



Fort Myers Beach Town Council

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

AMENDED Agenda

Wednesday, August 7, 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

- A. Dr. Traci Kohler - Fort Myers Beach Elementary School Update

VIII. APPROVAL OF MINUTES

- A. Town Council - June 17, 2024

IX. CONSENT AGENDA

- A. Resolutions 24-137 through 24-141; Extending Local State of Emergency for Hurricane Ian

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

- B. Resolutions 24-142 through 24-146; 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.

NEW C. Resolutions 24-155 through 24-158; Extending Local State of Emergency Tropical Storm Debby

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, EXTENDING THE DECLARATION OF STATE OF LOCAL EMERGENCY DUE TO TROPICAL STORM DEBBY 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.

X. ITEMS REMOVED FROM CONSENT AGENDA

XI. PUBLIC HEARINGS

A. Ordinance 24-18; DCI20240143, 1668 I Street (Beach Bar)

Continuance Requested by Petitioner:

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING A REQUEST TO REZONE THE PROPERTY LOCATED AT 1668 I STREET, GENERALLY IDENTIFIED AS STRAP NUMBER 19-46-24-W4-0070B.0110 FORT MYERS BEACH, FROM DOWNTOWN TO COMMERCIAL PLANNED DEVELOPMENT (CPD) ZONING, WITH DEVIATIONS, FOR A BAR AND RESIDENCE; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

B. Review of SEZ20230126, 163 Old San Carlos

An annual review of approved resolution 23-87 for special exception SEZ20230126 that allows temporary outdoor consumption on premises with retail use at 163 Old San Carlos Boulevard.

C. Ordinance 24-17; Advisory Committees

1st Reading and Public Hearing of an Ordinance entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING SECTION 2-94 "QUALIFICATIONS AND APPOINTMENTS OF MEMBERS" AND SECTION 2-96 "REMOVAL OF AGENCY, BOARD, COMMITTEE OR COMMISSION MEMBERS" OF DIVISION 2 "PROCEDURES FOR THE ESTABLISHMENT OF BOARDS, COMMITTEES AND COMMISSIONS" OF ARTICLE IV "BOARDS, COMMISSIONS, COMMITTEES AND OTHER AGENCIES" OF CHAPTER 2 "ADMINISTRATION" AND SECTION 34-113 "COMPOSITION, APPOINTMENT AND COMPENSATION OF MEMBERS" OF DIVISION 3 "LOCAL PLANNING AGENCY" OF ARTICLE II "ZONING PROCEDURES" OF CHAPTER 34 "ZONING DISTRICTS, DESIGN STANDARDS AND

NONCONFORMITIES” OF THE CODE OF ORDINANCES OF THE TOWN OF FORT MYERS BEACH, FLORIDA, REMOVING PROPERTY OWNERSHIP AS A QUALIFICATION REQUIREMENT FOR THE MEMBERS OF THE TOWN’S AGENCIES, BOARDS, COMMITTEES OR COMMISSIONS, INCLUDING THE TOWN’S LOCAL PLANNING AGENCY; ELIMINATING DUPLICATIVE LANGUAGE; ADDING A GRANDFATHER PROVISION FOR CURRENT NON-QUALIFYING MEMBERS OF THE TOWN’S BOARDS, AGENCIES, COMMISSIONS, AND COMMITTEES; ADDING A PROVISION TO SECTION 34-113, REGARDING THE MANDATORY ANNUAL FINANCIAL DISCLOSURE FORM AS REQUIRED BY THE FLORIDA COMMISSION ON ETHICS; PROVIDING FOR CODIFICATION, SEVERABILITY, SCRIVENER’S ERRORS, CONFLICTS OF LAW, AND AN EFFECTIVE DATE. Open the public hearing and schedule for second reading and final adoption on August 19, 2024 at 9:00 AM.

XII. ADMINISTRATIVE AGENDA

- A. FY2023 Audit Report
Accept FY2023 Audit Report Prepared by Mauldin & Jenkins
- B. Second Amendment ROW Agreement, Bandes Construction Co.
Authorize the Mayor to execute Amendment #2 to the previous Non-Exclusive Right of Way Agreement with Bandes Construction Company, Inc. to extend the agreement for two additional months under the same terms and conditions.
- C. Resolution 24-135; CDBG-DR Excessive Force Policy
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, ADOPTING POLICY PROTECTING INDIVIDUALS ENGAGED IN NONVIOLENT CIVIL RIGHTS DEMONSTRATIONS; AND PROVIDING FOR AN EFFECTIVE DATE.
- D. Resolution 24-136, 2025 F-ROC Participation
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AUTHORIZING THE TOWN MANAGER TO EXECUTE THE 2025 PARTICIPATION REQUEST AND RENEWAL FORM FOR THE FLORIDA RECOVERY OBLIGATION CALCULATION (F-ROC) PROGRAM; AUTHORIZING THE TOWN MANAGER OR THEIR DESIGNEE TO EXECUTE AND SUBMIT RELATED DOCUMENTS NEEDED TO IMPLEMENT AND ADMINISTER THE PROGRAM INCLUDING THE DISASTER READINESS ASSESSMENT AND ABATEMENT ACTIVITIES; PROVIDING AN EFFECTIVE DATE.
- E. Resolution 24-147; BCC TD Fund Grant Agreement FY25
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AUTHORIZING THE MAYOR OR TOWN MANAGER TO EXECUTE A GRANT AGREEMENT WITH THE LEE COUNTY BOARD OF COUNTY COMMISSIONERS FOR RECEIPT OF TOURIST DEVELOPMENT TAX FUNDS IN THE AMOUNT \$1,262,550.00

FOR BEACH AND SHORELINE MAINTENANCE; AUTHORIZING THE MAYOR OR TOWN MANAGER TO EXECUTE ANY RELATED DOCUMENTS NEEDED FOR RECEIPT OF THE FUNDING; AND PROVIDING AN EFFECTIVE DATE.

- F. Resolution 24-148; FDEP Hurricane Restoration Grant
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AUTHORIZING THE TOWN MANAGER TO EXECUTE AMENDMENTS TO FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION HURRICANE RESTORATION REIMBURSEMENT GRANT TO FUND THE ESTERO ISLAND BEACH RENOURISHMENT AND HURRICANE RECOVERY PROJECT; AND PROVIDING AN EFFECTIVE DATE.
- G. Resolution 24-149, Budget Amendment #3 - Allocation of FY23 Savings to Emergency Reserves
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA, APPROVING BUDGET AMENDMENT #3 TO THE TOWN GENERAL FUND AND EMERGENCY FUND; PROVIDING AUTHORITY; EFFECTIVE DATE.
- H. Resolution 24-150; Temporary \$8 Million Interfund Loan to Purchase Building
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA, APPROVING TEMPORARY INTERFUND LOAN TO PURCHASE PROPERTY FOR NEW TOWN HALL; PROVIDING AUTHORITY; EFFECTIVE DATE.
- I. Resolution 24-151; Budget Amendment #4 - Authorizing ARPA Funds for Emergency Outfall Repairs
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AUTHORIZING 1) THE USE OF \$104,929 OF AMERICAN RESCUE PLAN ACT ("ARPA") FUNDS TO REIMBURSE THE STORMWATER FUND FOR EMERGENCY EXPENDITURES INELIGIBLE FOR REIMBURSEMENT BY FEMA; AND 2) AMENDMENTS TO THE FISCAL YEAR 2024 BUDGET RELATED TO THIS REIMBURSEMENT; AND PROVIDING FOR AN EFFECTIVE DATE
- J. Resolution 24-152; Budget Amendment #5 - Allocation of Community Enhancement Fund Balance
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA, APPROVING BUDGET AMENDMENT #5 TO THE TOWN GENERAL FUND AND OTHER TOWN FUNDS; PROVIDING AUTHORITY; EFFECTIVE DATE.

- K. Resolution 24-153; Budget Amendment #6 - Purchase of New Town Hall and Acceptance of Grant

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA, APPROVING ACCEPTANCE OF FLORIDA DEPARTMENT OF COMMERCE GRANT FOR NEW TOWN HALL AND RELATED BUDGET ADJUSTMENT (#6); PROVIDING AUTHORITY; 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.



For special accommodation, please notify the Town Clerk's Office at least 72 hours in advance. (239) 765-0202

In accordance with the Americans with Disabilities Act (ADA), persons needing a special accommodation to participate in the Board's proceedings should contact the Town Clerk's Office not later than three days prior to the proceedings.



Fort Myers Beach Town Council

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

Minutes

Monday, June 17, 2024

9:00 AM

ORDER OF BUSINESS

DRAFT

I. CALL TO ORDER

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

II. INVOCATION

Town Clerk Baker.

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF FINAL AGENDA

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

V. PUBLIC COMMENT

Becky Weber, resident, stated she had stormwater issues and her home on Curlew has flooded three times since Ian. She asked the town council to approve additional funds for Tetra-Tech to fix the drainage issues. She asked the town to fill an area in the easement in front of her house.

Robin Capela, resident, questioned the town council about how many people they thought the town could accommodate, what their vision was and whether they were making decisions based on statistics. She asked why they were rushing to redevelop while about 60% of the condos were not back yet. She noted the traffic was already bad and asked the town not to give away any assets. She commented that they talked about trying to help with traffic while voting to approve overcapacity. Mike Miller, resident, listed his flooding issues on Bahia Via due to the drainage not working. He reiterated his comments regarding London Bay.

They planned to use a residential canal for commercial traffic and transport people to their resort for dining and shopping. He stated that London Bay should acquire a dock at Fish Tale Marina and shuttle people from Santini Plaza. He indicated that people would notice the shops and restaurants in town and may decide to shop there rather than stick with London Bay Resorts. He commented that London Bay needed to figure out how to support local businesses and not just themselves. Angela Amos, resident, commented on short-term rentals in residential areas. She described her full-time residential neighborhood before the hurricane and after the hurricane. She stated new rentals were coming in almost every weekend and they did not know the rules. She had to call the Sheriff's Office for noise and indicated it was constant. She asked the town council to take care of the people who lived there and preserve their quality of life.

VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Council Member King thanked Beach Talk Radio for the pub crawl over the weekend to benefit the Fort Myers Beach Community Foundation. They have raised about \$3,000.00 so far and the goal is \$5,000.00. He congratulated the mayor and his wife and the vice mayor and his wife on their wedding anniversaries. Vice Mayor Atterholt recently attended the grand opening of the Beach Baptist Church and recognized them for the volunteers' hard work and struggles. Last Sunday, he attended a service at St. Peter Evangelical Lutheran Church in the parking lot under a tent. He noted it was a beautiful service and recognized their commitment and faith.

Council Member Woodson recognized the town staff for the fitness court. She congratulated herself and her husband on their wedding anniversary.

Council Member Safford thanked the waste management team for their amazing job cleaning up during the recent rainstorm.

Mayor Allers recognized and thanked Council Member Safford for completing the Institute for Elected Municipal Officials. He presented the certificate to him.

VII. ADVISORY COMMITTEES ITEMS / REPORTS / APPOINTMENTS

A. Tier 1 Project Update - Andrew Sitework

Project Manager Chad Baker with Andrew Sitework summarized the project and noted they were 25% complete. Slides included two maps with Phases A, B, C and D and Streets within the Phases. He projected the final completion of Phase A to be November 2024, Phase B to be completed in March 2025, Phase C in February 2026 and Phase D in October 2025. The goal was to have the Tier 1 project completed in February 2026, which was two years ahead of schedule. He addressed the latest drainage issues in public comment and indicated the duck bills would help and the drainage structures were bigger to transfer more water.

Operations & Compliance Director Frankie Kropacek indicated that additional drainage may be needed and they were trying to pinpoint problem areas. He encouraged residents to contact him about drainage issues.

Mr. Baker stated that they received approval from the Department of Health to tie residents on Williams Dr., Bahia Via, Sterling Ave. and Seminole Ave. to the new water main and once the connections were complete, they could begin storm improvements. They were working on the water main for Phases C and D; storm improvements will begin after that is completed,

B. Estero Island Lighting Project Update - Florida Power & Light (FPL)

Mr. Davis stated all the materials had been ordered and the underground materials were onsite. Permits were resubmitted and he felt the issues would be resolved by the end of the month. A pre-construction meeting will be scheduled with stakeholders before construction. The tentative start date was July 15, 2024, with a completion date within 15 months. The project will start at Estero and Estrellita Dr. and proceed north. Installation of the poles will begin around August and the lights will be installed after the hurricane season. He estimated 405 new poles would be installed on Estero, 295 on side streets and 30 downtown. He thought the poles would be about 100 feet apart from each other and the existing poles would be replaced. New lights on the side streets will be added to the lights already there and will match. The old light fixtures will be taken down. Mr. Davis will forward a map of where the poles will be located.

