54"E	687589.78, 758109.35	688009.85, 757304.36
L12	1400.00	S66° 07' 47.00"E	675014.57, 768348.09	676294.82, 767781.55	L29	658.00	S13° 32' 32.85"E	688009.85, 757304.36	688163.93, 756664.65
L13	1057.00	S61° 00' 32.65"E	676294.82, 767781.55	677219.38, 767269.25	L30	677.00	S08° 05' 44.00"E	688163.93, 756664.65	688259.27, 755994.40
L14	878.00	S60° 14' 32.77"E	677219.38, 767269.25	677981.60, 766833.48	L31	1041.00	S13° 58' 48.56"E	688259.27, 755994.40	688510.76, 754984.23
L15	1018.00	S58° 50' 33.42"E	677981.60, 766833.48	678852.75, 766306.77	L32	1022.00	S49° 47' 34.18"E	688510.76, 754984.23	689291.28, 754324.48
L16	1063.00	S57° 22' 40.00"E	678852.75, 766306.77	679748.05, 765733.71	L33	1861.00	S40° 19' 02.15"E	689291.28, 754324.48	690495.38, 752905.51
L17	909.00	S56° 54' 53.57"E	679748.05, 765733.71	680509.67, 765237.50	L34	1367.00	S77° 07' 23.80"E	690495.38, 752905.51	691828.00, 752600.87

NEARSHORE BORROW AREA COORDINATES					
POINT	NORTHING	EASTING	POINT	NORTHING	EASTING
NBA-01	767,347	660,813	NBA-13	765,000	660,371
NBA-02	767,347	661,521	NBA-14	766,109	660,371
NBA-03	767,347	661,860	NBA-15	767,058	661,521
NBA-04	767,273	662,021	NBA-16	767,076	661,404
NBA-05	766,735	663,190	NBA-17	765,888	661,017
NBA-06	765,417	664,671	NBA-18	765,629	661,361
NBA-07	765,063	664,671	NBA-19	766,834	661,811
NBA-08	764,564	663,734	NBA-20	766,834	661,521
NBA-09	764,564	663,016	NBA-21	766,834	662,021
NBA-10	764,356	662,208	NBA-22	765,430	663,440
NBA-11	764,276	661,894	NBA-23	765,017	662,136
NBA-12	765,000	661,352			

NEARSHORE BORROW AREA VIBROCORE COORDINATES					
POINT	NORTHING	EASTING	POINT	NORTHING	EASTING
EI-00-1	767,598	661,994	EI-00-24	765,543	663,982
EI-00-16	765,727	664,220	EI-00-25	763,870	663,346
EI-00-17	766,623	662,798	EI-00-26	765,001	662,287
EI-00-18	766,890	660,983	EI-00-27	765,917	661,151
EI-00-19	765,974	661,988	EI-00-28	767,086	661,591
EI-00-20	764,765	663,170	EI-00-29	764,958	661,242
EI-00-21	764,736	664,387	EI-00-30	763,977	662,395
EI-00-22	765,659	663,009	EI-00-30C	763,999	662,416
EI-00-23	766,615	662,349			



COASTAL & MARINE ENGINEERING
ENVIRONMENTAL & GEOLOGICAL SERVICES
SURVEYING & MAPPING
ENGINEERING: CA 2464
SURVEYING: LB 2464

PHONE: (239) 643-2324
FAX: (239) 643-1143
www.coastalengineering.com
E-Mail: info@ceciff.com

CLIENT: TOWN OF FORT MYERS BEACH

TITLE: COORDINATE AND ALIGNMENT TABLES

DATE: 1/30/2024
DRAWN: JSD
CHECKED: MTP
SEC: TWP
ACAD NO.: 21504_CPS_26-27_Alignment Tables.DWG
REF. NO.:

SCALE: AS NOTED
F.B.
MTP
RNG.
PG.

NO. BY DATE REVISION DESCRIPTION

COASTAL
ENGINEERING
CONSULTANTS,
INC.

28421 BONITA CROSSINGS BLVD.
BONITA SPRINGS, FL 34135

SHEET 25 OF 26
FILE NO.: 24-504

OFFSHORE BORROW AREA COORDINATES					
POINT	NORTHING	EASTING	POINT	NORTHING	EASTING
OBA-01	744,348	534,313	OBA-12	742,399	536,602
OBA-02	746,761	536,798	OBA-13	742,604	536,319
OBA-03	746,569	536,950	OBA-14	742,666	536,130
OBA-04	745,981	537,420	OBA-15	742,927	534,844
OBA-05	745,785	537,576	OBA-16	743,330	534,330
OBA-06	745,276	537,770	OBA-17	744,016	534,319
OBA-07	744,768	537,964	OBA-18	744,153	535,537
OBA-08	744,115	538,368	OBA-19	743,615	536,059
OBA-09	743,897	538,503	OBA-20	744,346	536,813
OBA-10	742,821	539,548	OBA-21	742,718	536,930
OBA-11	741,358	538,041	OBA-22	743,449	537,683

OFFSHORE BORROW AREA VIBRA CORE COORDINATES					
POINT	NORTHING	EASTING	VC-21_1-12	744,251	534,552
VC-20_1-1	745,857	534,664	VC-21_1-13	744,956	535,260
VC-20_1-2	744,374	536,027	VC-21_1-14	742,123	538,003
VC-20_1-3	742,901	537,375	VC-21_1-15	742,152	537,304
VC-21_1-4	742,837	538,744	VC-21_1-16	743,530	538,053
VC-21_1-5	742,847	538,027	VC-21_1-17	744,588	537,700
VC-21_1-6	742,790	536,860	VC-21_1-18	742,855	535,909
VC-21_1-7	743,545	537,361	VC-21_1-19	744,334	536,873
VC-21_1-8	743,544	536,609	VC-21_1-20	745,482	537,231
VC-21_1-9	743,893	535,617	VC-21_1-21	743,280	534,986
VC-21_1-10	744,960	535,982	VC-21_1-22	745,641	536,680
VC-21_1-11	743,893	534,890	VC-21_1-23	745,641	535,989

PUMP-OUT AREA 1		
POINT	NORTHING	EASTING
PO1-01	721,679	658,669
PO1-02	721,389	657,198
PO1-03	719,917	657,487
PO1-04	720,207	658,959

PUMP-OUT AREA 2		
POINT	NORTHING	EASTING
PO2-01	748,113	676,953
PO2-02	748,720	677,748
PO2-03	747,924	678,355
PO2-04	747,349	677,535

OFFSHORE PIPELINE CORRIDOR - MAIN COORDINATES		
POINT	NORTHING	EASTING
OPCM-01	720,762	658,850
OPCM-02	734,106	670,151
OPCM-03	747,520	677,405

OFFSHORE PIPELINE CORRIDOR - MAIN LIMITS COORDINATES		
POINT	NORTHING	EASTING
OPCML-01	724,387	660,741
OPCML-02	725,836	662,885

SHORESIDE PIPELINE CORRIDOR COORDINATES		
POINT	NORTHING	EASTING
SSC-01	757,046	687,317
SSC-02	756,784	686,888
SSC-03	756,599	686,662
SSC-04	756,225	686,469
SSC-05	755,084	686,842
SSC-06	754,452	687,076
SSC-07	753,848	687,517
SSC-08	753,353	687,894
SSC-09	752,309	688,828
SSC-10	751,651	689,632
SSC-11	752,020	690,505
SSC-12	752,191	691,006

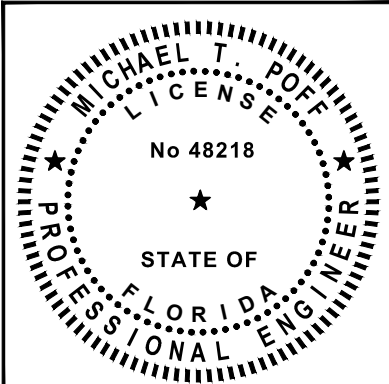
OFFSHORE PIPELINE CORRIDOR - NORTH COORDINATES		
POINT	NORTHING	EASTING
OPCN-01	748,493	677,450
OPCN-02	769,596	671,877

OFFSHORE PIPELINE CORRIDOR - SOUTH COORDINATES		
POINT	NORTHING	EASTING
OPCS-01	748,266	678,094
OPCS-02	754,975	686,882

NEARSHORE PIPELINE CORRIDOR - NORTH COORDINATES		
POINT	NORTHING	EASTING
NPCN-01	766,735	663,190
NPCN-02	771,884	668,186

NEARSHORE PIPELINE CORRIDOR - SOUTH COORDINATES		
POINT	NORTHING	EASTING
NPCS-01	764,564	663,734
NPCS-02	755,631	686,663

ANCHOR AVOIDANCE		
POINT	NORTHING	EASTING
AA-01	730,585	667,176



 COASTAL ENGINEERING CONSULTANTS, INC. SERVING FLORIDA SINCE 1977	COASTAL & MARINE ENGINEERING ENVIRONMENTAL & GEOLOGICAL SERVICES SURVEYING & MAPPING ENGINEERING: CA 2464 SURVEYING: LB 2464		CLIENT: TOWN OF FORT MYERS BEACH		DATE: 1/30/2024		SCALE: AS NOTED		
	PHONE: (239) 643-2324 FAX: (239) 643-1143 www.coastalengineering.com E-Mail: info@cecifi.com		TITLE: COORDINATE AND ALIGNMENT TABLES		DRAWN: JSD		F.B.		
					CHECKED: MTP		PG.		
					SEC. TWP.		RNG.		
					ACAD NO.: 21504_CPS_26-27_Alignment Tables.DWG				
28421 BONITA CROSSINGS BLVD. BONITA SPRINGS, FL 34135				REF. NO.:		NO. DATE BY		REVISION DESCRIPTION	

EXHIBIT "3" - CONTRACTORS BID



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:



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)



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.



TOWN of FORT MYERS BEACH
PART D
FMB:004 - CONTRACTOR QUALIFICATION QUESTIONNAIRE
(1 of 7 Pages)

BID NO. ITB-24-03-EN

THIS FORM MUST BE ON FILE WITH TOWN OF FORT MYERS BEACH, 2545 ESTERO BOULEVARD, FORT MYERS BEACH, FLORIDA 33931, AND BE CURRENT WITHIN TWELVE (12) CALENDAR MONTHS OR COMPLETED AND SUBMITTED WITH THIS BID PACKAGE. ANY CHANGES WHICH AFFECT THE ORGANIZATIONAL STRUCTURE, QUALIFICATIONS OR LICENSES SHALL BE REPORTED IMMEDIATELY TO THE TOWN. FAILURE TO UPDATE CHANGES WHICH MAY AFFECT THE CONTRACTOR RESPONSIBILITY MAY BE GROUNDS FOR THE CONTRACTOR TO BE DECLARED NOT A RESPONSIBLE CONTRACTOR FOR THIS BID OR FUTURE BIDS WITH TOWN OF FORT MYERS BEACH.

Submitted By: Ahtna Marine and Construction Company, LLC

☒ CORPORATION - Date of Incorporation: 01/15/2019 State of Florida -
Incorporation: Alaska

If Out of State Corporation, currently authorized to do business in Florida,
give date of such authorization: 01/15/2019

☐ PARTNERSHIP - Date of Organization: _____ Nature of Partnership: General ☐
Limited ☐
Association ☐

☐ INDIVIDUAL - Name and Address of Owner _____

☐ JOINT VENTURE - Between _____
Name Title
And _____
Name Title
Date of Agreement _____

☐ OTHER - Explain _____

Parent Company Office Address (if any): 110 W 38th Ave Ste 100, Anchorage, AK 99503

Principal Office Address: 444 W Boynton Beach Blvd E., Boynton Beach, FL 33435

Name of Project (if applicable): Estero Island Beach Nourishment and Hurricane Recovery

Person to Contact: Wesley Gammons

Title: Vice President

Telephone
No.: 954-568-0007



PART D
FMB:004 - CONTRACTOR QUALIFICATION QUESTIONNAIRE
(2 of 7 Pages)

Type of Work (file separate form FMB:004 for each classification of work):

The signee of this questionnaire guarantee, as evidenced by the sworn affidavit required herein, the truth and accuracy of all statements and of all answers to interrogatories hereinafter made.

The undersigned hereby authorizes and requests any public official, engineer, architect, surety company, bank depository, material or equipment manufacturer or distributor or any person, firm or corporation to furnish any pertinent information requested by the Town of Fort Myers Beach deemed necessary by the Town to verify the statements made in this application or regarding the standing and general reputation of the BIDDER.

1. How many years has your organization been in business as a General Contractor under your present name?

4.5 years

2. Under what other or former names has your organization operated?

N/A

3. List below your organizations Officers, Owners or Partners:

NAME	TITLE	ADDRESS	DATE ASSUMING POSITION
Craig O'Rourke	President	3200 El Camino Real, Ste 240 Irvine, CA 92602	01/15/2019
Matt Tisher	CFO	110 W 38th Ave Ste 100 Anchorage, AK 99503	01/15/2019



PART D
FMB:004 - CONTRACTOR QUALIFICATION QUESTIONNAIRE
(3 of 7 Pages)

4. List jurisdictions and trade categories in which your organization is legally qualified to do business and indicate registration or license numbers, if applicable:

JURISDICTION	TRADE	STATE CERT. NO.	TOWN'S COMP. NO.	STATE REG. NO.	TOWN'S OCC. LIC. NO.	STATE PERMIT	EXPIRE DATE
Florida	Construction	CGC1534282					08/31/2024

5. List jurisdictions in which your organization's partnership or trade name is filed:

Alaska and Florida

6. If the answer to any of the questions below is YES, please attach details. Reference sheets to question number.

6.1 Has your organization ever failed to complete any work awarded to it?

YES ☐ NO ☒

See Sheet No. _____

6.2 Are there any judgments, claims, arbitration proceedings or suits pending or outstanding against your organization or its officers?

YES ☐ NO ☒

See Sheet No. _____

6.3 Has your organization filed any lawsuits or requested arbitration with regard to construction contracts within the last five (5) years?

YES ☐ NO ☒

See Sheet No. _____

7. Has any Officer or Partner of your organization ever failed to complete a construction contract handled in his own name or as a qualifier for another?

YES ☐ NO ☒

If so, state the name of the individual, name of owner, when, where, and the reason therefore:

8. Has any Officer or Partner of your organization ever been as Officer or Partner of some other organization that failed to complete a construction project?

YES ☐ NO ☒

If so, state the name of the individual, other organization, when, where and the reason therefore:



PART D
FMB:004 - CONTRACTOR QUALIFICATION QUESTIONNAIRE
(4 of 7 Pages)

9. Has your organization ever been refused registration by a Federal, State or Municipal Agency as a Pre-qualified BIDDER or Qualified BIDDER for construction contracts? YES ☐ NO ☒

If so, for what type of work? _____

Give details and reason: _____

10. Give below any information which would indicate the size and capacity of your organization, including the number of permanent employees engaged in estimating, purchasing, expediting, detailing and engineering, field supervision, field engineering and layout:

Ahtna Marine and Construction Company has 47 full-time employees

(use extension sheet if necessary and reference sheet number herein: _____)

11. Attach resumes of key personnel, including superintendents for field management. The resumes shall include the following information:
- 11.1 Name and present position or capacity
 - 11.2 Years of construction experience, type of work, position or capacity and cost range
 - 11.3 Years of related construction experience, type of work, position or capacity and cost range
 - 11.4 Brief education and professional registrations

12. List of type of work normally provided by your own work forces:

Dredging, beach nourishment, earthwork, marine construction

13. Indicate type of contracting undertaken by your organization and number of years' experience:

As General Contractor 4.5 Years Marine/Dredging Type

As Sub-Contractor _____ Years _____ Type

14. Attach the prime construction contracts your organization has underway on this date 4/22/2024

The list shall include the following information: (reference sheet numbers herein: 1)

- 14.1 Project Title and Location
- 14.2 Contractor or Sub-Contractor
- 14.3 Contract Amount and Date of Contract
- 14.4 Percent of Project Constructed by Sub-Contractors
- 14.5 Percent Complete
- 14.5 Project Manager or Superintendent
- 14.6 Required Completion Date
- 14.7 Name, Address and Telephone Number of Owner
- 14.8 Designing Architect/Engineer and Address



Wesley Gammons

Project Manager / Project Scheduler

PROFESSIONAL EXPERIENCE

Ahtna Marine & Construction | Pompano Beach, Florida

2019 – Present

Project Manager / Project Scheduler

- Responsible for all aspects of project management and operations as well as safety and quality control management.
- Involved in the project scheduling on several projects utilizing Primavera Program P6.
- Involved in the process of generating construction schedules and provide updates in light of weekly progress reports.

Cavache Inc. | Pompano Beach, Florida

2014 – 2019

Project Manager / Quality Control Manager

- Responsible for all aspects of project management and operations as well as safety and quality control management.
- Project Manager and Supervisor of all dredge crews
- Involved on Turbidity Monitoring
- Involved on all aspects on Project Scheduling

Ferreira Construction | Stuart, Florida

2012 – 2014

Safety Manager/Engineer/Quality Control

- Site Safety Officer/Quality Control Officer
- Engineering Supervisor and Project Foreman
- Worked as an Engineer, Mechanic, Welder, Dredge Tender, Pipe Fuser Operator, and Equipment Operator



Palm Beach Marine Construction | West Palm Beach, Florida

2002 – 2012

Project Manager/Superintendent/Quality Control/Site Safety

- Quality Control Management
- Project Manager and Supervisor of all dredge crews
- Turbidity Monitor
- Involved in all dredging operations, dredge engineering and site mechanic.
- Responsible for dredge maintenance, repair and dredge support operations, including pipeline fusing and installation.
- Site Safety

Wes Side Enterprises | West Palm Beach, Florida

1995 – 2002

Principal/Project Manager/Superintendent

- Operator and Field Operations Organization.
- In charge of all mitigation and marine operations and management of projects.

PROJECTS

**Manatee Harbor, Maintenance Dredging, 40-Foot Project,
Entrance Channel, Turning Basin, and South Access Channel**

Base work consists of dredging 54,000 CY's of shoal material from the Manatee Harbor Entrance Channel and Turning Basin. Option A includes dredging 17,000 CY's of shoal material from the South Access Channel. The required depth for Manatee Harbor is 40 feet with one foot of allowable over depth. All excavated material from Manatee Harbor will be placed in the designated upland disposal area. Total of 102,000 CY's with options and OD.

- Duties: Quality Control Manager / Supervisor
- Involved on all aspects on Project Scheduling

**2022 Tigertail Lagoon / Sand Dollar Island Ecosystem
Restoration Project**

The Project consists of dredging a total of approximately 428,600 cubic yards of beach sediment from multiple areas within the system including; the Sand Trap, the Borrow Area Extension, and Flow Channel east of Sand Dollar Island and placement



of the material to restore the west side of a 1.5-mile segment of Sand Dollar Island. Approximately 3,600 cy of sand will be placed on Hideaway Beach. The sand shall be transported and placed on Sand Dollar Island by hydraulic and/or mechanical methods.

- Duties: Quality Control Manager / Supervisor
- Involved on all aspects on Project Scheduling

Naval Submarine Base Kings Bay Maintenance Dredging 44, 45, and 47-Foot Project

The project work consists of dredging material at the Kings Bay Naval Submarine Base located near St. Marys, Camden County, Georgia, or five miles north of the Georgia/Florida Border and 28 miles north of Jacksonville International Airport (JAX) and pumping the material via pipeline and place it at Disposal Area 1 (D/A-1) and Crab Island (D/A-C). The channel connecting the inshore waterways to the submarine base is known as Kings Bay Inner Channel (KBIC) and is approximately 8.6 nautical miles west of the mouth of the St. Marys Entrance.

- Duties: Quality Control Manager / Supervisor
- Involved on all aspects on Project Scheduling

**Intracoastal Waterway Jacksonville To Miami –
Maintenance Dredging, 12-Foot Project, Palm Valley, North Reach St Johns County, Florida**

The work includes dredging approximately 641,500 cubic yards of shoal material from the Intracoastal Waterway from cuts SJ-01 to SJ-07 in St. Johns County, Florida, to a 12-foot depth plus 2-foot allowable over depth. All dredged material will be placed in an existing Dredged Managed Material Area (DMMA), DU-9, located approximately 2.0 miles from the northernly extent of the project and 7.5 miles from the southernly extent of the project. Work also includes turbidity monitoring and endangered species monitoring. A minimum size 16- Foot Cutter Dredge is required.

Duties: Quality Control Manager / Supervisor

- Involved on all aspects on Project Scheduling

**Marine Corps Support Facility – Blount Island, Maintenance Dredging 38-Foot Project
DUVAL COUNTY, FLORIDA**

- Project work consists of maintenance dredging at the Marine Corps Support Facility - Blount Island (MCSF-BI) from Station 0+00 to Station 56+09.1 with a 38-foot required Mean Lower Low Water (MLLW) maintenance depth plus two feet of allowable over depth throughout as shown on the drawings. The placement location of the dredged material will be Dayson Island Disposal Area (D/A-D) as shown on the drawings. Duties:



- Quality Control Manager / Supervisor
- Involved on all aspects on Project Scheduling

Jupiter Inlet Sand Trap Maintenance Dredging & Beach Nourishment- 2022

The project consists of dredging approximately 78,000 CY's of material from the Sand Trap inside the Jupiter Inlet. Project also includes: marine animal observing and monitoring, beach grading, and beach tilling.

- Duties: Quality Control Manager / Supervisor
- Involved on all aspects on Project Scheduling

Loxahatchee River Central Embayment Main Channel Maintenance Dredging Project- 2022

Project consists of hydraulically dredging approximately 15,000 CY's of sediment from the Main Channel within the Loxahatchee River Central Embayment and placing the material in JID's dredged material management area.

- Duties: Quality Control Manager / Supervisor
- Involved on all aspects on Project Scheduling

Port Everglades

Maintenance Dredging of approximately 410,000 cubic yards of silt, fines, and like materials for Basin located at Port Everglades. Sediments will be dredged and pumped at a maximum of 2400 Linear Foot.

- Duties: Quality Control Manager / Supervisor
- Involved on all aspects on Project Scheduling

2021 Vilano Boat Ramp & Channel Dredge

St. Johns County, Florida

The project work consisted of the mechanical dredging of 5,700 cubic yards of material from turning basin and access channel at the Vilano Boat Ramp to be transported to a disposal site via on-road haul trucks.

- Duties: Quality Control Manager / Supervisor
- Involved on all aspects on Project Scheduling

Okeechobee Waterway, Reach 3 & 4 on the St. Lucie River, Maintenance Dredging 8-Foot Project MARTIN COUNTY, FLORIDA

Dredging shoal material from Okeechobee Waterway in



Martin County, Florida an existing Dredged Managed Material Area (DMMA), O-7, located approximately 9.0 miles from the eastern end of Reach 3.

- Duties: Quality Control Manager / Supervisor
- Involved on all aspects on Project Scheduling

**MAINTENANCE DREDGING, 12 and 11-FOOT PROJECT FT MYERS BEACH HARBOR
LEE COUNTY, FLORIDA**

- Dredging of 151,252 cubic yards of material from Ft. Myers Beach Harbor and placed in the nearshore area located approximately a quarter of a mile east of from Ft. Myers Pier.
- Duties: Quality Control Manager / Supervisor
- Involved on all aspects on Project Scheduling

MAINTENANCE DREDGING 10 AND 12-FOOT PROJECT NAPLES TO BIG MARCO PASS

- Dredging of 81,000 cubic yards of beach compatible fill from the Inlet Pass Channel and pumped to just south of the Keewaydin north jetty onto the south Beach.
- Duties: Quality Control Manager / Supervisor
- Involved on all aspects on Project Scheduling

Manatee Harbor, Maintenance Dredging, 40-Foot Project, Entrance Channel, Turning

- Dredging 121,000 cubic yards of material from the Manatee Harbor Entrance Channel and Turning Basin
- Duties: Quality Control Manager / Supervisor
- Involved on all aspects on Project Scheduling



ICWW Jacksonville to Miami, Florida, Maintenance Dredging Palm Beach and Broward Counties, Florida

- Dredging 10,492 CY from the Intracoastal Waterway (IWW) channel in two locations, approximately 16 Miles apart.
- Duties: Quality Control Manager / Supervisor
- Involved on all aspects on Project Scheduling

2019 Hideaway Beach Erosion Control Project Marco Island, Collier County, FL

- Dredge 52,354 CY Sandy sediments from Nearshore Borrow Area
- Duties: Quality Control Manager / Supervisor
- Involved on all aspects on Project Scheduling

Ponce De Leon Inlet & AIWW Maintenance Dredging Volusia County, Florida

- Dredging 420,638 CY of compatible fill from the IWW Channel to placement area south of the inlet
- Duties: Quality Control Manager / Supervisor
- Involved on all aspects on Project Scheduling

Clam Pass Dredging Project Collier Country, Florida

- Dredging 8,500 cubic yards (CY) of beach compatible fill from Clam Pass Entrance and Portion of the Channel.
- Duties: Quality Control Manager / Supervisor
- Involved on all aspects on Project Scheduling

Jupiter Inlet Sand Trap Maintenance Dredging and Beach Nourishment 2018



- Dredging 50,000 cubic yards (CY) of beach compatible fill from Jupiter Inlet Sand Trap to the Beach South of Jupiter Inlet.
- Duties: Quality Control Manager / Supervisor
- Involved on all aspects on Project Scheduling

ICWW Bakers Haulover Inlet Maintenance Dredging Dade Country, Florida

- Dredging 38,000 cubic yards (CY) of beach compatible fill from the ICWW Channel in the Vicinity of Bakers Haulover Inlet, Cuts DA-9 to 10 feet required Depth with 2 feet allowable over depth.
- Duties: Quality Control Manager / Supervisor
- Involved on all aspects on Project Scheduling

ICWW St. Lucie Reach 1 Maintenance Dredging Fort Pierce, St Lucie County, Florida

- Consisted of dredging 66,000 cubic yards of beach compatible fill from the ICWW to Beach Disposal Area
- Duties: Quality Control Manager / Supervisor
- Involved on all aspects on Project Scheduling

Jupiter Inlet Sand Trap & ICWW Maintenance Dredging 2017

- Consisted of dredging 164,931 cubic yards of material from the ICWW to Beach Disposal Area
- Duties: Quality Control Manager / Supervisor
- Involved on all aspects on Project Scheduling

Rybovich Marina Basin Maintenance

- Consisted of dredging 105,000 cubic yards of material from the Berth 14 to Berth 17
- Duties: Quality Control Manager / Supervisor
- Involved on all aspects on Project Scheduling



Jupiter Inlet Sand Trap Maintenance Dredging and Beach Nourishment 2016

- Consisted of dredging 61,699 cubic yards of material from the Jupiter Inlet
- Duties: Quality Control Manager / Supervisor
- Involved on all aspects on Project Scheduling

Intracoastal Waterway Deeping in the Vicinity of Port of Palm Beach, Palm Beach County, Florida

- Consisted of dredging 103,528 cubic yards of material from the ICWW to designated Peanut Island DMMA
- Duties: Quality Control Manager / Supervisor
- Involved on all aspects on Project Scheduling

Indian River ICWW Maintenance Dredging, USACE; Sebastian, Indian River County, Florida

- Consisted of dredging 302,740 cubic yards of material from the ICWW to designated DMMA
- Duties: Quality Control System Manager

Manatee Harbor, Maintenance Dredging, 40-ft Project Entrance Channel, Turning Basin and Berthing Areas USACE, Manatee County, Florida

- Consisted of dredging 229,176 cubic yards of sand and shell from Port Manatee to designated Contained Disposal Facility (CDF)
- Duties: Quality Control System Manager



Loxahatchee River South Channel Extension and Sims Creek, Jupiter Inlet District, Jupiter, Palm Beach County, Florida

- Consisted of dredging 3,800 cubic yards of material from the Loxahatchee River to designated DMMA
- Duties: Quality Control Manager

Emergency Beach Fill on Longboat Key using Longboat Pass Sand Trap, West Coast Inland Navigation District (WCIND), Longboat Key, Manatee County, Florida

- Consisted of dredging 99,000 cubic yards of material from the Longboat Pass Sand Trap onto Longboat Key Beach
- Duties: Quality Control Manager

Jupiter Inlet Sand Trap Maintenance Dredging and Beach Nourishment, Jupiter, Palm Beach County, Florida

- Consisted of dredging 32,284 cubic yards of sand from the Jupiter Inlet to Jupiter Beach
- Duties: Quality Control Manager

EDUCATION AND CERTIFICATION

- CPR / First aid
- CQM-C course
- Listed Species Awareness Training
- USCG ABS, About Boater Safety Certification
- Training of High-Density Polyethylene Pipe Per ASTM2620-12
- CQ Management for Contractors 784
- OUPV Course-627
- Upgrade OUPV to Master 100 Tons -530
- Confined Space Training
- Fall Hazards

Ahtna

Marine & Construction Co.

- Basic Hazards
- Primavera P6 Professional Advanced Rel 8.3
- OSHA 30-Hours
- Merchant Mariner Credentials
- Upgrade Master 100 Tons to 200 Tons
- Assistant Towing
- Radar Observer Unlimited
- Apprentice Mate (Steersman) Upgrade
- Maintenance of Centrifugal Pumps Course
- Handling & Usage of Portable Fire Extinguishers
- OSHA Bloodborne Pathogens Course



ROCCO CAVO

PROJECT MANAGER/SUPERINTENDENT/SAFETY OFFICER

PROFESSIONAL EXPERIENCE

Ahtna Marine & Construction | Pompano Beach, Florida

2020 –Present

Project Manager/Superintendent/SSHO

- General Superintendent, Project Manager, Quality Control and Safety Officer.
- Involved in all aspects of project management, operations, quality control and safety management.
- Contributed to major dredging projects of channels, waterways, ports and lakes oxbows.
- Responsible for estimating, quality control and daily reports, as well as, project organization and supervisor.
- Responsible for most of the company's open water and total projects.
- Responsible for safety. OSHA 510 Certified.

Cavache Inc. | Pompano Beach, Florida

2007 – 2020

Project Manager/Superintendent/SSHO

- General Superintendent, Project Manager, Quality Control and Safety Officer.
- Involved in all aspects of project management, operations, quality control and safety management.
- Contributed to major dredging projects of channels, waterways, ports and lakes oxbows.
- Responsible for estimating, quality control and daily reports, as well as, project organization and supervisor.
- Responsible for most of the company's open water and total projects.
- Responsible for safety. OSHA 510 Certified.