VIII. APPROVAL OF MINUTES

A. Town Council - June 3, 2024

Council Member King moved to approve the minutes, seconded by Council Member Safford.
The motion carried unanimously.

B. Management & Planning Session - June 6, 2024

Council Member King moved to approve the minutes, seconded by Council Member Safford.
The motion carried unanimously.

IX. CONSENT AGENDA

A. Special Event - Farmer's Markets

Shop Local Productions is requesting to have Farmer's Markets at: Santini Plaza from November 5, 2024 - April 4, 2025, and Times Square from September 9, 2024 - May 31, 2025

Vice Mayor Atterholt stated this was to approve the Farmer's Market in Santini Plaza and Times Square.

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

The motion carried unanimously.

B. Resolution 24-130, Town Hall Trailer Contract Amendment

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING ITS PRIOR APPROVAL OF A CONTRACT WITH KIRKWOOD ELECTRIC IN THE AMOUNT OF \$73,620.00 FOR WORK NEEDED FOR THE NEW TOWN HALL TRAILERS TO INCREASE THE CONTRACT AMOUNT BY \$15,374.00 FOR ADDITIONAL NEEDED WORK, FOR A TOTAL CONTRACT PRICE OF \$88,994.00; AND PROVIDING FOR AN EFFECTIVE DATE.

Town Manager Hyatt explained that the cost increased because of work needed on the rec center and concession stand.

X. ITEMS REMOVED FROM CONSENT AGENDA

XI. PUBLIC HEARINGS

Town Attorney Stuparich explained the quasi-judicial procedures. Town Clerk Baker confirmed that all agenda items were properly noticed and she swore in those providing testimony. Mayor Allers disclosed a conflict of interest with Items E. and F. He will submit a Form 8B to the Town Clerk for each item.

A. Ordinance 24-17; Amending Advisory Committee Requirements

1st Reading and Public Hearing of an Ordinance entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING SECTION 2-94 "QUALIFICATIONS AND APPOINTMENTS OF MEMBERS" AND SECTION 2-96 "REMOVAL OF AGENCY, BOARD, COMMITTEE OR COMMISSION MEMBERS" OF DIVISION 2 "PROCEDURES FOR THE ESTABLISHMENT OF BOARDS, COMMITTEES AND COMMISSIONS" OF ARTICLE IV "BOARDS, COMMISSIONS, COMMITTEES AND OTHER AGENCIES" OF CHAPTER 2 "ADMINISTRATION" OF THE CODE OF ORDINANCES OF THE TOWN OF FORT MYERS BEACH, FLORIDA, REMOVING RESIDENCY AS A QUALIFICATION REQUIREMENT FOR THE TOWN'S AGENCY, BOARD, COMMITTEE OR COMMISSION MEMBERS; ELIMINATING DUPLICATIVE LANGUAGE; PROVIDING FOR CODIFICATION, SEVERABILITY, SCRIVENER'S ERRORS, CONFLICTS OF LAW, AND AN EFFECTIVE DATE. Open the public hearing and schedule for second reading and final adoption on August 5, 2024 at 9:00 AM.

Mayor Allers read the title of the ordinance. Town Attorney Stuparich stated that the rules recently amended by the town council contradicted the residency requirements in this ordinance. She noted the rules would be brought back at the second reading to make both documents consistent. Council Member Safford questioned whether there was a distinction between residency or owning property. Town Attorney Stuparich replied that the removal was no longer a registered voter within the town's jurisdiction or a property owner. Council Member Safford confirmed that owning property was insufficient; however, Council Member King stated that a person appointed to the LPA was a property owner who lived in Estero. Town Attorney Stuparich will look into it.

Council Member Safford noted an injunction regarding Form 6 requirements on page 67. Town Attorney Stuparich said she would change the language for the second reading.

Public comment:

Ellen Vaughan, resident, was troubled about removing a deep association with the island and being allowed to participate on a committee. She was concerned that someone with only a financial interest in the island could significantly influence decisions brought forward by committees.

Paula Kiker, who owned a building in town, commented that new ordinances typically affected incoming people and not the current committee membership. Public comment closed.

Council Member King moved to move it to a second reading, seconded by Vice Mayor Atterholt.

The motion carried unanimously by roll call vote.

B. Ordinance 24-16; Amending Schedule of Uses (Sandy Bottoms)

Second Reading and Public Hearing of an Ordinance Entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING AND RESTATING ORDINANCE NO. 22-06 TO AMEND THE SCHEDULE OF USES FOR THE COMMERCIAL PLANNED DEVELOPMENT ZONING FOR THE PROPERTY LOCATED AT 2301, 2307 & 2311 ESTERO BLVD. AND 111 & 121 MANGO ST., GENERALLY IDENTIFIED AS STRAP NUMBERS 219-46-24-W3-0110D.0010, 19-46-24-W3-0120E.0010, 19-46-24-W3-0120E.0020, AND 19-46-24-W3-0120E.0030 FORT MYERS BEACH; AMENDING THE MASTER CONCEPT PLAN FOR THE RESTAURANT USE(S); PROVIDING FOR REVISIONS TO CONDITIONS OF APPROVAL AND DEVIATIONS, AND OTHER CLARIFICATION AS NECESSARY; PROVIDING FOR REPEAL, CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

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

Community Development Senior Planner Jason Smalley stated that the request is generally the same as the first reading. Changes to conditions of approval for deviations have changed. The applicant asked to add a 2,750-square-foot tiki hut, which would cover the front lawn. Today, there were 9 deviations with 12 conditions of approval as stated on the blue sheet. He distributed and reviewed a clarification of the schedule of uses and hours of operation.

Ken Gallander of The Neighborhood Company represented the applicant. His presentation included the Master Concept Plan, Restaurant Service Bar and Condition #6. He stated that they agreed with the staff report.

Public comment:

Susan Bonfigli, resident, commented that she initially supported the restaurant, but now it appeared that the focus was on becoming an entertainment venue and bar well past typical dinner hours. She was surprised that they operated with a special event permit on Memorial Day and described how loud the music was. She stated that the acoustic guitar at 10:00 a.m. resonated through her home, disrupting her peace. She requested that the amplified music request be denied, and indoor music be restricted. She requested that the applicant reconsider the venue's nature and a restaurant with modest music was welcome.

Public comment closed.

Mr. Gallander noted that the permanent structure would not be open. Mike Miller distributed information and noted the decibel levels were checked inside the tent and they were well under the code on the edges of the property. He stated that Sandy Bottoms was primarily a restaurant that served alcohol.

Council Member King moved to approve the ordinance with conditions in the staff report, seconded by Council Member Woodson.

The motion carried unanimously by roll call vote.

C. Ordinance 24-15; DCI20230246; 125, 131-151 School St and 2661-2681 Estero Blvd (Myerside)

Second Reading and Public Hearing of an Ordinance Entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING THE COMMERCIAL PLANNED DEVELOPMENT (CPD) ZONING FOR THE PROPERTY LOCATED AT 125, 131-151 SCHOOL ST AND 2661-2681 ESTERO BLVD. GENERALLY IDENTIFIED AS STRAP NUMBERS 19-46-24-W3-0020C.0230; 19-46-24-W3-0020C.0270; 19-46-24-W3-0020C.0290 FORT MYERS BEACH TO ALLOW A MIXED USE DEVELOPMENT INCLUDING LODGING, LIVE/WORK UNITS, RETAIL, AND RESTAURANT USES; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the ordinance. Ex parte communications: all members disclosed receiving emails for and against the project. Vice Mayor Atterholt and Council Member Safford disclosed conversations with The Neighborhood Company and the applicants. The applicants confirmed receipt of the agenda and background materials.

Community Development Planner Sarah Propst reviewed the background of the request as stated on the blue sheet. She noted that they asked for an additional deviation today to allow a Floor Area Ratio (FAR) of 1.3 to allow larger live/work units. The applicant provided additional conditions based on conversations at the first hearing.

Attorney Noel Davies from Davies Duke represented the applicants. He stated they were consistent with the policies and objectives of the existing Boulevard future land use designation.

Ken Gallander from The Neighborhood Company reviewed Public Benefits, Items to Address, including Parking, Traffic Mitigation and Live/Work Units and Conclusion.

Vice Mayor Atterholt wanted to include language to require an MD, Physician's Assistant or Nurse Practitioner to be on staff at the Medical Clinic and Urgent Care Center so prescriptions could be written. Also, a licensed Physical Therapist would be required on staff in Rehabilitation Clinics. He did not think that a Medical Spa or Chiropractor should be on the list to share parking spots. Council Member Woodson commented that other public services were needed, like hair stylists. Vice Mayor Atterholt responded that if the applicant had difficulty attracting medical practitioners, they could petition the town council to allow other services.

Beverly Milligan, applicant, stated that every unit would receive membership at Bay Oaks.

Mayor Allers stated that the applicants were asking for more intensity and less parking this time without giving anything back. He noted that he never received an answer regarding the number of units going up to 45 from 42. He felt they were asking the town to make things work for the applicants.

Mr. Gallander stated that 42 units were stated pre-application and after evaluating the project, they determined a need for 45 units. He did not think they were asking for more this time. The increase in FAR was based on conversations from the first hearing regarding the size of the live/work units. Mayor Allers commented that they were not willing to decrease anything.

Patrick Vanasse from The Neighborhood Company stated that the town council asked them to increase those units, and they identified multiple parking options. The town council also offered shared parking at Bay Oaks if the applicants provided medical professionals in their building. He noted that he heard from the town council that having medical professionals on the island was a public benefit. Mayor Allers agreed it was a public benefit, but they needed to give something up because the shared parking took away from the public. He noted they did not offer to give up units, but they wanted the community to give them more to make their public benefits a reality. Mr. Vanasse responded that they did not ask for parking at Bay Oaks and did not think the town was giving up anything for them. Mayor Allers questioned whether there were parking agreements in place. Mr. Vanasse replied that valet parking was an option, and the library and church were open to shared parking. He felt confident that the applicants would be able to address any shortcomings.

Mr. Vanasse addressed the height deviation of two feet. Mr. Gallander noted the units would start at less than 400 sq. ft. and go up from there. Planner Propst explained how the applicants got to a 5.6 multiplier and stated it was allowed through the deviation process. She added that many developments made similar requests in the past. She clarified that the 5.6 multiplier was compliant with the current comp plan and felt the request was appropriate.

Mr. Vanasse stated that the equivalency ratio was consistent with the comp plan and they were asking for the same mechanism Margaritaville and others used.

Public comment:

Bill Veach, resident, felt that if there was any public benefit, it should be proportional to the benefit the applicants were getting. He thought it was odd that the staff recommended denial of the last CPD but recommended approval for this one since it asked for more. He did not think the list of public benefits included any commitments. He stated that trying to have a medical-themed facility was a public benefit for getting additional units. Now, for them to say that they wanted something additional from the town to make that happen was double-dipping. He questioned whether they would have sufficient parking if they did not have the extra units. He felt it was too big of an ask.

Paula Kiker, business owner, was in favor of the project and stated it was monumental because this was the first development since Ian. She indicated their decision would divide many of them, but it was in the town council's hands, and the town would be okay. She stated that the beach would always be a tourist town, and there would always be a divide between commercial businesses and residents' wants and needs. She commented that the project was a boutique gem for the island and a huge financial investment.

She thanked everyone for what they had done to bring the town back.

Ron Fleming, resident, stated that Ms. Kiker stole his speech. He was in favor of the project, but it was a difficult decision. He remembered what Myerside looked like before Ian and how the applicants cleaned it up. He said this project was a good change and encouraged the town council to approve it.

Ellen Vaughan, resident, supported the project and agreed with Ms. Kiker and Mr. Fleming. She felt that what the applicants did for the property before Ian should count for something. She noted that the applicants also provided tickets to their guests for the Mound House.

Todd Capela, resident, stated the island would not shrivel up and die if they did not rebuild quickly. He did not see a lot of public benefit and questioned how many people would use the one doctor on the island. He felt the request broke many rules and agreed with Mayor Aller's concerns.

Barbara Hill, resident, agreed with Mayor Allers and thought he was correct. She loved the resort's design but felt the seven deviations were more than she could approve. She did not support the density or setback on Estero Blvd. Leasing ground floor units for medical providers as a public benefit was based on supply and demand. She did not think the applicants would turn away other businesses to keep space open for medical providers. She did not like the parking issues and did not approve of it.

Steve Johnson, resident, felt it was a key day for the town because it opened Pandora's box. He felt the project was too intense and recommended that they stay as close to the comp plan as possible. He questioned why the public was not involved with the changes to the comp plan before it was sent to the state. He stated that although variances were allowed, the town council did not have to grant them.

Chris Smutz of the London Bay Development Group and owners of the Outrigger parcel supported the project and asked that they consider the island-wide economic impact of the project. He stated that the economic impact would increase property values and tax revenue, generate additional

sales and tourism taxes, and lead to job and wage creation. He felt that approving the project would send a message that the town council was committed to rebuilding the town for future generations.

Robin Capela, resident, stated that they were not a wasteland and should slow down to think about things. She felt the applicants could give up a little and agreed with Mayor Allers. She thought that they were giving parking away and asked that they rethink the project.

Public comment closed.

Attorney Davies reiterated that they were consistent with the comprehensive plan, and it was appropriate to approve the project.

Bev Milligan, applicant, stated that they had been open and public about their project since the beginning and thanked everyone for their support.

Council Member Safford questioned how medical providers created traffic and commented that trips over the bridge caused traffic. Mayor Allers pointed out there was still traffic on Estero Blvd. because one had to drive to the office. Council Member Safford did not think a mid-island business would create a lot of traffic. He did not know why the government was involved in telling businesses how many parking spots they had to have because the market would dictate what happened with their parking. He added that they could not make them have a doctor's office in their building. Council Member Safford had four units and a gift shop and only had parking issues during the holidays in season, but he figured it out. He questioned why they continued to make parking requirements if they wanted to reduce traffic. Mayor Allers responded that more units in Council Member Safford's hotel increased the number of people driving on the island to stay in his hotel.

Council Member Woodson agreed with Council Member Safford and believed that the applicants addressed everything the town council asked at the last hearing and listed some items. She agreed that they could not demand that they have medical providers, although they had talked to medical professionals who were on the island before Ian. She complimented the applicants for a job well done.

Vice Mayor Atterholt appreciated the civility on both sides of the issue. He indicated that essential goods and services were a key part of their quality of place on Fort Myers Beach. Having a grocery, pharmacy and gas on the island was critical to him for quality of life. The public benefit piece for him was something the applicant had been consistent about from day one and that was the health and wellness focus. He listed the healthcare providers lost because of Ian and noted those losses affected the quality of life on the beach. He suggested shared parking to further incentivize the applicants to encourage medical providers to come to the beach. He supported the project.

Council Member King clarified that regarding slowing things down, they do not control who comes before them. As far as density, he questioned whether everyone knew what it meant. He noted they had a smaller population than what they had in 1990 pre-Ian. He added that Lee County indicated they had 42.9% of open hotels and rentals and the Chamber broke it down to less than 1,800 hotel and vacation rental rooms available, down from 4,315 pre-Ian.

He looked at the project in a positive light because it would increase the tax revenue.

Mayor Allers complimented the applicants for their project design, but it did not change the numbers for him and what it would do. He stated that if they applied the same numbers to another property down the road, 5.6% of what they could build by right would result in 840 hotel rooms next to a residential neighborhood. He questioned how they could deny that project if they approved this one. He commented that what was being built there by right was already three times more than what was there when the property was purchased. He noted that there were only a couple of items he considered a public benefit and felt the project would have an adverse effect on the area. He discussed the strain on the infrastructure. He did not support the project but wished the applicants the best.

Council Member King moved to approve the ordinance with the conditions listed in the staff report, seconded by Council Member Safford.

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

- D. Resolution 24-131; VAR20240071 - 1250 Estero Blvd (Cottage/Shuckers)
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING WITH CONDITIONS VAR20240071 CONSISTING OF FIVE (5) VARIANCES FROM THE FOLLOWING LDC SECTIONS: 1) SECTION 34-674(a)(1)(b) [BUILD-TO-LINE MAXIMUM SETBACKS], 2) SECTION 34-675(b)(3) [BUILDING HEIGHT], 3) SECTION 34-676(a)(4) [PARKING SPACES], 4) SECTION 34-676(b) [REAR PARKING], AND 5) SECTION 34-676(d) [LOCATION OF ENTRANCE WAYS, FOR PROPERTY LOCATED AT 1250 ESTERO BLVD. ALSO IDENTIFIED BY STRAP# 19-46-24-W4-0070F.0010, TO ALLOW FOR REDEVELOPMENT OF A RESTAURANT/BAR; AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Ex parte communications: Council Member King - familiar with the site and met with the developer a long time ago; Vice Mayor Atterholt - conversation with The Neighborhood Company and a meeting with the applicant a long time ago; Mayor Allers - met with The Neighborhood Company and spoke to the owner; Council Member Woodson - watched the LPA meeting and saw the first renditions of the plan months ago and Council Member Safford - familiar with the site and met with The Neighborhood Company.

The property owner confirmed receipt of the agenda and background materials.

Senior Planner Smalley reviewed the background of the request as stated on the blue sheet. He noted the applicant provided 16 parking spaces, an 85% reduction. The LPA recommended unanimous approval.

Attorney Noel Davies represented the applicants. Patrick Vanasse from The Neighborhood Company clarified that although they had unanimous approval from the LPA, the 10-day grace period for objections ended on the 21st.

If a complaint was filed, the applicants would have to wait until August to come back to the town council.

Joe Orlandini, applicant, described the interior of the building and noted they were going to try to keep the character of the old building. He added that they would keep the favorites from the old menu while adding new items. He stated that he met with the neighbors and intended to keep the sound contained. He indicated the ground floor on the beach side would be completely open, the dumpster area would be enclosed, and vegetation would be planted. He clarified that the architects drafted the third floor as open, but the intent was to provide an enclosure to contain the sound. One elevator served patrons and the other was for food. Mr. Orlandini described how they created resiliency in the building design.

Mr. Vanasse explained that the increase in total square footage was associated with the back of the house and the patron space was about the same square footage.

Senior Planner Smalley clarified that 16 physical parking spaces were provided, plus one bike rack, which was equivalent to 17 spaces. Planner Propst added that the code in the downtown zoning district allowed a 67% reduction, so they got a 33% reduction, but they were asking for an 85% reduction. She stated that 67% of 114 spaces were 76 spaces. Mayor Allers discussed the parking calculation requirements for bars versus restaurants and noted the previous establishment had 28 spaces.

Public comment:

Mike Miller, resident, supported the restaurant but was concerned about the noise. He agreed with LPA Chair Cereceda that they had to be responsible for their actions, so he decided to file to remove his special exemption for a noise ordinance for the same reason.

Public comment closed.

Council Member Woodson moved to approve the resolution with the variances approved by the LPA, seconded by Vice Mayor Atterholt. The motion carried unanimously by roll call vote.

E. Resolution 24-133; VAC20240030- Pink Shell Resort Beach Access Easement Relocation

A RESOLUTION VACATING BEACH ACCESS POINT #42 LOCATED OVER REAL PROPERTY OWNED BY CAPTIVA VILLAS DEVELOPMENT LLC, GENERALLY LOCATED AT 200 ESTERO BOULEVARD, FORT MYERS BEACH; ACCEPTING AND APPROVING A COMPARABLE REPLACEMENT EASEMENT TO BE LOCATED ON REAL PROPERTY OWNED BY JABO, LLC, SUBJECT TO TERMS AND CONDITIONS AS CONTAINED IN A SECOND AMENDED AND RESTATED PEDESTRIAN RELOCATION AND VIEW EASEMENT AGREEMENT; DIRECTING THE TOWN CLERK TO RECORD THIS RESOLUTION; AUTHORIZING THE MAYOR TO SIGN ALL NEEDED DOCUMENTS; AND PROVIDING AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Ex parte communications: all members disclosed receiving at least one email opposing the project except for Council Member Safford. Mayor Allers recused himself from this item.

The applicant confirmed receipt of the agenda and background materials. Planner Propst reviewed the background of the request as stated on the blue sheet. She noted that the view corridor would remain in the original location. She explained that the town and county were jointly responsible for the easement.

Attorney Sarah Spector with Roetzel & Andress represented the applicants. The slides included a map, and she pointed out the boundaries of both properties and identified the proposed beach access. The hours of operation would be from 8:00 a.m. to 11:00 p.m. while the resort was open, and restrooms would be available to the public. She stated that the easement would extend to the mean high watermark as requested by the county and the town would not have any obligation related to the replacement easement. Attorney Spector reviewed the application. She acknowledged the email opposing the resolution and noted the concern was alleviated. She explained that a fence had to be installed around the pool after the hurricane for safety. Bob Boykin, owner of the Pink Shell, stated that he was concerned about having the beach access open 24/7 since the pool was there. The gate would remain open during special events but closed at 11:00 p.m.

No public comment.

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

The motion carried 4-0, with Mayor Allers recused.

F. Resolution 24-13; SEZ20230226, 275/322, 200 Estero Blvd and 192 Estero Blvd Common Element (Pink Shell)

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING WITH CONDITIONS SPECIAL EXCEPTION SEZ20230226 TO ALLOW RECONSTRUCTION OF A POOL DECK, CABANAS, FENCE, IRRIGATION SYSTEM AND CHICKEE HUTS IN THE ENVIRONMENTALLY CRITICAL (EC) ZONING DISTRICT, WITH CONDITIONS, FOR THE PROPERTY LOCATED AT 275/322, 200, AND THE COMMON ELEMENT OF 192 ESTERO BOULEVARD; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, AND AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Ex parte communications: all members disclosed receiving emails at one time except for Council Member King.

Planner Propst reviewed the background of the request as stated on the blue sheet. She noted that staff received letters of support and opposition from the adjacent property owners. The property owners supplied a landscape plan for the pool deck, side yard event area and an emergency evacuation plan as requested by the LPA.

Attorney Sarah Spector of Roetzel & Andress represented the applicants. Slides included Request, Depiction of Resort, Landscaping Plan, Clarification, Picture of tiki huts and Special Exception Criteria.

No public comment.

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

The motion carried 4-0, with Mayor Allers recused.

G. Resolution 24-134; SEZ20240126, 7400 Estero Blvd

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/PROVING WITH CONDITIONS/ DENY SPECIAL EXCEPTION SEZ20240126 TO ALLOW RECONSTRUCTION OF STORM DAMAGED INFRASTRUCTURE IN THE EC ZONING DISTRICT, INCLUDING: A PARTIAL PARKING LOT, A NEW ALUMINUM RAIL FENCE ALONG THE SEAWALL, AND NEW FENCE WITH GATE AROUND THE SOUTH GARDEN, FOR THE PROPERTY LOCATED AT 7400 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.

Eli Lee reviewed his experience in land use planning.

Vice Mayor Atterholt moved to qualify Mr. Lee as an expert in his field, seconded by Mayor Allers.

The motion carried unanimously.

The property owner confirmed receipt of the agenda and background materials.

Mr. Lee reviewed the background of the request as stated on the blue sheet.

The staff recommended denial of the fence and gate because they were new, fully in the EC (Environmentally Critical) zone and not required by the building code. The LPA recommended approval.

Myles LaGarde of South Shore Construction explained that the seawall was not there before Ian and a riprap apron would be added. The applicants did not want people walking on the seawall and possibly falling on the rocks below. The fence would be 42 inches per code and might be removed after the renourishment project is complete.

No public comment.

Vice Mayor Atterholt moved to approve the resolution with the condition that the fence on top of the seawall be removed if there are no longer any public safety concerns post beach renourishment by a determination by the Operations & Compliance Director, seconded by Council Member Woodson. The motion carried unanimously by roll call vote.