United Contractors/City Services LTD. | Fort Lauderdale, Florida

1998 – 2007

Project Manager/Superintendent/Safety/Dredge Engineer/Site Mechanic

- Involved in all aspects of dredging operations including project management, safety, quality control, operations.
- General Superintendent, Project Manager, Quality Control and Safety Officer.
- Dredge Operator, Engineer and Dredge Tender.
- Survey Lead.



ROCCO CAVO

PROJECT MANAGER/SUPERINTENDENT/SAFETY OFFICER

- Containment Disposal Facility Operations, Pipeline Installation, Pipeline Foreman, and Engineer Foreman.
- Responsible for safety plans.

United Contractors | Fort Lauderdale, Florida

1996 – 1998

Dredge Engineer/Site Mechanic

- Part time work as a Dredge Engineer and Survey Assistant

PROJECTS

Manatee Harbor, Maintenance Dredging, 40-Foot Project, Entrance Channel, Turning Basin, and South Access Channel

Base work consists of dredging 54,000 CY's of shoal material from the Manatee Harbor Entrance Channel and Turning Basin. Option A includes dredging 17,000 CY's of shoal material from the South Access Channel. The required depth for Manatee Harbor is 40 feet with one foot of allowable over depth. All excavated material from Manatee Harbor will be placed in the designated upland disposal area. Total of 102,000 CY's with options and OD.

- Duties: Superintendent Alt. SSHO

2022 Tigertail Lagoon / Sand Dollar Island Ecosystem Restoration Project

The Project consists of dredging a total of approximately 428,600 cubic yards of beach sediment from multiple areas within the system including; the Sand Trap, the Borrow Area Extension, and Flow Channel east of Sand Dollar Island and placement of the material to restore the west side of a 1.5-mile segment of Sand Dollar Island. Approximately 3,600 cy of sand will be placed on Hideaway Beach. The sand shall be transported and placed on Sand Dollar Island by hydraulic and/or mechanical methods.

- Duties: Superintendent Alt. SSHO



ROCCO CAVO

PROJECT MANAGER/SUPERINTENDENT/SAFETY OFFICER

**Naval Submarine Base Kings Bay Maintenance Dredging 44,
45, and 47-Foot Project**

The project work consists of dredging material at the Kings Bay Naval Submarine Base located near St. Marys, Camden County, Georgia, or five miles north of the Georgia/Florida Border and 28 miles north of Jacksonville International Airport (JAX) and pumping the material via pipeline and place it at Disposal Area 1 (D/A-1) and Crab Island (D/A-C). The channel connecting the inshore waterways to the submarine base is known as Kings Bay Inner Channel (KBIC) and is approximately 8.6 nautical miles west of the mouth of the St. Marys Entrance.

Duties: Superintendent Alt. SSHO

Intracoastal Waterway Jacksonville To Miami –

Maintenance Dredging, 12-Foot Project, Palm Valley, North Reach St Johns County, Florida

The work includes dredging approximately 641,500 cubic yards of shoal material from the Intracoastal Waterway from cuts SJ-01 to SJ-07 in St. Johns County, Florida, to a 12-foot depth plus 2-foot allowable over depth. All dredged material will be placed in an existing Dredged Managed Material Area (DMMA), DU-9, located approximately 2.0 miles from the northernly extent of the project and 7.5 miles from the southernly extent of the project. Work also includes turbidity monitoring and endangered species monitoring. A minimum size 16- Foot Cutter Dredge is required.

Duties: Superintendent Alt. SSHO

**Marine Corps Support Facility – Blount Island, Maintenance Dredging 38-Foot Project
DUVAL COUNTY, FLORIDA**

- Project work consists of maintenance dredging at the Marine Corps Support Facility - Blount Island (MCSF-BI) from Station 0+00 to Station 56+09.1 with a 38-foot required Mean Lower Low Water (MLLW) maintenance depth plus two feet of allowable over depth throughout as shown on the drawings. The placement location of the dredged material will be Dayson Island Disposal Area (D/A-D) as shown on the drawings. Duties:

Duties: Superintendent Alt. SSHO

Jupiter Inlet Sand Trap Maintenance Dredging & Beach Nourishment- 2022

The project consists of dredging approximately 78,000 CY's of material from the Sand Trap inside the Jupiter Inlet. Project also includes: marine animal observing and monitoring, beach grading, and beach tilling.



ROCCO CAVO

PROJECT MANAGER/SUPERINTENDENT/SAFETY OFFICER

- Duties: Supervisor

Loxahatchee River Central Embayment Main Channel Maintenance Dredging Project- 2022

Project consists of hydraulically dredging approximately 15,000 CY's of sediment from the Main Channel within the Loxahatchee River Central Embayment and placing the material in JID's dredged material management area.

- Duties: Supervisor

•

Port Everglades

Maintenance Dredging of approximately 410,000 cubic yards of silt, fines, and like materials for Basin located at Port Everglades. Sediments will be dredged and pumped at a maximum of 2400 Linear Foot.

- Duties: SSHO / Supervisor

2021 Vilano Boat Ramp & Channel Dredge

St. Johns County, Florida

- The project work consisted of the mechanical dredging of 5,700 cubic yards of material from turning basin and access channel at the Vilano Boat Ramp to be transported to a disposal site via on-road haul trucks.
Duties: SSHO / Supervisor

**Okeechobee Waterway, Reach 3 & 4 on the St. Lucie River, Maintenance Dredging
8-Foot Project MARTIN COUNTY, FLORIDA**

- Dredging shoal material from Okeechobee Waterway in Martin County, Florida an existing Dredged Managed Material Area (DMMA), O-7, located approximately 9.0 miles from the eastern end of Reach 3.
- Duties: Superintendent Alt. SSHO

**MAINTENANCE DREDGING, 12 and 11-FOOT PROJECT FT MYERS BEACH HARBOR
LEE COUNTY, FLORIDA**

- Dredging of 151,252 cubic yards of material from Ft. Myers Beach Harbor and placed in the nearshore area located approximately a quarter of a mile east of from Ft. Myers Pier.
- Duties: Superintendent



ROCCO CAVO

PROJECT MANAGER/SUPERINTENDENT/SAFETY OFFICER

MAINTENANCE DREDGING 10 AND 12-FOOT PROJECT NAPLES TO BIG MARCO PASS

- Dredging of 81,000 cubic yards of beach compatible fill from the Inlet Pass Channel and pumped to just south of the Keewaydin north jetty onto the south Beach.
- Duties: Superintendent

Manatee Harbor, Maintenance Dredging, 40-Foot Project, Entrance Channel, Turning

- Dredging 121,000 cubic yards of material from the Manatee Harbor Entrance Channel and Turning Basin
- Duties: Superintendent / Project Manager

ICWW Jacksonville to Miami, Florida, Maintenance Dredging Palm Beach and Broward Counties, Florida

- Dredging 10,492 CY from the Intracoastal Waterway (IWW) channel in two locations, approximately 16 Miles apart.
- Duties: Superintendent Alt. SSHO

2019 Hideaway Beach Erosion Control Project Marco Island, Collier County, FL

- Dredge 52,354 CY Sandy sediments from Nearshore Borrow Area
- Duties: Superintendent

Ponce De Leon Inlet & AIWW Maintenance Dredging Volusia County, Florida

- Dredging 420,638 CY of compatible fill from the IWW Channel to placement area south of the inlet
- Duties: Superintendent

Clam Pass Dredging Project Collier Country, Florida



ROCCO CAVO

PROJECT MANAGER/SUPERINTENDENT/SAFETY OFFICER

- Dredging 8,500 cubic yards (CY) of beach compatible fill from Clam Pass Entrance and Portion of the Channel.
- Duties: Superintendent

**Jupiter Inlet Sand Trap Maintenance Dredging and Beach Nourishment
2018**

- Dredging 50,000 cubic yards (CY) of beach compatible fill from Jupiter Inlet Sand Trap to the Beach South of Jupiter Inlet.
- Duties: Superintendent

ICWW Bakers Haulover Inlet Maintenance Dredging Dade County, Florida

- Dredging 38,000 cubic yards (CY) of beach compatible fill from the ICWW Channel in the Vicinity of Bakers Haulover Inlet, Cuts DA-9 to 10 feet required Depth with a 2 feet allowable over depth.
- Duties: Superintendent

ICWW St. Lucie Reach 1 Maintenance Dredging Fort Pierce, St Lucie County, Florida

- Consisted of dredging 66,000 cubic yards of beach compatible fill from the ICWW to Beach Disposal Area
- Duties: Superintendent

Jupiter Inlet Sand Trap & ICWW Maintenance Dredging 2017

- Consisted of dredging 164,931 cubic yards of material from the ICWW to Beach Disposal Area
- Duties: Superintendent

Rybovich Marina Basin Maintenance

- Consisted of dredging 105,000 cubic yards of material from the Berth 14 to Berth 17
- Duties: Superintendent



ROCCO CAVO

PROJECT MANAGER/SUPERINTENDENT/SAFETY OFFICER

Jupiter Inlet Sand Trap Maintenance Dredging and Beach Nourishment 2016

- Consisted of dredging 61,699 cubic yards of material from the Jupiter Inlet
- Duties: Superintendent

Intracoastal Waterway Deeping in the Vicinity of Port of Palm Beach, Palm Beach County, Florida

- Consisted of dredging 103,528 cubic yards of material from the ICWW to designated Peanut Island DMMA
- Duties: Superintendent

Indian River ICWW Maintenance Dredging, USACE; Sebastian, Indian River County, Florida

- Consisted of dredging 302,740 cubic yards of material from the ICWW to designated DMMA
- Duties: Superintendent

Manatee Harbor, Maintenance Dredging, 40-ft. Project Entrance Channel, Turning Basin and Berthing Areas USACE, Manatee County, Florida

- Consisted of dredging 229,176 cubic yards of sand and shell from Port Manatee to designated Contained Disposal Facility (CDF)
- Duties: Superintendent

Loxahatchee River South Channel Extension and Sims Creek, Jupiter Inlet District, Jupiter, Palm Beach County, Florida

- Consisted of dredging 3,800 cubic yards of material from the Loxahatchee River to designated DMMA
- Duties: Project Manager

Emergency Beach Fill on Longboat Key using Longboat Pass Sand Trap, West Coast Inland Navigation District (WCIND), Longboat Key, Manatee County, Florida



ROCCO CAVO

PROJECT MANAGER/SUPERINTENDENT/SAFETY OFFICER

- Consisted of dredging 99,000 cubic yards of material from the Longboat Pass Sand Trap onto Longboat Key Beach
- Duties: Project Manager

Jupiter Inlet Sand Trap Maintenance Dredging and Beach Nourishment, Jupiter, Palm Beach County, Florida

- Consisted of dredging 32,284 cubic yards of sand from the Jupiter Inlet to Jupiter Beach
- Duties: Project Manager

Kissimmee River Restoration Project, S-65EX1, USACE, Okeechobee, Florida

- Consisted of dredging 170,000 cubic yards of material from the intake and the discharge basins of the newly constructed S-65EX1 Water Control Structure
- Duties: Project Manager

C-44 Reservoir, Intake Canal, USACE, Indiantown, Florida

- Consisted of dredging 100,000 cubic yards pumping up to 16,500 LF with 2 booster pumps and a 10" Swinging
- Ladder Cutter head Dredge
- Duties: Project Manager

Ponce De Leon Inlet Project, Florida Inland Navigation District (FIND), New Smyrna Beach, Florida

- Consisted of dredging 260,000 cubic yards pumping up to 16,500 LF with 2 booster pumps and a 16" Ellicott 1170 dredge
- Duties: Project Manager

Hideaway Beach Erosion Control Project, City of Marco Island, Florida

- Consisted of dredging 25,000 cubic yards from a borrow site just off shore to restore the beach using a 16" Ellicott 1170 dredge
- Duties: Superintendent, Project Manager



ROCCO CAVO

PROJECT MANAGER/SUPERINTENDENT/SAFETY OFFICER

Marco Island Beach Re-nourishment Project, Collier County, Florida

- Consisted of dredging up to 92,000 cubic yards of sand from a borrow site within the channel onto the beach with a 16" Ellicott 1170 dredge
- Duties: Superintendent, Project Manager

C-37 Critical Restoration Project

- Dredging project dollar value was \$11 million
- Consisted of dredging 800,000 cubic yards at 19,400 LF with 4 booster pumps and a 16" Ellicott 1170 dredge
- Duties: Superintendent, Project Manager

Bathtub Beach Restoration, Martin County

- Dredged 55,000 cubic yards of sand for beach nourishment
- Duties: Superintendent, Project Manager

VOLPAC Oil Company in the Grand Bahamas

- Dredging project dollar value was \$12 million
- Consisted of dredging 486,000 cubic yards of un-shot rock at 52 ft. of water depth using an 24" electric dredge in open water
- Duties: General Superintendent, Operation Manager

Disney Studios in the Grand Bahamas

- Dredged 300,000 cubic yards of sand from the entrance inlet and turn basin with a 16" dredge for the Pirates of Caribbean movie Part 3
- Duties: General Superintendent, Operation Manager

Bradford Marine in the Grand Bahamas

- Dredged 85,000 cubic yards of un-shot rock for installation of new dry dock
- Duties: Dredge Operator and Captain



ROCCO CAVO

PROJECT MANAGER/SUPERINTENDENT/SAFETY OFFICER

Freeport Shipyard in the Grand Bahamas

- Dredged 950,000 cubic yards of un-shot rock with a 24" dredge for dry dock basin 1 and 2
- Performed maintenance dredging next to the ship berths with a 24" dredge
- Duties: Dredge Operator and Captain

Discovery Bay in the Grand Bahamas

- Dredged 950,000 cubic yards of sand 1.5 miles off-shore with a 24" dredge for Beach Re-nourishment
- Duties: Dredge Operator

Key Biscayne in Miami, Florida

- Dredged off-shore 2 miles with a 16" dredge and 2 booster pumps for Beach Re-nourishment
- Duties: Dredge Captain

Silver-Lakes for Lennar Homes

- Dredged 1.5 million cubic yards of sand and rock aggregate
- Duties: Dredge Captain

EDUCATION AND CERTIFICATION

- 2 Year Degree
- Augusta State University
- Transport of Solid Using Centrifugal Pumps
- GIW Maintenance of Centrifugal Pump Course
- OSHA 10 Hours Construction
- OSHA 30 and MSHA Certified
- OSHA 510: Occupational Safety and Health Standards For The Construction Industry
- CPR / First aid
- Texas A&M dredging short course



ROCCO CAVO

PROJECT MANAGER/SUPERINTENDENT/SAFETY OFFICER

- CQM-C course
- Listed Species Awareness Training
- Level 1 Rigging
- USCG ABS, About Boater Safety Certification
- STCW95, Standards of Training, Certification & Watchkeeping, Basic Safety Training Certification (Marine Safety)
- Personal Safety & Social Responsibility MARTPT 359
- Basic Fire Fighting MARTPT-53
- Personal Survival Techniques Course MARTPT-363
- First Aid & CPR MARTPT-197
- Marine Security Awareness MARTPT-561
- Training of High Density Polyethylene Pipe Per ASTM2620-12
- OUPV Course (FLAMTA-627)
- Confined Space Training
- OSHA Confined Space Entry for General Industry Course
- Basic Hazard Training
- Fall Hazard Training
- Merchant Mariner Credentials
- Upgrade Master 100 Tons 200 Tons
- Apprentice Mate (Steersman) Upgrade
- Radar Observer Unlimited
- Assistance Towing
- OSHA Confined Space Entry for General Industry Course
- OSHA Welding and Cutting for Construction Course
- OSHA Cranes, Derricks, Hoist, Elevators, and Conveyors for Construction
- OSHA Rigging and Material Handling Course
- OSHA 4-Hours Recordkeeping Course
- Dredge Pack and Volumes Training Course
- 40 Dredging Engineering Short Course
- Dredging Engineering Short Course
- Proper Handling & Usage of Portable Fire Extinguisher
- OSHA Bloodborne Pathogens Course

JAMES FORRLER
SUPERINTENDENT

PROFESSIONAL EXPERIENCE

Ahtna Marine and Contruction

2019 Present

Superintendent

- Responsible for site operations and daily reporting.
- Responsible for dredge tender and support equipment operations
- Responsible for day to day activities.
- Responsible for Safety and Project Organization
- Works with PM to complete project goals and tasks

Cavache, Inc. |

2018-2019

Superintendent/ Safety Officer / Turbidity Monitoring

- Responsible for all crew safety
- Performed tailgate safety meetings
- Responsible for dredge tender and support equipment operations
- Duties include operating boats, bulldozers, excavators, pipeline, fusing pipeline and surveying
- Responsible for day to day activities
- Turbidity Monitoring

Ferreira |

2015 –2018

Superintendent/ Safety Officer

- Responsible for all safety
- Performed safety meetings
- Responsible for dredge tender and support equipment operations
- Duties include operating boats, bulldozers, excavators, pipeline, fusing pipeline and surveying
- Responsible for day to day activities

Cavache Inc. | Pompano Beach, Florida

2009 –2015

Superintendent/ Safety Officer / Turbidity Monitoring

- Responsible for all safety on DMMA
- Performed tailgate safety meetings
- Responsible for dredge tender and support equipment operations
- Duties include operating boats, bulldozers, excavators, pipeline, fusing pipeline and surveying
- Responsible for day to day activities
- Turbidity Monitoring

JAMES FORRLER SUPERINTENDENT

Native Technologies, Inc. | Deerfield Beach, Florida

2005 – 2009

Superintendent / Safety Officer

- Responsible for all safety activities
- Performed daily tailgate safety meetings
- Responsible for wetland and mitigation construction and maintenance
- Erosion control and maintenance
- Equipment finish grading and operations
- Worked closely with owner and government field representatives

Florida Power & Light | Florida

2002 – 2005

Equipment Operator

- Equipment operator and inventory organizer
- Responsible for equipment maintenance

Divosta | Florida

2000 – 2002

Equipment Operator

- Worked as equipment operator
- Responsible for finish grading and surveys

JAMES FORRLER
SUPERINTENDENT

PROJECTS

SIMS CREEK MAINTENANCE DREDGING - 2020

- Dredging 1,450 cubic yards of material from the dredging area and transporting it directly via a pipeline to the upland dredged material management
- Duties: Superintendent

Manatee Harbor, Maintenance Dredging, 40-Foot Project, Entrance Channel, Turning

- Dredging 121,000 cubic yards of material from the Manatee Harbor Entrance Channel and Turning Basin
- Duties: Superintendent

ICWW Jacksonville to Miami, Florida, Maintenance Dredging Palm Beach and Broward Counties, Florida

- Dredging 10,492 CY from the Intracoastal Waterway (IWW) channel in two locations, approximately 16 Miles apart.
- Duties: Superintendent

2019 Hideaway Beach Erosion Control Project Marco Island, Collier County, FL

- Dredge 52,354 CY Sandy sediments from Nearshore Borrow Area
- Duties: Superintendent

Ponce De Leon Inlet & AIWW Maintenance Dredging Volusia County, Florida

- Dredging 420,638 CY of compatible fill from the IWW Channel to placement area south of the inlet
- Duties: Superintendent, Alt. SSHO
- Turbidity Monitoring

JAMES FORRLER
SUPERINTENDENT

Indian River ICWW Maintenance Dredging, USACE; Sebastian, Indian River County, Florida

- Consisted of dredging 302,740 cubic yards of material from the ICWW to designated DMMA
- Duties: Superintendent, SSHO

Manatee Harbor, Maintenance Dredging, 40-ft .Project Entrance Channel, Turning Basin and Berthing Areas USACE, Manatee County, Florida

- Consisted of dredging 229,176 cubic yards of sand and shell from Port Manatee to designated Contained Disposal Facility (CDF)
- Duties: Superintendent, Safety Officer

Loxahatchee River South Channel Extension and Sims Creek, Jupiter Inlet District, Jupiter, Palm Beach County, Florida

- Consisted of dredging 3,800 cubic yards of material from the Loxahatchee River to designated DMMA
- Duties: Superintendent, Safety Officer

Emergency Beach Fill on Longboat Key using Longboat Pass Sand Trap, West Coast Inland Navigation District (WCIND), Longboat Key, Manatee County, Florida

- Consisted of dredging 229,176 cubic yards from two Sand Trap locations over 7,500 LF of pumping distance
- Duties: Superintendent, Safety Officer

Jupiter Inlet Sand Trap Maintenance Dredging and Beach Nourishment, Jupiter, Palm Beach County, Florida

- Consisted of dredging 32,284 cubic yards of sand from the Jupiter Inlet to Jupiter Beach
- 4,200 LF Pumping
- Duties: Superintendent, Safety Officer

Intracoastal Waterway Maintenance Dredging in vicinity of Ponce De Leon Inlet, New Smyrna Beach, Volusia County, Florida

- Dredging of 257,755 CY of sand from the Intracoastal Waterway to the designated MSA disposal area 23,555 of channel dredged
- Duties: Superintendent, Safety Officer

JAMES FORRLER
SUPERINTENDENT

South Marco Beach Sand Re-nourishment, Marco Island, Collier County, Florida

- Dredging project dollar value is approximately Dredging of Caxambas Pass Inlet and placement of approximately 77,000 CY of beach compatible fill along 2,700 LF of beach fill template and 5,800 LF of pumping distance
- Duties: Superintendent, Turbidity Monitoring

Hideaway Beach Erosion Control – Phase II, Collier County, Florida

- Consisted of dredging and placement of approximately 65,000 cubic yards of sand from designated borrow area as beach nourishment on North Beach and Central/Royal Marco Point Beach. 5,300 LF of Pumping Distance
- Duties: Superintendent
- Turbidity Monitoring

C-44 Reservoir, Intake Canal, USACE, Indiantown, Florida

- Consisted of dredging 100,000 cubic yards pumping up to 16,500 LF with 2 booster pumps and a 10" Swinging Ladder Cutterhead Dredge
- Duties: Superintendent, Safety Officer

Ponce De Leon Inlet Project, Florida Inland Navigation District (FIND), New Smyrna Beach, Florida

- Consisted of dredging 260,000 cubic yards pumping up to 16,500 LF with 2 booster pumps and a 16" Ellicott 1170 dredge
- Duties: Superintendent, Safety Officer
- **Turbidity Monitoring**

Hideaway Beach Erosion Control Project, City of Marco Island, Florida

- Consisted of dredging 25,000 cubic yards from a borrow site just off shore to restore the beach using a 16" Ellicott 1170 dredge
- Duties: Superintendent, Safety Officer

Marco Island Beach Re-nourishment Project, Collier County, Florida

- Consisted of dredging up to 92,000 cubic yards of sand from a borrow site within the channel onto the beach with a 16" Ellicott 1170 dredge
- Duties: Superintendent, Turbidity Monitoring

JAMES FORRLER
SUPERINTENDENT

C-37 Kissimmee River Restoration

- Consisted of dredging 800,000 cubic yards at 19,400 LF with 4 booster pumps and a 16" Ellicott 1170 dredge
- Duties: Superintendent, Safety Officer

13B Kissimmee River Restoration

- Dredged 178,000 CY of materials and pumping to fill channel cut with a 14" dredge
- Duties: Superintendent, Safety Officer

Lake Trafford Critical Restoration

- Consisted of dredging 2,000,000 CY of materials from 1,300 Acres of open water and pumping 11,000 ft with one booster pump with a 16" dredge
- Duties: Superintendent, Safety Officer

CERTIFICATIONS

- OSHA 30
- CPR/First Aid
- USCG Boaters Safety Course
- Aquatic and Natural Area Chemical Course
- USCG ABS, About Boater Safety Certification
- STCW 95, Standards of Training, Certification & Watchkeeping, Basic Safety Training Certification (Marine Safety)
- Personal Safety & Social Responsibility MARTPT 359
- Basic Fire Fighting MARTPT - 53
- Personal Survival Techniques Course MARTPT - 363
- Training of High Density Polyethylene Pipe per ASTM 2620-12
- Listed Species Awareness Training
- Confined Space Training
- Basic Hazard Training
- Fall Hazard Training
- Level 1 Rigging



ANTHONY BUDHU
Superintendent / Leverman

Ahtna Marine and Construction

2020 – Present

Dredge Captain/ Superintendent

- Involved in all aspects of project management, operations, quality control and safety management.
- Responsible for estimating, quality control and daily reports, as well as project organization and supervisor.
- In charge of organization and dredge operations
- In charge of dredge production and efficiency
- In charge of dredge crew safety
- Responsible for daily logs, project tracking
- In charge of HYPACK/GPS computer software systems

Cavache Inc. | Pompano Beach, Florida

2008 – 2020

Dredge Captain/ Superintendent

- Involved in all aspects of project management, operations, quality control and safety management.
- Responsible for estimating, quality control and daily reports, as well as project organization and supervisor.
- In charge of organization and dredge operations
- In charge of dredge production and efficiency
- In charge of dredge crew safety
- Responsible for daily logs, project tracking
- In charge of HYPACK/GPS computer software systems

Carmella Corp | Pembroke Pines, Florida

2002 – 2008

Dredge Captain/Dredge Safety Officer

- Involved in all aspects of running 24" cutter suction dredge "Rocco"
- In charge of dredge production and efficiency
- In charge of 21 crew members from deckhands, welders, tug captains and operators
- In charge of dredge crew safety
- Responsible for daily logs, project tracking



ANTHONY BUDHU

Superintendent / Leverman

Cavo Development | Fort Lauderdale, Florida

1989 – 2002

Operator/Dredge Captain/Safety Officer

- Involved in all aspects of running 24" cutter suction dredge "Rocco"
- In charge of dredge production and efficiency
- In charge of 21 crew members from deckhands, welders, tug captains and operators
- In charge of dredge crew safety
- Responsible for daily logs, project tracking

PROJECTS

**Okeechobee Waterway, Reach 3 & 4 on the St. Lucie River, Maintenance Dredging
8-Foot Project MARTIN COUNTY, FLORIDA**

- Dredging shoal material from Okeechobee Waterway in Martin County, Florida an existing Dredged Managed Material Area (DMMA), O-7, located approximately 9.0 miles from the eastern end of Reach 3.
- Duties: Superintendent

**MAINTENANCE DREDGING, 12 and 11-FOOT PROJECT FT MYERS BEACH HARBOR
LEE COUNTY, FLORIDA**

- Dredging of 151,252 cubic yards of material from Ft. Myers Beach Harbor and placed in the nearshore area located approximately a quarter of a mile east of from Ft. Myers Pier.
- Duties: Superintendent

MAINTENANCE DREDGING 10 AND 12-FOOT PROJECT NAPLES TO BIG MARCO PASS

- Dredging of 81,000 cubic yards of beach compatible fill from the Inlet Pass Channel and pumped to just south of the Keewaydin north jetty onto the south Beach.