XII. ADMINISTRATIVE AGENDA**A. Resolution 24-126; Authorizing Use of ARPA Funds to Reimburse Emergency Fund**

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AUTHORIZING 1) THE USE OF \$411,481 OF AMERICAN RESCUE PLAN ACT ("ARPA") FUNDS TO REIMBURSE THE EMERGENCY FUND FOR EMERGENCY EXPEDITURES INELIGIBLE FOR REIMBURSEMENT BY FEMA, AND 2) AMENDMENTS TO THE FISCAL YEAR 2024 BUDGET RELATED TO THIS REIMBURSEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

Finance Director Joe Onzick explained that the resolution was for the remnants of expenditures immediately after Ian. Tidal Basin realized the documentation was insufficient for FEMA reimbursement. Fortunately, ARPA funds were available and the remaining \$800,000.00 in the fund had to be used by the end of the calendar year.

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

The motion carried unanimously.

B. Resolution 24-127, Adoption of Financial Policies

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AUTHORIZING THE ADOPTION OF FINANCIAL POLICIES; AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Director Onzick explained that the adoption of the final policies was required to receive advance funds. He reviewed the four policies to be adopted. Legislative Liaison Jason Freeman described the new F-ROC (Florida Recovery Obligation Calculation) program and how the score translated to money up front that the town could receive upon obligation.

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

The motion carried unanimously.

C. Resolution 24-128; Short Term Rentals

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, WAIVING THE REQUIREMENT FOR PROOF OF USE OF A DWELLING UNIT AS A SHORT-TERM VACATION RENTAL DURING THE PRIOR YEAR DUE TO THE PENDANCY OF THE LOCAL STATES OF EMERGENCY FOR HURRICANES IAN AND IDALIA; DIRECTING TOWN STAFF TO ADMINISTER ANNUAL RENEWAL APPLICATIONS OF PREVIOUSLY REGISTERED MONTHLY AND WEEKLY SHORT-TERM VACATION RENTALS AND COLLECT SHORT TERM VACATION RENTAL FEES AS IF THE ANNUAL REGISTRATION WAS TIMELY RECEIVED AND THE HOUSES HAD BEEN RENTED DURING THE PRIOR YEAR UNTIL JUNE 1, 2025; AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Town Attorney Stuparich reviewed the background of the resolution as stated on the blue sheet. The deadline to file a renewal application was discussed since some property owners lost their homes. A consensus was reached that June 1, 2025, was a reasonable deadline.

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

The motion carried unanimously.

D. Resolution 24-120; Tentative FY24/25 Millage Rate

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, ADOPTING THE TENTATIVE OPERATING AD VALOREM MILLAGE RATE OF .##### MILLS FOR FISCAL YEAR 2024- 2025 OF THE TOWN OF FORT MYERS BEACH; ESTABLISHING THE DATE, TIME AND PLACE FOR HEARINGS TO ADOPT THE FINAL OPERATING AD VALOREM MILLAGE RATE AND BUDGET FOR THE FISCAL YEAR 2024-2025; AND PROVIDING AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Director Onzick stated that one of the key issues was ensuring they had enough cash in the emergency fund reserve. He reviewed the Emergency Fund Reserve Target, Emergency Fund Reserve Funding and Emergency Fund Reserve Optional Funding. He stressed the need to build up the emergency reserve and have enough in the budget to replenish it. Council Member King questioned whether F-ROC would help offset the deficit. Director Onzick explained that it would take too long to get the money after an emergency. He explained that the \$7.6 million for revenue replacement enabled them to repay the bridge loan. Council Member Woodson clarified that they would not know whether the loan would be forgiven until next year.

Vice Mayor Atterholt suggested that the town sell part of the town's property to fund the emergency reserves fully and keep the millage rate the same.

Director Onzick agreed that selling the land would be the quickest way to replenish the fund, but his concern was funding the reserve annually.

Vice Mayor Atterholt commented that Lee County Property Appraiser Matt Caldwell was optimistic about next year and he indicated that over the next year, the town would be back where it was before Ian. Vice Mayor Atterholt stated that they would be negligent from a public policy standpoint if they did not sell the property to replenish the emergency fund reserve. Mayor Allers noted that selling the land would fix the immediate shortfall, but it would not fix the recurring problem. Director Onzick added that they needed to put money into the capital fund and funding for ongoing beach renourishment.

Council Member Safford stated that the land was an asset and could generate revenue. He noted that the sources of revenue had decreased substantially. He supported raising the cap and taking a couple of months to discuss where the revenue was coming from and the expenses. Mayor Allers indicated that the legislators did help the town financially, but it was made clear to him that the town had to help itself. He challenged Director Onzick to find areas that could be cut so they did not have to raise the rate.

Council Member Woodson noted property sales were decreasing and she suggested holding on to the property until the market improved. She stated that the rate they set today could always be lowered and indicated they did not raise it last year. She described reduced funding from sources and commented that there was still a lot of work to be done.

Council Member King felt that raising the rate sent a bad message to the residents even if they did lower it later. He suggested that implementing the impact fees would show the state that the town was helping itself. He agreed with selling the old town hall property and did not support an increase. Mayor Allers felt that selling the land was a last resort and the land could be used as collateral for other needs. He thought raising the rate kept options open over the next few months, especially if they had a storm. Council Member Safford did not want to raise the rate either, but he did not support selling the land right now.

Director Onzick recommended raising the millage rate to 1.03.

Mayor Allers moved to set the tentative millage rate at 1.03, as recommended by the finance director, to put forth to the state to be brought back to discuss during the two meetings in September, seconded by Council Member Woodson.

The motion carried 3-2 by roll call vote, with Vice Mayor Atterholt and Council Member King dissenting.

E. Resolution 24-129; Condo Opt-Out Resolution

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, SUSPENDING DURING THE PENDANCY OF THE LOCAL STATES OF EMERGENCY FOR HURRICANES IAN AND IDALIA THE REQUIREMENT FOR CONDOMINIUM ASSOCIATIONS TO NOTIFY THE TOWN MANAGER IF THEY SELF-PERFORM AN ENFORCEMENT PROGRAM FOR VIOLATIONS OF THE CODE OF CONDUCT FOR SHORT TERM RENTALS AS PROVIDED IN SECTION 10-198(7) OF THE TOWN OF FORT MYERS BEACH CODE OF ORDINANCES; WAIVING PAYMENT OF THE REQUIRED FEE FOR EACH BUILDING FOR WHICH AN OPT OUT EXEMPTION WOULD OTHERWISE BE REQUESTED; AND PROVIDING AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Town Attorney Stuparich reviewed the background of the resolution as stated on the blue sheet. She added that this did not make any changes to the existing code.

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

The motion carried unanimously.

XIII. FINAL PUBLIC COMMENT

No public comment.

XIV. TOWN MANAGER'S ITEMS

Town Manager Hyatt stated that FEMA was reviewing the town's documentation. He noted that they would put an offer on the land next to the new town hall for parking and put in flood controls to help the neighborhood flooding. He indicated that it would cost more than \$25 million to build a new town hall over three years. Hurricane preparedness was ongoing and training continued. He mentioned that the town needed an ordinance regarding silt fencing. The R2P2 survey was out, and he encouraged residents to fill it out.

XV. TOWN ATTORNEY'S ITEMS

No items.

XVI. COUNCILMEMBERS ITEMS AND REPORTS

Vice Mayor Atterholt received consent to work with the owner of Santini Plaza to update the sign ordinance. Mayor Allers suggested looking at the ordinance as a whole.

No items from other members.

XVII. ADJOURNMENT

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

The meeting was adjourned at 3:30 p.m.

DRAFT

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

LAST NAME—FIRST NAME—MIDDLE NAME <i>Aders Daniel LEE</i>		NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE <i>Fort Myers Beach Town Council</i>
MAILING ADDRESS		THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF:
CITY	COUNTY	☒ CITY ☐ COUNTY ☐ OTHER LOCAL AGENCY
DATE ON WHICH VOTE OCCURRED		NAME OF POLITICAL SUBDIVISION: <i>Town Council</i>
		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, Daniel L Allers, hereby disclose that on June 17, 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, Tim Ryan ;

☐ inured to the special gain or loss of my relative, _____ ;

☐ inured to the special gain or loss of _____, by
whom I am retained; or

☐ inured to the special gain or loss of _____, which
is the parent subsidiary, or sibling organization or subsidiary of a principal which has retained me.

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

*My business partner and I have a business contract with the applicant
for our golf cart services.*

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.

6/17/24
Date Filed

[Signature]
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.

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

LAST NAME—FIRST NAME—MIDDLE NAME <i>Ailers Daniel Lee</i>	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE <i>Fort Myers Beach Town Council</i>
MAILING ADDRESS <i>5485 Avenida Pescadore</i>	THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF: ☒ CITY ☐ COUNTY ☐ OTHER LOCAL AGENCY
CITY COUNTY <i>Fort Myers Beach Lee</i>	NAME OF POLITICAL SUBDIVISION: <i>Town Council</i>
DATE ON WHICH VOTE OCCURRED <i>6/17/24</i>	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.

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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, Daniel L Allers, hereby disclose that on June 17, 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, Tim Ryan;
- ☐ inured to the special gain or loss of my relative, _____;
- ☐ inured to the special gain or loss of _____, by whom I am retained; or
- ☐ inured to the special gain or loss of _____, which is the parent subsidiary, or sibling organization or subsidiary of a principal which has retained me.

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

my business partner and I have a business contract with the applicant for our golf carts services.

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.

6/17/24
Date Filed

[Signature]
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.

1. **Request:**

Meeting Date: August 7, 2024

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

Why the action is necessary:

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

What the action accomplishes:

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

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Amy Baker, Town Clerk

5. **Background:**

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

Attachments:

1. 24-137, Extending Declaration of Local Emergency Ian 8.6.24-8.12.24
2. 24-138, Extending Declaration of Local Emergency Ian 8.13.24-8.19.24
3. 24-139, Extending Declaration of Local Emergency Ian 8.20.24-8.26.24
4. 24-140, Extending Declaration of Local Emergency Ian 8.27.24-9.2.24
5. 24-141, Extending Declaration of Local Emergency Ian 9.3.24-9.9.24

Financial Impact:

6. **Alternative Action**

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

7. **Management Recommendations:**

Approve

8. **Recommended Approval:**

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

Created/Initiated - 7/3/2024
Approved - 7/24/2024
Approved - 7/24/2024
Final Approval - 7/27/2024

RESOLUTION 24-137

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

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

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

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

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

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

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

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

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

Section 2. Hurricane Ian has caused a catastrophic disaster in the Town, damaging, or destroying over ninety percent (90%) of the Town's public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas and continues to pose a serious threat to the health, lives, property, and safety of the business owners and residents of the Town. Accordingly, the state of local emergency is hereby extended for seven (7) additional days *nun pro tunc* from 9:00 AM on the 6th day of August 2024.

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

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

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

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

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

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

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

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

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

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

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

ADOPTED this 5th day of August 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 the ____ day of _____ 2024.

RESOLUTION 24-138

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

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

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

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

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

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

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

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

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

Section 2. Hurricane Ian has caused a catastrophic disaster in the Town, damaging, or destroying over ninety percent (90%) of the Town's public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas and continues to pose a serious threat to the health, lives, property, and safety of the business owners and residents of the Town. Accordingly, the state of local emergency is hereby extended for seven (7) additional days *nun pro tunc* from 9:00 AM on the 13th day of August 2024.

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

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

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

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

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

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

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

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

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

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

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

ADOPTED this 5th day of August 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 the ____ day of _____ 2024.

RESOLUTION 24-139

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

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

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

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

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

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

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

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

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

Section 2. Hurricane Ian has caused a catastrophic disaster in the Town, damaging, or destroying over ninety percent (90%) of the Town's public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas and continues to pose a serious threat to the health, lives, property, and safety of the business owners and residents of the Town. Accordingly, the state of local emergency is hereby extended for seven (7) additional days *nun pro tunc* from 9:00 AM on the 20th day of August 2024.

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

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

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

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

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

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

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

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

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

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

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

ADOPTED this 5th day of August 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 the ____ day of _____ 2024.

RESOLUTION 24-140

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

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

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

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

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

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

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

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

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

Section 2. Hurricane Ian has caused a catastrophic disaster in the Town, damaging, or destroying over ninety percent (90%) of the Town's public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas and continues to pose a serious threat to the health, lives, property, and safety of the business owners and residents of the Town. Accordingly, the state of local emergency is hereby extended for seven (7) additional days *nun pro tunc* from 9:00 AM on the 27th day of August 2024.

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

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

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

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

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

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

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

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

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

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

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

ADOPTED this 5th day of August 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 the ____ day of _____ 2024.

RESOLUTION 24-141

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

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

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

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

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

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

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

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

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

Section 2. Hurricane Ian has caused a catastrophic disaster in the Town, damaging, or destroying over ninety percent (90%) of the Town's public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas and continues to pose a serious threat to the health, lives, property, and safety of the business owners and residents of the Town. Accordingly, the state of local emergency is hereby extended for seven (7) additional days *nun pro tunc* from 9:00 AM on the 3rd day of September 2024.

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

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

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

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

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

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

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

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

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

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

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

ADOPTED this 5th day of August 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 the ____ day of _____ 2024.

1. **Request:**

Meeting Date: August 7, 2024

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

Why the action is necessary:

Keeps the Local State of Emergency in effect for Hurricane Idalia

What the action accomplishes:

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Amy Baker, Town Clerk

5. **Background:**

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

Attachments:

1. 24-142, Extension of Local Emergency - Idalia 8.6.24-8.12.24
2. 24-143, Extension of Local Emergency - Idalia 8.13.24-8.19.24
3. 24-144, Extension of Local Emergency - Idalia 8.20.24-8.26.24
4. 24-145, Extension of Local Emergency - Idalia 8.27.24-9.2.24
5. 24-146, Extension of Local Emergency - Idalia 9.3.24-9.9.24

Financial Impact:

6. **Alternative Action**

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

7. **Management Recommendations:**

Approve

8. **Recommended Approval:**

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

Created/Initiated - 7/3/2024
Approved - 7/24/2024
Approved - 7/24/2024
Final Approval - 7/27/2024

RESOLUTION NUMBER 24-142

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member Woodson and seconded by Council Member Safford, 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 6th day of June 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 3rd day of June 2024.

RESOLUTION NUMBER 24-143

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

3. The Town Manager may suspend, toll or extend the time requirements, notice requirements and deadlines for final action on applications for permits, licenses, rates and other approvals under the Town of Fort Myers Beach Code of Ordinances, to the extent necessary to accommodate the emergency.
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 - (d) To assign and make available for duty the offices and agencies of the town, including the employees, property, or equipment thereof relating to health, medical and related services, transportation, construction, and similar items or services for emergency operation purposes, for deployment within or outside the limits of the town.
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8. Any person who refuses to comply with or violates any provision of this declaration of local emergency shall be guilty of a municipal violation. Each day of such violation shall constitute a separate offense. Nothing herein contained shall prevent the town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article or the emergency measures which may be made effective pursuant to this article. Such other lawful action shall include but shall not be limited to,

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

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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 6th day of June 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 3rd day of June 2024.

RESOLUTION NUMBER 24-144

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

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

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

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Dan Allers, Mayor	Aye
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ADOPTED this 6th day of June 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 3rd day of June 2024.

RESOLUTION NUMBER 24-145

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

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

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

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

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

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

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

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

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member Woodson and seconded by Council Member Safford, 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 6th day of June 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 3rd day of June 2024.

RESOLUTION NUMBER 24-145

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member Woodson and seconded by Council Member Safford, 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 6th day of June 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 3rd day of June 2024.

1. **Request:**

Meeting Date: August 7, 2024

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

Why the action is necessary:

Keeps the Local State of Emergency in effect for Tropical Storm Debby

What the action accomplishes:

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Amy Baker, Town Clerk

5. **Background:**

Approving and ratifying this Resolution will maintain in place the Town Declaration of State of Local Emergency originally adopted via Resolution 24-154.

Attachments:

1. 24-155, Extension of Local Emergency - Debby 8.12.24 - 8.18.24
2. 24-156, Extension of Local Emergency - Debby 8.19.24-8.25.24
3. 24-157, Extension of Local Emergency - Debby 8.26.24-9.1.24
4. 24-158, Extension of Local Emergency - Debby 9.2.24-9.8.24

Financial Impact:

6. **Alternative Action**

Do not approve and end the Local State of Emergency for Tropical Storm Debby

7. **Management Recommendations:**

Approve

8. **Recommended Approval:**

Amy Baker, Town Clerk

Created/Initiated - 8/5/2024

RESOLUTION NUMBER 24-155

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

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

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

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

WHEREAS, the effects of Tropical Storm Debby impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on August 5, 2024, must be extended.

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

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

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

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

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

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

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

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

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

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

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

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

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

ADOPTED this 7th day of August 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

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

RESOLUTION NUMBER 24-156

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

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

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

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

WHEREAS, the effects of Tropical Storm Debby impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on August 5, 2024, must be extended.

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

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

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

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

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

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

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

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

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

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

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

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

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

ADOPTED this 7th day of August 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

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

RESOLUTION NUMBER 24-157

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

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

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

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

WHEREAS, the effects of Tropical Storm Debby impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on August 5, 2024, must be extended.

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

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

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

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

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

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

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

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

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

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

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

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

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

ADOPTED this 7th day of August 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

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

RESOLUTION NUMBER 24-158

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

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

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

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

WHEREAS, the effects of Tropical Storm Debby impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on August 5, 2024, must be extended.

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

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

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

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

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

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

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

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

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

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

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

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

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

ADOPTED this 7th day of August 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

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

1. **Request:**

Meeting Date: August 7, 2024

Continuance Requested by Petitioner:

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING A REQUEST TO REZONE THE PROPERTY LOCATED AT 1668 I STREET, GENERALLY IDENTIFIED AS STRAP NUMBER 19-46-24-W4-0070B.0110 FORT MYERS BEACH, FROM DOWNTOWN TO COMMERCIAL PLANNED DEVELOPMENT (CPD) ZONING, WITH DEVIATIONS, FOR A BAR AND RESIDENCE; PROVIDING FOR OTHER 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 approves rezoning cases.

What the action accomplishes:

The CPD rezoning will allow development of a residence and bar that exceeds the FAR allowed in that location in the Downtown zoning district.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Ordinance

4. **Submitter of Information:**

Jason Smalley, Senior Planner

5. **Background:**

The applicant is requesting a rezoning from Downtown to Commercial Planned Development for the redevelopment of a bar and dwelling unit. The residential use is allowed in the Downtown zoning district and the bar use received approval through Lee County Special Permit Case 95-10-173 (attached as Exhibit C) and has been in operation since that time. The CPD includes a deviation to increase the floor area ratio (FAR) from 1.0 to 1.4.

Attachments:

1. Ordinance 24-18
2. Staff Report
3. Exhibit A - MCP
4. Exhibit B - Uses, Deviations & Conditions
5. Exhibit C - 95-10-173-02
6. Exhibit D - BZA-88-339
7. Exhibit E - Architectural Plans
8. Exhibit F - Application
9. 24-18, Business Impact Estimate DCI20240143-1668 I St-Beach Bar

Financial Impact:

Unknown

6. **Alternative Action**

Deny

7. **Management Recommendations:**

Recommend approval with conditions

8. Recommended Approval:

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

Created/Initiated - 7/24/2024
Approved - 7/24/2024
Approved - 7/24/2024
Approved - 7/24/2024
Final Approval - 7/27/2024

ORDINANCE 24-18

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING A REQUEST TO REZONE THE PROPERTY LOCATED AT 1668 I STREET, GENERALLY IDENTIFIED AS STRAP NUMBER 19-46-24-W4-0070B.0110 FORT MYERS BEACH, FROM DOWNTOWN TO COMMERCIAL PLANNED DEVELOPMENT (CPD) ZONING, WITH DEVIATIONS, FOR A BAR AND RESIDENCE; 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, B & B Properties of Fort Myers, as owner, and Jim Ink, Ink Engineering Inc., as agent for the owner of property located at 1668 I Street, and generally identified as STRAP numbers 19-46-24-W4-0070B.0110 ("Subject Property") in the Town of Fort Myers Beach, filed an application to rezone the property from the Downtown Zoning District to Commercial Planned Development (CPD) with a Master Concept Plan (MCP) and a request for certain deviations to the Land Development Code (LDC) in order to develop a bar and residence; 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 June 11, 2024; and

WHEREAS, at the June 11, 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 June 11, 2024 public hearing the LPA found that the request is **consistent** with the comprehensive plan and the requirements of the LDC and voted to recommend **approval with conditions** of the rezoning by a 6-0 vote; and

WHEREAS, on August 5, 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 legally noticed in the _____ 10 days prior to the Town Council's meeting on August 19, 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, the applicant has resolved and is current on any outstanding fees associated with notice, advertisement, and consulting services required by the Town; and

WHEREAS, a Business Impact Estimate has been prepared and timely published on the Town's website; and

WHEREAS, the Town Council finds approval of the request with requirements and conditions to be in the interest of the public's health, safety, and welfare as well as in compliance with the comprehensive plan and the Land Development Code; 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 certain deviations to the Land Development Code (LDC) in order to develop a bar and residence, is a unique and individual application which does not set precedent for future development or rezoning applications. Approved deviations include:

Deviation #1

Request to deviate from 34-675(c)3 that states, Floor area ratio (FAR). Floor area ratios (see 34-633) of the chapter) shall not exceed: (3) 1.0 for all other properties in the Downtown District" to allow an FAR of 1.4 consistent with properties fronting Estero Blvd per 34-675(c)(2).

WHEREAS, the Town Council has 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 Town Council carefully considered the testimony of the applicant, the recommendations of staff and of the local planning agency, and testimony from the public.
- c. The rezoning would be consistent with the goals, objectives, policies, and intent, and

- with the densities, intensities, and general uses in the Comprehensive Plan.
- d. The rezoning would meet or exceed all performance and locational standards set forth for the proposed use.
 - e. Urban services are available and adequate to serve the proposed use.
 - f. The rezoning would protect, conserve, or preserve environmentally critical areas and natural resources.
 - g. The rezoning would be compatible with existing and planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
 - h. 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.
 - i. 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 made the following formal findings before making final decisions on the one requested deviation 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 finds that this application to approve Ordinance 24-02 which is, **consistent/ not consistent** with the Town of Fort Myers Beach Comprehensive Plan and LDC and voted to **deny/ approve/ approve with conditions** the Application.

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 CPD **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 AND REQUIREMENTS** as contained in the Master Concept Plan in Exhibit A and the schedule of uses, deviations, and conditions of approval for the Property's CPD set forth in Exhibit B, which shall be attached to and incorporated by this reference to approval of the Ordinance.

Section 3. Whenever the requirements or provisions of this Ordinance conflict with the requirements or provisions of any other lawfully adopted LDC or Town Code provision, ordinance, or statute, the most restrictive shall apply.

Section 4. Any typographical errors that do not affect the intent of this Ordinance may be corrected with notice to and authorization of the Town Manager without further process.

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

Section 6. 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 _____ and seconded by _____, and upon being put to a vote, the result was as follows:

DULY PASSED AND ADOPTED on this 19th day of August 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 Ordinance was filed in the Office of the Town Clerk on this ____ day of August 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, 20240143

CASE NAME: 1668 I St, rezone the property from Downtown Zoning to Commercial Planned Development for the redevelopment of a bar and dwelling unit.

**1st TOWN COUNCIL
HEARING DATE:** August 5, 2024 at 9 AM

**LPA
HEARING DATE:** June 11, 2024 at 9 AM

**STAFF
RECOMMENDATION:** Approve with conditions

**PREPARED/
SUBMITTED BY:** Sarah Propst, AICP, PMP

I. APPLICATION SUMMARY

Applicant/Owner: James Ink, Ink Engineering Inc. / B & B Properties of Fort Myers

Request: Rezone the property from Downtown Zoning to Commercial Planned Development with one deviation, for the redevelopment of a bar and residential dwelling.

Subject property: See attached site plan

Physical Address: 1668 I Street

STRAP #: 19-46-24-W4-0070B.0110

FLU: Pedestrian Commercial

Zoning: Downtown

Adjacent zoning and land uses:

North: Downtown/ Pedestrian Commercial
Vacant, previously residence

South: Environmentally Critical/Recreation
Beach

East: Downtown/ Pedestrian Commercial
Residence

West: Downtown/ Pedestrian Commercial
Vacant

II. BACKGROUND AND ANALYSIS

Background:

James Ink on behalf of B & B Properties of Fort Myers, owner of 1668 I Street, is requesting a rezoning from Downtown to Commercial Planned Development for the redevelopment of a bar and dwelling unit. The residential use is allowed in the Downtown zoning district and the bar use received approvals through Lee County Special Permit Case 95-10-173 (attached as Exhibit C) and has been in operation since that time. A reduction in parking requirements from 10 parking spaces to 0 parking spaces was approved per Lee County Resolution BZA-88-339 (Attached as Exhibit D).