ANTHONY BUDHU

Superintendent / Leverman

- Duties: Superintendent

Clam Pass Dredging Project Collier Country, Florida

- Dredging 8,500 cubic yards (CY) of beach compatible fill from Clam Pass Entrance and Portion of the Channel.
- Duties: *Dredge Captain*

Jupiter Inlet Sand Trap Maintenance Dredging and Beach Nourishment 2018

- Dredging 50,000 cubic yards (CY) of beach compatible fill from Jupiter Inlet Sand Trap to the Beach South of Jupiter Inlet.
- Duties: *Dredge Captain*

ICWW Bakers Haulover Inlet Maintenance Dredging Dade Country, Florida

- Dredging 38,000 cubic yards (CY) of beach compatible fill from the ICWW Channel in the Vicinity of Bakers Haulover Inlet, Cuts DA-9 to 10 feet required Depth with a 2 feet allowable over depth.
- Duties: *Dredge Captain*

ICWW St. Lucie Reach 1 Maintenance Dredging Fort Pierce, St Lucie County, Florida

- Consisted of dredging 66,000 cubic yards of beach compatible fill from the ICWW to Beach Disposal Area
- Duties: *Dredge Captain*

Jupiter Inlet Sand Trap & ICWW Maintenance Dredging 2017

- Consisted of dredging 164,931 cubic yards of material from the ICWW to Beach Disposal Area
- Duties: *Dredge Captain*

Rybovich Marina Basin Maintenance



ANTHONY BUDHU

Superintendent / Leverman

- Consisted of dredging 105,000 cubic yards of material from the Berth 14 to Berth 17
- Duties: *Dredge Captain*

Jupiter Inlet Sand Trap Maintenance Dredging and Beach Nourishment 2016

- Consisted of dredging 61,699 cubic yards of material from the Jupiter Inlet
- Duties: *Dredge Captain*

Intracoastal Waterway Deeping in the Vicinity of Port of Palm Beach, Palm Beach County, Florida

- Consisted of dredging 103,528 cubic yards of material from the ICWW to designated Peanut Island DMMA
- Duties: *Dredge Captain*

Indian River ICWW Maintenance Dredging, USACE; Sebastian, Indian River County, Florida

- Consisted of dredging 302,740 cubic yards of material from the ICWW to designated DMMA
- Duties: *Dredge Captain*

Manatee Harbor, Maintenance Dredging, 40-ft .Project Entrance Channel, Turning Basin and Berthing Areas USACE, Manatee County, Florida

- Consisted of dredging 229,176 cubic yards of sand and shell from Port Manatee to designated Contained Disposal Facility (CDF)
- Duties: *Dredge Captain*

Loxahatchee River South Channel Extension and Sims Creek, Jupiter Inlet District, Jupiter, Palm Beach County, Florida

- Consisted of dredging 3,800 cubic yards of material from the Loxahatchee River to designated DMMA
- Duties: *Dredge Captain*

Emergency Beach Fill on Longboat Key using Longboat Pass Sand Trap, West Coast Inland Navigation District (WCIND), Longboat Key, Manatee County, Florida

- Consisted of dredging 229,176 cubic yards from two Sand Trap locations over 7,500 LF of pumping distance



ANTHONY BUDHU

Superintendent / Leverman

- Duties: *Dredge Captain*

Jupiter Inlet Sand Trap Maintenance Dredging and Beach Nourishment, Jupiter, Palm Beach County, Florida

- Consisted of dredging 32,284 cubic yards of sand from the Jupiter Inlet to Jupiter Beach
- 4,200 LF Pumping
- Duties: *Dredge Captain*

Intracoastal Waterway Maintenance Dredging in vicinity of Ponce De Leon Inlet, New Smyrna Beach, Volusia County, Florida

- Dredging of 257,755 CY of sand from the Intracoastal Waterway to the designated MSA disposal area
23,555 of channel dredged
- Duties: *Dredge Captain*

South Marco Beach Sand Re-nourishment, Marco Island, Collier County, Florida

- Dredging project dollar value is approximately Dredging of Caxambas Pass Inlet and placement of approximately 77,000 CY of beach compatible fill along 2,700 LF of beach fill template and 5,800 LF of pumping distance
- Duties: Project *Dredge Captain*

Hideaway Beach Erosion Control – Phase II, Collier County, Florida

- Consisted of dredging and placement of approximately 65,000 cubic yards of sand from designated borrow area as beach nourishment on North Beach and Central/Royal Marco Point Beach. 5,300 LF of Pumping Distance
- Duties: *Dredge Captain*

C-44 Reservoir, Intake Canal, USACE, Indiantown, Florida

- Consisted of dredging 100,000 cubic yards pumping upto 16,500 LF with 2 booster pumps and a 10" Swinging
- Swinging Ladder Cutterhead Dredge
- Duties: *Dredge Captain*



ANTHONY BUDHU

Superintendent / Leverman

Ponce De Leon Inlet Project, Florida Inland Navigation District (FIND), New Smyrna Beach, Florida

- Consisted of dredging 260,000 cubic yards pumping up to 16,500 LF with 2 booster pumps and a 16" Ellicott 1170 dredge
- Duties: *Dredge Captain*

Hideaway Beach Erosion Control Project, City of Marco Island, Florida

- Consisted of dredging 25,000 cubic yards from a borrow site just off shore to restore the beach using a 16" Ellicott 1170 dredge
- Duties: *Dredge Captain*

Marco Island Beach Re-nourishment Project, Collier County, Florida

- Consisted of dredging up to 92,000 cubic yards of sand from a borrow site within the channel onto the beach with a 16" Ellicott 1170 dredge
- Duties: *Dredge Captain*

C-37 Kissimmee River Restoration

- Consisted of dredging 800,000 cubic yards at 19,400 LF with 4 booster pumps and a 16" Ellicott 1170 dredge
- Duties: *Dredge Captain*

13B Kissimmee River Restoration

- Dredged 178,000 CY of materials and pumping to fill channel cut with a 14" dredge
- Duties: *Dredge Captain*

Lake Trafford Critical Restoration

- Consisted of dredging 2,000,000 CY of materials from 1,300 Acres of open water and pumping 11,000 ft with one booster pump with a 16" dredge
- Duties: *Dredge Captain*

Bathtub Beach Restoration, Martin County



ANTHONY BUDHU

Superintendent / Leverman

- Dredged 55,000 cubic yards of sand for beach nourishment
- Duties: *Dredge Captain*

MPC5-Miramar, Florida

- Dredged 150,000 CY of sand and rock to make mitigation and land embankments
- Duties: *Dredge Captain*

Monterra – Davie, Florida

- Dredged 110,000 cubic yards of sand for landfill embankment with a 12” dredge
- Duties: *Dredge Captain*

Maple Ridge – West Palm Beach, Florida

- Dredged 250,000 cubic yards of sand for landfill embankment with a 16” dredge
- Duties: *Dredge Captain*

MPC2 – Miramar, Florida

- Dredged 180,000 cubic yards of sand/stone material for landfill embankment with a 16” dredge
- Duties: *Dredge Captain*

Oak Ridge – West Palm Beach, Florida

- Dredged 320,000 cubic yards of sand for landfill embankment with a 16” dredge
- Duties: *Dredge Captain*

Addison Preserve – West Palm Beach, Florida

- Dredged 300,000 cubic yards of sand material for landfill embankment with a 16” dredge
- Duties: *Operator, Dredge Captain*

Aberdyne Proving Ground Maryland

- Dredged 2 million cubic yards of sand with a 18” dredge for submarine fast facility
- Duties: *Dredge Captain*



ANTHONY BUDHU
Superintendent / Leverman

EDUCATION AND CERTIFICATION

- Listed Species Awareness Training
- Level 1 Rigging
- USCG ABS, About Boater Safety Certification
- STCW95, Standards of Training, Certification & Watchkeeping, Basic Safety Training Certification (Marine Safety)
- OUPV Course FLAMTA-627
- OUPV to Master 100 FLAMTA-530
- OUPV 100 Tons to Master 200 Tons
- Assistant Tow
- Apprentice Mate (Steersman)
- Personal Safety & Social Responsibility MARTPT 359
- Basic Fire Fighting MARTPT-53
- Personal Survival Techniques Course MARTPT-363
- Training of High Density Polyethylene Pipe Per ASTM2620-12



ANTHONY BUDHU

Superintendent / Leverman

- Confined Space Training
- Basic Hazard Training
- Fall Hazard Training
- Merchant Mariner Credential 100 Tons
- OSHA Bloodborne Pathogens Course
- First Aid – Basic Life Support

Name, Location and Description of Project	Owner	Contract Start Date/Amount	Required Completion Date	Project Manager	Percent Performed by Sub	Architect/Engineer
Las Olas Marina Renovation Fort Lauderdale, Florida The project work generally consists demolishing approx 54,000 SF of existing docks. Installing 940 LF of steel sheet pile seawall with concrete batter piles. Hydraulically dredging approximately 102,000 cubic yards of material from the Las Olas Marina basin. Installing 58,000 SF of floating Bellingham Docks.	Las Olas Marina Eric Metz Suntex Marinas 213-814-8829	8/8/2022 \$9,168,543.96		Wesley Gammons	40%	Cummins Coderberg & Marino Engineering Cutt 741-6155 Coastal Penny 305-
Jupiter Inlet Sand Trap Maintenance Dredging and Beach Nourishment 2024 Project work generally consists of dredging approximately 100,000 cubic yards of material by hydraulic cutter suction dredge from Jupiter Inlet in Palm Beach County, Florida. The Contractor shall transport the material via pipeline and place it as beach fill on the beach south of Jupiter Inlet, between DEP survey monuments R-14.5 and R-19 as shown on the plans. The design elevation and the vertical limit of sand trap dredging -20.5 ft NAVD88 plus 1 ft allowable over dredge.	Jupiter Inlet District	03/25/2024 \$1,629,432.00	04/31/2024	Wesley Gammons	N/A	Taylor Engineering Kenneth R. Craig, P.E. 904-731-7040
Lake Worth Lagoon Ecosystem Restoration Project Create an approximately 50-acre eco-island chain at the Bonefish Cove dredge site in LWL with approximately 350,000 CY's of borrow material from the Peanut Island DMMA. This will allow the creation of 11 acres of planted mangrove seedlings and 1 acre of oyster habitat as part of the eco-island chain. The hauling distance is approximately 10 nautical miles and must cross under four bridges, two of which are draw bridges. Work includes clearing and grubbing, excavation and transportation of fill material, constructing stone wave breaks, oyster reefs and bird mounds, as well as planting mangroves. Incidental related work also includes turbidity and vibration control monitoring.	USACE- Jacksonville District	12/20/2023 \$14,729,970.00	7/17/2025	Renee Piccitto	30%	Jim Bonanno, P.E. COR/FPE/CDSO WPB Coastal RO Cell: 561 236 8360
Beneficial Use Sediment Rehandling at Breach Inlet, A1WW Charleston County, South Carolina The work consists of maintenance dredging approximately 757,000 cubic yards of unclassified material from Placement Areas 1110S W-C, 1088S W-C, 1056S W-C, and 1028S W-C which shall be placed at Sullivan's Island and Isle of Palms beaches. The work is located in Charleston County, South Carolina.	USACE - Charleston District	TBD \$9,867,286.98	TBD	Wesley Gammons	N/A	Carter Bagley, P.E. Deputy Resident Engineer Lowcountry Resident Office Charleston District 1050 Remount Road, Bldg 3555 North Charleston, SC 29406 Cell 843.957.5253



PART D
FMB:004 - CONTRACTOR QUALIFICATION QUESTIONNAIRE
(5 of 7 Pages)

15. Attach a list of the no fewer than five (5) prime construction contracts involving offshore dredging/beach fill projects similar to this Project, specifically dredging within the influence of waves and tidal currents with transport and placement of varying sediment ranging from fine grain silt to coarse grain sand on the beach, completed in the past seven (7) years by your organization. BIDDERS shall provide evidence of their ability and past experience to pump medium to coarse grain sediment through dredge pipelines over long distances (greater than 6 miles) and achieve production rates of 200,000 cubic yards per month.

The list shall include the following information: (reference sheet numbers herein: 1)

- 15.1 Project Title, Location, and Brief Description of Work Performed
- 15.2 Contractor or Sub-Contractor
- 15.3 Contract Amount and Date of Contract
- 15.4 Percent of Project Constructed by Sub-Contractors
- 15.5 Date Complete
- 15.6 Project Manager or Superintendent
- 15.7 Required Completion Date
- 15.8 Name, Address and Telephone Number of Owner
- 15.9 Designing Engineer and Address
- 15.10 Volume, Pump Distance, Monthly Production Rate

16. Attach any construction contracts your organization has contracted with Town of Fort Myers Beach that are either underway or completed.

The list shall include the following information: (reference sheet numbers herein: 0)

- 16.1 Project Title and Location
- 16.2 Contractor or Sub-Contractor
- 16.3 Original Contract Amount and Date
- 16.4 Final Contract Amount
- 16.5 Percent of Project Constructed by Sub-Contractors
- 16.6 Project Manager or Superintendent
- 16.7 Required Completion Date
- 16.8 Name, Address and Telephone Number of Owner
- 16.9 Town Sponsoring Department

Name, Location and Description of Project	Owner	Dates Work of Performance	Contract Price	Reference / Contact Include Address and Phone
Marine Corps Support Facility – Blount Island, Maintenance Dredging 38-Foot Project DUVAL COUNTY, FLORIDA Project work consists of maintenance dredging at the Marine Corps Support Facility - Blount Island (MCSF-BI) from Station 0+00 to Station 56+09.1 with a 38-foot required Mean Lower Low Water (MLLW) maintenance depth plus two feet of allowable over depth throughout as shown on the drawings. The placement location of the dredged material will be Dayson Island Disposal Area (D/A-D) as shown on the drawings.	Jacksonville District U.S. Army Corps of Engineers	09/14/2023 - 01/12/2024	\$2,161,000.00	KLUG, GEOFFREY U.S. Army Corps of Engineers Geoffrey.m.Klug@usace.army.mil 904-228-2970
Manatee Harbor, Maintenance Dredging, 40-Foot Project, Entrance Channel, Turning Basin, and South Access Channel Base work consists of dredging 54,000 CY's of shoal material from the Manatee Harbor Entrance Channel and Turning Basin. Option A includes dredging 17,000 CY's of shoal material from the South Access Channel. The required depth for Manatee Harbor is 40 feet with one foot of allowable over depth. All excavated material from Manatee Harbor will be placed in the designated upland disposal area. Total of 102,000 CY's with options and OD.	USACE Jacksonville District	3/6/2023- 7/11/2023	\$4,289,472.48	Sergio Alvarado COR / Project Engineer USACE Tampa Resident Office 561-215-0830 - Mobile
2022 Tigertail Lagoon / Sand Dollar Island Ecosystem Restoration Project The Project consists of dredging a total of 499,052 cubic yards of beach sediment from multiple areas within the system including: the Sand Trap, the Borrow Area Extension, and Flow Channel east of Sand Dollar Island. Project requires work at a distance of up to 8,500 ft offshore. Placement of the material to restore the west side of a 1.5-mile segment of Sand Dollar Island. Approximately 3,600 cy of sand will be placed on Hideaway Beach. The sand shall be transported and placed on Sand Dollar Island by hydraulic and/or mechanical methods. This project	City of Marco Island	10/24/2022- 6/2/2023	\$4,241,323.27	Mohamed Dabees md@humistonandmoore.com Humiston and Moore Project Engineer 239-594-2021
Naval Submarine Base Kings Bay Maintenance Dredging 44, 45, and 47-Foot Project The project work consists of dredging material at the Kings Bay Naval Submarine Base located near St. Marys, Camden County, Georgia, or five miles north of the Georgia/Florida Border and 28 miles north of Jacksonville International Airport (JAX) and pumping the material via pipeline and place it at Disposal Area 1 (D/A-1) and Crab Island (D/A-C). The channel connecting the inshore waterways to the submarine base is known as Kings Bay Inner Channel (KBIC) and is approximately 8.6 nautical miles west of the mouth of the St. Marys Entrance.	USACE- Jacksonville District	9/5/2022- 5/22/2023	\$12,145,650.00	Jennifer L. Tyler Project Engineer Jacksonville Resident Office Cell: 561-379-2854
Jupiter Inlet Sand Trap Maintenance Dredging & Beach Nourishment- 2022 The project consists of dredging approximately 78,000 CY's of material from the Sand Trap inside the Jupiter Inlet. Project also includes: marine animal observing and monitoring, beach grading, and beach tilling.	Jupiter Inlet District	3/16/2022 4/4/2022	\$1,165,085.40	Jupiter Inlet District Joe Chaison (561) 797-2003
FORT PIERCE INLET SEDIMENT IMPOUNDMENT BASIN PHASE 1, MAINTENANCE DREDGING PROJECT, ST. LUCIE COUNTY, FLORIDA The project work consists of constructing a sand trap by dredging approximately 65,000 cubic yards of predominantly medium grained sand (with silt, shell, and rock) by mechanical dredge to clear a sediment impoundment basin inside of Fort Pierce Inlet, St. Lucie County, Florida. The Sediment Impoundment Basin is located east of Fort Pierce North on the south bank of Fort Pierce Inlet State Park. It covers an area of approximately 800 linear feet of the Inlet by a 200-foot- deep cut bottom. The dredge spoil was then disposed	Taylor Engineering	11/9/2021	\$4,365,712.00	Taylor Engineering Kenneth R. Craig, P.E. 904-731-7040
Intracoastal Waterway Jacksonville To Miami – Maintenance Dredging, 12-Foot Project, Palm Valley, North Reach St Johns County, Florida The work includes dredging approximately 641,500 cubic yards of shoal material from the Intracoastal Waterway from cuts SJ-01 to SJ-07 in St. Johns County, Florida, to a 12-foot depth plus 2-foot allowable over depth. All dredged material will be placed in an existing Dredged Managed Material Area (DMMA), DU-9, located approximately 2.0 miles from the northernly extent of the project and 7.5 miles from the southernly extent of the project. Work also includes turbidity monitoring and endangered species monitoring. A minimum size 16- Foot Cutter Dredge is required.	Jacksonville District U.S. Army Corps of Engineers	2/5/2021	\$7,809,245.00	KLUG, GEOFFREY U.S. Army Corps of Engineers Geoffrey.m.Klug@usace.army.mil 904-228-2970
Marine Corps Support Facility – Blount Island, Maintenance Dredging 38-Foot Project DUVAL COUNTY, FLORIDA Project work consists of maintenance dredging at the Marine Corps Support Facility - Blount Island (MCSF-BI) from Station 0+00 to Station 56+09.1 with a 38-foot required Mean Lower Low Water (MLLW) maintenance depth plus two feet of allowable over depth throughout as shown on the drawings. The placement location of the dredged material will be Dayson Island Disposal Area (D/A-D) as shown on the drawings.	Jacksonville District U.S. Army Corps of Engineers	10/14/2021	\$2,787,900.08	Mike Lyons Civil Engineer North Florida Area Office U.S. Army Corps Office Jacksonville District Office: 904-570-4132 Cell: 904-874-0018
Port Everglades Maintenance Dredging of approximately 410,000 cubic yards of silt, fines, and like materials for Basin located at Port Everglades. Sediments will be dredged and pumped a maximum of 2400 Linear Foot.	Ryan Incorporated Southern	7/26/2021 10/20/21	\$2,350,505.74	Rynne_Moss/ Kiewitt Joe Burke, Contracts Specialist 954-427-5599



PART D
FMB:004 - CONTRACTOR QUALIFICATION QUESTIONNAIRE
(6 of 7 Pages)

17. If General Contractor, list one or more of the following subcontractors who have been associated with you on any of the projects listed above:

SUB-CONTRACTOR (Name and Address)

17.1 Turbidity
Monitoring

P2 Enviromental

502 S Fremont Ave, Unit 322 Tampa, FL 33606

17.2 Endangered
Species

P2 Enviromental

502 S Fremont Ave, Unit 322 Tampa, FL 33606

17.3 Surveying

Terraquatic

1220 Tangelo Terrace A-12

Delray Beach, Florida 33444

17.4 Three (3) other major subcontractors:

N/A

18. List below the name of the bonding companies you use for construction project and the name, address and telephone number of your agent:

Hub International 408 W Tudor Rd Ste 100 Anchorage, AK 99503 Carol Lowell 907-258-6240

19. List no less than three (3) and preferably five (5) financial references:

Port Consolidate Attn: Michelle Thompson mthompson@portconsolidated.com 954-449-8809

Pearce Pump Supply Attn: Jeremy Walker jwalker@peaceusa.com 225-673-6188

Ellicot Dredge Attn: Steve Miller smiller@dredge.com 410-302-4348



TOWN of FORT MYERS BEACH

BID NO. ITB-24-03-EN

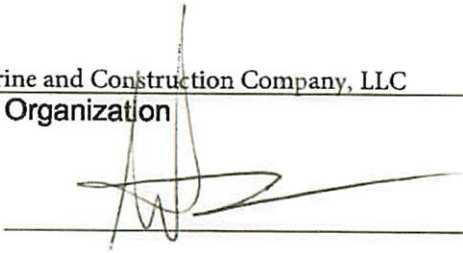
PART D
FMB:004 - CONTRACTOR QUALIFICATION QUESTIONNAIRE
(7 of 7 Pages)

20. What is the largest contract (dollar cost) ever performed by your organization?
\$12,145,650.00

21. What is the dollar value of the largest project you consider your organization is qualified to undertake?
\$100 million

Dated at April this 22 day of 2024 201-

Ahtna Marine and Construction Company, LLC
Name of Organization

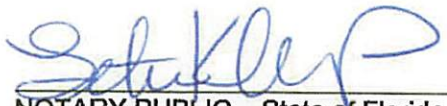
BY: 

Vice-President
Title of Person Signing

(if Corporation Affix Corporate Seal)

STATE OF FLORIDA)
COUNTY OF LEE)

SWORN TO AND SUBSCRIBED BEFORE ME, on this 22 day of April,
2024, by means of (x) physical presence or () online notarization, personally appeared _____
Wesley Gammons as Vice President of Ahtna Marine and Construction Company, LLC
(x) who personally known to me of () who has produced _____ as identification.


NOTARY PUBLIC – State of Florida

My commission expires:



Leticia Kleinop
Comm.: HH 348031
Expires: Jan. 21, 2027
Notary Public - State of Florida



TOWN of FORT MYERS BEACH
PART D

BID NO. ITB-24-03-EN

FMB:005 – DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION

NOTE: This form must be signed by the person who will sign or has signed the Bid Form. This form will become a part of the contract documents.

DIVISION OF EQUAL OPPORTUNITY CERTIFIED DBE ☐/MINORITY ☐/WOMEN ☐ (CHECK APPROPRIATE DESIGNATION):

DESCRIPTION OF WORK: N/A

SUBCONTRACTOR'S

NAME:

EST. DOLLAR VALUE OF PROPOSED
WORK:

DIVISION OF EQUAL OPPORTUNITY CERTIFIED DBE ☐/MINORITY ☐/WOMEN ☐ (CHECK APPROPRIATE DESIGNATION):

DESCRIPTION OF WORK: N/A

SUBCONTRACTOR'S NAME:

EST. DOLLAR VALUE OF PROPOSED WORK:

DIVISION OF EQUAL OPPORTUNITY CERTIFIED DBE ☐/MINORITY ☐/WOMEN ☐ (CHECK APPROPRIATE DESIGNATION):

DESCRIPTION OF WORK: N/A

SUBCONTRACTOR'S NAME:

EST. DOLLAR VALUE OF PROPOSED WORK:

DIVISION OF EQUAL OPPORTUNITY CERTIFIED DBE ☐/MINORITY ☐/WOMEN ☐ (CHECK APPROPRIATE DESIGNATION):

DESCRIPTION OF WORK: N/A

SUBCONTRACTOR'S NAME:

EST. DOLLAR VALUE OF PROPOSED WORK:

TOTAL VALUE OF ALL DBE/MINORITY/WOMEN SUBCONTRACT WORK: \$

ESTIMATED TOTAL PERCENT (%) TO BE UTILIZED: %

Wesley Gammons

CONTRACTOR NAME

[Signature]
SIGNATURE

4/22/2024
DATE



PART D
FMB:019 – PUBLIC ENTITIES CRIME FORM
(1 of 2 Pages)

SWORN STATEMENT PURSUANT TO SECTION 287.133(3) (a), FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES

THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICIAL AUTHORIZED TO ADMINISTER OATHS.

1. This sworn statement is submitted to Town of Fort Myers Beach
(Print name of public entity)
by Wesley Gammons, Vice-President
(Print individual's name and title)
for Ahtna Marine and Construction Company, LLC
(Print name of entity submitting sworn statement)
whose business address is 444 W Boynton Beach Blvd E.
Boynton Beach, Fl 33435

and (if applicable) its Federal Employer Identification Number (FEIN) is 30 - 1163758
(If the entity has no FEIN, include the Social Security Number of individual signing this sworn statement:
____ - ____ - ____.)

2. I understand that a "public entity crime" as defined in Paragraph 287.133(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 of the United States, including, but not limited to, any bid or contract for goods or services to be provided to any public entity or an agency or political subdivision of any other state or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.
3. I understand that "convicted" or "conviction" as defined in Paragraph 287.133 (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, non-jury trial, or entry of a plea of guilty or nolo contendere.
4. I understand that an "affiliate" as defined in Paragraph 287.133 (1) (a), Florida Statutes, means:
- A. A predecessor or successor of a person convicted of a public entity crime; or
- An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima facie case that one person controls another person.



TOWN of FORT MYERS BEACH

BID NO. ITB-24-03-EN

PART D

FMB:019 – PUBLIC ENTITIES CRIME FORM

(2 of 2 Pages)

- B. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.
5. I understand that a "person" as defined in Paragraph 287.133 (1) (e), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.
6. Based on information and belief, the statement, which I have marked below, is true in relation to the entity submitting this sworn statement. (Indicate which statement applies.)

X Neither the entity submitting this sworn statement, nor any of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, nor any affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

_____ The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

_____ The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989. However, there has been a subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearings and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list. (Attach a copy of the final order)

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 (ONE) ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES FOR CATEGORY TWO OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

(Signature)

STATE OF Florida)
COUNTY OF Palm Beach)

SWORN TO AND SUBSCRIBED BEFORE ME, on this 22 day of April, 2024, by means of (X) physical presence or () online notarization, personally appeared Wesley Gammons as Vice President of Ahtna Marine and Construction Company, LLC

(X) who personally known to me of () who has produced _____ as identification.

Notary Public Signature

My commission expires Leticia Kleintop
Comm.: HH 346031
Expires: Jan. 21, 2027
Notary Public - State of Florida

D-17



PART D
FMB:021 – NON-COLLUSION AFFIDAVIT

State of Florida)County of Palm Beach)Wesley Gammons being first duly sworn, deposes and says that:

- 1) He/she is the Vice-President, (Owner, Partner, Officer, Representative or Agent) of Ahtna Marine and Construction Company, LLC, the BIDDER that has submitted the attached Bid;
- 2) He/she is fully informed respecting the preparation and contents of the attached Bid and of all pertinent circumstances respecting such Bid;
- 3) Such Bid is genuine and is not a collusive or sham Bid;
- 4) Neither the said BIDDER nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, have in any way colluded, conspired, connived or agreed, directly or indirectly, with any other Responder, firm, or person to submit a collusive or sham Bid in connection with the Work for which the attached Bid has been submitted; or to refrain from Responding in connection with such Work; or have in any manner, directly or indirectly, sought by agreement or collusion, or communication, or conference with any Responder, firm, or person to fix the price or prices in the attached Bid or of any other Responder, or to fix any overhead, profit, or cost elements of the Bid price or the Bid price of any other Responder, or to secure through any collusion, conspiracy, connivance, or unlawful agreement any advantage against (Recipient), or any person interested in the proposed Work;
- 5) The price or prices quoted in the attached Bid are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the Responder or any other of its agents, representatives, owners, employees or parties in interest, including this affiant.

Signed, sealed and delivered in the presence of:

By: _____

Wesley Gammons
 (Printed Name)

ACKNOWLEDGEMENTSTATE OF Florida)COUNTY OF Palm Beach)

SWORN TO AND SUBSCRIBED BEFORE ME, on this 22 day of April, 2024, by means of (X) physical presence or () online notarization, personally appeared Wesley Gammons as Vice President of Ahtna Marine and Construction Company, LLC

(X) who personally known to me of () who has produced _____ as identification.

[Signature]
 Notary Public Signature

My commission expires:
Leticia Kleintop
 Comm.: HH 346031
 Expires: Jan. 21, 2027
 Notary Public - State of Florida



TOWN of FORT MYERS BEACH

BID NO. ITB-24-03-EN

PART D
FMB:022 – TRENCH SAFETY AFFIDAVIT
(When Applicable)

Trench excavations on this Project are expected to be in excess of 5 feet deep. The Occupational Safety and Health Administration excavation safety standards, 29 CFR 1926.650 Subpart P trench safety standards will be in effect during the period of construction of the Project.

BIDDER acknowledges that included in the Bid Price are costs for complying with the Florida Trench Safety Act (90-096, Laws of FL) effective October 1, 1990, and hereby gives assurance that, if awarded the Contract, the Contractor or Subcontractor performing trench excavation work on the Project will comply with the applicable trench safety standards. The BIDDER further identifies the costs as follows:

Trench Safety Item: _____
(Description)

(Cost written in words)

TOTAL \$ _____

FAILURE TO COMPLETE THE ABOVE SHALL RESULT IN THE BID BEING DECLARED NON-RESPONSIVE

COMPANY NAME: Ahtna Marine and Construction Company, LLC

DATE: April 22, 2024

BY: _____
(Signature)

Wesley Gammons
(Print Name)



PART D
FMB:023 – MATERIALS MANUFACTURERS LIST

The BIDDER is required to state below, material manufacturers it proposes to utilize on this project. No change will be allowed after submittal of Bid. If substitute material proposed and listed below is not approved by TOWN, BIDDER shall furnish the manufacturer named in the TOWN'S specification. Acceptance of this Bid does not constitute acceptance of material proposed on this list.

THIS LIST MUST BE COMPLETED OR BID MAY BE DEEMED NON-RESPONSIVE. (Attach additional sheets as needed).

BIDDER'S STATEMENT OF PROPOSED MANUFACTURER FOR

The BIDDER lists the following manufacturers of the major equipment (LIST)

<u>MATERIAL</u>	<u>MANUFACTURER</u>
1. <u>Dredge</u>	<u>Ellicot</u>
2. <u>Boosters</u>	<u>Ellitot</u>
3. <u>Pipe</u>	<u>Isco</u>
4. _____	_____
5. _____	_____
6. _____	_____

Signed

Name of BIDDER

Ahtna Marine and Construction Company, LLC



PART D
FMB:024 - LIST OF SUB-CONTRACTORS

The undersigned states that the following is a full and complete list of the proposed subcontractors on this Project and the class of work to be performed by each, and that such list will not be added to nor altered without written consent of the TOWN. The undersigned further acknowledges its responsibility for ensuring that the subcontractors listed herein meet all legal requirements applicable to and necessitated by this Agreement, including, but not limited to proper licenses, qualifications, certifications, registrations and insurance coverage. The TOWN reserves the right to disqualify any BIDDER who includes non-compliant or non-qualified subcontractors in his/her bid offer. Further, the TOWN may direct the BIDDER/contractor to remove/replace any subcontractor that is found to be non-compliant with this requirement subsequent to award of the contract at no additional cost to the TOWN. THIS LIST MUST BE COMPLETED OR BID WILL BE DEEMED NON-RESPONSIVE. (Attach additional sheets as needed).

BIDDER'S STATEMENT OF PROPOSED SUBCONTRACTOR FOR:

The BIDDER identifies the following firm as the proposed installation subcontractor of the:

N/A

Name of Firm: _____

Address and Phone: _____

Contact Person: _____

<u>Other Subcontractor and Address</u>	<u>Specialty</u>
1. <u>Terraquatics, Inc</u> <u>1220 Tangelo Terrace A-12 Delray Beach, FL 33444</u>	<u>Survey</u>
2. <u>P2 Enviromental</u> <u>502 S Fremont Ave, Unit 322, Tampa, FL 33606</u>	<u>Turbidity Monitoring</u>
3. <u>Atwell</u> <u>11770 US Highway One Ste E308, Palm Beach Gardens, FL 33408</u>	<u>Gopher Tortoise Survey</u>

Signed _____

Name of BIDDER Ahtna Marine and Construction Company, LLC

**PART D****FMB:25 – PLANT AND EQUIPMENT SCHEDULE***** Dredge Plant**

Name/Type	Capacity	Manufacturer	Age & Condition	Location
Katie John/18' Dredge	350 cy per hour 220' swing 20'spod barge	Ellicot	2021 Great Condition	Stuart, FL
(2) 1200 hp 18" Boosters		Ellicot	2019 Great Condition	Stuart, FL
1870 18" Booster		Ellicot	2023 New	Stuart, FL
1500 hp 20" Booster		Pearce	2020 Great Condition	Stuart, FL

*** Support Boats**

Name/Type	Capacity	Manufacturer	Age & Condition	Location
Stacey/Pushboat		Victory	2005 Great Condition	Stuart, FL
Ryanne/Anchor Boat		Custom	2014 Great Condition	Stuart, FL

*** Land Based**

Name/Type	Capacity	Manufacturer	Age & Condition	Location
(2) Excavators	3.5 cy	Sany	2018 Great Condition	Stuart, FL
Dozer	D6	CAT	2015 Great Condition	Stuart, FL
Loader	3 yard	Hitachi	2019 Great Condition	Stuart, FL

NOTE: Provide separate table for each type of equipment including name, manufacturer, excavating, material handling, loading, grading, earthworks, trucking, etc. Specify production rate of equipment. Use separate line for each major item. Use additional pages if necessary.



PART D
FMB:100 – CERTIFICATION IMMIGRATION LAWS AFFIDAVIT

BID NO: ITB-24-03-EN

PROJECT NAME: ESTERO ISLAND BEACH NOURISHMENT AND HURRICANE RECOVERY
PROJECT

TOWN OF FORT MYERS BEACH WILL NOT INTENTIONALLY AWARD TOWN CONTRACTS TO ANY CONTRACTOR WHO KNOWINGLY EMPLOYS UNAUTHORIZED ALIEN WORKERS, CONSTITUTING A VIOLATION OF THE EMPLOYMENT PROVISIONS CONTAINED IN 8 U.S.C. SECTION 1324 a(e) SECTION 274A(e) OF THE IMMIGRATION AND NATIONALITY ACT ("INA").

TOWN OF FORT MYERS BEACH SHALL CONSIDER THE EMPLOYMENT BY ANY CONTRACTOR OF UNAUTHORIZED ALIENS A VIOLATION OF SECTION 274A (e) OF THE INA. **SUCH VIOLATION BY THE RECIPIENT OF THE EMPLOYMENT PROVISIONS CONTAINED IN SECTION 274A (e) OF THE INA SHALL BE GROUNDS FOR UNILATERAL CANCELLATION OF THE CONTRACT BY TOWN OF FORT MYERS BEACH.**

BIDDER ATTESTS THAT THEY ARE FULLY COMPLIANT WITH ALL APPLICABLE IMMIGRATION LAWS (SPECIFICALLY TO THE 1986 IMMIGRATION ACT AND SUBSEQUENT AMENDMENTS).

Company Name: Ahtna Marina and Construction Company, LLC

(Signature)

Vice-President
(Title)

04/22/2024
(Date)

STATE OF FLORIDA)
COUNTY OF LEE)

SWORN TO AND SUBSCRIBED BEFORE ME, on this 22 day of April, 2024, by means

of (X) physical presence or () online notarization, personally appeared Wesley Gammons
as

Vice President of Ahtna Marine and Construction Company, LLC

(X) who personally known to me of () who has produced _____ as identification.



Leticia Kleintop
Comm.: HH 346031
Expires: Jan. 21, 2027
Notary Public - State of Florida

NOTARY PUBLIC – State of Florida

My commission expires

The signee of this Affidavit guarantee, as evidenced by the sworn affidavit required herein, the truth and accuracy of this affidavit to interrogatories hereinafter made. **TOWN OF FORT MYERS BEACH RESERVES THE RIGHT TO REQUEST SUPPORTING DOCUMENTATION, AS EVIDENCE OF SERVICES PROVIDED, AT ANY TIME.**



Ron DeSantis, Governor

Melanie S. Griffin, Secretary



STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

CONSTRUCTION INDUSTRY LICENSING BOARD

THE GENERAL CONTRACTOR HEREIN IS CERTIFIED UNDER THE
PROVISIONS OF CHAPTER 489, FLORIDA STATUTES

GAMMONS, WESLEY EVAN

AHTNA MARINE & CONSTRUCTION COMPANY, LLC
3200 EL CAMINO REAL SUITE 240
IRVINE CA 92602

LICENSE NUMBER: CGC1534282

EXPIRATION DATE: AUGUST 31, 2024

Always verify licenses online at MyFloridaLicense.com



Do not alter this document in any form.

This is your license. It is unlawful for anyone other than the licensee to use this document.



December 17, 2020

Craig O'Rourke, President
Ahtna Marine & Construction Company, LLC
2125 East Atlantic Boulevard, Suite A
Pompano Beach, Florida 33062

Dear Mr. O'Rourke,

Congratulations! Your firm has been certified as a Participant in the U.S. Small Business Administration's (SBA) 8(a) Business Development Program. Your nine (9) year program term begins on the date of this letter.

During participation in the 8(a) BD Program, you will receive business development assistance from an assigned Business Opportunity Specialist in the Alaska District Office located at 420 L Street, Suite 300, Anchorage, Alaska 99501. The phone number is (907)271-4022. We are sending a copy of this certification letter to the SBA Alaska District Office. That office will contact you to schedule an orientation session. This could take up to 4-6 weeks. In the meantime, there are steps you should take to start your participation in the program.

Next Steps:

- **Read and Sign the Participation Agreement:** SBA requires the 8(a) participant's highest ranking officer, the individual upon whom eligibility is based, sign the Participation Agreement showing he or she understands the conditions of 8(a) BD program participation. Please find the Agreement attached with this letter. Please read the Agreement carefully, sign and date it, and make a copy for your records. Return one copy to your local SBA District Office at the address shown in the second paragraph above.
- **Complete Training:** SBA has training courses that will benefit 8(a) Participants. You will learn the different strategies and tactics to win contracts and grow your business, and how to effectively use the 8(a) certification to position your company for sole-source awards and teaming. For firms in the first 12 months of program participation, five training courses will be offered. The training courses are: 1: How to do Business with the Federal Government, 2: Bids and Proposals, 3: FAR and CFR Overview, 4: Market Research in Federal Procurement, and 5: Capabilities Statement and Briefings. This training is offered via interactive webinars and can be coordinated through your respective District Office Business Opportunity Specialist.

- **Develop Your Business Plan:** We encourage you to start developing your business plan. Current 8(a) BD program regulations require a firm, once certified, to promptly submit a business plan which must be approved by the SBA before the firm is eligible to receive 8(a) benefits; including 8(a) contracts. Once approved, the business plan will be reviewed annually and may be modified as needed. We offer an optional format for business plans. To consider the optional 8(a) Business Plan Form 1010C, please go to: <https://www.sba.gov/sites/default/files/SBA%201010C.pdf>.
- **Develop Your Strategy for Winning Contracts in Year 1:** Though your firm's approved North American Industry Classification System (NAICS) Code is 237990 (Dredging and Surface Cleanup Activities), your firm may be awarded contracts under other NAICS Codes, as long as your firm is determined to be responsible to perform the required service or task. In this regard, please note that contracts awarded under the 8(a) Business Development Program authority generally result from the self-marketing efforts of participating firms. You must build relationships with potential federal customers, pursue federal prime contractors for subcontracts, and aggressively pursue prime contract opportunities to grow your business. Successful 8(a) firms regularly respond to competitive small business contracting opportunities posted on www.FBO.gov. Establish a goal and vision for winning at least two (2) competitive contracts during your first year.
- **Utilize Resources:** There are valuable FREE resources available to you right now that offer expertise in all areas of business operation including reviewing your business plan and strategy. Two resources that you can utilize today are:
- **SBA Resource Partners:** I encourage you to locate your nearest Resource Partner. Please go to: <https://www.sba.gov/tools/local-assistance>. This link will provide access to upcoming small business events and the webpage for your District SBA Office, also.
- **7(i) Management and Technical Assistance:** While your firm's acceptance into the 8(a) Business Development program is not a guarantee for contracts, the SBA will make every effort to assist you in implementing your business plan and strategy. Your success in the program is dependent upon the extent to which you take advantage of SBA's efforts to support you. One of the agency's major tools for your success is the 7(i) Management and Technical Assistance Services Program.

I am excited about your future, and welcome you as an 8(a) Business Development Program Participant. Wishing you much success!

Sincerely,
Dr. Donna L. Peebles,
Associate Administrator
Office of Business Development



ADDENDUM TO CONTRACT DOCUMENTS

ITB-24-03-EN

Addendum No.: 1

CONTRACT/PROJECT NAME: **Estero Island Beach Nourishment and Hurricane Recovery Project**

DATE OF ISSUE: **March 19, 2024**

The following information shall be included in the Contract documents and is hereby made part of the project documents in the form of clarification, addition, deletion or revision to the contract requirements, specifications and/or drawings.

ALL Original documents uploaded in Demandstar have been replaced with the following correct Bid Documents comprised of 31 PDF files. All previous All Original documents have been renamed and will start and end with the word "VOID". Do not use these documents with the word "VOID" in the filename.

The correct Bid Documents include the following 31 PDF files.

INVITATION TO BID (1 FILE)

447455_ITB-24-03-EN_20240319.PDF

CONTRACT PLANS (1 FILE)

447455_Estero Island Beach Nourish Contract Plans 20240130_20240319.PDF

SPECIFICATIONS (1 FILE)

447455_Estero Island Beach Nourish Hur Rec Tech Specs 20240229_20240319.PDF

DATA FILES (8 FILES)

These are Data Files that contain the Coordinates and Elevations of the bathymetric surveys performed in support of the design of the beach fills, borrow areas, pipeline corridors, and pump-out areas.

447455_EI NBA and NPC-South Nov2021-elev-NAVD88ft_20240319.TXT

447455_EI NPC-North Jul2021-elev-NAVD88ft_20240319.TXT

447455_EI OBA-LKP1-Jul2021-elev-NAVD88ft_20240319.TXT

447455_EI OPC1-Jul2021-elev-NAVD88ft_20240319.TXT
447455_EI OPC2-Jun2023-elev-NAVD88ft_20240319.TXT
447455_EI OPC-North-Jun2023-elev-NAVD88ft_20240319.TXT
447455_EI OPC-South-Jun2023-elev-NAVD88ft_20240319.TXT
447455_EI Rmon Jun2023-elev-NAVD88ft_20240319.TXT

GEOPHYS-GEOTECH (9 FILES)

These are the geophysical and geotechnical survey reports performed in support of Project design for the borrow areas, pipeline corridors, and pump-out areas.

447455_EI Sono Detailed PC Geophys Survey Report 2023_20240319.PDF
447455_EI CPE BA Sand Search Report 2003_20240319.PDF
447455_EI OSI BA and PC Geophys Survey Report 2021_20240319.PDF
447455_EI RCG CR Survey Report 2022_20240319.PDF
447455_LK-BB GFA Amdril Detailed Geotechnical Investigation 2022_20240319.PDF
447455_LK-BB GFA Amdril Recon Geotechnical Investigation Report 2021_20240319.PDF
447455_LK-BB OSI Detailed Geophysical Survey Report 2022_20240319.PDF
447455_LK-BB OSI Recon Geophysical Survey Report 2020_20240319.PDF
447455_LK-BB RCG CR Report 2022_20240319.PDF

PERMITS (11 FILES)

447455_EI_Beach_Nourish_FDEP_Permit_20240319.PDF
447455_EI_Beach_Nourish_FDEP_Sediment_QAQC-BA_20240319.PDF
447455_EI_Beach_Nourish_FDEP_Mod_1_20240319.PDF
447455_EI_Beach_Nourish_FDEP_Mod_3_20240319.PDF
447455_EI_Beach_Nourish_USACE_Permit_20240319.PDF
447455_EI_Beach_Nourish_NMFS_BO_20240319.PDF
447455_NMFS_GRBO_2003_20240319.PDF
447455_NMFS_GRBO_2007-20240319.PDF
447455_EI_Beach_Nourish_USFWS_BO_20240319.PDF
447455_USFWS_Piping_Plover_PBO-2013_20240319.PDF
447455_USFWS_SPBO_2015_20240319.PDF

Please Print Ahtna Marine and Construction Company, LLC 954-568-0007

Company Name & Phone Number


Signature

Amy Baker, Town Clerk
bids@fmbgov.com
239-765-0202



ADDENDUM TO CONTRACT DOCUMENTS

ITB-24-03-EN

Addendum No.: 2

CONTRACT/PROJECT NAME: Estero Island Beach Nourishment and Hurricane Recovery Project

DATE OF ISSUE: April 8, 2023

The following information shall be included in the Contract documents and is hereby made part of the project documents in the form of clarification, addition, deletion or revision to the contract requirements, specifications and/or drawings.

CLARIFICATION: All electronic bids are due MONDAY, April 15, 2024 by 2:00 pm local time via Demandstar.com

Questions received by the Town

Q1. The differing site condition ("DSC") relief provision in SP-24 requires the Contractor to notify the Town of a DSC within 24 hours of discovery. SP-24 also requires Contractor to immediately move to another Work Area to continue dredging activities. How will the Town be able to detect and verify the existence of a sub-surface DSC if the Contractor is required to move away from the discovery zone and immediately begin work in another area? Contractor obviously has an interest in ensuring that a DSC encountered can be verified by the Town.

A1. The approach to detect and verify a subsurface differing site condition claim will be based on the nature of the differing site condition claim. Approaches may include but not be limited to diver surveys, grab samples, or geophysical surveys. For these approaches, the dredge may have to relocate to afford access to conduct such an investigation.

Q2. Tech. Spec. TS-02, Section B, ¶ 2 states that "The Contractor is put on notice that materials outside and below the Borrow Area limits may contain rock fragments and/or continuous rock surfaces. Vibracore samples are available for inspection upon request." Please confirm that if rock fragments or continuous rock surface are unexpectedly found inside the borrow area limits that Contractor will be eligible for DSC relief. Also, please provide the Vibracore samples such that all bidders can assess them on an equal basis.

A2. Please refer to geotechnical and geophysical reports and data files for the Nearshore Borrow Area posted at www.Demandstar.com. The Nearshore Borrow Area sand source investigation was conducted by CPE (2003) on behalf of Lee County for the initial restoration project. The Nearshore Borrow Area detailed geophysical and cultural resource surveys were conducted by OSI (2021) and RC Goodwin (2022) on behalf of the Town for this Nourishment Project. Please note the CPE

investigation examined sand sources for both Estero Island and Lovers Key. The Nearshore Borrow Area is identified as Borrow Area 1 in the report. The Nearshore Borrow Area vibracores are not available for bidder review. The detailed subbottom and sidescan surveys do not indicate the presence of a continuous rock surface.

Please refer to geotechnical and geophysical reports and data files for the Offshore Borrow Area posted at www.Demandstar.com conducted by the Coastal Engineering Consultants Consulting Team (OSI, RC Goodwin, Amdril, GFA) on behalf of Lee County for the Lovers Key-Bonita Beach project. The detailed subbottom and sidescan surveys do not indicate the presence of a continuous rock surface.

The Town acknowledges that it is possible that discrete occurrences of non-compatible sediment may exist within the permitted Borrow Areas. The Sediment Quality Assurance/Quality Control Plan included with the Bid Documents details the responsibilities for the Town and for the contractor to minimize and avoid excavation and placement of non-compatible sediment. The Bid Documents include provisions and specifications to address the contractor's responsibilities if and when non-compatible sediment is encountered from contractor failure to comply with the Permits and/or associated with dredging outside or below the permitted limits of dredging. The Bid Documents include provisions afforded to the contractor for changes in the work.

The vibracores for the Offshore Borrow Area may be made available for inspection upon written request to the Town and coordination with Lee County who is housing them.

Q3. Gen. Conds. § 13.9 identifies a 1-year correction period for the Work. A 1-year correction period is not appropriate for a beach fill project that is subject to tides, severe weather and other natural conditions that can degrade the quality of the completed work. Please confirm that the 1-year correction period will not apply to the beach fill work.

A3. The one (1) year correction period requirement in General Condition Article 13.9 does not apply to accepted sections of beach fill. The one (1) year correction period requirement applies to Work specific to existing facilities the contractor damages and has to repair / replace, restoration of staging areas, restoration of construction accesses, restoration or repair of structures damaged by the contractor, and restoration of landscaping damaged by the contractor.

Q4. Tech. Spec. TS-02, Section B, ¶ 3 states that:
The Town reserves the right to relocate the Contractor within the dredge limits to avoid placement of non-compatible sediment. Relocations to avoid non-compatible sediment shall be at no additional cost to the Town and shall not be a basis of claim for additional cost or time. This provision is not commercially reasonable on a beach fill Project with long sediment pipelines, pumps and other ancillary equipment that needs to be shut down, moved with field labor and re-started. Please provide a unit price item for the relocation of dredge equipment ordered by the Town to avoid placement of non-compatible sediment.

A4. No change is made to the Bid Schedule. Refer to the response to Question 2.

Q5. The Technical Specifications of this Contract contain the most important Project-specific scope definitions, access constraints, permit requirements, beach fill requirements and general operational data. To ensure this Project-specific data governs over any conflicting generic information in the General

Condition, Supp. Conditions or Special Conditions, please revise the order of precedence set forth in Gen. Conds., Art. 4.5 to the following:

1. Change Order
2. Standard Form of Agreement
3. Addenda
4. Technical Specifications
5. Supplementary Conditions
6. General Conditions
7. Drawings
8. Figure Dimensions
9. Scale Dimensions

A5. The order of precedence as stated in General Condition Article 4.5 is correct as listed. No change is made.

Q6. Can equipment (boosters, unloaders, etc.) be placed anywhere in the pipeline corridors, outside of the pump out areas?

A6. Yes provided the equipment (boosters, unloaders, etc.), anchors, and anchor lines are contained within the permitted limits of the pipeline corridors with the exception of the avoidance areas.

Q7. If the same Contractor is awarded the Lovers Key – Bonita Beach project, could the offshore borrow area be used on this project past October 31, 2024?

A7. The Town and Lee County are committed to working together to complete their projects synergistically. The permit agencies have provided their support for this approach. In the event the same contractor is awarded the Estero Island Beach Project and the Lovers Key – Bonita Beach project, the Town and County will work with the contractor to grant additional time for use of the Offshore Borrow Area for the Estero Island Project subject to the following:

***contractor continuously prosecutes the work for both projects subject to Special Provision 16, Continuous Prosecution of Work,**

***contractor is able to achieve all of the environmental windows of both projects as stipulated in the Bid Documents and Permits, in particular, the Bonita Beach and South Bonita Beach work must be completed between November 1 and April 15,**

***contractor does not arbitrarily demobilize to complete work for other clients, and**

***sufficient time is provided to survey the Offshore Borrow Area in accordance with the Permits and BOEM NNA between projects.**

Q8. Is a USFWS permitted person or company needed to formally conduct gopher tortoise surveys prior to mobilization in the Bowditch staging area?

A8. A Florida Fish and Wildlife Conservation Commission permitted person or company is needed to formally conduct gopher tortoise surveys prior to mobilization in the Bowditch staging area.

Q9. Please verify no screening is required at the beach (unless sediment noncompliance is seen after dredging has started).

A9. No screening at the beach is required. In the event sediment noncompliance is documented after dredging has started, the Sediment QA-QC Plan and Permits shall be followed for remediation.

Q10. Could the north-central and southern beach fill be pumped concurrently and/or in any order of work if the Contractor abides by environmental windows?

A10. The north-central and southern beach fill can be pumped concurrently provided the contractor abides by the environmental windows and Permits, and sufficient time is provided each day for the Town's sea turtle monitor to monitor for and relocate sea turtle nests in accordance with the Permits.

Q11. Referencing the technical specification bullet under 5. Cut Sequence, "Each Borrow Area cut must be completed prior to the next cut"; what proof of cut completion will be expected before moving onto another cut? Will the contractor be allowed to submit single beam surveys for proof?

A11. The contractor may provide a single beam survey to verify cut completion in accordance with the following specification.

Bathymetric surveys associated with the Borrow Areas may be collected utilizing a single-beam fathometer and shall be performed in accordance with the most recent edition of the most recent edition of NOAA's Office of Coast Survey Hydrographic Survey Field Procedure Manual. Transects shall be spaced 100 ft apart, perpendicular and parallel to the borrow area survey baseline, and extend at a minimum 400 ft beyond the cumulative extents of excavation. All bathymetric data will be roll, pitch, heave, and tide corrected using best management practices. Sound velocity corrections will be applied based on measurements made during and throughout the duration of the survey using a profiling sound velocity meter to obtain water column sound velocities with casts that log the entire water column to the seafloor. Calibration of the fathometer shall be performed for verification of accuracy at the beginning and end of each survey day through the use of a bar check plate or survey level rod based on the water depth of the survey area. Latency checks shall be conducted periodically throughout each day. The latency corrections shall be calculated and adjustments shall be made to the data. Field notes of the bar checks and latency calibrations shall be made available to the Engineer with the data submittal. Surveys shall be conducted using kinematic GPS referenced to a GPS base station occupying an established (NAVD88 vertical control) monument or a National Geodetic Survey real-time network; or referenced to a water-level gauge deployed within the vicinity of the Work Area. An uncertainty or error analysis shall be conducted on the bathymetric dataset based on calculated differences of measured elevations at all transect crossings.

Q12. Are hoppers or scows allowed to overflow within pump out areas?

A12. No, hoppers and scows are not allowed to overflow within pump out areas.

Q13. Can you provide an updated project magnitude?

A13. The final opinion of probable construction cost is \$25.18 million.

Q14. The technical specifications specify that hopper inflow screens should have 4"x4" screening and "If the contractor... determines that the draghead is clogging and reducing production substantially, the mesh size may be increased". Can you verify that though inflow screening is required, no draghead screening is required and this sentence could refer to increasing screening size of inflow boxes are clogging?

A14. Consistent with the Permits, the screening required on the draghead is that between the deflector and the draghead which shall be no more than four-inches by four-inches (4" x 4").

Q15. In reference to TS-08 Turbidity Monitoring in the technical specifications, is turbidity monitoring required in the federal offshore borrow area?

A15. Yes turbidity monitoring required in the Offshore Borrow Area.

Q16. Has the nearshore borrow area been dredged since the date of the survey provided in the Plans (November 2021)? If so, please provide details on quantity removed and/or an updated survey.

A16. No. The Nearshore Borrow Area has not been dredged since the original 2012 project.

Q17. Who is responsible for Post-Construction Sampling and Laboratory Testing of the beach fill?

A17. The Town is responsible for Post-Construction Sampling and Laboratory Testing of the beach fill.

Q18. The Construction Contract Agreement Article 11 Paragraph 11.7.1 states that the Unit Price of an item may be subject to revaluation and adjustment if it differs by more than 15% of the estimated quantity. However, SP-17 states that an equitable adjustment may be made if the actual quantity varies by more than 25%. Can you please confirm which figure applies for the Variation in Estimated Quantities?

A18. Special Provision 17, Variation in Estimated Quantities, is correct, equal to 25%.

Q19. In reference to FMB:003 D-6 page 5, do bidders without a Business Tax Receipt Number need to complete an application to do business in the Town of Fort Meyers beach prior to submitting a bid on this project?

A19. The Town does not issue business tax receipts.

Q20. Other than the bid bond, are the only required documents to be submitted with the bid, those listed in the ITB Page B-2 paragraphs 3.2.1-3.2.7? Please clarify if FMB:005, FMB:019, and FMB:022 should be submitted with the bid.

A20. Yes, the FMB:005 FMB:019 and FMB:022 must be submitted with the bid and marked if applicable or not to your response.

Q21. The Contract Documents specify that the Town may perform other work related to the Project by itself, or it may let others through direct contracts perform additional work, and that Contractor must coordinate with such other work. Please confirm whether any such work is scheduled or anticipated during the period of this work.

A21. The Town is implementing a truck haul project as stated in Technical Specification TS-01.B.9. The Town may elect to plant existing dunes during the same time period. Lee County has advertised the Lovers Key – Bonita Beach Project that may occur in the same time period.

Q22. Please confirm in the event of changes in laws or regulations taking effect after submission of Contractor's bid, Contractor shall be entitled to an equitable adjustment to the extent such change impacts Contractors' cost and/or time of performance.

A22. Yes

Q23. Article 5.5 of the Construction Contract Agreement Form states that LDs will be assessed in the amount of \$2,500 per day, but Special Provision 8 says that LDs will be assessed in the amount of \$3,570 per day. Please confirm which is the correct amount of liquidated damages to be assessed.

A23. The amount of liquidated damages is found in Special Provision 8, and is \$3,570 per day.

Q24. Since liquidated damages are assessed not as a penalty but as a reasonable pre-estimate of probable damages when actual/direct damages are difficult to calculate, please confirm and update the contract documents to reflect that in the event of delayed performance, liquidated damages will be assessed in lieu of actual/direct and consequential damages.

A24. Liquidated damages for delayed performance shall be assessed as stated in the construction contract and special provision.8 Liquidated Damages.

Q25. Please include a mutual waiver of consequential damages: "Notwithstanding anything herein to the contrary, neither party shall be responsible or liable for any indirect, consequential or special damages of any type or nature whatsoever and howsoever arising, including, without limitation, delay, loss of profits, loss of income, loss of business opportunity, business interruption, loss of use whether resulting from negligence, breach of contract or otherwise, and regardless of whether such damages may have been foreseeable."

A25. No waiver of consequential damages is available.

Q26. Please confirm that Contractor shall be entitled to an equitable adjustment in the Contract Time and/or Contract Price for delays caused by the negligent acts or omissions of the Owner, other contractors of Owner, or anyone for whom Owner is responsible. The Contractor should not be required to bear the costs associated with such delays.

A26. Yes

Q27. Please confirm whether this project is funded in whole or in part by the U.S. Government. If it is, please identify the funding/grant type, the date the funding was obligated and the applicable domestic product preference requirements (i.e. Buy America, BABA, or Buy American), and confirm whether the project is 1) subject to the Trade Agreements Act; and 2) whether the legacy test for domestic (50% component test, COTS exception, no consideration of predominantly iron and steel) will apply; and 3) if not, what test will apply.

A27. Yes, this project is funded in part by a FEMA Category G grant. The date the funding was obligated is Nov. 6, 2023. Your response shall comply with any and all FEMA Category G grant requirements as well as any applicable federal laws and regulations.

Q28. The indemnity provisions in Article 10.5 of the Construction Contract Agreement Form and Attachment "A" General Conditions Article 7.26 are conflicting. Please modify the Construction Contract Agreement Form to limit Contractor's indemnity obligations to the extent claims are caused by the negligence, recklessness, or intentional wrongful misconduct of the Contractor and those it employs or utilizes in the performance of the contract.

A28. The indemnity provisions in article 10.5 of the construction contract form shall conform to Article 7.26 General Conditions.

Q29. Please confirm Contractor is responsible only for hazardous materials brought to the Project site and/or generated by the Contractor and will not be responsible for any pre-existing materials containing substances classified as hazardous, potentially hazardous, infectious, toxic or dangerous under applicable law, which shall be disposed of in strict compliance with all regulations as directed by Owner. With respect to any such pre-existing materials, Owner is the generator.

A29. Agreed, the Contractor is only responsible for hazardous material brought to the project site and/or generated by the Contractor and will not be responsible for any pre-existing materials containing substances classified as hazardous, potentially hazardous, infectious, toxic or dangerous under applicable law, which shall be disposed of in strict compliance with all regulations as directed by Owner.

Q30. Please modify Section 15.2 on page E-43, by removing the language which allows Owner to take possession of any tools, equipment, construction equipment and machinery of Contractor. It is not acceptable for Owner to take possession of Contractor's tools, equipment, construction equipment and/or machinery.

A30. Section 15.2 on Page E-43 is hereby modified to remove the language which allows Owner to take possession of any tools, equipment, construction equipment and machinery of Contractor.

Q31. Unlike land-based construction, completed dredging activities are subject to natural forces that are entirely outside the control of the Contractor. To clarify the intent of the warranty, please include the following warranty provision: "The warranty provisions herein do not apply to the dredging portion(s) of the work. With respect to dredging, upon Contractor's advising Owner that the dredging has been completed, Owner shall inspect the Work and, if acceptable, shall advise Contractor of Owner's acceptance thereof. Contractor in no way represents, guarantees or warrants that any dredging or excavation will stay open, dredged or excavated for any period of time whatsoever."

A31. The one (1) year correction period requirement in General Condition Article 13.9 does not apply to accepted sections of beach fill. The one (1) year correction period requirement applies to Work specific to existing facilities the contractor damages and has to repair / replace, restoration of staging areas, restoration of construction accesses, restoration or repair of structures damaged by the contractor, and restoration of landscaping damaged by the contractor.

Q32. Since bids are being accepted through Demandstar, will there be a virtual bid opening option for bidders?

A32. Yes, the bid opening will be broadcast live on YouTube and recorded, meeting link will be posted on the Town website.

Q33. Please confirm no original bid bond is required to be submitted to the Town by the bid opening time and date.

A33. For purposes of the bid submittal, an electronic copy of the Bid Bond Certificate with your electronic bid submittal. Within 7 business days of the bid closing, the Town must receive the original bid bond by mail.

Q34. In reference to Note 2 on Plan Sheet 12, please provide data for vibracores conducted by CPE in the nearshore borrow area in 2020.

A34. The date in Note 2 on Plan Sheet 12 is a typo. The correct date is August 2000. Refer to the answer to Question 2 for details on the Nearshore Borrow Area vibracores.

CONTRACT PLANS

Revisions to the Contract Plans include the following.

Sheets 4 through 7 have been updated to reflect the current No Work Zones based on receipt of additional private property owner easements.

Sheets 6 and 7 have been updated to reflect the Town is utilizing another contractor to build the dune via truck haul from the north end to R-182, approximate Stations 1+00 through 71+00. This work is anticipated to be completed by the end of May, 2024.

Sheet 12 was revised as follows. The date in Note 2 on Plan Sheet 12 is a typo. The correct date is August 2000.

The entire Contract Plan set has been uploaded to Demandstar and replaces the prior versions. The filename is 447455_EI_Beach_Nourish_Contract_Plans_20240408.PDF

TECHNICAL SPECIFICATIONS

Revisions to the Technical Specifications include the following.

Add the following paragraph to TS-01.B.5 Construction Access and Staging.

During usage of Newton Park, the Contractor shall maintain a 50 foot buffer, offset from the southeast property line (adjacent to the single family homes). No equipment storage, construction access, or staging may occur within this 50 foot buffer.

Delete TS-02.A.2 Bowditch Point Park Dune Construction and replace it with the following.

TS-02.A.2 North Segment Berm - The Town is implementing a truck haul project scheduled to be completed May 31, 2024. The truck haul project will construct the dune from Bowditch Point Park to Crescent Beach Park, approximate Stations 1+00 through 71+00.

SPECIAL PROVISIONS

Revisions to the Special Provisions include the following.

Add the following paragraph to SP-27.

Bathymetric surveys associated with the Borrow Areas may be collected utilizing a single-beam fathometer and shall be performed in accordance with the most recent edition of the most recent edition of NOAA's Office of Coast Survey Hydrographic Survey Field Procedure Manual. Transects shall be spaced 100 ft apart, perpendicular and parallel to the borrow area survey baseline, and extend at a minimum 400 ft beyond the cumulative extents of excavation. All bathymetric data will be roll, pitch, heave, and tide corrected using best management practices. Sound velocity corrections will be applied based on measurements made during and throughout the duration of the survey using a profiling sound velocity meter to obtain water column sound velocities with casts that log the entire water column to the seafloor. Calibration of the fathometer shall be performed for verification of accuracy at the beginning and end of each survey day through the use of a bar check plate or survey level rod based on the water depth of the survey area. Latency checks shall be conducted periodically throughout each day. The latency corrections shall be calculated and adjustments shall be made to the data. Field notes of the bar checks and latency calibrations shall be made available to the Engineer with the data submittal. Surveys shall be conducted using kinematic GPS referenced to a GPS base station occupying an established (NAVD88 vertical control) monument or a National Geodetic Survey real-time network; or referenced to a water-level gauge deployed within the vicinity of the Work Area. An uncertainty or error analysis shall be conducted on the bathymetric dataset based on calculated differences of measured elevations at all transect crossings.