Analysis:

1668 I Street has been used as a bar and since at least 1995. Pre Ian, the property included a ground floor retail store with alcohol sales and a second story with two residential units, for a total of approximately 3,690 square feet, per the Lee Property Appraiser property details. The proposed development will contain a ground floor open area used as a bar which will open to the beach where a sand seating area is located. A residence is proposed on the second and third floor of the structure. The total proposed gross square footage is 5,822 square feet.

The applicant is requesting a CPD in order to increase the allowable floor area ratio (FAR) from 1.0 to 1.4 to allow additional square footage of the proposed development. The Downtown zoning district provides three FAR limits, depending on the location of the parcel:

- 1) Parcels along Old San Carlos, between 5th and 1st Streets and fronting on Times Square pedestrian plaza are limited to 1.8 FAR.
- 2) Parcels fronting on Estero Blvd and fronting on the Bayfront pedestrian plaza are limited to 1.4 FAR
- 3) All other Downtown zoned parcels are limited to 1.0 FAR.

This parcel is located in the 1.0 FAR area and contains only 4,159 square feet of Downtown zoned property. The remainder of the property is located in the Environmentally Critical (EC) zoning district and this district does not grant any additional FAR. Based on the portion of the lot in the Downtown zoning district, an FAR of 1.0 would allow a maximum of 4,159 square feet. The underlying future land use district, Pedestrian Commercial, provides the top limit of 2.5 FAR for a CPD.

Requested Deviations:

- 1) **Request to deviate from 34-675(c)3 that states, “Floor area ration (FAR). Floor area ratios (see 34-633) of the chapter) shall not exceed: (3) 1.0 for all other properties in the Downtown District” to allow an FAR of 1.4 consistent with properties fronting Estero Blvd per 34-675(c)(2).**

Applicant Justification: The subject property was developed as a two unit elevated single story residential structure with a commercial bar facility on the ground level operating under a Lee County Resolution Number BZA-88-339 and Hearing Examiner Case 95-10-173.02s. These entitlements were established before incorporation of the Town of Fort Myers Beach on December 31, 1995. Prior the town incorporating, Lee County did not use Floor Area Ratios to determine density and intensities. The subject property was bound for development by density, setbacks, and heights. The Town adopted their Comprehensive Plan on January 1, 1999. The plan developed Future Land Use categories for determining use and development of the parcels consistent with the Comprehensive Plan. The plan splits the subject property into two future land use categories. They are Pedestrian Commercial and Recreation. Pedestrian Commercial has a maximum Floor Area Ration of 2.5 and Recreation does not allow development. The Town further restricted the use of the subject property with the adoption of the town’s Land Development Code setting an allowable FAR of 1.0 on the subject property. These actions changed development rights from development based on density, height, and setbacks to a highly restrictive FAR in a Future Land Use category that is the highest allowable in the Comprehensive Plan. There is only one zoning district (Santos) that allows residential with a FAR of less than the subject property. Santos zoning district is a transitional community that is a buffer between high intensities on Estero Blvd and low-density residential portions of Venetian Gardens Subdivision. The subject property

and all lots along Alva Drive and I Street do not provide any transition to a lower density neighborhood. In fact this area is in the heart of Gulf front properties that could support much higher FAR's. This poor planning perspective is further supported in the apparent lack of the town to enforcement of the restrictive FAR at 1560 I Street and 61 Alva Drive.

Staff Comment: The proposed request meets all of the setback and height requirements of the Downtown zoning district. While the square footage is greater than would be allowed by the strict interpretation of the ordinance, it is unlikely to have any noticeable impact. The proposed development contains approximately 300 additional square feet of first floor bar area than the previous development. The residence above will be unlikely to impact adjacent properties.

Neighborhood Compatibility:

Many of the previously existing commercial and residential properties in the area were destroyed by hurricane Ian. Very few structures remain standing. The proposed development will decrease density from two units to a single unit, although the unit will be larger. The bar use has been in place for several decades and the existing conditions, repeated in this staff report and the ordinance, will remain in effect.

While the square footage increases the FAR above the code allowed 1.0, it does appear that some developments in this same FAR category may exceed the allowed 1.0 FAR. Properties less than 100 feet from this property are allowed an FAR of 1.4.

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.

No errors or ambiguities exist.

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

The previous structure was destroyed by Hurricane Ian and the property owner would like to build a larger structure. This is a design choice, not a changing condition.

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

If the intent of the code was to encourage smaller, quaint beach homes, this may affect

the intent. However, that intent is not explicit, only inferred from the regulatory requirements.

(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.

The proposed development is in compliance with the intent and intensity of the future land use district, as the maximum allowed intensity is 2.5.

The proposed development is not consistent with the intent of Policy 4-A-8, as the lower intensity of 1.0 was developed following the adoption of this Comprehensive Plan policy.

- **Policy 4-A-8** *The Town shall establish clear and consistent rules and processes that govern private and public development. They shall be incorporated into an illustrated Land Development Code that: v. In existing subdivisions, controls the scale of new homes to avoid the replacement of existing homes with excessively large structures.*

The proposed use is, however, consistent with Policy 4-B-6, which recommends residential uses over commercial uses in the Pedestrian Commercial district.

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

The proposed development will meet performance standards set for the in 34-2031 and 34-2032. An approved photometric plan will be required prior Certificate of Occupancy.. There are no special location standards for residences and the bar use has been previously approved by Lee County Special Permit 95-10-173.

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

The urban services exist in this location.

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

The requested FAR increase is landward of the EC zoning district. The seating area is located within the EC zoning district but has been approved and in existence for several decades. The dune and plantings will be located seaward of the proposed outdoor seating area.

(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 proposed use has been in existence in this location for many decades. It is not anticipated to have any detrimental impacts on existing or planned uses. The structure will be approximately 2,100 square feet larger than the previous structure. The impact of the structure size is unknown.

(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.

This use in this location will not place additional burden on the transportation network or other facilities and services. The two parking spaces provided will be for the residential unit, not the bar.

(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.

The proposed use and requested deviation for the CPD comply with the Comprehensive Plan.

(2) This chapter.

The proposed use complies with this chapter except in regard to the deviation to increase the FAR.

(3) Any other applicable town ordinances or codes.

The proposed request complies with the town ordinances and codes, except in regard to the deviation to increase the FAR.

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

Sec. 34-216 Findings:

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

The uses are allowed in this location.

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

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;

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.

It is not in the "mixed residential" category, 4-B-4 is not applicable. 4-C-3: An expansion of commercial use is proposed but it is not in the "mixed residential" category.

However, the expansion is unlikely to cause increased impacts because conditions are in place which limit hours of operation and live music. Additionally, the seating area is not being increased with the expansion.

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

It is not in the "boulevard" category.

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

Not applicable.

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

Not applicable.

5. Policy 4-E-1 on pre-disaster buildback.

Not applicable.

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

The proposed development does not provide parking for bar patrons and is unlikely to cause any additional traffic impacts. The seating area will not expanded.

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

The requested deviations allows a 1,660 square foot larger structure on the site than would be allowed without the CPD deviation.

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

The proposed deviations does not have any impact on public health, safety and welfare.

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

The deviations are not a detriment to the public interest.

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

The deviations are consistent with the comprehensive plan in that the plan allows up to 2.5 FAR in the pedestrian commercial future land use. It does, however, indicate that larger structures should not be promoted but does not provide a size reference for that policy.

III. RECOMMENDATION

At the June 11, 2024 LPA hearing James Boan made a motion to approve the request with conditions recommended by staff, John McLean seconded the motion. The LPA unanimously voted to approve the request.

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 DCI20240143 with the attached conditions. Staff notes that the previous zoning approvals from Lee County included conditions and that staff recommends these conditions continue to be enforced. These conditions are listed and include the reference to the corresponding case.

IV. 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. The proposed development must be substantially in compliance with the Master Concept Plan attached to the ordinance.
3. A Landscaping Plan and Photometric Plan must be approved prior to CO.
4. From BZA-88-339: The commercial use shall be limited to the retail sales of beach-oriented convenience items, including packaged food and beverage and beach recreational rentals; and
5. From BZA-88-339: Public access shall be limited to the beach on Gulf side of the business.
6. From 95-10-173: The Special Permit for consumption on premises in conjunction with outdoor seating is limited to the use in conjunction with the existing retail use. The use of a bar/service bar on this property is prohibited.

However, this does not prohibit the sale of draft beer or wine which is poured from a large bottle, so long as it is consumed only in the designated locations. There will be no waiter or waitress service: the customers must order their drinks from inside the premises and directly from the person who pours the drinks.

7. From 95-10-173: The location of the Special Permit for consumption on premises in conjunction with outdoor seating is limited to the outdoor deck area (approximately 10 feet by 40 feet as shown on Attachment B to the Staff report) which separates the retail use from the beach area, and on the first 50 feet of the beach which extends south from the deck area toward the water. The seating for both areas may not exceed 75 seats. The alcohol consumption portion of the beach area will be clearly marked.
8. From 95-10-173: Hours of operation for the outdoor seating area are limited to 10:00 a.m. to 10:00 p.m., daily.
9. From 95-10-173: Live entertainment is limited to the hours of 10 a.m. to 8 p.m., daily.
10. The conditions of Resolution No. BZA-88-339 and from Special Permit 95-10-173 will remain in full force and effect to the extent that they are not in conflict with this ordinance.

Staff Report Exhibits:

A – Master Concept Plan

B – Schedule of Uses, Approved Deviations, & Conditions of Approval

C – Special Permit Case 95-10-173

D – BZA-88-339

E – Architectural Plan

F – Application

Exhibit B

Schedule of Uses

- Dwelling unit, single-family
- Administrative Office
- Commercial Accessory Uses
- ATM
- On-Premises consumption of alcoholic beverages – existing conditions
- Bar or Cocktail Lounge – existing conditions
- Retail Store, Small – existing conditions

Deviation

Request to deviate from 34-675(c)3 that states, “Floor area ration (FAR). Floor area ratios (see 34-633) of the chapter) shall not exceed: (3) 1.0 for all other properties in the Downtown District” to allow an FAR of 1.4 consistent with properties fronting Estero Blvd per 34-675(c)(2).

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 proposed development must be substantially in compliance with the Master Concept Plan attached to the ordinance.
3. A Landscaping Plan and Photometric Plan must be approved prior to CO.
4. From BZA-88-339: The commercial use shall be limited to the retail sales of beach-oriented convenience items, including packaged food and beverage and beach recreational rentals; and
5. From BZA-88-339: Public access shall be limited to the beach on Gulf side of the business.
6. From 95-10-173: The Special Permit for consumption on premises in conjunction with outdoor seating is limited to the use in conjunction with the existing retail use. The use of a bar/service bar on this property is prohibited. However, this does not prohibit the sale of draft beer or wine which is poured from a large bottle, so long as it is consumed only in the designated locations. There will be no waiter or waitress service: the

customers must order their drinks from inside the premises and directly from the person who pours the drinks.

7. From 95-10-173: The location of the Special Permit for consumption on premises in conjunction with outdoor seating is limited to the outdoor deck area (approximately 10 feet by 40 feet as shown on Attachment B to the Staff report) which separates the retail use from the beach area, and on the first 50 feet of the beach which extends south from the deck area toward the water. The seating for both areas may not exceed 75 seats. The alcohol consumption portion of the beach area will be clearly marked.
8. From 95-10-173: Hours of operation for the outdoor seating area are limited to 10:00 a.m. to 10:00 p.m., daily.
9. From 95-10-173: Live entertainment is limited to the hours of 10 a.m. to 8 p.m., daily.
10. The conditions of Resolution No. BZA-88-339 and from Special Permit 95-10-173 will remain in full force and effect to the extent that they are not in conflict with this ordinance.

OFFICE OF THE HEARING EXAMINER, LEE COUNTY, FLORIDA

HEARING EXAMINER DECISION

SPECIAL PERMIT: CASE 95-10-173.02S
APPLICANT: MURRAY CARSLAKE, rep. by LINDA KANE, in ref. to TIKI KLUB
HEARING DATE: December 7, 1995

I. APPLICATION:

Filed by LINDA KANE, 12140 Siesta Dr., Ft. Myers Beach, FL 33931 (Applicant); MURRAY CARSLAKE, 5770 Estero Blvd., Ft. Myers Beach, FL 33931 (Owner); CARLETON RYFFEL, AICP, 6309 Corporate Ct., #207, Ft. Myers, FL 33919 (Agent).