PERMITS

The FDEP Permit was not provided on Demandstar noting it was incorrectly named and a repeat of the USACE Permit. The correct file, filename: 447455_EI_Beach_Nourish_FDEP_Permit_20240408.PDF, has been uploaded to Demandstar.

An unsigned Bureau of Ocean Energy Management Negotiated Noncompetitive Agreement for use of the Offshore Borrow Area is included in the Project Permits, filename: 447455_EI_Beach_Nourish_BOEM_NNA_unsigned_20240408.PDF and has been uploaded to Demandstar.

Please Print Ahtna Marine and Construction Company, LLC 954-568-0007

Company Name & Phone Number


Signature

Amy Baker, Town Clerk
bids@fmbgov.com
239-765-0202



ADDENDUM TO CONTRACT DOCUMENTS

ITB-24-03-EN

Addendum No.: 3

CONTRACT/PROJECT NAME: **Estero Island Beach Nourishment and Hurricane Recovery Project**

DATE OF ISSUE: **April 11, 2024**

The due date for all bid submittals is being **extended** to:

FRIDAY, APRIL 19, 2024 at 11:00 a.m.

Bid Opening will be held at 11:15 a.m. on Friday, April 19, 2024 at Town Hall Council Chambers, 2731 Oak St., Fort Myers Beach, FL 33931 or may be viewed live on the Towns YouTube channel.

Clarifications to the current bid documents shall be issued on Tuesday, April 16, 2024.

Any Contractors that have already submitted a proposal may remove their bid submission from Demandstar.com and re-upload.

Please Print Ahtna Marine and Construction Company, LLC 954-568-0007
Company Name & Phone Number


Signature

Amy Baker, Town Clerk
bids@fmbgov.com 239-765-0202



ADDENDUM TO CONTRACT DOCUMENTS

ITB-24-03-EN

Addendum No.: 4

CONTRACT/PROJECT NAME: **Estero Island Beach Nourishment and Hurricane Recovery Project**

DATE OF ISSUE: **April 16, 2024**

The due date for all bid submittals is being **extended** to:

TUESDAY, APRIL 23, 2024 at 10:30 a.m.

Bid Opening will be held at 10:35 a.m. on Tuesday, April 23rd, 2024 at Town Hall Council Chambers, 2731 Oak St., Fort Myers Beach, FL 33931 or may be viewed live on the Towns YouTube channel.

Any Contractors that have already submitted a proposal may remove their bid submission from Demandstar.com and re-upload.

CLARIFICATIONS TO THE BID DOCUMENTS

Please see clarifications to Bid Documents below:

Under TS-01.B.2. NO WORK ZONES, the Contractor is allowed to place submerged pipeline in the gap between the North-Central Beach Fill (NCBF) and the South Beach Fill (SBF), approximate Stations 245+00 to 282+00, seaward of mean high water. As denoted on the Contract Plans, the gap between NCBF and SBF landward of mean high water is a No Work Zone, as the property owners elected not to sign easements with the Town.

On road trucks may be used on the beach subject to Town, State, and Federal regulations and guidelines.

Under SP-21 TIME OF OPERATIONS, the alternative transportation method to construct the SBF, specifically utilizing trucks to transport sand pumped from the Borrow Area to the NCBF and delivered to the SBF via Estero Boulevard; shall be limited to 12 hours per day from 7 a.m. to 7 p.m.

TECHNICAL SPECIFICATIONS

Revisions to the Technical Specifications include the following.

Under TS-02.A.1. GENERAL, add the following sentences to the last paragraph.

Use of trucks to deliver sand from the NCBF to the SBF via Estero Boulevard shall be limited to 12 hours per day, from 7 a.m. to 7 p.m. Sand may be trucked from the NCBF to the SBF prior to September 1 provided the sand is stockpiled on uplands (off the beach).

SCHEDULE OF VALUES, BID FORM (FMB:003)

The Town desires to know the cost savings for allowing the alternative transportation method for utilizing trucks to transport sand pumped from the Borrow Area to the NCBF and delivered to the SBF via Estero Boulevard, 24 hours per day. A line item has been added to the Schedule of Values in the Bid Form requesting the Bidder's propose a unit rate per cubic yard to serve as a deduct in negotiating a Change Order.

Delete the Schedule of Values, Page D-4, of the Bid Form (FMB:003) and replace with the new Schedule of Values, Page D-4, attached to this addendum.

Please Print Ahtna Marine & Construction Company, LLC 954-568-0007

Company Name & Phone Number

Signature

Amy Baker, Town Clerk
bids@fmbgov.com 239-765-0202

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

FEDERAL EMERGENCY MANAGEMENT AGENCY PUBLIC ASSISTANCE

The supplemental conditions contained in this section are intended to cooperate with, to supplement, and to modify the general conditions and other specifications. In cases of disagreement with any other section of this contract, the Supplemental Conditions shall govern. This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract.

Pursuant uniform requirements of federal awards (2 CFR Part 200.23) the definition of CONTRACTOR is an entity that receives a Contract / Purchase Order.

Compliance with Federal Law, Regulations and Executive Orders: The Sub-Recipient (Town) agrees to include in the subcontract that (i) the subcontractor is bound by the terms of the Federally-Funded Subaward and Grant Agreement, (ii) the subcontractor is bound by all applicable state and Federal laws and regulations, and (iii) the subcontractor shall hold the Division and Sub-Recipient harmless against all claims of whatever nature arising out of the subcontractor's performance of work under this Agreement, to the extent allowed and required by law.

Specifically, the Contractor shall be responsible for being knowledgeable and performing any and all services under this contract in accordance with the following governing regulations along with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

- 2 C.F.R. Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- 44 C.F.R. Part 206
- The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended, 42 U.S.C. 5121 et seq., and Related Authorities
- FEMA Public Assistance Program and Policy Guide

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

Access to Records: The contractor agrees to provide the Town, the Florida Department of Emergency Management, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representative's access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions. (2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. (3) The contractor agrees to provide the FEMA Administrator or his authorized representatives' access to construction or other work sites pertaining to the work being completed under the contract. (4) In compliance with section 1225 of the Disaster Recovery Act of 2018, the Town and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

Affirmative Socioeconomic Steps If subcontracts are to be let, the prime contractor is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

Changes: To be allowable under a FEMA grant or cooperative agreement award, the cost of any contract change, modification, amendment, addendum, change order, or constructive change must be necessary, allowable, allocable, within the scope of the grant or cooperative agreement, reasonable for the scope of work, and otherwise allowable.

DHS Seal, Logo, and Flags: The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre- approval. The contractor shall include this provision in any subcontracts.

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

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

License and Delivery of Works Subject to Copyright and Data Rights: The Contractor grants to the Town, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the contract but not first produced in the performance of this contract, the Contractor will identify such data and grant to the Town or acquires on its behalf a license of the same scope as for data first produced in the performance of this contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this contract, the Contractor will deliver to the Town data first produced in the performance of this contract and data required by the contract but not first produced in the performance of this contract in formats acceptable by the Town.

No Obligation by Federal Government: The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

Prohibition on Covered Telecommunications Equipment or Services

(a) Definitions. As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy, #405-143-1 Prohibitions on Expending FEMA Award Funds for covered Telecommunications Equipment or Services As used in this clause –

(b) Prohibitions.

(1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug. 13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

(2) Unless an exception in paragraph (c) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:

- (i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
- (ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
- (iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or
- (iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(c) Exceptions.

(1) This clause does not prohibit contractors from providing — (i). A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or (ii). Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) By necessary implication and regulation, the prohibitions also do not apply to: (i). Covered telecommunications equipment or services that: i. Are not used as a substantial or essential component of any system; and ii. Are not used as critical technology of any system. (ii). Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(d) Reporting requirement.

(1) In the event the contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause: (i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended. (ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph(e), in all subcontracts and other contractual instruments.

Program Fraud and False or Fraudulent Statements or Related Acts: The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract.

Rights to Inventions Made Under a Contract or Agreement: Exempt from FEMA Public Assistance Funding

Suspension and Debarment: (1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935). (2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into. (3) This certification is a material representation of fact relied upon by the Town. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Town, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Procurement of Recovered Materials (§200.323) (Over \$10,000): In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired— Competitively within a timeframe providing for compliance with the contract performance schedule; Meeting contract performance requirements; or At a reasonable price. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines webpage:

<https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

Termination for Cause and Convenience (over \$10,000): See Standard Purchase Order and/or Contract Terms and Conditions

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

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

Contractors must sign and submit a certification to the Town with each bid or offer exceeding \$100,000. See Certifications and Assurances and the end of this document.

Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708) (over \$100,000): Where applicable, all contracts awarded by the solicitor in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).

(1) **Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) **Withholding for unpaid wages and liquidated damages.** The Town or FEMA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

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

For contracts that are only subject to Contract Work Hours and Safety Standards Act and are not subject to the other statutes in 29 C.F.R. § 5.1

"Further Compliance with the Contract Work Hours and Safety Standards Act.

(1) The contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

(2) Records to be maintained under this provision shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Homeland Security, the Federal Emergency Management Agency, and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

Clean Air Act (over \$150,000): 1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. 2. The contractor agrees to report each violation to the Town and understands and agrees that the Town will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office. 3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act (over \$150,000): 1. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. 2. The contractor agrees to report each violation to the Town and understands and agrees that the Town will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office. 3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Administrative, Contractual, or Legal Remedies (over \$250,000): Unless otherwise provided in this contract, all claims, counter-claims, disputes and other matters in question between the local government and the contractor, arising out of or relating to this contract, or the breach of it, will be decided by arbitration, if the parties mutually agree, or in a Florida court of competent jurisdiction.

CONSTRUCTION ACTIVITIES

Equal Employment Opportunity Clause (§60-1.4): Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60-1.4.

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

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Davis Bacon Act: Exempt under FEMA Public Assistance Funding

Copeland Anti-Kickback Act: Exempt under FEMA Public Assistance Funding

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

STATE OF FLORIDA PROVISIONS DEPARTMENT OF ENVIRONMENTAL PROTECTION BEACH MANAGEMENT FUNDING ASSISTANCE PROGRAM

Applicable Laws - The Town and all its agents shall comply with all federal, state and local regulations, including, but not limited to, nondiscrimination, wages, social security, workers' compensation, licenses, and registration requirements. The Town shall include this provision in all contracts issued.

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

In order to comply with Florida Auditor General report 2014-064 regarding conflicts of interest and to be consistent with Section 287.057(17)(a)(I), F.S., **all monitoring data and statistical analysis must be provided directly and concurrently from the monitoring contractor to the Florida Department of Environmental Protection/Town/permittee/engineering consultant.** The Town's engineering consultant must provide an adequate mitigation plan, consistent with Section 287.057(17)(a)(I), F.S., including a description of organizational, physical, and electronic barriers to be used by the Town's engineering consultant, that addresses conflicts of interest when contracting multi-disciplinary firms for Project engineering and post-construction environmental monitoring services, or when the Project engineering consultant firm subcontracts for post-construction environmental monitoring. Environmental monitoring includes hardbottom, seagrass, and mangrove resources.

Equal Employment Opportunity: No person on the ground of race, creed, color, religion, national origin, age, gender, or disability, shall be excluded from participation in; be denied the proceeds or benefits of, otherwise subjected to discrimination.

Inspector General Cooperation: The Parties agree to comply with Section 20.055(5), Florida Statutes, for the inspector general to have access to any records, data and other information deemed necessary to carry out his or her duties and incorporate into all subcontracts the obligation to comply with Section 20.055(5), Florida Statutes.

Lobbying: No funds received pursuant to this Agreement may be expended for lobbying the Legislature, the judicial branch or a state agency.

Local Preference: Pursuant to Section 255.0991, F.S. local vendor preference is not applicable

Physical Access and Inspection: Grantor personnel shall be given access to and may observe and inspect work being performed under this Agreement, with reasonable notice and during normal business hours, including by any of the following methods:

- i. The Town shall provide access to any location or facility on which Town is performing work, or storing or staging equipment, materials or documents.
- ii. The Town shall permit inspection of any facility, equipment, practices, or operations required in performance of any work pursuant to this Agreement; and,
- iii. The Town shall allow and facilitate sampling and monitoring of any substances, soils, materials or parameters at any location reasonable or necessary to assure compliance with any work or legal requirements pursuant to this Agreement.

Record Retention: A. The contractor shall maintain and retain sufficient records demonstrating its compliance with the terms of the Agreement for a period of at least five (5) years after final payment is

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

made and shall allow the Town, the State, or its authorized representatives access to such records for audit purposes upon request.

Statutory Notices Relating to Unauthorized Employment: The Town shall consider the employment by any Contractor of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. If the Contractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this Agreement

Statutory Notices Relating to Subcontracts: Pursuant to Sections 287.133 and 287.134, F.S., the following restrictions apply to persons placed on the convicted vendor list or the discriminatory vendor list:

- i. **Public Entity Crime.** A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a Grantee, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, F.S., for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.
- ii. **Discriminatory Vendors.** An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity.
- iii. **Notification.** The Grantee shall notify Department if it or any of its suppliers, subcontractors, or consultants have been placed on the convicted vendor list or the discriminatory vendor list during the life of the Agreement. The Florida Department of Management Services is responsible for maintaining the discriminatory vendor list and posts the list on its website. Questions regarding the discriminatory vendor list may be directed to the Florida Department of Management Services, Office of Supplier Diversity, at (850) 487-0915.

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

**Compliance with Federal Law, Regulations, And Executive Orders
and Acknowledgement of Federal Funding**

Certification

This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

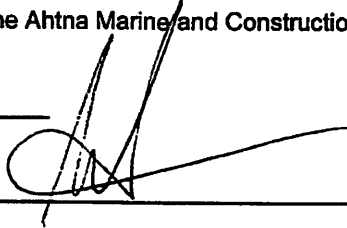
If the Contractor subcontracts any of the work required under this Agreement, a copy of the signed subcontract must be available to the Town for review and approval. The Contractor agrees to include in the subcontract that (1) the subcontractor is bound by the terms of this Agreement, (ii) the subcontractor is bound by all applicable state and federal laws and regulations, and (iii) the subcontractor shall hold the Town and the Grantor Agency harmless against all claims of whatever nature arising out of the subcontractor's performance of work under this Agreement, to the extent allowed and required by law. The Town may document in the quarterly report the Contractor's progress in performing its work under this agreement.

On behalf of my firm, I acknowledge, the grant requirements identified in this document.

Vendor/Contractor Name Ahtna Marine and Construction Company, LLC

Date 04/22/2024

Authorized Signature _____



FEDERAL CONTRACT PROVISIONS AND ASSURANCES

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY
and VOLUNTARY EXCLUSION**

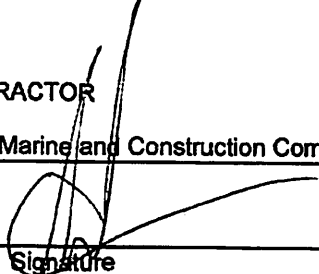
Contractor Covered Transactions

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

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

CONTRACTOR

Ahtna Marine and Construction Company, LLC

By: 

Signature

Wesley Gammons Vice Preident

Name and Title

444 W. Boynton Beach Blvd E.

Street Address

Boynton Beach, FL 33435

City, State, Zip

ZZXXGF7F5MH2

UEI Unique Entity Identifier (for SAM.gov verification)

04/22/2024

Date

Sub-Recipient Name: Town of Fort Myers Beach

DEM Contract Number: TBD

FEMA Project Number: TBD

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

TOWN OF FORT MYERS BEACH					
ANTICIPATED DISADVANTAGED, MINORITY, WOMEN OR VETERAN PARTICIPATION STATEMENT					
Status will be verified. Unverifiable statuses will require the PRIME to either provide a revised statement or provide source documentation that validates a status.					
A. PRIME VENDOR/CONTRACTOR INFORMATION					
PRIME NAME		PRIME FID NUMBER		CONTRACT DOLLAR AMOUNT	
IS THE PRIME A FLORIDA-CERTIFIED DISADVANTAGED, MINORITY OR WOMEN BUSINESS ENTERPRISE? (DBE/MBE/WBE) OR HAVE A SMALL DISADVANTAGED BUSINESS BA CERTIFICATION FROM THE SMALL BUSINESS ADMINISTRATION? A SERVICE DISABLED VETERAN?		VETERAN Y N DBE? Y N MBE? Y N WBE? Y N SDB BA? Y N		IS THE ACTIVITY OF THIS CONTRACT... CONSTRUCTION? Y N CONSULTATION? Y N OTHER? Y N	
IS THIS SUBMISSION A REVISION?		Y N		IF YES, REVISION NUMBER	
B. IF PRIME HAS SUBCONTRACTOR OR SUPPLIER WHO IS A DISADVANTAGED MINORITY, WOMEN-OWNED, SMALL BUSINESS CONCERN OR SERVICE DISABLED VETERAN, PRIME IS TO COMPLETE THIS NEXT SECTION					
DBE VETERAN	M/WBE	SUBCONTRACTOR OR SUPPLIER NAME	TYPE OF WORK OR SPECIALTY	ETHNICITY CODE (See Below)	PERCENT OF CONTRACT DOLLARS
TOTALS					
C. SECTION TO BE COMPLETED BY PRIME VENDOR/CONTRACTOR					
NAME OF SUBMITTER		DATE		TITLE OF SUBMITTER	
EMAIL ADDRESS OF PRIME (SUBMITTER)		TELEPHONE NUMBER		FAX NUMBER	
NOTE: This information is used to track and report anticipated DBE or MBE participation in federally-funded contracts. The anticipated DBE or MBE amount is voluntary and will not become part of the contractual terms. This form must be submitted at time of response to a solicitation. If and when awarded a County contract, the prime will be asked to update the information for the grant compliance files.					
ETHNICITY		CODE			
Black American		BA			
Hispanic American		HA			
Native American		NA			
Subcont. Asian American		SAA			
Asian-Pacific American		APA			
Non-Minority Women		NMW			
Other: not of any other group listed		O			
D. SECTION TO BE COMPLETED BY TOWN OF FORT MYERS BEACH					
DEPARTMENT NAME		FMS CONTRACT # (FBI/RFP or PO/REQ)		GRANT PROGRAM/CONTRACT	
ACCEPTED BY:				DATE	

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

LOBBYING CERTIFICATION
(To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

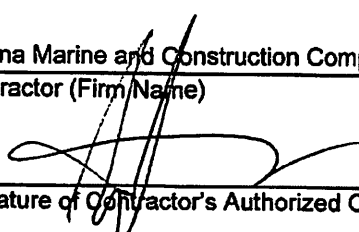
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this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

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.

Ahtna Marine and Construction Company, LLC
Contractor (Firm Name)


Signature of Contractor's Authorized Official

Wesley Gammons Vice President
Name and Title of Contractor's Authorized Official

04/22/2024
Date

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	

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	

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Standard Grant Agreement**

This Agreement is entered into between the Parties named below, pursuant to Section 215.971, Florida Statutes:

1. Project Title (Project): **Estero Island Shore Protection Project** Agreement Number: **23LE1**

2. Parties **State of Florida Department of Environmental Protection,
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000** (Department)

Grantee Name: **Town of Fort Myers Beach** Entity Type: **Local Government**
Grantee Address: **2525 Estero Boulevard, Ft. Myers Beach, FL 33931** FEID: **59-0632342** (Grantee)

3. Agreement Begin Date: **7/1/2022** Date of Expiration: **12/31/2025**

4. Project Number: Project Location(s): **Lee County**
(If different from Agreement Number)

Project Description: **The project consists of design, construction, and monitoring.**

5. Total Amount of Funding:	Funding Source?	Award #s or Line Item Appropriations:	Amount per Source(s):
\$ 14,013,346.00	☒ State ☐ Federal	FY 22/23 GAA Line # 1778	\$ 14,013,346.00
	☐ State ☐ Federal		
	☐ Grantee Match		
Total Amount of Funding + Grantee Match, if any:			\$ 14,013,346.00

6. Department's Grant Manager Name: Anthony Sogluizzo or successor Address: Beach Management Funding Assistance 2600 Blair Stone Road, MS #3601 Tallahassee, Florida 32399 Phone: 850-245-8626 Email: Anthony.Sogluizzo@FloridaDEP.gov	Grantee's Grant Manager Name: Chadd Chustz or successor Address: Town of Fort Myers Beach 2525 Estero Boulevard Ft. Myers Beach, FL 33931 Phone: 239-765-0202 ext. 1312 Email: Chadd@fmbgov.com
---	--

7. The Parties agree to comply with the terms and conditions of the following attachments and exhibits which are hereby incorporated by reference:

☒ Attachment 1: Standard Terms and Conditions Applicable to All Grants Agreements
☒ Attachment 2: Special Terms and Conditions
☒ Attachment 3: Grant Work Plan
☒ Attachment 4: Public Records Requirements
☒ Attachment 5: Special Audit Requirements
☐ Attachment 6: Program-Specific Requirements
☐ Attachment 7: Grant Award Terms (Federal) *Copy available at https://facts.fldfs.com , in accordance with §215.985, F.S.
☐ Attachment 8: Federal Regulations and Terms (Federal)
☐ Additional Attachments (if necessary):
☒ Exhibit A: Progress Report Form
☐ Exhibit B: Property Reporting Form
☒ Exhibit C: Payment Request Summary Form
☐ Exhibit D: Quality Assurance Requirements
☐ Exhibit E: Advance Payment Terms and Interest Earned Memo
☐ Exhibit F: Common Carrier or Contracted Carrier Attestation Form PUR1808

☐ Additional Exhibits (if necessary):

8. The following information applies to Federal Grants only and is identified in accordance with 2 CFR 200.331(a)(1):

Federal Award Identification Number(s) (FAIN):	
Federal Award Date to Department:	
Total Federal Funds Obligated by this Agreement:	
Federal Awarding Agency:	
Award R&D?	☐ Yes ☐ N/A

IN WITNESS WHEREOF, this Agreement shall be effective on the date indicated by the Agreement Begin Date above or the last date signed below, whichever is later.

Town of Fort Myers Beach

GRANTEE

Grantee Name

By **Chadd Chustz**

(Authorized Signature)

Digitally signed by Chadd Chustz
Date: 2023.03.14 09:17:11 -04'00'

14 March 2023

Date Signed

Chadd Chustz, Environmental Project Manager

Print Name and Title of Person Signing

State of Florida Department of Environmental Protection

DEPARTMENT

By

Secretary or Designee

Date Signed

Print Name and Title of Person Signing

☒ Additional signatures attached on separate page.

ORCP Additional Signatures

DEP Grant Manager

DEP QC Reviewer

Local Sponsor may add additional signatures if needed below.

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

ATTACHMENT 1

1. Entire Agreement.

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

2. Grant Administration.

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

3. Agreement Duration.

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

4. Deliverables.

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

5. Performance Measures.

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

6. Acceptance of Deliverables.

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

7. Financial Consequences for Nonperformance.

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

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

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

8. Payment.

- a. Payment Process. Subject to the terms and conditions established by the Agreement, the pricing per deliverable established by the Grant Work Plan, and the billing procedures established by Department, Department agrees to pay Grantee for services rendered in accordance with Section 215.422, Florida Statutes (F.S.).
- b. Taxes. The Department is exempted from payment of State sales, use taxes and Federal excise taxes. The Grantee, however, shall not be exempted from paying any taxes that it is subject to, including State sales and use taxes, or for payment by Grantee to suppliers for taxes on materials used to fulfill its contractual obligations with Department. The Grantee shall not use Department's exemption number in securing such materials. The Grantee shall be responsible and liable for the payment of all its FICA/Social Security and other taxes resulting from this Agreement.
- c. Maximum Amount of Agreement. The maximum amount of compensation under this Agreement, without an amendment, is described in the Standard Grant Agreement. Any additional funds necessary for the completion of this Project are the responsibility of Grantee.
- d. Reimbursement for Costs. The Grantee shall be paid on a cost reimbursement basis for all eligible Project costs upon the completion, submittal, and approval of each deliverable identified in the Grant Work Plan. Reimbursement shall be requested on Exhibit C, Payment Request Summary Form. To be eligible for reimbursement, costs must be in compliance with laws, rules, and regulations applicable to expenditures of State funds, including, but not limited to, the Reference Guide for State Expenditures, which can be accessed at the following web address:
<https://www.myfloridacfo.com/Division/AA/Manuals/documents/ReferenceGuideforStateExpenditures.pdf>.
- e. Invoice Detail. All charges for services rendered or for reimbursement of expenses authorized by Department pursuant to the Grant Work Plan shall be submitted to Department in sufficient detail for a proper pre-audit and post-audit to be performed. The Grantee shall only invoice Department for deliverables that are completed in accordance with the Grant Work Plan.
- f. Interim Payments. Interim payments may be made by Department, at its discretion, if the completion of deliverables to date have first been accepted in writing by Department's Grant Manager.
- g. Final Payment Request. A final payment request should be submitted to Department no later than sixty (60) days following the expiration date of the Agreement to ensure the availability of funds for payment. However, all work performed pursuant to the Grant Work Plan must be performed on or before the expiration date of the Agreement.
- h. Annual Appropriation Contingency. The State's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. This Agreement is not a commitment of future appropriations. Authorization for continuation and completion of work and any associated payments may be rescinded, with proper notice, at the discretion of Department if the Legislature reduces or eliminates appropriations.
- i. Interest Rates. All interest rates charged under the Agreement shall be calculated on the prevailing rate used by the State Board of Administration. To obtain the applicable interest rate, please refer to:
www.myfloridacfo.com/Division/AA/Vendors/default.htm.
- j. Refund of Payments to the Department. Any balance of unobligated funds that have been advanced or paid must be refunded to Department. Any funds paid in excess of the amount to which Grantee or subgrantee is entitled under the terms of the Agreement must be refunded to Department. If this Agreement is funded with federal funds and the Department is required to refund the federal government, the Grantee shall refund the Department its share of those funds.

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

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

- a. Salary/Wages. Grantee shall list personnel involved, position classification, direct salary rates, and hours spent on the Project in accordance with Attachment 3, Grant Work Plan in their documentation for reimbursement or match requirements.
- b. Overhead/Indirect/General and Administrative Costs. If Grantee is being reimbursed for or claiming match for multipliers, all multipliers used (i.e., fringe benefits, overhead, indirect, and/or general and administrative rates) shall be supported by audit. If Department determines that multipliers charged by Grantee exceeded the rates supported by audit, Grantee shall be required to reimburse such funds to Department within thirty (30) days of written notification. Interest shall be charged on the excessive rate.
- c. Contractual Costs (Subcontractors). Match or reimbursement requests for payments to subcontractors must be substantiated by copies of invoices with backup documentation identical to that required from Grantee. Subcontracts which involve payments for direct salaries shall clearly identify the personnel involved, salary rate per hour, and hours spent on the Project. All eligible multipliers used (i.e., fringe benefits, overhead, indirect, and/or general and administrative rates) shall be supported by audit. If Department determines that multipliers charged by any subcontractor exceeded the rates supported by audit, Grantee shall be required to reimburse such funds to Department within thirty (30) days of written notification. Interest shall be charged on the excessive rate. Nonconsumable and/or nonexpendable personal property or equipment costing \$5,000 or more purchased for the Project under a subcontract is subject to the requirements set forth in Chapters 273 and/or 274, F.S., and Chapter 69I-72, Florida Administrative Code (F.A.C.) and/or Chapter 69I-73, F.A.C., as applicable. The Grantee shall be responsible for maintaining appropriate property records for any subcontracts that include the purchase of equipment as part of the delivery of services. The Grantee shall comply with this requirement and ensure its subcontracts issued under this Agreement, if any, impose this requirement, in writing, on its subcontractors.
 - i. For fixed-price (vendor) subcontracts, the following provisions shall apply: The Grantee may award, on a competitive basis, fixed-price subcontracts to consultants/contractors in performing the work described in Attachment 3, Grant Work Plan. Invoices submitted to Department for fixed-price subcontracted activities shall be supported with a copy of the subcontractor's invoice and a copy of the tabulation form for the competitive procurement process (e.g., Invitation to Bid, Request for Proposals, or other similar competitive procurement document) resulting in the fixed-price subcontract. The Grantee may request approval from Department to award a fixed-price subcontract resulting from procurement methods other than those identified above. In this instance, Grantee shall request the advance written approval from Department's Grant Manager of the fixed price negotiated by Grantee. The letter of request shall be supported by a detailed budget and Scope of Services to be performed by the subcontractor. Upon receipt of Department Grant Manager's approval of the fixed-price amount, Grantee may proceed in finalizing the fixed-price subcontract.
 - ii. If the procurement is subject to the Consultant's Competitive Negotiation Act under section 287.055, F.S. or the Brooks Act, Grantee must provide documentation clearly evidencing it has complied with the statutory or federal requirements.
- d. Travel. All requests for match or reimbursement of travel expenses shall be in accordance with Section 112.061, F.S.
- e. Direct Purchase Equipment. For the purposes of this Agreement, Equipment is defined as capital outlay costing \$5,000 or more. Match or reimbursement for Grantee's direct purchase of equipment is subject to specific approval of Department, and does not include any equipment purchased under the delivery of services to be completed by a subcontractor. Include copies of invoices or receipts to document purchases, and a properly completed Exhibit B, Property Reporting Form.
- f. Rental/Lease of Equipment. Match or reimbursement requests for rental/lease of equipment must include copies of invoices or receipts to document charges.
- g. Miscellaneous/Other Expenses. If miscellaneous or other expenses, such as materials, supplies, non-excluded phone expenses, reproduction, or mailing, are reimbursable or available for match or reimbursement under the terms of this Agreement, the documentation supporting these expenses must be itemized and include copies of receipts or invoices. Additionally, independent of Grantee's contract obligations to its subcontractor, Department shall not reimburse any of the following types of charges: cell phone usage; attorney's fees or court costs; civil or administrative penalties; or handling fees, such as set percent overages associated with purchasing supplies or equipment.
- h. Land Acquisition. Reimbursement for the costs associated with acquiring interest and/or rights to real property (including access rights through ingress/egress easements, leases, license agreements, or other site access agreements; and/or obtaining record title ownership of real property through purchase) must be supported by the following, as applicable: Copies of Property Appraisals, Environmental Site Assessments, Surveys and Legal

Attachment 1

4 of 12

Descriptions, Boundary Maps, Acreage Certification, Title Search Reports, Title Insurance, Closing Statements/Documents, Deeds, Leases, Easements, License Agreements, or other legal instrument documenting acquired property interest and/or rights. If land acquisition costs are used to meet match requirements, Grantee agrees that those funds shall not be used as match for any other Agreement supported by State or Federal funds.

10. Status Reports.

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

11. Retainage.

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

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

12. Insurance.

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

13. Termination.

- a. Termination for Convenience. When it is in the State's best interest, Department may, at its sole discretion, terminate the Agreement in whole or in part by giving 30 days' written notice to Grantee. The Department shall notify Grantee of the termination for convenience with instructions as to the effective date of termination or the specific stage of work at which the Agreement is to be terminated. The Grantee must submit all invoices for work to be paid under this Agreement within thirty (30) days of the effective date of termination. The Department shall not pay any invoices received after thirty (30) days of the effective date of termination.

Attachment 1

5 of 12

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

14. Notice of Default.

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

15. Events of Default.

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

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

Attachment 1

6 of 12

- iv. An action by Grantee under any state insolvency or similar law for the purpose of its bankruptcy, reorganization, or liquidation.

16. Suspension of Work.

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

17. Force Majeure.

The Grantee shall not be responsible for delay resulting from its failure to perform if neither the fault nor the negligence of Grantee or its employees or agents contributed to the delay and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond Grantee's control, or for any of the foregoing that affect subcontractors or suppliers if no alternate source of supply is available to Grantee. In case of any delay Grantee believes is excusable, Grantee shall notify Department in writing of the delay or potential delay and describe the cause of the delay either (1) within ten days after the cause that creates or will create the delay first arose, if Grantee could reasonably foresee that a delay could occur as a result; or (2) if delay is not reasonably foreseeable, within five days after the date Grantee first had reason to believe that a delay could result. **THE FOREGOING SHALL CONSTITUTE THE GRANTEE'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY.** Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. No claim for damages, other than for an extension of time, shall be asserted against Department. The Grantee shall not be entitled to an increase in the Agreement price or payment of any kind from Department for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist Grantee shall perform at no increased cost, unless Department determines, in its sole discretion, that the delay will significantly impair the value of the Agreement to Department, in which case Department may: (1) accept allocated performance or deliveries from Grantee, provided that Grantee grants preferential treatment to Department with respect to products subjected to allocation; (2) contract with other sources (without recourse to and by Grantee for the related costs and expenses) to replace all or part of the products or services that are the subject of the delay, which purchases may be deducted from the Agreement quantity; or (3) terminate Agreement in whole or in part.

18. Indemnification.

- a. The Grantee shall be fully liable for the actions of its agents, employees, partners, or subcontractors and shall fully indemnify, defend, and hold harmless Department and its officers, agents, and employees, from suits, actions, damages, and costs of every name and description arising from or relating to:
 - i. personal injury and damage to real or personal tangible property alleged to be caused in whole or in part by Grantee, its agents, employees, partners, or subcontractors; provided, however, that Grantee shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of Department;
 - ii. the Grantee's breach of this Agreement or the negligent acts or omissions of Grantee.
- b. The Grantee's obligations under the preceding paragraph with respect to any legal action are contingent upon Department giving Grantee: (1) written notice of any action or threatened action; (2) the opportunity to take over and settle or defend any such action at Grantee's sole expense; and (3) assistance in defending the action at Grantee's sole expense. The Grantee shall not be liable for any cost, expense, or compromise incurred or made by Department in any legal action without Grantee's prior written consent, which shall not be unreasonably withheld.
- c. Notwithstanding sections a. and b. above, the following is the sole indemnification provision that applies to Grantees that are governmental entities: Each party hereto agrees that it shall be solely responsible for the negligent or wrongful acts of its employees and agents. However, nothing contained herein shall constitute a waiver by either party of its sovereign immunity or the provisions of Section 768.28, F.S. Further, nothing herein shall be construed as consent by a state agency or subdivision of the State to be sued by third parties in any matter arising out of any contract or this Agreement.

- d. No provision in this Agreement shall require Department to hold harmless or indemnify Grantee, insure or assume liability for Grantee's negligence, waive Department's sovereign immunity under the laws of Florida, or otherwise impose liability on Department for which it would not otherwise be responsible. Any provision, implication or suggestion to the contrary is null and void.

19. Limitation of Liability.

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

20. Remedies.

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

21. Waiver.

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

22. Statutory Notices Relating to Unauthorized Employment and Subcontracts.

- a. The Department shall consider the employment by any Grantee of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. If Grantee/subcontractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this Agreement. The Grantee shall be responsible for including this provision in all subcontracts with private organizations issued as a result of this Agreement.
- b. Pursuant to Sections 287.133, 287.134, and 287.137 F.S., the following restrictions apply to persons placed on the convicted vendor list, discriminatory vendor list, or the antitrust violator vendor list:
- i. Public Entity Crime. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a Grantee, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, F.S., for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.
 - ii. Discriminatory Vendors. An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity.
 - iii. Antitrust Violator Vendors. A person or an affiliate who has been placed on the antitrust violator vendor list following a conviction or being held civilly liable for an antitrust violation may not submit a bid, proposal, or reply on any contract to provide any good or services to a public entity; may not submit a bid, proposal, or reply on any contract with a public entity for the construction or repair of a public building or public work; may not submit a bid, proposal, or reply on leases of real property to a public entity; may not be awarded or perform work as a Grantee, supplier, subcontractor, or consultant under a contract with a public entity; and may not transact new business with a public entity.
 - iv. Notification. The Grantee shall notify Department if it or any of its suppliers, subcontractors, or consultants have been placed on the convicted vendor list, the discriminatory vendor list, or antitrust violator vendor list during the life of the Agreement. The Florida Department of Management Services is responsible for maintaining the discriminatory vendor list and the antitrust violator vendor list and posts the list on its website. Questions regarding the discriminatory vendor list or antitrust violator vendor list may be directed to the Florida Department of Management Services, Office of Supplier Diversity, at (850) 487-0915.

Attachment 1

8 of 12

23. Compliance with Federal, State and Local Laws.

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

24. Build America, Buy America Act (BABA).

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

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

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

25. Scrutinized Companies.

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

26. Lobbying and Integrity.

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

27. Record Keeping.

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

28. Audits.

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

Attachment 1

10 of 12

money demanded by Department. Interest on any refund shall be calculated based on the prevailing rate used by the State Board of Administration. Interest shall be calculated from the date(s) the original payment(s) are received from Department by Grantee to the date repayment is made by Grantee to Department.

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

29. Conflict of Interest.

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

30. Independent Contractor.

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

31. Subcontracting.

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

32. Guarantee of Parent Company.

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

33. Survival.

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

34. Third Parties.

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

35. Severability.

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

36. Grantee's Employees, Subcontractors and Agents.

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

37. Assignment.

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

38. Compensation Report.

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

39. Execution in Counterparts and Authority to Sign.

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

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Special Terms and Conditions
AGREEMENT NO. 23LE1**

ATTACHMENT 2

These Special Terms and Conditions shall be read together with general terms outlined in the Standard Terms and Conditions, Attachment 1. Where in conflict, these more specific terms shall apply.

1. Scope of Work.

The Project funded under this Agreement is Estero Island Shore Protection Project. The Project is defined in more detail in Attachment 3, Grant Work Plan.

2. Duration.

- a. Reimbursement Period. The reimbursement period for this Agreement is the same as the term of the Agreement.
- b. Extensions. There are extensions available for this Project.
- c. Service Periods. Additional service periods may be added in accordance with 2.a above and are contingent upon proper and satisfactory technical and administrative performance by the Grantee and the availability of funding.

3. Payment Provisions.

- a. Compensation. This is a cost reimbursement Agreement. The Grantee shall be compensated under this Agreement as described in Attachment 3.
- b. Invoicing. Invoicing will occur as indicated in Attachment 3.
- c. Advance Pay. Advance Pay is not authorized under this Agreement.

4. Cost Eligible for Reimbursement or Matching Requirements.

Reimbursement for costs or availability for costs to meet matching requirements shall be limited to the following budget categories, as defined in the Reference Guide for State Expenditures, as indicated:

<u>Reimbursement</u>	<u>Match</u>	<u>Category</u>
☐	☐	Salaries/Wages
		Overhead/Indirect/General and Administrative Costs:
☐	☐	a. Fringe Benefits, N/A.
☐	☐	b. Indirect Costs, N/A.
☒	☐	Contractual (Subcontractors)
☐	☐	Travel, in accordance with Section 112, F.S.
☐	☐	Equipment
☐	☐	Rental/Lease of Equipment
☐	☐	Miscellaneous/Other Expenses
☐	☐	Land Acquisition

5. Equipment Purchase.

No Equipment purchases shall be funded under this Agreement.

6. Land Acquisition.

There will be no Land Acquisitions funded under this Agreement.

7. Match Requirements

See Attachment 3, Grant Work Plan.

8. Insurance Requirements

Required Coverage. At all times during the Agreement the Grantee, at its sole expense, shall maintain insurance coverage of such types and with such terms and limits described below. The limits of coverage under each policy maintained by the Grantee shall not be interpreted as limiting the Grantee's liability and obligations under the Agreement. All insurance policies shall be through insurers licensed and authorized to issue policies in Florida, or alternatively, Grantee may provide coverage through a self-insurance program established and operating under the laws of Florida. Additional insurance requirements for this Agreement may be required elsewhere in this Agreement, however the minimum insurance requirements applicable to this Agreement are:

a. Commercial General Liability Insurance.

The Grantee shall provide adequate commercial general liability insurance coverage and hold such liability insurance at all times during the Agreement. The Department, its employees, and officers shall be named as an additional insured on any general liability policies. The minimum limits shall be \$250,000 for each occurrence and \$500,000 policy aggregate.

b. Commercial Automobile Insurance.

If the Grantee's duties include the use of a commercial vehicle, the Grantee shall maintain automobile liability, bodily injury, and property damage coverage. Insuring clauses for both bodily injury and property damage shall provide coverage on an occurrence basis. The Department, its employees, and officers shall be named as an additional insured on any automobile insurance policy. The minimum limits shall be as follows:

\$200,000/300,000	Automobile Liability for Company-Owned Vehicles, if applicable
\$200,000/300,000	Hired and Non-owned Automobile Liability Coverage

c. Workers' Compensation and Employer's Liability Coverage.

The Grantee shall provide workers' compensation, in accordance with Chapter 440, F.S. and employer liability coverage with minimum limits of \$100,000 per accident, \$100,000 per person, and \$500,000 policy aggregate. Such policies shall cover all employees engaged in any work under the Grant.

d. Other Insurance. None.

9. Quality Assurance Requirements.

There are no special Quality Assurance requirements under this Agreement.

10. Retainage.

Retainage is permitted under this Agreement. Retainage may be up to a maximum of 10% of the total amount of the Agreement.

11. Subcontracting.

The Grantee may subcontract work under this Agreement without the prior written consent of the Department's Grant Manager except for certain fixed-price subcontracts pursuant to this Agreement, which require prior approval. The Grantee shall submit a copy of the executed subcontract to the Department prior to submitting any invoices for subcontracted work. Regardless of any subcontract, the Grantee is ultimately responsible for all work to be performed under this Agreement.

12. State-owned Land.

The Board of Trustees of the Internal Improvement Trust Fund must be listed as additional insured to general liability insurance required by the Agreement and, if the Grantee is a non-governmental entity, indemnified by the Grantee.

13. Office of Policy and Budget Reporting.

There are no special Office of Policy and Budget reporting requirements for this Agreement.

14. Common Carrier.

- a. Applicable to contracts with a common carrier – firm/person/corporation that as a regular business transports people or commodities from place to place. If applicable, Contractor must also fill out and return PUR 1808 before contract execution. If Contractor is a common carrier pursuant to section 908.111(1)(a), Florida Statutes, the Department will terminate this contract immediately if Contractor is found to be in violation of the law or the attestation in PUR 1808.

- b. Applicable to solicitations for a common carrier – Before contract execution, the winning Contractor(s) must fill out and return PUR 1808, and attest that it is not willfully providing any service in furtherance of transporting a person into this state knowing that the person unlawfully present in the United States according to the terms of the federal Immigration and Nationality Act, 8 U.S.C. ss. 1101 et seq. The Department will terminate a contract immediately if Contractor is found to be in violation of the law or the attestation in PUR 1808.

15. Additional Terms.

None

ATTACHMENT 3 GRANT WORK PLAN

PROJECT TITLE: Estero Island Shore Protection Project

PROJECT LOCATION: The Project is located between Department of Environmental Protection (Department or DEP) reference monuments R175-400' to R198 and R203 to R207 along the Gulf of Mexico in the Town of Ft. Myers Beach in Lee County, Florida.

PROJECT BACKGROUND: The Project's northern 1.3 miles of project shoreline was restored in 2011 and included the construction of the Matanzas Pass terminal groin on the north end of the beach fill. In 2016 and 2020, the USACE placed dredged sand from Matanzas Pass between R182 and R187. In 2017, the West Coast Inland Navigation District and Lee County nourished between R203 and R206 using dredged sand from Big Carlos Pass. In 2017 and 2020, Lee County used upland sand to repair storm damages at R180 and R181 from Hurricane Irma and Tropical Storm Eta, respectively. In 2020, the Town of Fort Myers Beach took over local sponsorship from Lee County. Following additional storm damages along Estero Island in 2020 and 2021, the Town plans to extend the project nourishment length.

PROJECT DESCRIPTION: The Project consists of design, construction, and monitoring

PROJECT ELIGIBILITY: The Department has determined that 86 percent of the design task, 83.4 percent of the construction task within the northern project boundaries (R175-400' – R198), 100 percent of the construction task within the southern project boundaries (R203 – R207, which includes the critical wildlife area), and 86 percent of the monitoring task of the non-federal Project cost is eligible for state cost sharing. Therefore, the Department's financial obligation shall not exceed the sum of \$14,013,346 for this Project or up to 43 percent of the design task, 41.7 percent of the construction task between R175-400' – R198, 100 percent of the construction task between R203 – R207, and 43 percent of the monitoring task of the non-federal Project cost, if applicable, for the specific eligible Project items listed, whichever is less. To the extent applicable, it is understood and agreed that for portions of the Project which are located within lands owned and managed by the Department's Division of Recreation and Parks, no cost share for construction activities shall be required of the Local Sponsor, and the Project costs for such portions shall be paid by the Department. Any indicated federal cost sharing percentage is an estimate and shall not affect the cost sharing percentages of the non-federal share. The parties agree that eligibility for cost sharing purposes will be maintained pursuant to 62B-36, Florida Administrative Code (F.A.C.).

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

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

Pursuant to 62B-36.005(1)(d) or for Inlets 62B-36.005(2)(d), F.A.C., the Local Sponsor has resolved to support and serve as local sponsor, has demonstrated a financial commitment, and has demonstrated the ability to perform the tasks associated with the beach erosion control project as described herein.

The Project shall be conducted in accordance with the terms and conditions set forth under this Agreement, all applicable Department permits and the eligible Project task items established below. All data collection and processing, and the resulting product deliverables, shall comply with the standards and technical specifications contained in the Department's Monitoring Standards for Beach Erosion Control Projects

(2014) and all associated state and federal permits, unless otherwise specified in the approved scope of work for an eligible Project item. The monitoring standards may be found at:

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

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

Acronyms:

DEP – Florida Department of Environmental Protection
F.A.C. – Florida Administrative Code
F.S. – Florida Statutes
FEMA – Federal Emergency Management Agency
FWC – Florida Fish and Wildlife Conservation Commission
IMP – Inlet Management Plan
USACE – United States Army Corps of Engineers

TASKS and DELIVERABLES:

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

Task 1: Design and Permitting

Task Description: The Local Sponsor will acquire professional services for the engineering and design of the Project such as coastal engineering analyses, preparation of plans and specifications, physical and environmental surveys, cultural resource surveys, design-level geotechnical services, sediment studies, inlet studies, environmental analyses, orthophotography, plan formulations and for obtaining environmental permits and other Project-related authorizations. The Local Sponsor will submit work products to the appropriate State or Federal regulatory agencies as requested by the DEP Project Manager in order to be eligible for reimbursement under this task.

Deliverable: Certification of Completion including documentation of submittal affirming that the final design document was completed and submitted to the Department. For interim payment requests, a Task Summary Report signed by the Local Sponsor must be submitted detailing work progress during the payment request period. The Task Summary Report must include the dates and descriptions of all activities, surveys and reports completed or in progress during the time period of the interim payment request.

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

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

Task 2.1: Construction

Task Description: This task includes work performed and costs incurred associated with the placement of fill material and/or the construction of erosion control structures within the Project area. Project costs

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

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

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

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

Task 2.2: Construction

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

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

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

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

Task 3: Monitoring

State and federal monitoring required by permit is eligible for reimbursement pursuant to program statute and rule. In order to comply with Florida Auditor General report 2014-064 regarding conflicts of interest and to be consistent with Section 287.057(17)(a)(1), F.S., all monitoring data and statistical analysis must be provided directly and concurrently from the monitoring contractor to the Department/Local Sponsor permittee/engineering consultant. The Local Sponsor's engineering consultant must provide an adequate mitigation plan, consistent with Section 287.057(17)(a)(1), F.S., including a description of organizational, physical, and electronic barriers to be used by the Local Sponsor's engineering consultant, that addresses conflicts of interest when contracting multi-disciplinary firms for Project engineering and post-construction environmental monitoring services, or when the Project engineering consultant firm subcontracts for post-construction environmental monitoring. Environmental monitoring includes hardbottom, seagrass, and mangrove resources. Department approval of the consultant's mitigation plan will be required prior to execution of this Agreement. If at any time the Local Sponsor and/or its engineering consultant fails to comply with this provision, the Local Sponsor agrees to reimburse the Department all funds provided by the Department associated with environmental monitoring for the Project listed.

Task Description: This task includes activities associated with permit-required monitoring conducted in accordance with the conditions specified by state or federal regulatory agencies. All monitoring tasks must be located within or adjacent to the Project area and follow the Department's Regional Coastal Monitoring Program and FWC's marine turtle and shorebird monitoring programs. Guidance for monitoring of nearshore resources is available in the Department's Standard Operation Procedures For Nearshore Hardbottom Monitoring Of Beach Nourishment Projects. The Local Sponsor must submit work products directly to the appropriate state or federal regulatory agencies in accordance with permit conditions to be eligible for reimbursement under this task, unless otherwise directed.

Deliverable: For each interim or final payment, the Local Sponsor will provide a Task Summary Report signed by Local Sponsor containing; 1) An itemized listing of all monitoring activities completed or in progress during the payment request period and, 2) Documentation of submittal to state and federal regulatory agencies of completed monitoring data, surveys and final reports for permit-required work under this task description.

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

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

Estimated Eligible Project Cost

Task #	Eligible Project Tasks	State Cost Share (%)	Federal Estimated Project Costs	DEP	Local	Total
1	Design and Permitting	43.00%	\$0.00	\$35,260.00	\$46,740.00	\$82,000.00
2.1	Construction	41.70%	\$0.00	\$6,162,426.00	\$8,615,574.00	\$14,778,000.00
2.2	Construction	100.00%	\$0.00	\$7,746,000.00	\$0.00	\$7,746,000.00
3	Monitoring	43.00%	\$0.00	\$69,660.00	\$92,340.00	\$162,000.00
TOTAL PROJECT COSTS			\$0.00	\$14,013,346.00	\$8,754,654.00	\$22,768,000.00

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

Task No.	Task Title	Budget Category	Budget Amount	Task Start Date	Deliverable Due Date
1	Design and Permitting	Contractual Services	\$35,260.00	1/1/2022	09/30/2025
2.1	Construction	Contractual Services	\$6,162,426.00	1/1/2022	09/30/2025
2.2	Construction	Contractual Services	\$7,746,000.00	1/1/2022	09/30/2025
3	Monitoring	Contractual Services	\$69,660.00	1/1/2022	09/30/2025
Total:			\$14,013,346.00		

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Public Records Requirements**

Attachment 4

1. Public Records.

- a. If the Agreement exceeds \$35,000.00, and if Grantee is acting on behalf of Department in its performance of services under the Agreement, Grantee must allow public access to all documents, papers, letters, or other material, regardless of the physical form, characteristics, or means of transmission, made or received by Grantee in conjunction with the Agreement (Public Records), unless the Public Records are exempt from section 24(a) of Article I of the Florida Constitution or section 119.07(1), F.S.
- b. The Department may unilaterally terminate the Agreement if Grantee refuses to allow public access to Public Records as required by law.

2. Additional Public Records Duties of Section 119.0701, F.S., If Applicable.

For the purposes of this paragraph, the term “contract” means the “Agreement.” If Grantee is a “contractor” as defined in section 119.0701(1)(a), F.S., the following provisions apply and the contractor shall:

- a. Keep and maintain Public Records required by Department to perform the service.
- b. Upon request, provide Department with a copy of requested Public Records or allow the Public Records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law.
- c. A contractor who fails to provide the Public Records to Department within a reasonable time may be subject to penalties under section 119.10, F.S.
- d. 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 Public Records to Department.
- e. Upon completion of the contract, transfer, at no cost, to Department all Public Records in possession of the contractor or keep and maintain Public Records required by Department to perform the service. If the contractor transfers all Public Records to Department 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 Public Records stored electronically must be provided to Department, upon request from Department’s custodian of Public Records, in a format specified by Department as compatible with the information technology systems of Department. These formatting requirements are satisfied by using the data formats as authorized in the contract or Microsoft Word, Outlook, Adobe, or Excel, and any software formats the contractor is authorized to access.

f. IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, F.S., TO THE CONTRACTOR’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE CONTRACT, CONTACT THE DEPARTMENT’S CUSTODIAN OF PUBLIC RECORDS AT:

Telephone: (850) 245-2118
Email: public.services@floridadep.gov
Mailing Address: Department of Environmental Protection
ATTN: Office of Ombudsman and Public Services
Public Records Request
3900 Commonwealth Boulevard, MS 49
Tallahassee, Florida 32399

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Special Audit Requirements
(State and Federal Financial Assistance)**

Attachment 5

The administration of resources awarded by the Department of Environmental Protection (*which may be referred to as the "Department", "DEP", "FDEP" or "Grantor", or other name in the agreement*) to the recipient (*which may be referred to as the "Recipient", "Grantee" or other name in the agreement*) may be subject to audits and/or monitoring by the Department of Environmental Protection, as described in this attachment.

MONITORING

In addition to reviews of audits conducted in accordance with 2 CFR Part 200, Subpart F-Audit Requirements, and Section 215.97, F.S., as revised (see "AUDITS" below), monitoring procedures may include, but not be limited to, on-site visits by DEP Department staff, limited scope audits as defined by 2 CFR 200.425, or other procedures. By entering into this Agreement, the recipient agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Department of Environmental Protection. In the event the Department of Environmental Protection determines that a limited scope audit of the recipient is appropriate, the recipient agrees to comply with any additional instructions provided by the Department to the recipient regarding such audit. The recipient further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Chief Financial Officer (CFO) or Auditor General.

AUDITS

PART I: FEDERALLY FUNDED

This part is applicable if the recipient is a State or local government or a non-profit organization as defined in 2 CFR §200.330

1. A recipient that expends \$750,000 or more in Federal awards in its fiscal year, must have a single or program-specific audit conducted in accordance with the provisions of 2 CFR Part 200, Subpart F. EXHIBIT 1 to this Attachment indicates Federal funds awarded through the Department of Environmental Protection by this Agreement. In determining the federal awards expended in its fiscal year, the recipient shall consider all sources of federal awards, including federal resources received from the Department of Environmental Protection. The determination of amounts of federal awards expended should be in accordance with the guidelines established in 2 CFR 200.502-503. An audit of the recipient conducted by the Auditor General in accordance with the provisions of 2 CFR Part 200.514 will meet the requirements of this part.
2. For the audit requirements addressed in Part I, paragraph 1, the recipient shall fulfill the requirements relative to auditee responsibilities as provided in 2 CFR 200.508-512.
3. A recipient that expends less than \$750,000 in federal awards in its fiscal year is not required to have an audit conducted in accordance with the provisions of 2 CFR Part 200, Subpart F-Audit Requirements. If the recipient expends less than \$750,000 in federal awards in its fiscal year and elects to have an audit conducted in accordance with the provisions of 2 CFR 200, Subpart F-Audit Requirements, the cost of the audit must be paid from non-federal resources (i.e., the cost of such an audit must be paid from recipient resources obtained from other federal entities).
4. The recipient may access information regarding the Catalog of Federal Domestic Assistance (CFDA) via the internet at <https://sam.gov/content/assistance-listings>.

PART II: STATE FUNDED

This part is applicable if the recipient is a nonstate entity as defined by Section 215.97(2), Florida Statutes.

1. In the event that the recipient expends a total amount of state financial assistance equal to or in excess of \$750,000 in any fiscal year of such recipient (for fiscal years ending June 30, 2017, and thereafter), the recipient must have a State single or project-specific audit for such fiscal year in accordance with Section 215.97, F.S.; Rule Chapter 69I-5, F.A.C., State Financial Assistance; and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. EXHIBIT 1 to this form lists the state financial assistance awarded through the Department of Environmental Protection by this agreement. In determining the state financial assistance expended in its fiscal year, the recipient shall consider all sources of state financial assistance, including state financial assistance received from the Department of Environmental Protection, other state agencies, and other nonstate entities. State financial assistance does not include federal direct or pass-through awards and resources received by a nonstate entity for Federal program matching requirements.
2. In connection with the audit requirements addressed in Part II, paragraph 1; the recipient shall ensure that the audit complies with the requirements of Section 215.97(8), Florida Statutes. This includes submission of a financial reporting package as defined by Section 215.97(2), Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.
3. If the recipient expends less than \$750,000 in state financial assistance in its fiscal year (for fiscal year ending June 30, 2017, and thereafter), an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, is not required. In the event that the recipient expends less than \$750,000 in state financial assistance in its fiscal year, and elects to have an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, the cost of the audit must be paid from the non-state entity's resources (i.e., the cost of such an audit must be paid from the recipient's resources obtained from other than State entities).
4. For information regarding the Florida Catalog of State Financial Assistance (CSFA), a recipient should access the Florida Single Audit Act website located at <https://apps.fldfs.com/fsaa> for assistance. In addition to the above websites, the following websites may be accessed for information: Legislature's Website at <http://www.leg.state.fl.us/Welcome/index.cfm>, State of Florida's website at <http://www.myflorida.com/>, Department of Financial Services' Website at <http://www.fldfs.com/> and the Auditor General's Website at <http://www.myflorida.com/audgen/>.

PART III: OTHER AUDIT REQUIREMENTS

(NOTE: This part would be used to specify any additional audit requirements imposed by the State awarding entity that are solely a matter of that State awarding entity's policy (i.e., the audit is not required by Federal or State laws and is not in conflict with other Federal or State audit requirements). Pursuant to Section 215.97(8), Florida Statutes, State agencies may conduct or arrange for audits of State financial assistance that are in addition to audits conducted in accordance with Section 215.97, Florida Statutes. In such an event, the State awarding agency must arrange for funding the full cost of such additional audits.)

PART IV: REPORT SUBMISSION

1. Copies of reporting packages for audits conducted in accordance with 2 CFR Part 200, Subpart F-Audit Requirements, and required by PART I of this form shall be submitted, when required by 2 CFR 200.512, by or on behalf of the recipient directly to the Federal Audit Clearinghouse (FAC) as provided in 2 CFR 200.36 and 200.512
 - A. The Federal Audit Clearinghouse designated in 2 CFR §200.501(a) (the number of copies required by 2 CFR §200.501(a) should be submitted to the Federal Audit Clearinghouse), at the following address:

By Mail:

Federal Audit Clearinghouse
Bureau of the Census
1201 East 10th Street
Jeffersonville, IN 47132

Submissions of the Single Audit reporting package for fiscal periods ending on or after January 1, 2008, must be submitted using the Federal Clearinghouse's Internet Data Entry System which can be found at <http://harvester.census.gov/facweb/>

2. Copies of financial reporting packages required by PART II of this Attachment shall be submitted by or on behalf of the recipient directly to each of the following:

- A. The Department of Environmental Protection at one of the following addresses:

By Mail:

Audit Director

Florida Department of Environmental Protection
Office of Inspector General, MS 40
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Electronically:

FDEPSingleAudit@dep.state.fl.us

- B. The Auditor General's Office at the following address:

Auditor General
Local Government Audits/342
Claude Pepper Building, Room 401
111 West Madison Street
Tallahassee, Florida 32399-1450

The Auditor General's website (<http://flauditor.gov/>) provides instructions for filing an electronic copy of a financial reporting package.

3. Copies of reports or management letters required by PART III of this Attachment shall be submitted by or on behalf of the recipient directly to the Department of Environmental Protection at one of the following addresses:

By Mail:

Audit Director

Florida Department of Environmental Protection
Office of Inspector General, MS 40
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Electronically:

FDEPSingleAudit@dep.state.fl.us

4. Any reports, management letters, or other information required to be submitted to the Department of Environmental Protection pursuant to this Agreement shall be submitted timely in accordance with 2 CFR 200.512, section 215.97, F.S., and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.

Attachment 5

3 of 7

5. Recipients, when submitting financial reporting packages to the Department of Environmental Protection for audits done in accordance with 2 CFR 200, Subpart F-Audit Requirements, or Chapters 10.550 (local governmental entities) and 10.650 (non and for-profit organizations), Rules of the Auditor General, should indicate the date and the reporting package was delivered to the recipient correspondence accompanying the reporting package.

PART V: RECORD RETENTION

The recipient shall retain sufficient records demonstrating its compliance with the terms of the award and this Agreement for a period of **five (5)** years from the date the audit report is issued, and shall allow the Department of Environmental Protection, or its designee, Chief Financial Officer, or Auditor General access to such records upon request. The recipient shall ensure that audit working papers are made available to the Department of Environmental Protection, or its designee, Chief Financial Officer, or Auditor General upon request for a period of **three (3)** years from the date the audit report is issued, unless extended in writing by the Department of Environmental Protection.

EXHIBIT – 1

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

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

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

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

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

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

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

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

State Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following Resources Subject to Section 215.97, F.S.:						
State Program A	State Awarding Agency	State Fiscal Year ¹	CSFA Number	CSFA Title or Funding Source Description	Funding Amount	State Appropriation Category
Original	Florida Department of Environmental Protection	2022-2023	37.003	Beach Management Funding Assistance Program, GAA Line Item #1778, LATF	\$14,013,346.00	140126
State Program B	State Awarding Agency	State Fiscal Year ²	CSFA Number	CSFA Title or Funding Source Description	Funding Amount	State Appropriation Category

Total Award	\$14,013,346.00	
-------------	-----------------	--

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

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

¹ Subject to change by Change Order.