Request is for a Special Permit in the C-1 (Commercial) district for consumption on premises with outdoor seating per Land Development Code Section 34-1264(a).

The subject property is located at 1668 I Street, Fort Myers Beach (over Sky Bridge to Estero Blvd., south to Ave E [just beyond Hooters] turn right to I St., building is on Gulf, directly to the right of public access), in S19-T46S-R24E, Lee County, FL. (District #3)

The Strap # as furnished by the Applicant is: 19-46-24-07-0000B.0110

II. STAFF RECOMMENDATION:

The Department of Community Development Staff Report was prepared by Mike Pavese. The staff report is incorporated herein by this reference.

III. HEARING EXAMINER DECISION:

The undersigned Lee County Hearing Examiner APPROVES the Applicant's request and GRANTS a Special Permit in the C-1 (Commercial) district for consumption on premises with outdoor seating per Land Development Code Section 34-1264(a) for the real estate described in Section VIII. Legal Description WITH THE FOLLOWING CONDITION(S):

1. The Special Permit for consumption on premises in conjunction with outdoor seating is limited to the use in conjunction with the existing retail use. The use of a bar/service bar on this property is prohibited. However, this does not prohibit the sale of draft beer or wine which is poured from a large bottle, so long as it is consumed only in the designated locations. There will be no waiter or waitress service; the customers must order their drinks from inside the premises and directly from the person who pours the drinks.
2. The location of the Special Permit for consumption on premises in conjunction with outdoor seating is limited to the outdoor deck area (approximately 10 feet by 40 feet as shown on Attachment B to the Staff Report) which separates the retail use from the beach area, and on the first 50 feet of the beach which extends south from the deck area toward the water. The seating for both areas may not exceed 75 seats. The alcohol consumption portion of the beach area will be clearly marked.
3. Hours of operation for the outdoor seating area are limited to 10:00 a.m. to 10:00 p.m., daily.
4. Live entertainment is limited to the hours of 10:00 a.m. to 8:00 p.m., daily.
5. The conditions of Resolution No. BZA-88-339 will remain in full force and effect to the extent that they are not in conflict with this Special Permit.

IV. HEARING EXAMINER DISCUSSION:

The Applicant, Murry Carslake, represented by Linda Kane, in reference to the Tiki Klub, is requesting a Special Permit in the C-1 (Commercial) zoning district to allow consumption of beer and wine on the premises which is located at 1668 I Street, Fort Myers Beach.

The Staff is recommending approval of the request with four conditions which would limit the location of the alcohol consumption and the hours of operations of the outdoor portion of the business.

The Applicant objected to the stringent nature of the conditions, and put on testimony which was designed to loosen them somewhat without eliminating them completely.

The Tiki Klub is located in a 2-story building which contains a combination of commercial and residential uses. The upper portion of the building contains two residential units and the lower portion contains a small retail store which sells beach related convenience items and packaged food and beverages. There is also a portion of the lower floor which is used for storage. Ancillary uses which occur on the site include jet ski and parasail rentals and ultralight rides. It was also noted that the beach area behind the building is often used for volleyball games.

The retail business on the site has had a (2 APS) license since 1981, which permits the sale of beer and wine for off-site consumption. The site was also the subject of a variance in 1988 which reduced the number of parking space to zero, and which limited the public access to the beach; it also limited the use to the sale of those items enumerated above.

The subject site and the properties surrounding it are in the C-1 zoning category. It was pointed out that this is an area of the beach which is tourist and entertainment oriented and which caters, primarily, to a transient, younger clientele. As such the requested use is not an intrusion into a more sedate area.

The Staff was of the opinion that the sale of beer and wine for on premise consumption would be proper, but they were also of the opinion that the use of kegs of beer (rather than cans and bottles), and the sale of wine by the drink (rather than by the bottle), would be too intense a use for the location. Therefore, the difference from what is being requested and what the Staff is recommending is one of degree. However, it was not clear to this Hearing Examiner what the difference would be if drinks were sold by the glass rather than by the can or bottle. Rather, it would appear that beer and wine sold by the glass would be safer and cleaner than by beer and wine sold by the can or bottle because there would be less trash as a result of the discarding of the cans and bottles.

Testimony was offered by the Applicant which demonstrated that entertainment already existed at the subject location, and that the condition recommended by the Staff to prohibit live entertainment would be taking something away from the Applicant which has never been a problem at this location.

Given the resort oriented character of the properties around the subject location, and given the already existing sale of alcohol and the existence of live entertainment on those surrounding properties, it is this Hearing Examiner's opinion that the requested use, as conditioned, is not contrary to the public's interest nor does it pose a public health, safety, comfort, convenience or welfare threat to the citizens of the County.

Therefore, the Special Permit, as conditioned is approved.

V. FINDINGS AND CONCLUSIONS:

Based upon the staff report, the testimony and exhibits presented in connection with this matter, the undersigned Hearing Examiner makes the following findings and conclusions:

A. There is no negative impact on the intent of the Land Development Code as a result of the granting of the Special Permit, conditioned as set out above.

B. That the granting of the Special Permit, conditioned as set out above, is consistent with the goals, objectives, policies and intent of the Lee Plan, as last amended.

C. That the Special Permit, conditioned as set out above, meets or exceeds all performance and locational standards set forth for the proposed use.

D. That the Special Permit, conditioned as set out above, is consistent with the densities, intensities and general uses set forth in the Lee Plan.

E. That granting the Special Permit, conditioned as set out above, will protect, conserve and preserve environmentally critical areas and natural resources.

F. That the Special Permit, conditioned as set out above, will be compatible with existing or planned uses and will not cause damage, nuisance, hazard or other detriment to persons or property.

G. That the location of the requested Special Permit does not place 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 use(s) which will be developed in conjunction with the Special Permit.

H. That the requested use is in compliance with all applicable general zoning provisions and supplemental regulations pertaining to the use, as set forth in the Land Development Code, as last amended.

I. That granting the requested Special Permit, conditioned as set out above, is not contrary to the public interest, public health, public safety, public convenience or public welfare of the citizens of Lee County.

VI. PRESENTATION SUMMARY:

After the Hearing Examiner placed all witnesses under oath, Mike Pavese, Division of Zoning and Development Services, presented the Staff Report in this request for a Special Permit in the C-1 (Commercial) district for consumption on premises (COP) with outdoor seating. The subject property is located on I Street, on the Gulf side of Estero Boulevard, Fort Myers Beach.

The subject property is developed with a 2-story building that was constructed in 1966. The existing structure is a combination of residential and commercial uses. There are two residential units upstairs while a portion of the first floor is used as a small retail operation specializing in the sale of beach related convenience items, and packaged food and drink to go.

The property was previously the subject of a variance request in 1988. The Applicant purchased the property approximately one year before that and attempted to obtain an occupational license for basically the same type of retail use. At that time he attempted to obtain a license for an existing shed which was located between the existing structure and the Gulf of Mexico. Because the County determined the existing use was non-conforming, the application for an occupational license was denied.

As a resolution to the Applicant's problem, the County suggested that he apply for a variance and attempt to relocate the retail use that had previously been located in the shed to the ground floor of the commercial structure. This caused a problem from the standpoint that, in order to relocate to the other building, he would have to provide the appropriate

parking for the use. At that time there was no parking available on site; therefore, a variance from the minimum requirement of 10 spaces, to zero spaces was requested and approved.

In approving the variance request the Board of Zoning Adjustments applied two conditions. The first condition provided that the commercial use would be limited to the retail sales of beach oriented convenience items including package food and beverage and beach recreational rentals. The second condition was that public access to the commercial use would be limited to the beach on the Gulf side of the business.

The instant request is for a 2-COP license. The proposed outdoor seating area is a 10-foot by 40-foot deck which is located at the rear of the building, and facing the Gulf of Mexico.

Staff has recommended approval of the request with five conditions. Condition 1 states that the COP is limited to use in conjunction with the existing retail use. The use of a bar/service bar on this property is prohibited. Condition 2 limits the proposed outdoor seating area to the 10-foot by 40-foot deck located to the rear of the existing structure. Condition 3 limits the hours of operation of the outdoor seating area to the hours of 10:00 a.m. to 10:00 p.m., daily. Condition 4 states that live entertainment is prohibited; and Condition 5 states that the conditions of resolution number BZA 88-339 is to remain in full force and effect.

The surrounding zoning is C-1. The existing uses surrounding this property are primarily residential, but they are of a seasonal rental nature. There are some commercial uses in the general vicinity that are located closer to Estero Boulevard.

Staff felt that the request, as conditioned, was consistent with the Lee Plan and with the surrounding zoning and land uses; therefore, they recommended approval.

The Hearing Examiner noted that Staff was keeping the other conditions in place and that there was a provision in the old resolution that limited the request to packaged food and beverage. He asked if there would be a conflict since this request, if approved, would allow outside consumption? Mr. Pavese stated that there could be a conflict if the Applicant was planning on selling draft beer which is not sold in a factory sealed container. The Hearing Examiner asked if Staff would object if he changed the language to state that the other resolution was in effect to the extent that it is not in conflict with this resolution, and Mr. Pavese replied that would be acceptable.

The Hearing Examiner asked why this request was not handled administratively? Mr. Pavese replied that these types of requests were done administratively in conjunction with a restaurant use; however, this use was not a restaurant, it is a retail operation.

Matt Uhle, the Applicant's attorney, referenced the last sentence of Condition 1 which states that "the use of a bar/service bar on this property is prohibited." He questioned the Staff about the differences between selling wine and beer by the bottle or can, as opposed to selling it by the glass. Staff indicated that their concern was that, if beer and wine were sold by the glass, it might create a "bar" situation. The existing use is a retail use. The proposed uses are specifically restricted by a previous resolution that permits only packaged food and beverages for sale. To allow draft beer to be served from a keg, or wine to be served by the glass, would go against the conditions approved in that resolution.

After further discussion the Hearing Examiner asked what the Applicant would be allowed to do on the property if approval of the 2-COP license is granted. Mr. Pavese stated that they would be allowed to sell beer and wine in factory sealed containers, and people would be allowed to consume it on premises in the designated area.

Mr. Uhle asked what public interest would be served by selling packaged liquor, as opposed to non-packaged liquor, to which Mr. Pavese stated that he didn't feel the subject location was appropriate for a bar, in that it is surrounded by predominantly residential uses. In response to further questioning by Mr. Uhle, Mr. Pavese stated that Staff was concerned that people would tend to stay at the site longer if non-package liquor was sold.

Mr. Uhle referenced Condition 2 and stated that the outdoor seating area included the deck and the private beach located contiguous to the deck. He noted that the Staff Report did not make reference to the private beach area, and questioned what the rationale for this limitation was, to which Mr. Pavese replied that this also related to the intensity of the use. The County could not control how much seating is on the beach and how far it extends out into the area that is traversed by the public. In response to Mr. Uhle's question as to why Staff couldn't impose a setback condition, Mr. Pavese stated that the amount of seating is easier to control within an existing building or deck. This goes back to the intensity of the use. Staff also had to consider parking. The previous variance issued was conditioned to allow a certain type of use on this property. To allow the COP to encroach out into the beach area changes the intended use of the property. Mr. Uhle noted that the LDC does not require any particular parking for outdoor seating.

Mr. Uhle referred to the issue of the enforceability of the condition and asked Mr. Pavese if he has been to the beach lately, to which Mr. Pavese replied yes. He agreed that there are roped off areas indicating boundaries of property in this area and throughout the beach, and that this could be done fairly easily on the subject site. This would be an objective standard and could be enforceable if a setback of a particular distance was established.

Mr. Pavese agreed that the sandy beach area would be further away from the adjacent uses than the deck currently is, whether it was extended or not. However, as proposed by the Applicant, it is closer.

In response to further questioning by Mr. Uhle, Mr. Pavese confirmed that the beach area is frequently used for volleyball games, and for live entertainment. The impacts caused by someone consuming alcohol at a table on the surrounding areas is greater than the impact created by live music at the same location.