² Subject to change by Change Order.

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

EXHIBIT A

**FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION
BEACH MANAGEMENT FUNDING ASSISTANCE PROGRAM
REQUEST FOR PAYMENT – PART III
QUARTERLY PROJECT PROGRESS REPORT**

Name of Project: Estero Island Shore Protection Project

Local Sponsor: Town of Fort Myers Beach

DEP Agreement Number: 23LE1

Report Year: _____ **Report Period (select one):**

☐ Q1: Jan – Mar 31 ☐ Q2: Apr – Jun 30 ☐ Q3: Jul – Sep 30 ☐ Q4: Oct – Dec 31

For each task, include the following information: Describe the work performed during the reporting period (including percent of task completed to date), problems encountered, problem resolutions, scheduled updates, and proposed work for the next reporting period. (*Use additional pages, if needed*).

Task 1: _____

Task 2: _____

Task 3: _____

Task 4: _____

EXHIBIT C

FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION BEACH MANAGEMENT FUNDING ASSISTANCE PROGRAM REQUEST FOR PAYMENT PART I – PAYMENT SUMMARY

Name of Project: Estero Island Shore Protection Project

Local Sponsor: Town of Fort Myers Beach

DEP Agreement Number: 23LE1

Remittance Mailing Address: _____

Billing Number: _____

Billing Type: ☐ Interim Billing ☐ Final Billing

Costs Incurred This Payment Request:

Federal Share*	State Share	Local Share	Total
\$ _____	\$ _____	\$ _____	\$ _____
*if applicable			

Cost Summary:

State Funds Obligated
\$ _____

Local Funds Obligated
\$ _____

Less Advance Pay
\$ _____

Less Advance Pay
\$ _____

Less Previous Payment
\$ _____

Less Previous Credits
\$ _____

Less Previous Retained
\$ _____

Less This Credit
\$ _____

Less This Payment
\$ _____

Local Funds Remaining
\$ _____

Less This Retainage
\$ _____

State Funds Remaining
\$ _____

**FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION
BEACH MANAGEMENT FUNDING ASSISTANCE PROGRAM
REQUEST FOR PAYMENT
PART II – REIMBURSEMENT DETAIL**

DEP Agreement Number: _____

Name of Project: _____

Billing Number: _____

Billing Period (1): _____

Individual Completing Form (2): _____

Phone Number (2): _____

REIMBURSEMENT DETAIL

Item #	Vendor Name	Invoice Number	Invoice Date	Check Number	Task Number (3)	SOW Number (3)	Invoice Amount (4)	Eligible Amount (5)	% Fed Share (6)	Federal Share of Eligible Amount (7)	Non-Federal Share (8)	% State Share (9)	State Share (10)	Local Share (11)	Requested Retainage Payment (12)	Withheld Retainage (13)	State Payment (14)
										-	-		\$0.00	0.00		0.00	0.00
								-		Totals	-		-	-	-	-	-

Total Due to Local Sponsor (15) _____

Form Instructions:

- Billing Period: Period when services were conducted (beginning date: earliest date of services conducted; end date: latest date of services conducted).
- Person responsible for completing this form: Name and phone number if contact is needed.
- Task #/SOW #: Insert a Task #/SOW # for each invoice. If invoice covers multiple Task#/SOW#, then that invoice should be listed multiple times, a line item for each deliverable.
- Invoice amount: Full amount of invoice.
- Eligible Amount: Invoice amount paid by Local Sponsor less ineligible cost for line item deliverable only.
- % Federal Share: If applicable, the federal cost share percentage listed in Agreement.
- Federal Share of Eligible Amount: If applicable, Local Sponsor will multiply Eligible Amount (5) by % Federal Share (6).
- Non-Federal Share: Eligible Amount (5) minus Federal Share of Eligible Amount (7).
- % State Share: The state cost share percentage listed in Agreement.
- State Share: Multiply Non-Federal Share (8) by % State Share (9).
- Local Share: Subtract State Share (10) from Non-Federal Share (8).
- Requested Retainage Payment: Requires separate line for each completed Task, Sub-Task and or Deliverable that retainage is being requested.
- Withheld Retainage: Multiply State Share (10) by 10%.
- State Payment: Subtract Withheld Retainage (13) from State Share (10).
- Total Due to Local Sponsor: Add Retainage Payment Total (12) to State Payment Total (14).

Please redact all sensitive financial information from the invoices and other supporting documentation to be submitted with this Payment Request Form.

****For questions or concerns regarding this form please contact: Janice Simmons, Fiscal Administrator, 850-245-7620, Janice.L.Simmons@FloridaDEP.gov**

**FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION
BEACH MANAGEMENT FUNDING ASSISTANCE PROGRAM
REQUEST FOR PAYMENT
PART III – INVOICE REPORT**

Name of Project: Estero Island Shore Protection Project

Local Sponsor: Town of Fort Myers Beach

DEP Agreement Number: 23LE1

Billing Number: _____

Invoice Report Period: _____

(Describe progress accomplished during the invoice report period, including statement(s) regarding percent of task completed to date.). **NOTE:** Use as many pages as necessary to cover all tasks in the Grant Work Plan.

The following format should be followed:

Task 1:

Progress for this invoice billing period:

Identify any delays or problems encountered:

**FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION
BEACH MANAGEMENT FUNDING ASSISTANCE PROGRAM
REQUEST FOR PAYMENT
PART IV – CERITIFICATION OF DISBURSEMENT REQUEST**

Name of Project: Estero Island Shore Protection Project

Local Sponsor: Town of Fort Myers Beach

DEP Agreement Number: 23LE1

Billing Number: _____

Certification: I certify that this billing is correct and is based upon actual obligations of record by the Local Sponsor; that payment from the State Government has not been received; that the work and/or services are in accordance with the Department of Environmental Protection, Beach Management Funding Assistance Program's approved Project Agreement including any amendments thereto; and that progress of the work and/or services are satisfactory and are consistent with the amount billed. The disbursement amount requested on Page 1 of this form is for allowable costs for the project described in the Attachment 3, Grant Work Plan.

I certify that the purchases noted were used in accomplishing the project; and that invoices, check vouchers, copies of checks, and other purchasing documentation are maintained as required to support the cost reported above and are available for audit upon request.

Name of Project Administrator

Signature of Project Administrator

Date

Name of Project Financial Officer

Signature of Project Financial Officer

Date

**FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION
FLORIDA BEACH MANAGEMENT FUNDING ASSISTANCE PROGRAM
REQUEST FOR PAYMENT
PART V – COMPLETION CERTIFICATION**

Name of Project: Estero Island Shore Protection Project

Local Sponsor: Town of Fort Myers Beach

DEP Agreement Number: 23LE1

Task Completion ☐ (List Tasks) _____

Agreement Completion ☐

*I hereby certify that the above mentioned project task(s) has been completed in accordance with the Project Agreement, including any amendments thereto, between the DEPARTMENT and LOCAL SPONSOR, and all funds expended for the project were expended pursuant to this Agreement. All unused funds and interest accrued on any unused portion of advanced funds which have not been remitted to the DEPARTMENT, have been returned to the DEPARTMENT, or will be returned to the DEPARTMENT within sixty (60) days of the completion of construction portion of this PROJECT. Unused funds advanced to the United States Army Corps of Engineers through LOCAL SPONSORS will be due sixty (60) days after the final federal accounting has been completed.

Name of Project Manager

Signature of Project Manager

Date

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

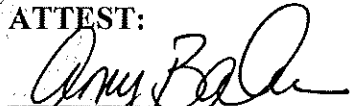
ADOPTED this 1st day of April 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL



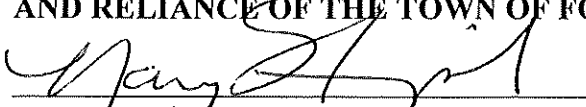
Dan Allers, Mayor

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.

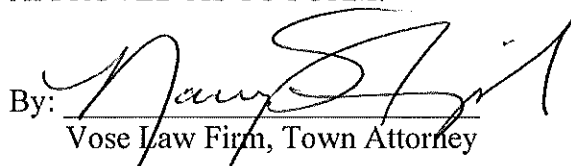
ATTEST:

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.

Department of Homeland Security Federal Emergency Management Agency

General Info

Project #	705212	PW #	643	Project Type	Specialized
Project Category	G - Parks, Recreational Facilities, and Other Items			Applicant	Fort Myers Beach, Town of (071-24150-00)
Project Title	Fort Myers Beach Beach Renourishment			Event	4673DR-FL (4673DR)
Project Size	Large			Declaration Date	9/29/2022
Activity Completion Date	3/29/2024			Incident Start Date	9/23/2022
Process Step	Obligated			Incident End Date	11/4/2022

Damage Description and Dimensions

The Disaster # 4673DR, which occurred between 09/23/2022 and 11/04/2022, caused:

Damage #1294705; Engineered Beach Renourishment (North Segment)

Please see attached SME Report titled "**V2 FINAL 4673 - North Estero Island Shore Protection Project CAT G Beach Project 705212 SME Report Dillon Irwin**" for additional information on Location, Project History, Eligibility, Maintenance, Incident Related Damages, Scope of Work, and Environmental Compliance

General Facility Information:

- **Facility Type:** Beaches
- **Facility:** North Estero Island Shore Protection Project
- **Facility Description:** Engineered Beach in Town of Ft. Myers Beach constructed with imported sand—of proper grain size—to a designed elevation, width, and slope.
- **Year Built:** 2011
- **Start GPS Latitude/Longitude:** 26.46159, -81.96720
- **End GPS Latitude/Longitude:** 26.45088, -81.95285
- **Design Elevation:** Varies
- **Design Slope:** Varies
- **Pre- and Post-Storm Profiles Available?:** Yes

General Damage Information:

- **Date Damaged:** 9/23/2022 to 11/4/2022
- **Cause of Damage:** During the declared incident period from September 23, 2022 – November 4, 2022, Hurricane Ian generated storm surge and wave action that caused beach and dune erosion in the Town of Ft. Myers Beach

Facility Damage:

Start (R-176): 26.46159, 81.96720 End (R-182): 26.45088, -81.95285:

- Beach, 56,845 CY of Sand, hurricane, 0% work completed.
- Dunes, 33,200 each of Dune Plants, hurricane, 0% work completed.

The "North Estero Island Shore Protection Project" is located on the Gulf Coast of Florida in the Town of Ft. Myers Beach on

Estero Island (see [Attachment 1. North Estero Shore Protection Damages Location Map](#)) and Fig. 1 of [Attachment 2: 22279 Estero Island Post-Ian Engineering and Assessment Report with Appendices 20230216](#).

Project Location

North End at Groin: 26.46430, -81.96889

South End at R-182: 26.45088, -81.95285

Project Area Length: 6,850 FT

There are no federally constructed shoreline management projects within Project template. The Project is not a specifically authorized and constructed Corps of Engineers (USACE) Coastal Storm Risk Management project. Therefore, the beach is not a federally constructed shoreline under the specific authority of USACE (PAPPG, p.126).

The construction, maintenance and repair of this engineered beach project is the legal responsibility of the Applicant, the Town of Ft. Myers Beach. More information can be found in [Attachment 3: Estero Island FO](#).

Therefore, the Project is the legal responsibility of the Applicant requesting assistance (PAPPG, p.52).

-

Damage Description and Dimensions

Erosion Damages were observed within the project template between R-176 and R-182.

Coordinates for the damaged area of the project template are as follows:

Start (R-176): 26.46159, -81.96720

End (R-182): 26.45088, -81.95285

During the declared incident period from September 23, 2022 – November 4, 2022, Hurricane Ian generated storm surge and wave action that caused beach and dune erosion in Ft. Myers Beach, Florida. A major disaster, DR-4673-FL, was declared on September 29, 2022. Photos of the beach taken before and after the storm are shown in [Fig. 6 and 7 of Attachment 2](#).

PROJECT HISTORY/MAINTENANCE:

Design

The project was constructed between April 2011 and December 2011.

Geotechnical data collected on North Estero Island showed a native beach mean grain size of 0.13 mm. Permitted offshore borrow areas were the sources of beach-compatible sand for the Project. The location of these offshore borrow areas is shown in [Fig. 1 of Attachment 2](#). The Borrow Areas' mean grain size was 0.15 mm with 4% silt content.

In summary, the Project was constructed by the placement of imported sand—of proper grain size—to a designed elevation, width, and slope (PAPPG, p. 180).

-

Maintenance

The project was constructed in 2011 and is coming up on the first scheduled and budgeted 10-year renourishment cycle.

The upcoming 2023 Renourishment project will place 905,000 CY of imported beach compatible sand within the project template.

Additional information on this scheduled renourishment can be found in [Section 4, Table 3 of Attachment 2](#).

In summary, the Applicant has established and adhered to a maintenance program involving periodic renourishment with imported sand to preserve the original design (PAPPG, p. 180).

INCIDENT-RELATED DAMAGE:

Depth of Closure:

FEMA's definition of Depth of Closure is found in its "Guidance for Flood Risk Analysis and Mapping: Coastal Notations, Acronyms, and Glossary of Terms", that reads: "*CLOSURE DEPTH The water depth beyond which repetitive profile surveys (collected over several years) do not detect vertical sea bed changes, generally considered the seaward limit of littoral transport. The depth can be determined from repeated cross-shore profile surveys or estimated using formulas based on wave statistics. Note that this does not imply the lack of sediment motion beyond this depth.*" The Applicant's coastal engineer, CEC, reviewed historical profiles to estimate the DOC values at each station within the design template are Shown in [Table 2 of Attachment 2](#).

The post-lan bathymetric survey of the Project was completed by CEC on October 11th of 2022. The prior survey of North Estero Island was conducted by CEC on June 1st of 2022. The beach profiles at each R-monument from the Terminal Groin to R-182 are presented in [Appendix 1 of Attachment 2](#).

The total incident-related sand loss for the beach fill from the landward limit of erosion to the depth of closure equals **56,845 CY**. The details of the storm impact volume calculations including the volume changes and the application of background erosion are presented in [Appendix 2 of Attachment 2](#).

Using pre-storm aerials and the survey comparisons, the Applicant's Engineer determined approximately 8,300 square yards of previously planted dune plants were destroyed. These plants were installed at an average plant spacing of 18 inches on center, equivalent to 4 plants per square yard. Therefore, the number of plants destroyed equals **33,200 plants**.

***** NOTE - All incident-related sand replacement will occur between R-176 and R-182. No Recovery work will be performed in the CBRA zone.**

Final Scope

1294705 Engineered Beach Renourishment (North Segment)

DI 1294705

Town of Fort Myers Beach Renourishment

Work to be Completed

The applicant will utilize contract and/or force account services to renourish Fort Myers Beach to its pre-disaster design, function, and capacity (in-kind) within the existing footprint.

A. Furnish and Install 56,845 CY of Sand along 6,850 LF of shoreline at North Estero Island with a berm elevation of 2.9 feet NAVD88 and sloped 20H:1V seaward until connected with existing grade.

- Start: R-176 The Groin – (26.46159, -81.96720)
- End: R-182 – (26.45088, -81.95285)

Total Work to be Completed Total: \$1,408,050.00

Project Notes:

1. The Town of Fort Myers Beach is legally responsible for the maintenance and renourishment of Fort Myers Beach including North Estero Island.
2. The applicant engaged their Engineer of Record (EOR) to assess the damages to Town of Fort Myers Beach specifically North Estero Island. The assessment report, signed and sealed by the EOR, computed sand losses from pre and post storm surveys and has accounted for background erosion. Refer to *Attachment 2. 22279 Estero Island Post-Ian Engineering and Assessment Report 20230216.pdf*.
3. The EOR assessment also includes an estimate for the Estero Island Nourishment Project Preliminary Opinion of Probable Construction costs. The costs for this project are predicated by this project coinciding with previously scheduled, unassociated, maintenance and engineered beach development projects and all costs are prorated per CY of total quantities. This estimate and approach have been found to be reasonable. Refer to *705212 DR4673FL Cost Summary.xlsx*.
4. Installation of dune plants will be performed as part of this project. Costs were included in the prorated CY price developed for the larger dredging project. All plant replacement is for damages resulting from Hurricane Ian.
5. The beach is not a federally constructed shoreline under the specific authority of USACE.
6. The beach was constructed by the placement of imported sand, of proper grain size, to a designed elevation, width, and slope.
7. As of December 2022, FDEP and USACE permits were still in process. FDEP permit 0413684-001-JC is pending local public notice and anticipated in January 2023. The published the public notice on December 20, 2022, and will be initiating consultation with the U.S. Fish and Wildlife Service and National Marine Fisheries Service in early 2023.
8. For work to be completed, the applicant is required to obtain any necessary Federal, State, and Local environmental permits prior to the start of construction.
9. Construction scheduled to take place June – December 2023 and will require sea turtle nest relocations.
10. The northern end of the project template is within CBRS System Unit P-17A, "Bowditch Point". All incident-related sand replacement will occur between R-176 and R-182. No Recovery work will be performed in the CBRA Zone.
11. Refer to subject matter expert (SME) report for more information, V2 FINAL 4673 - North Estero Island Shore Protection Project CAT G Beach Project 705212 SME Report Dillon Irwin.pdf.

Public Assistance

Hazard Mitigation Proposal

For template instructions, turn paragraph marks on. Press "¶" or "Ctrl/Shift+/8"					
Applicant Name	Town of Fort Myers Beach	GM Project #	705212	HMP Date	May 24, 2023
Site Name	North Estero Island Shore, Fort Myers Beach, FL				
DR-	4673	- FL	D#	1294705	

HMP Writer and Title:	Oswaldo "Ossie" Rueda Builes, General Engineer
This HMP is based on the following Grants Manager project report, see attachment.	
	PRJ_Report_705212_20230504.pdf
Select Work Completed Status:	Work to be Completed
I. Related Damaged Items to be Protected	
During the declared incident period of September 23, 2022, through November 4, 2022, the Town of Fort Myers Beach was impacted by Hurricane Ian's Storm Surge and wave action resulting in erosion damages. As a direct result of this event, 56,845 CY of Sand and 6,850 LF of Dune plants were damaged.	
Total repair cost of damaged elements being protected by the HMP at this site*= *Before Cost Estimating Format (CEF) factors if a large project.	\$ 1,267,245
Comments:	According to Grants Manager the total cost for the project is \$1,408,050 which includes a 10% contingency, therefore, the total repair cost is \$1,267,245, after contingency is deducted.
II. Hazard Mitigation Proposal (HMP) Scope of Work	

Mitigation consists of replacing pre-disaster dune vegetation with mature plants that have a 2.5 multiplier. Planting of mature plants in the dune system will bring immediate storm protection benefits to the coastal system.

Project Location

North End at Groin: 26.46430, -81.96889

South End at R-182: 26.45088, -81.95285

Project Area Length: 6,850 LF

Effective Planting width: 7.5 LF

Area: 5,708 SY

Unit Rate per SY: \$32.5

Cost: \$185,521

The mitigation measures will reduce the risk of future damage by helping build up the dunes and maintain their form. In major storms, these dunes will act as a buffer against waves and flooding.

III. Hazard Mitigation Proposal (HMP) Cost: Worksheet

- Reference and attach a detailed, itemized cost estimate and/or CEF.

A. Cost of items if the HMP is approved=

\$185,521

B. Cost of items deducted from the repair scope of work (SOW)=

\$0

C. Net Hazard Mitigation Cost (before CEF factors) =

\$185,521

D. Is there a CEF?

?Yes ?No

E. Net Hazard Mitigation Cost (after CEF factors)=

\$204,073

F. What is the CEF ratio (CEF Total Cost/Base Cost)?		1.1 (10% Contingency Factor)	
Comments:	10% contingency added as per CRC validated applicant provided cost		
Hazard Mitigation Proposal Cost: Summary			
Net Hazard Mitigation Cost =		\$ 204,073	
See attachment(s).		N/A	
Comments:	The multiplier and cost are based on similar projects utilized in this event.		
IV. Cost Effectiveness Calculation (Net HMP Cost/Total Repair Cost of the damaged portions of the facility for which the mitigation measure applies) x 100			
	\$ 185,521	/	\$ 1,267,245
		x 100 =	14.64%
			= 15%
The Benefit-Cost Analysis (BCA) ratio is		N/A	= 1.0

V. HMP Cost-Effectiveness

The mitigation measures meet the cost effectiveness criteria based on:

a) Mitigation cost is within 15% of the total eligible repair cost of the facility or facilities for which the mitigation measure applies. In accordance with FEMA Public Assistance Program and Policy Guide (PAPPG) V4 June 2020, Chapter 8. Section IV. A, this mitigation measure does not exceed 15 percent of the eligible repair cost and is considered to be cost-effective.

VI. Compliances and Assurances

For 'work to be completed,' this HMP is for estimating purposes only. If the site's final placement and configuration are different than the preliminary estimate, the Applicant should submit a change in scope request. This HMP is subject to further review prior to award.

The Applicant is responsible for final design, placement, configuration, procurement, permits and compliance with all regulatory codes and standards.

Eligibility and funding for the mitigation at this site on this project will be subject to the compliance of all environmental laws, regulations, and executive orders applicable to the site(s).

HMP Notes

1. The mitigation proposal estimates were generated using local costs. See attachment labeled V2 FINAL 4673 - North Estero Island Shore Protection Project CAT G Beach Project 705212 SME Report Dillon Irwin.pdf
2. The project does not reflect CEF factors, since a 10% contingency was already incorporated in the estimate.
3. The Multiplier for the Mature plants is $2.5 \times \$13/\text{SY}$ of replacement dune plants = $\$32.5/\text{SY}$.

Cost

Code	Quantity	Unit	Total Cost	Section
9001 (Contract)	1.00	Lump Sum	\$1,408,050.00	Uncompleted

CRC Gross Cost	\$1,408,050.00
Total 406 HMP Cost	\$204,073.00
Total Insurance Reductions	\$0.00
CRC Net Cost	\$1,612,123.00
Federal Share (90.00%)	\$1,450,910.70
Non-Federal Share (10.00%)	\$161,212.30

Award Information

Version Information

Version #	Eligibility Status	Current Location	Bundle Number	Project Amount	Cost Share	Federal Share Obligated	Date Obligated
0	Eligible	Awarded	PA-04-FL-4673-PW-00643(1515)	\$1,612,123.00	75%	\$1,209,092.25	10/30/2023
1	Eligible	Awarded	PA-04-FL-4673-PW-00643(1552)	\$0.00	15%	\$241,818.45	11/6/2023

Drawdown History

EMMIE Drawdown Status As of Date	IFMIS Obligation #	Expenditure Number	Expended Date	Expended Amount
No Records				

Obligation History

Version #	Date Obligated	Obligated Cost	Cost Share	IFMIS Status	IFMIS Obligation #
-----------	----------------	----------------	------------	--------------	--------------------

Subgrant Conditions

- As described in Title 2 Code of Federal Regulations (C.F.R.) § 200.333, financial records, supporting documents, statistical records and all other non-Federal entity records pertinent to a Federal award must be retained for a period of three (3) years from the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or pass-through entity in the case of a subrecipient. Federal awarding agencies and pass-through entities must not impose any other record retention requirements upon non-Federal entities. Exceptions are stated in 2 C.F.R. §200.333(a) – (f)(1) and (2). All records relative to this project are subject to examination and audit by the State, FEMA and the Comptroller General of the United States and must reflect work related to disaster-specific costs.
- In the seeking of proposals and letting of contracts for eligible work, the Applicant/Subrecipient must comply with its Local, State (provided that the procurements conform to applicable Federal law) and Federal procurement laws, regulations, and procedures as required by FEMA Policy 2 CFR Part 200, Procurement Standards, §§ 317-326.
- The Recipient must submit its certification of the subrecipient's completion of this project, the final claim for payment, and supporting documentation within 180 days from the date that the applicant completes the scope of work, or the project deadline, whichever occurs first. FEMA reimburses Large Projects (those with costs above the large project threshold) based on the actual eligible final project costs. Therefore, during the final project reconciliation (closeout), the project may be amended to reflect the reconciliation of actual eligible costs.
- When any individual item of equipment purchased with PA funding is no longer needed, or a residual inventory of unused supplies exceeding \$5,000 remains, the subrecipient must follow the disposition requirements in Title 2 Code of Federal Regulations (C.F.R.) § 200.313-314.
- The terms of the FEMA-State Agreement are incorporated by reference into this project under the Public Assistance award and the applicant must comply with all applicable laws, regulations, policy, and guidance. This includes, among others, the Robert T. Stafford Disaster Relief and Emergency Assistance Act; Title 44 of the Code of Federal Regulations; FEMA Policy No. 104-009-2, Public Assistance Program and Policy Guide; and other applicable FEMA policy and guidance.
- The DHS Standard Terms and Conditions in effect as of the declaration date of this emergency declarations or major disaster, as applicable, are incorporated by reference into this project under the Public Assistance grant, which flow down from the Recipient to subrecipients unless a particular term or condition indicates otherwise.
- The Uniform Administrative Requirements, Cost Principles, and Audit Requirements set forth at Title 2 Code of Federal Regulations (C.F.R.) Part 200 apply to this project award under the Public Assistance grant, which flow down from the Recipient to all subrecipients unless a particular section of 2 C.F.R. Part 200, the FEMA-State Agreement, or the terms and conditions of this project award indicate otherwise. See 2 C.F.R. §§ 200.101 and 110.
- The subrecipient must submit a written request through the Recipient to FEMA before it makes a change to the approved scope of work in this project. If the subrecipient commences work associated with a change before FEMA approves the change, it will jeopardize financial assistance for this project. See FEMA Policy No. 104-009-2, Public Assistance Program and Policy Guide.
- The Subrecipient provided the estimate for this PW. FEMA validated the estimate and found it to be reasonable for the work to be performed.
- Pursuant to section 312 of the Stafford Act, 42 U.S.C. 5155, FEMA is prohibited from providing financial assistance to any entity that receives assistance from another program, insurance, or any other source for the same work. The subrecipient agrees to repay all duplicated assistance to FEMA if they receive assistance for the same work from another Federal agency, insurance, or any other source. If an subrecipient receives funding from another federal program for the same purpose, it must notify FEMA through the Recipient and return any duplicated funding.

Insurance

Additional Information

FACTS

During the incident period Severe Storms and Surge Flooding caused damage to Town of Fort Myers Beach, beach facilities.

REPETITIVE DAMAGES

No previous disaster requirements were found for the location(s) identified in this project.

FINDINGS

The Town of Fort Myers Beach provided a commercial property insurance pool policy issued by Florida Municipal Insurance Trust (FMIT), Member # 0778 with effective dates 10/01/2021 to 10/01/2022. The policy has building property limits of \$13,435,548.00 and contents limits of \$1,175,000.00 with a \$500.00 deductible per occurrence. The policy includes Named Storm coverage by Endorsement, with a 5% of Total Insured Value (TIV) deductible, for scheduled property, per item, and per occurrence. The policies Named Storm coverage includes storm surge flood as the result of a named storm.

The scope of work represented in this project is neither insured nor insurable. The facility was damaged by flood. A Mandatory National Flood Insurance Program (NFIP) Reduction will not be required. Insurance coverage for this type of exposure is not available with the National Flood Insurance Program. The Commercial Policy does not provide coverage for the peril of Flooding. No coverage is anticipated. No insurance reduction will apply. An obtain and maintain insurance requirement will not be mandated for this damage. Insurance coverage for this type of exposure is not available with the National Flood Insurance Program. No insurance narrative will be produced or uploaded into documents or attachments.

FEMA Policy 206-086-1

PART 2: Other Insurance-Related Provisions. (Sections 312 and 406(d) of the Stafford Act)

A. Duplication of Benefits. FEMA cannot provide assistance for disaster-related losses that duplicate benefits available to an applicant from another source, including insurance.

1. Before FEMA approves assistance for a property, an applicant must provide FEMA with information about any actual or anticipated insurance settlement or recovery it is entitled to for that property.
2. FEMA will reduce assistance to an applicant by the amount of its actual or anticipated insurance proceeds.
3. Applicants must take reasonable efforts to recover insurance proceeds that they are entitled to receive from their insurer(s).

REQUIREMENTS

A Standard Flood Insurance Policy issued by the National Flood Insurance Program is the basis used to determine if a building or its contents can be insured for the peril of flood. As a result, the requirement to obtain and maintain insurance is not being mandated for the facilities described in this project as these facilities are not insurable by a Standard Flood Insurance Policy.

Insurance coverage for this type of exposure is generally not available. The requirement to obtain and maintain insurance is not being mandated for the damages. Therefore, compliance with Section 311 of the Stafford Act and its implementing regulations, Title 44 CFR 206.250-253 does not apply to the damages included in this project.

Steven A. Goodroad, Insurance Specialist, CRC East

O&M Requirements

There are no Obtain and Maintain Requirements on **Fort Myers Beach Beach Renourishment**.

406 Mitigation

08/09/2023 – Marcella Simmons, HM Crew Leader - Project #7052123 -D# 1294705 has entered the mitigation queue for the second time. The project was reworked to reflect changes in the scope notes. There are no apparent changes to the project and the current version of the HMP remains eligible for 406 Funding in accordance with the 15% rule of the FEMA PA Program and Policy Guide - Mitigation Section. MS

5/24/2023 – O. Rueda Builes, EASP – The Hazard Mitigation Proposal is approved in accordance with the 15% rule of the FEMA PA Program and Policy Guide e (PAPPG) V4 June 2020, Chapter 8. Section IV.- See the HMP additional details.

Environmental Historical Preservation

Is this project compliant with EHP laws, regulations, and executive orders?

Yes

EHP Conditions

- Any change to the approved scope of work will require re-evaluation for compliance with NEPA and other Laws and Executive Orders.
- This review does not address all federal, state and local requirements. Acceptance of federal funding requires recipient to comply with all federal, state and local laws. Failure to obtain all appropriate federal, state and local environmental permits and clearances may jeopardize funding.
- If ground disturbing activities occur during construction, applicant will monitor ground disturbance and if any potential archaeological resources are discovered, will immediately cease construction in that area and notify the State and FEMA.
- NHPA CONDITION: If human remains or intact archaeological features or deposits (e.g. arrowheads, pottery, glass, metal, etc.) are uncovered, work in the vicinity of the discovery will stop immediately and all reasonable measures to avoid or minimize harm to the finds will be taken. The subrecipient will ensure that archaeological discoveries are secured in place, that access to the sensitive area is restricted, and that all reasonable measures are taken to avoid further disturbance of the discoveries. The subrecipient's contractor will provide immediate notice of such discoveries to the applicant. The subrecipient shall contact the Florida Division of Historic Resources and FEMA within 24 hours of the discovery. Work in the vicinity of the discovery may not resume until FEMA has completed consultation with SHPO, Tribes, and other consulting parties as necessary. In the event that unmarked human remains are encountered during permitted activities, all work shall stop immediately and the proper authorities notified in accordance with Florida Statutes, Section 872.05.
- CWA CONDITION: The subrecipient must comply with the terms and conditions of FDEP Permit No. 0413684-001-JC and associated guidance. The subrecipient must obtain permit modifications as necessary. Failure to comply with these conditions may jeopardize FEMA funding; verification of compliance will be required at project closeout.
- CZMA CONDITION: The subrecipient must comply with the conditions of the FDEP Joint Coastal Permit 0413684-001-JC. Failure to comply with this condition may jeopardize FEMA funding; verification of compliance will be required at project closeout.
- ESA CONDITION: The proposed project must adhere to the Conservation Measures and Terms and Conditions of the following Biological Opinions: USFWS BO dated 9/29/2023, USFWS Programmatic Piping Plover BO dated 5/22/2013, the USFWS Statewide Programmatic BO for Sand Placement dated 3/13/2015, NMFS BO dated 8/25/2023, and the NMFS GRBO dated 11/19/2003 and 1/9/2007. The subrecipient must also adhere to the attached Sea Turtle and Smalltooth Sawfish Construction Conditions and Standard Manatee Conditions for In-Water Work. Failure to comply with these conditions may jeopardize FEMA funding; verification of compliance will be required at project closeout.
- MSA CONDITION: The proposed project must adhere to the Conservation Measures and Terms and Conditions of the following Biological Opinions: NMFS BO dated 8/25/2023 and the NMFS GRBO dated 11/19/2003 and 1/9/2007. Failure to comply with these conditions may jeopardize FEMA funding; verification of compliance will be required at project closeout.

EHP Additional Info

There is no additional environmental historical preservation on **Fort Myers Beach Beach Renourishment**.

Final Reviews

Final Review

Reviewed By GILLMAN, ANGELA D.

Reviewed On 10/06/2023 1:31 PM EDT

Review Comments

Approved

Recipient Review

Reviewed By Hayth, John

Reviewed On 10/09/2023 8:22 AM EDT

Review Comments

Advanced

Project Signatures

Signed By Russ, Cheri

Signed On 10/16/2023

252.37 Financing.—

(1) The Legislature intends and declares it to be the policy of the state that funds to meet emergencies shall always be available.

(2) It is the legislative intent that the first recourse be made to funds regularly appropriated to state and local agencies. If the Governor finds that the demands placed upon these funds in coping with a particular disaster declared by the Governor as a state of emergency are unreasonably great, she or he may make funds available by transferring and expending moneys appropriated for other purposes, by transferring and expending moneys out of any unappropriated surplus funds, or from the Budget Stabilization Fund. Following the expiration or termination of the state of emergency, the Governor may transfer moneys with a budget amendment, subject to approval by the Legislative Budget Commission, to satisfy the budget authority granted for such emergency.

(3) Nothing contained in this section shall be construed to limit the authority of the Governor to apply for, administer, and expend any grants, gifts, or payments in aid of emergency prevention, mitigation, preparedness, response, or recovery.

(4)(a) Whenever the Federal Government or any agency or officer thereof offers to the state or, through the state, to any political subdivision thereof services, equipment, supplies, materials, or funds by way of gift, grant, or loan for the purposes of emergency management, the state, acting through the division, or such political subdivision, acting with the consent of the Governor or the Governor's authorized representative, may accept such offer. Upon such acceptance, the division or the presiding officer or governing body of such political subdivision may authorize receipt of the gift, grant, or loan on behalf of the state or such political subdivision, subject to the terms of the offer and the rules and regulations of the agency making the offer.

(b) Whenever any person, firm, or corporation offers to the state or to any political subdivision thereof services, equipment, supplies, materials, or funds by way of gift, grant, loan, or other agreement for the purpose of emergency management, the state, acting through the division, or such political subdivision, acting through its governing body or a local emergency management agency, may accept such offer. Upon such acceptance, the division or the presiding officer or governing body of the political subdivision may authorize receipt of the gift, grant, or loan on behalf of the state or such political subdivision, subject to the terms of the offer.

(5) Unless otherwise specified in the General Appropriations Act:

(a) Whenever the state accepts financial assistance from the Federal Government or its agencies under the federal Public Assistance Program and such financial assistance is conditioned upon a requirement for matching funds, the state shall provide the entire match requirement for state agencies and one-half of the required match for grants to local governments. The affected local government shall be required to provide one-half of the required match prior to receipt of such financial assistance.

(b) The Executive Office of the Governor may approve a waiver, subject to the requirement for legislative notice and review under s. [216.177](#), of all or a portion of the required match for public assistance projects for local governments if the Executive Office of the Governor determines that such a match requirement cannot be provided, or that doing so would impose a documented hardship on the local government, and if the local government applies for the waiver within the first 18 months after the disaster is declared.

(6) Whenever the state accepts financial assistance from the Federal Government or its agencies under the federal Hazard Mitigation Assistance Grant Program and such financial assistance is conditioned upon a requirement for matching funds, the eligible subgrantee recipient shall be required to provide the full amount of the required match prior to receipt of such financial assistance unless otherwise specified in the General Appropriations Act.

History.—s. 1, ch. 74-285; s. 20, ch. 83-334; s. 5, ch. 93-128; s. 131, ch. 95-148; s. 14, ch. 98-73; s. 52, ch. 2000-371; s. 1, ch. 2004-482; s. 42, ch. 2005-152; s. 37, ch. 2006-122.

20224Aer

1
2 An act relating to disaster relief; amending s.
3 161.101, F.S.; authorizing the Department of
4 Environmental Protection to waive or reduce match
5 requirements for certain local governments; amending
6 s. 194.032, F.S.; conforming provisions to changes
7 made by the act; creating s. 197.3181, F.S.; providing
8 definitions; authorizing the refund of ad valorem
9 taxes for residential improvements rendered
10 uninhabitable by certain hurricanes; providing
11 procedures and requirements to receive a refund;
12 requiring property appraisers and tax collectors to
13 take certain actions; providing construction;
14 providing retroactive applicability; providing for
15 expiration; creating s. 197.3182, F.S.; providing for
16 the extension and suspension of payments and discounts
17 of certain taxes and assessments; providing for
18 retroactive operation; providing for expiration;
19 amending s. 252.37, F.S.; providing legislative
20 intent; requiring the Division of Emergency Management
21 and local governments to enter into certain agreements
22 to receive specified funds; providing requirements for
23 such agreements; providing for availability of funds;
24 requiring the division to report progress on a certain
25 timetable to specified parties; providing for
26 expiration; creating s. 252.71, F.S.; providing
27 definitions; providing for the organization and
28 operation of the Florida Emergency Management
29 Assistance Foundation within the division; providing

20224Aer

for a board of directors; requiring the foundation to
operate under a written contract with the division;
specifying requirements for such contract; providing
requirements for the governance, organization, and
operations of the foundation; providing for the use of
property, facilities, and personal services of the
division by the foundation; requiring the submission
of annual budgets and reports; requiring an annual
audit; providing for future repeal; authorizing the
Department of Revenue to adopt emergency rules;
providing for the expiration of such authority;
providing appropriations; requiring such
appropriations to be spent in specified ways;
requiring the Florida Housing Finance Corporation to
coordinate with the division and the Department of
Economic Opportunity for a specified purpose; creating
the Hurricane Restoration Reimbursement Grant Program
within the Department of Environmental Protection;
providing purpose and eligibility requirements for
such program; authorizing emergency rulemaking for the
administration of such program; requiring the
department to administer such program; providing
requirements for such administration; providing for
the expiration of such program; specifying that grants
may only be used for reimbursement of specified costs;
requiring cost-sharing; creating the Hurricane
Stormwater and Wastewater Assistance Grant Program
within the Department of Environmental Protection;
providing purpose and eligibility requirements for

20224Aer

such program; authorizing emergency rulemaking for the
administration of such program; requiring the
department to administer such program; providing
requirements for such administration; providing for
the expiration of such program; providing
appropriations; requiring such appropriations be spent
in a specified way; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (22) of section 161.101, Florida
Statutes, is amended to read:

161.101 State and local participation in authorized
projects and studies relating to beach management and erosion
control.—

(22) Notwithstanding subsections (1), (15), and (16), and
for the 2022-2023 ~~2021-2022~~ fiscal year, for in the event that
beaches located in Brevard, Broward, Charlotte, Collier, Duval,
Flagler, Indian River, Lee, Manatee, Martin, Nassau, Palm Beach,
Saint Johns, Saint Lucie, Sarasota, and Volusia Counties, are
impacted by Hurricane Ian hurricanes or Hurricane Nicole other
storm events within communities with a per capita annual income
that is less than the state's per capita annual income as shown
in the most recent release from the United States Census Bureau
of the United States Department of Commerce which includes both
measurements, the department may waive or reduce the match
requirements for local governments. This subsection expires July
1, 2023 ~~2022~~.

Section 2. Paragraph (b) of subsection (1) of section

20224Aer

194.032, Florida Statutes, is amended to read:

194.032 Hearing purposes; timetable.—

(1)

(b) Notwithstanding the provisions of paragraph (a), the value adjustment board may meet prior to the approval of the assessment rolls by the Department of Revenue, but not earlier than July 1, to hear appeals pertaining to the denial by the property appraiser of exemptions, tax abatements under s. 197.3195, tax refunds under ss. 197.3181 and 197.319 ~~s. 197.319~~, agricultural and high-water recharge classifications, classifications as historic property used for commercial or certain nonprofit purposes, and deferrals under subparagraphs (a)2., 3., and 4. In such event, however, the board may not certify any assessments under s. 193.122 until the Department of Revenue has approved the assessments in accordance with s. 193.1142 and all hearings have been held with respect to the particular parcel under appeal.

Section 3. Section 197.3181, Florida Statutes, is created to read:

197.3181 Refund of taxes for residential improvements rendered uninhabitable by Hurricane Ian or Hurricane Nicole.—

(1) As used in this section, the term:

(a) "Damage differential" means the product arrived at by multiplying the percent change in value by a ratio, the numerator of which is the number of days the residential improvement was rendered uninhabitable in 2022, and the denominator of which is 365.

(b) "Disaster relief refund" means the product arrived at by multiplying the damage differential by the amount of timely

20224Aer

117 paid taxes initially levied in 2022.

118 (c) "Percent change in value" means the difference between
119 the just value of a residential parcel as of January 1, 2022,
120 and its postdisaster just value, expressed as a percentage of
121 the just value of the parcel as of January 1, 2022.

122 (d) "Postdisaster just value" means the just value of the
123 residential parcel on January 1, 2022, adjusted by subtracting
124 the just value of the residential improvement on January 1,
125 2022.

126 (e) "Residential improvement" means a residential dwelling
127 or house on real estate used and owned as a homestead as defined
128 in s. 196.012(13) or used as nonhomestead residential property
129 as defined in s. 193.1554(1). A residential improvement does not
130 include a structure that is not essential to the use and
131 occupancy of the residential dwelling or house, including, but
132 not limited to, a detached utility building, detached carport,
133 detached garage, bulkhead, fence, or swimming pool, and does not
134 include land.

135 (f) "Uninhabitable" means the loss of use and occupancy of
136 a residential improvement for the purpose for which it was
137 constructed resulting from damage to or destruction of, or from
138 a condition that compromises the structural integrity of, the
139 residential improvement which was caused by Hurricane Ian or
140 Hurricane Nicole during the 2022 calendar year.

141 (2) If a residential improvement is rendered uninhabitable
142 for at least 30 days, taxes originally levied and paid for 2022
143 may be refunded in the following manner:

144 (a) The property owner must file an application for refund
145 with the property appraiser on a form prescribed by the

20224Aer

department and furnished by the property appraiser, no sooner than January 1, 2023, and no later than April 1, 2023. The property appraiser may allow applications to be filed electronically.

(b) The application for refund must identify the residential parcel upon which the residential improvement was rendered uninhabitable and the number of days that the residential improvement was uninhabitable during 2022. For purposes of determining uninhabitability, the application must be accompanied by supporting documentation, including, but not limited to, utility bills, insurance information, contractors' statements, building permit applications, or building inspection certificates of occupancy.

(c) The application for refund must be verified under oath and is subject to penalty of perjury.

(d) The property appraiser shall review the application and determine if the applicant is entitled to a refund of taxes. No later than June 1, 2023, the property appraiser must:

1. Notify the applicant if the property appraiser determines that the applicant is not entitled to receive a refund. If the property appraiser determines that the applicant is not entitled to a refund, the applicant may file a petition with the value adjustment board, pursuant to s. 194.011(3), requesting that the refund be granted. The petition must be filed with the value adjustment board on or before the 30th day following the issuance of the notice by the property appraiser.

2. Issue an official written statement to the tax collector and the applicant if the property appraiser determines that the applicant is entitled to a refund. The statement must provide:

20224Aer

175 a. The just value of the residential improvement as
176 determined by the property appraiser on January 1, 2022.

177 b. The number of days during 2022 that the residential
178 improvement was uninhabitable.

179 c. The postdisaster just value of the residential parcel as
180 determined by the property appraiser.

181 d. The percent change in value applicable to the
182 residential parcel.

183 (3) Upon receipt of the written statement from the property
184 appraiser, the tax collector shall calculate the damage
185 differential pursuant to this section.

186 (a) If the property taxes for 2022 have been paid, the tax
187 collector must process a refund in an amount equal to the
188 disaster relief refund.

189 (b) If, at the time of receipt of the written statement
190 from the property appraiser under this subsection, the property
191 taxes have not yet been paid pursuant to s. 197.3182, the tax
192 collector must process a refund in an amount equal to the
193 disaster relief refund upon receipt of timely payment of the
194 property taxes for 2022 in accordance with s. 197.3182.

195 (4) A property owner who fails to file an application by
196 April 1, 2023, waives a claim for a refund of taxes under this
197 section.

198 (5) By September 1, 2023, the tax collector shall notify:

199 (a) The department of the total reduction in taxes for all
200 properties that qualified for a refund pursuant to this section.

201 (b) The governing board of each affected local government
202 of the reduction in such local government's taxes which occurred
203 pursuant to this section.

20224Aer

(6) For purposes of this section, a residential improvement that is uninhabitable has no value.

(7) The disaster relief refund is determined only for purposes of calculating tax refunds for 2022 under this section and does not determine a parcel's just value as of January 1, 2023, or any subsequent year.

(8) This section does not affect the requirements of s. 197.333.

(9) This section applies retroactively to January 1, 2022, and expires January 1, 2024.

Section 4. Section 197.3182, Florida Statutes, is created to read:

197.3182 Tax deadlines for real property destroyed or rendered uninhabitable by Hurricane Ian or Hurricane Nicole.—

(1) Notwithstanding any other law, for ad valorem taxes and non-ad valorem assessments levied in 2022, for all real property that has been completely destroyed or otherwise rendered uninhabitable due to damage or destruction caused by Hurricane Ian or Hurricane Nicole:

(a) The deadlines set forth in s. 197.333 are suspended and extended as follows:

1. Ad valorem taxes and non-ad valorem assessments levied in 2022, shall be due and payable on January 1, 2023.

2. Ad valorem taxes and non-ad valorem assessments shall become delinquent on June 1, 2023.

3. All dates or time periods and their associated provisions relative to the collection of, or administrative procedures regarding, delinquent taxes and non-ad valorem assessments, including, but not limited to, the sale of tax

20224Aer

certificates, are extended based on the June 1, 2023,
delinquency date, in accordance with s. 197.333.

(b) The deadlines set forth in s. 197.162 governing
discounts for payments of all taxes assessed on the county tax
rolls and collected by the county tax collector before the
delinquency date are extended as follows:

1. Four percent in November 2022, December 2022, and
January 2023.

2. Three percent in February 2023.

3. Two percent in March 2023.

4. One percent in April 2023.

5. Zero percent in May 2023.

(c) The deadlines set forth in s. 197.222(1)(c) and (d)
governing ad valorem taxes prepaid in installments and the
discounts applied to those payments are suspended and extended
for 60 days.

(2) This section operates retroactively to January 1, 2022,
and expires January 1, 2024.

Section 5. Paragraph (c) is added to subsection (5) of
section 252.37, Florida Statutes, to read:

252.37 Financing.—

(5) Unless otherwise specified in the General Appropriations
Act:

(c) Subject to appropriation, and notwithstanding paragraph

(a), the Legislature intends to provide the entire match

requirement for Public Assistance Program grants to local

governments within a county designated in the Federal Emergency

Management Agency disaster declarations for Hurricane Ian or

Hurricane Nicole. Local governments named in such Federal

20224Aer

Emergency Management Agency disaster declarations must enter into agreements with the division to have their portions of the match requirements waived and must agree to use an equal amount of funds toward further disaster recovery or mitigation. Funds shall be allocated on a first-come, first-served basis. Notwithstanding paragraph (a), a local government in an agreement with the division under this paragraph is not required to provide one-half of the required match prior to receipt of Public Assistance Program financial assistance. The division shall report quarterly to the Executive Office of the Governor and the chair of each legislative appropriations committee on the amount of match requirements waived, agreements entered into with local governments, and the amount of remaining appropriated funds. This paragraph expires June 30, 2027.

Section 6. Section 252.71, Florida Statutes, is created to read:

252.71 Florida Emergency Management Assistance Foundation.—

(1) As used in this section, the term:

(a) "Foundation" means the Florida Emergency Management Assistance Foundation for the division.

(b) "Personal services" includes full-time or part-time personnel of the division.

(2) The foundation is hereby created as a direct-support organization of the division to provide assistance, funding, and support to the division in its disaster response, recovery, and relief efforts for natural emergencies.

(a) The foundation must be an organization that is a Florida nonprofit corporation incorporated under chapter 617, approved by the Department of State, and recognized under s.

20224Aer

501(c)(3) of the Internal Revenue Code. The foundation is exempt from paying fees under s. 617.0122.

(b) The foundation is organized and operated exclusively to obtain funds; request and receive grants, gifts, and bequests of moneys or other items; acquire, receive, hold, invest, and administer in its own name securities, funds, or property; and make expenditures to or for the direct or indirect benefit of the division, political subdivisions of this state, and individuals adversely impacted by a natural emergency occurring within this state.

(c) The division must determine that the foundation is operating in a manner consistent with the goals of the division and in the best interest of the state.

(3) The foundation shall be governed by a board of directors.

(a) The board of directors shall consist of five members appointed by the director of the division. A majority of the members must be knowledgeable about emergency management activities and programs. The importance of geographic representation shall be considered in appointing members. Members must be residents of this state at the time of appointment and throughout their terms.

(b) The term of office of the appointed members of the board of directors shall be 3 years, except that the initial terms of appointment shall be two members for 1 year, two members for 2 years, and one member for 3 years. A member may be reappointed when his or her term expires and may continue to serve in such capacity upon expiration of his or her term until an appointment is made to fill the vacancy. However, a member

20224Aer

may not serve more than two consecutive terms.

(c) Upon a finding based on a majority vote of the board of directors, the director of the division may remove any member of the board for cause.

(d) Any vacancy that occurs shall be filled in the same manner as the original appointment for the unexpired term of that seat.

(e) Members of the board of directors shall serve without compensation, but are entitled to receive reimbursement for per diem and travel expenses in accordance with s. 112.061, and shall be paid from funds managed by the foundation.

(f) Moneys of the foundation must be held in a separate depository account in the name of the foundation, subject to the provisions of the contract with the division, and shall be used in a manner consistent with the goals of the foundation.

(4) The foundation shall operate under a written contract with the division. The written contract must, at a minimum, provide for:

(a) Approval of the articles of incorporation and bylaws of the foundation by the director of the division.

(b) Certification by the division that the foundation is complying with the terms of the contract and is doing so consistent with the goals and purposes of the division and in the best interests of the state. The division must make this certification annually and it must be reported in the official minutes of a meeting of the foundation.

(c) Reversion of moneys and property held by the foundation to the:

1. Division if the foundation is no longer approved to

20224Aer

operate by the division;

2. Division if the foundation fails to maintain its tax-exempt status pursuant to s. 501(c)(3) of the Internal Revenue Code;

3. Division if the foundation ceases to exist; or

4. State if the division ceases to exist.

(d) Prominent disclosure of the distinction between the division and the foundation to donors, including such disclosure in all promotional and fundraising publications or activities.

(e) Approval by the board of directors of an annual operating budget for the foundation.

(f) Adoption of an ethics code as required by s. 112.3251.

(5) The division may permit the use of its property, facilities, and personal services by the foundation and shall set forth any requirements or conditions on such use in the contract between the division and the foundation, including provisions governing the use of such property, facilities, and personal services during a declared state of emergency for a natural emergency. However, the division may not permit the use of such property, facilities, or personal services by the foundation if it does not provide equal employment opportunities to all persons regardless of race, color, national origin, gender, age, or religion.

(6) (a) The fiscal year of the foundation shall begin on July 1 of each year and end on June 30 of the following year.

(b) By August 1 of each year, the foundation shall submit to the division its federal Internal Revenue Service Application for Recognition of Exemption form (Form 1023) and federal Internal Revenue Service Return of Organization Exempt from

20224Aer

Income Tax form (Form 990).

(c) By September 30 of each year, the foundation shall submit the budget and a report of contributions and expenditures to the division in a manner prescribed by the division.

(7) The foundation shall provide for an annual financial audit in accordance with s. 215.981.

(8) This section is repealed December 31, 2024, unless reviewed and saved from repeal by the Legislature.

Section 7. The Department of Revenue may, and all conditions are deemed met to, adopt emergency rules pursuant to s. 120.54(4), Florida Statutes, to administer the creation of ss. 197.3181 and 197.3182, Florida Statutes, and the amendment made to s. 194.032, Florida Statutes, by this act. Notwithstanding any other law, emergency rules adopted pursuant to this section are effective for 6 months after adoption and may be renewed during the pendency of procedures to adopt permanent rules addressing the subject of the emergency rules. This section expires July 1, 2024.

Section 8. For the 2022-2023 fiscal year, the nonrecurring sum of \$350,000,000 from the General Revenue Fund is appropriated to the Division of Emergency Management within the Executive Office of the Governor to provide the match requirement for Public Assistance Program grants pursuant to s. 252.37(5)(c), Florida Statutes, as created by this act. Appropriated funds may only be used to meet federal match requirements as provided in s. 252.37(5)(c), Florida Statutes, as created by this act. Notwithstanding s. 216.301, Florida Statutes, and pursuant to s. 216.351, Florida Statutes, the balance of this appropriation which is not disbursed by June 30,

20224Aer

2023, may be carried forward for up to 5 years after the
effective date of this act.

Section 9. For the 2022-2023 fiscal year, the nonrecurring
sum of \$150,000,000 from the General Revenue Fund is
appropriated in the Affordable Housing for Hurricane Recovery
appropriation category to the Florida Housing Finance
Corporation.

(1) From these funds, \$60,000,000 shall be used to fund the
Hurricane Housing Recovery Program, to be administered in
accordance with part VII of chapter 420, Florida Statutes, for
eligible counties and municipalities based on Hurricane Ian and
Hurricane Nicole Federal Emergency Management Agency damage
assessment data and population. Hurricane recovery purposes may
include, but are not limited to, repair and replacement of
housing; repair, replacement, and relocation assistance for
manufactured homes; acquisition of building materials for home
repair and construction; or housing reentry assistance, such as
security deposits, utility deposits, and temporary storage of
household furnishings. Of this amount for the Hurricane Housing
Recovery Program, up to \$25,000,000 may be used to provide
assistance to homeowners to pay insurance deductibles.

(2) From these funds, \$90,000,000 shall be used to fund the
Rental Recovery Loan Program for eligible counties and
municipalities based on Hurricane Ian and Hurricane Nicole
Federal Emergency Management Agency damage assessment data and
population.

(3) The Florida Housing Finance Corporation shall
coordinate with the Executive Office of the Governor's Division
of Emergency Management and the Department of Economic

20224Aer

436 Opportunity to prevent duplication of benefits related to other
437 state or federal programs for recipients of funds appropriated
438 under this section.

439 Section 10. Hurricane Restoration Reimbursement Grant
440 Program.—

441 (1) There is hereby created within the Department of
442 Environmental Protection the Hurricane Restoration Reimbursement
443 Grant Program for the purpose of providing financial assistance
444 to mitigate coastal beach erosion for coastal homeowners whose
445 property was significantly impacted by Hurricane Ian or
446 Hurricane Nicole in 2022. The department is authorized to
447 provide financial assistance grants to eligible recipients
448 located in Brevard, Broward, Charlotte, Collier, Duval, Flagler,
449 Indian River, Lee, Manatee, Martin, Nassau, Palm Beach, Saint
450 Johns, Saint Lucie, Sarasota, and Volusia Counties.

451 (2) The department may provide grants to property owners to
452 mitigate for coastal beach erosion caused by Hurricane Ian or
453 Hurricane Nicole during 2022. Grant funding may only be used to
454 reimburse a property owner for construction costs:

455 (a) Related to sand placement and temporary or permanent
456 coastal armoring construction projects to mitigate coastal beach
457 erosion and may not be used for the repair of residential
458 structures.

459 (b) Incurred as a result of preparation for or damage
460 sustained from Hurricane Ian or Hurricane Nicole in 2022.

461 (c) Incurred after September 23, 2022.

462 (d) Related to a project that has been permitted, is exempt
463 from permitting requirements, or is otherwise authorized by law.

464 (3) Financial assistance grants may only be provided to

20224Aer

mitigate damage to property located in Brevard, Broward,
Charlotte, Collier, Duval, Flagler, Indian River, Lee, Manatee,
Martin, Nassau, Palm Beach, Saint Johns, Saint Lucie, Sarasota,
and Volusia Counties that is a:

(a) Residential property that meets the following
requirements:

1. The parcel must be a single-family, site-built,
residential property; and

2. The homeowner must have been granted a homestead
exemption on the home under chapter 196, Florida Statutes;

(b) Residential condominium, as defined in chapter 718,
Florida Statutes; or

(c) Cooperative, as defined in chapter 719, Florida
Statutes.

(4) (a) The department shall cost-share with \$1 provided by
the property owner for every \$1 provided by the state with a
maximum of \$150,000 in state funding toward the actual cost of
an eligible project. The department shall prioritize applicants
who are low-income or moderate-income persons, as defined in s.
420.0004, Florida Statutes. Grants will be awarded to property
owners for eligible projects following the receipt of a
completed application on a first-come, first-served basis until
funding is exhausted.

1. Applications may be submitted beginning February 1,
2023.

2. Applicants must include evidence that the project meets
the criteria in subsections (2) and (3).

(b) If the department determines that an application meets
the requirements of this section, the department shall enter

20224Aer

into a cost-share grant agreement with the applicant consistent with this section.

(c) The department shall disburse grant funds on a reimbursement basis. In order to receive reimbursement, property owners must submit, at a minimum:

1. If applicable, the permit issued under chapter 161, Florida Statutes, or applicable statute, and evidence that the project complies with all permitting requirements.

2. All invoices and payment receipts for eligible projects.

3. If applicable, documentation that the eligible project was completed by a licensed professional or contractor.

(5) No later than January 31, 2023, the department shall adopt emergency rules prescribing the procedures, administration, and criteria for approving the applications for the Hurricane Restoration Reimbursement Grant Program. The department is authorized, and all conditions are deemed met, to adopt emergency rules under ss. 120.536(1) and 120.54(4), Florida Statutes, to implement this section. The Legislature finds that such emergency rulemaking authority is necessary to address critical shoreline erosion which may result in the loss of property by homeowners in those areas of the state that sustained damage due to Hurricane Ian or Hurricane Nicole during 2022. Such rules shall remain effective for 6 months after the date of adoption.

(6) This section expires July 1, 2023.

Section 11. Hurricane Stormwater and Wastewater Assistance Grant Program.—

(1) There is hereby created within the Department of Environmental Protection the Hurricane Stormwater and Wastewater

20224Aer

Assistance Grant Program for the purpose of providing financial assistance to local governments located in Brevard, Broward, Charlotte, Collier, Duval, Flagler, Indian River, Lee, Manatee, Martin, Nassau, Palm Beach, Saint Johns, Saint Lucie, Sarasota, and Volusia Counties and impacted by Hurricane Ian or Hurricane Nicole.

(2) The department shall administer the Hurricane Stormwater and Wastewater Assistance Grant Program to remediate damage to stormwater and wastewater systems resulting from Hurricane Ian or Hurricane Nicole.

(3) Eligible recipients of such grants include counties, municipalities, and special taxing districts that operate a stormwater or wastewater management system.

(4) All information pertaining to the grant application process must be provided on the department's website no later than February 1, 2023.

(5) No later than January 31, 2023, the department must adopt emergency rules prescribing the procedure and application for the Hurricane Stormwater and Wastewater Assistance Grant Program. All conditions are deemed met to adopt such emergency rules under ss. 120.536(1) and 120.54(4), Florida Statutes, to implement this section. Such rules shall remain effective for 6 months after the date of adoption.

(6) Grant applications must be submitted to the department on or before March 31, 2023.

(7) To be eligible for the program, the applicant must provide proof that:

(a) The applicant's stormwater or wastewater systems sustained damages as a result of Hurricane Ian or Hurricane

20224Aer

Nicole.

(b) The damage to the stormwater or wastewater system poses an immediate threat to the public health or the environment if not immediately addressed.

(8) Grants may not exceed \$10 million per project.

(9) Grants must be awarded by May 1, 2023.

(10) This section expires July 1, 2023.

Section 12. For the 2022-2023 fiscal year, the sum of \$251.5 million in nonrecurring funds is appropriated from the General Revenue Fund to the Department of Environmental Protection as follows: \$250 million as Fixed Capital Outlay for damages related to Hurricane Ian or Hurricane Nicole, including \$100 million for beach erosion projects as identified in s. 161.101(22), Florida Statutes; \$50 million for the Hurricane Restoration Reimbursement Grant Program; \$100 million for the Hurricane Stormwater and Wastewater Assistance Grant Program; and \$1.5 million as administrative costs for the department to implement this section.

Section 13. This act shall take effect upon becoming a law.