He also confirmed that the Applicant already has a license to sell alcohol off-site. Mr. Uhle asked Mr. Pavese if he could make the distinction in the regulations between "off-premises" and "on-premises"? Mr. Pavese stated that with regard to the licenses issued by the State, a 2 APS license permits the sale of alcoholic beverages (beer and wine) for consumption off the licensed premises. A 2-COP allows for the sale of beer and wine for consumption on the licensed premises.

Mr. Uhle stated that he really was asking for the definition of "on the premises." He noted that the building has residential units on the second floor. He asked if it would be considered "on-premises" if someone were to come down and buy a beer in a can and then go up to their residence and drink it, assuming the Applicant didn't have a COP at this location. Mr. Pavese replied, literally, this would be on-premises consumption, but with respect to the Zoning Ordinance, and the subject case, that was not really relevant. The on-premises consumption that Staff was referring to was on a licensed premises. Mr. Uhle stated that this was merely a hypothetical question. He asked if it would be a violation of the County regulations for someone to do that, to which Mr. Pavese replied no.

Mr. Uhle asked, hypothetically, if it would be considered "off-premises" if someone from one of the adjacent cottages were to walk over to the subject property, buy a beer, and walk back to their own property and drink it, to which Mr. Pavese replied yes.

Mr. Uhle asked if it would be a violation of County regulations for someone to buy a beer at the subject property, and drink next door assuming

they had permission to do, to which Mr. Pavese replied he believed it may be a violation of the open container law. Mr. Uhle stated that it would be private property; therefore, he did not believe the open container law would apply. He asked if selling beer to somebody who is consuming it on-premises would be a violation in terms of the zoning regulations, to which Mr. Pavese replied no.

In response to Mr. Uhle's questions with regard to Condition 4, Mr. Pavese confirmed that he was aware that live entertainment has been on the premises in the past. This particular condition would actually require the property owner to give up something he already has. The subject property is approximately 500 feet from the Lani Kai Resort. To the best of his knowledge the Lani Kai does have outdoor seating and COP. He was not sure if they had live entertainment.

With regard to the live entertainment on the subject property in the past, Mr. Pavese was not aware of outstanding allegations of code violations, or Noise Ordinance violations.

Mr. Uhle asked if a permit was required to have live entertainment on a piece of property, to which Mr. Pavese replied that he was not aware of any ordinance that would prohibit someone from playing a guitar or singing on a piece of property, if they weren't being compensated for it. Mr. Uhle asked if the condition would prohibit an adjacent property owner from having live entertainment. Mr. Pavese stated that he did not know of any ordinance that would prohibit an adjacent property owner from playing music on their property, unless they were charging admission.

Mr. Uhle asked if Condition 3 would also limit the hours of operation for live entertainment if live entertainment was allowed. Mr. Pavese stated that Condition 3 would not limit the hours for live entertainment because the time limitation is only related to the outdoor seating area. Mr. Uhle asked if it would be possible to write a condition that would limit the hours of outdoor entertainment if, in fact, the tranquillity of the neighborhood at night is one of Staff's concerns, to which Mr. Pavese replied yes. Mr. Uhle asked if the tranquillity of the neighborhood was one of Staff's concern, to which Mr. Pavese replied it was a minimal concern. The main reasoning for the condition related to the existing use and its intensity. Mr. Uhle noted that the intensity of the existing use involved live entertainment. Mr. Pavese stated that the County could not really control live entertainment being performed on the property if the people are not being charged admission, or the performers are not being compensated.

The Hearing Examiner asked if Staff was proposing that the Applicant be allowed to sell sealed containers of wine and beer to customers who will be allowed to drink them on the deck, to which Mr. Pavese replied yes. Staff has limited the hours of operation for the deck and prohibited live entertainment. This was a very minimal increase in the intensity of the use of the property. Staff believed that anything beyond that would be too great of an increase in intensity.

Carleton Ryffel, for the Applicant, stated that the subject property is located in a high activity level area near the Times Square area on the beach. Some adjacent and nearby uses include Gulf front seasonal rentals, a Hooters Restaurant, offices, and a variety of retail uses. The Lani Kai is approximately nine lots away from the subject property. Most of the lots along the gulf are 50-foot-wide lots, therefore, as Mr. Uhle stated, the subject property is approximately 500 feet away from the subject property.

The Applicant and/or his wife own six cottages immediately to the west of the subject property. To the east are other cottages which are seasonal rentals. The owner of the Tiki Klub lives in the cottage (under separate ownership) immediately adjacent to the subject property. Most of the cottages in the area cannot be rented on an annual basis due to the high level of activity in the area. This particular area of the island caters to young people and tourists. Most of the cottages are rented on a short

term basis. The ambiance of this area is a "party" atmosphere. This is where jet ski and other water sports abound, and volleyball is a common activity among younger people. The entire area is zoned C-1.

The Hearing Examiner stated that it might help him to know what the Applicant would like and why they believe their request should be approved. Mr. Ryffel stated that the Applicant would like to continue with the outdoor entertainment, which is something they already have. Mr. Uhle stated that the Applicant would also like to be allowed to use the private sandy beach area, located immediately south of the deck, for outdoor seating. He noted that he would be proposing an alternative condition to address this issue in the event the Hearing Examiner believed such a condition was necessary.

In terms of the sale of alcohol, the Applicant did not need a physical structure for a bar. However, they would like permission to be able sell draft beer out of kegs and to be able to keep wine in a refrigerator and pour into cups and be able to serve it. The Hearing Examiner asked if the Applicant wanted to have alcohol in bulk rather than individual containers, to which Mr. Uhle replied that was correct. The Hearing Examiner asked if there would be any indoor seating or area for patrons to consume alcohol, to which Mr. Uhle replied no.

Mr. Ryffel stated that there were several reasons the Applicant wanted to serve wine out of the bottle, however, as a practical matter, he has never seen wine come in a can. Serving wine or wine coolers in a bottle would mean there would be glass containers on the beach which is not appropriate for the type of activity in the area.

The property has evolved in use over the years. Long ago it was a duplex, and it remains a duplex upstairs. The downstairs was made into a beach clothing store, and then it became and remains the home base of jet ski, ultra-light boat rentals, sale of beach convenience items, i.e., sun glasses, T-shirts, suntan oil, and the package liquor store. In addition to these activities volleyball is played by anyone who walks by the property on the beach side. Televisions are available on the lower deck to watch sporting events. Live musical entertainment is provided on most weekends.

Mr. Ryffel submitted and reviewed several photographs (Applicant's Exhibits 1 through 13). These pictures depicted the front of the subject building, the view of Estero Boulevard (taken from the subject building), the upper and lower portions of the building, the sales counter and convenience items, the deck area, the television and scoreboard, and the outdoor seating area on the beach. He noted that Applicant's Exhibits 14 and 15 were also photographs which would be discussed later.

The Applicant has asked for 75 outdoor seats for COP which is reasonable considering the present activity level of the property. Some of the seating will be on the deck; the remainder on the sand. The Applicant intends to have the seating area on the sand within 50 feet of the back deck of the subject building. Mr. Ryffel submitted an as-built survey (Applicant's Exhibit 16) and pointed out the location where the Applicant wanted to have the outdoor seating.

As depicted on the as-built survey, the property line is 186 feet from the mean high tide to the road right-of-way of I Street. Between the existing building, and the 50-foot-wide area proposed for the outdoor seating on the sand, there is an additional 90 feet of private property before the water's edge. Even though the 90-foot-wide area is private property, the Applicant would limit the seating to the 50-foot-wide area. The 90-foot-wide area would not have any seating.

Mr. Ryffel submitted two photographs (Applicant's Exhibits 14 and 15) which depicted the 50-foot-wide area of sandy beach that will be used for seating. He referenced his letter to Pam Houck, dated October 15, 1995 (submitted with the application), and noted that it described the Applicant's response to the review criteria for a Special Permit. His letter states "the number of seats requested is 75, of which about 20 would be

on the adjoining ground level deck" As a correction to this statement Mr. Ryffel noted that, given the size of the deck, there would be room for approximately ten tables (40 seats). Therefore, Applicant did not want to be limited as to how many of the 75 seats they could put on the deck.

With regard to the second criteria of whether there are "changed or changing conditions which makes approval of the application appropriate," Mr. Ryffel noted that outdoor seating has become increasingly popular especially in tourist and beach areas which is the instant case. This would be considered a changing condition and one which would be consistent with this premise.

With regard to the question of whether the request is consistent with the goals, objectives, policies and intent of the Lee Plan. Mr. Ryffel noted that his letter lists approximately ten policies that the request is consistent with. With regard to Policy 18.2.1, his letter states:

Since the nature of the business and its outward appearance will not change, i.e., it was and continues to be a mixed commercial use, it will not be an intrusion into any residential neighborhood. In fact there really is no owner occupied neighborhood near the present use. The proposed use should be considered as a logical adjunct to the existing use of the property.

He referred to the criteria of whether the requested use will be compatible with the existing or planned uses, and stated that the property is in a mixed use area and it will, therefore, be compatible with other uses.

The location of the project will not place a greater burden upon existing transportation facilities than it has in the past. Allowing the uses may actually reduce trips. Moreover, the proposed use is intended to primarily serve customers already on the property. The Applicant has no advertising from Estero Boulevard. They do not intend to draw automobile traffic, in that parking would be a problem in this area. The Applicant's business relies on the pedestrian traffic along the beach.

With regard to Condition 2 which limits the outdoor seating to the outdoor deck area, the Applicant feels that there is no logical reason to not permit outdoor seating on a private beach owned by an individual. There is seating already provided during the daylight hours. People use these tables and chairs to watch sporting activities at the property, especially volleyball.

Outdoor seating with a COP occurs nearby at Jimmy B's (with outdoor entertainment) and at the Lani Kai where there is sometimes more than one band. The Lani Kai has approximately four bars, jet ski rentals, retail stores, and beach convenience items. Jimmy B's and the Lani Kai sell hard liquor, while the Applicant will only sell beer and wine. The recently approved application for the Jewell Real Estate property will allow outdoor seating and COP, and was approved for outdoor entertainment. The Applicant was not proposing a physical bar; they merely wanted to dispense beer and wine.

He referred to Condition 4 and stated that, given the location and the activity level of the area, there is no reason to prevent outdoor entertainment. There have been no noise complaints against this property to the best knowledge of the Applicant. There were no letters of opposition from neighbors, but rather letters of support. He asked "What then are we protecting?"

He submitted a map of the subject property (Applicant's Exhibit 17) which showed the location and names of all adjoining property owners. He noted that the following letter was written by the Applicant and signed by all the adjacent property owners. (See Section VIII.)

I am requesting a Special Permit in the C-1 (Commercial) district for consumption on premises with outdoor seating per Land Development Code Section 34-1264(a), at the above stated premises. I currently hold an alcohol license at this location,

I am simply expanding the usage. Because you are adjacent and/or very near to our operation, we are asking for your support.

The only property owner who did not sign the letter was the owner of the Outlaws Steakhouse. Mr. Ryffel believed that the only reason they didn't sign the letter was because they couldn't be found. He believed they would have signed because they were former clients of his.

Due to the support from all of the neighbors, outdoor entertainment should not be a problem. Outdoor entertainment has been an ongoing activity in the neighborhood. The Applicant will comply with the County Noise Ordinance, and wants to be treated as anyone else would. It should be noted that outdoor entertainment does not require permission or public hearings; just compliance with the law. The Applicant has agreed to limit the hours of outdoor entertainment from 10:00 a.m. to 10:00 p.m., as stated in the Staff Report. As a practical matter, the Applicant could set up a band on his adjacent property and have the same effect, because Staff's condition only applies to the subject property.

It was Mr. Ryffel's understanding that Special Permits are not discretionary unless a public harm is found. In this case Staff sees outdoor seating and music on a private beach as public harm. The Applicant feels that these things are a public good in that these activities are part of the beach lifestyle in this particular area. It probably wouldn't be appropriate in more purely residential areas away from this busy area. However, in a place where this type of activity is commonplace, it makes no sense to impose conditions that serve no purpose and are easily circumvented. In short, the young people and tourist guests need these types of places to recreate and socialize without these obstructions.

In response to Mr. Uhle's questions Mr. Ryffel stated that the subject property and surrounding properties are zoned C-1. Mr. Ryffel did not agree with Mr. Pavese's earlier statement that consumption on premises would have a greater impact than volleyball games and live music on surrounding uses. Volleyball games get fairly vocal since people cheer on the players. He did not think that sitting down and drinking a beer is a very noisy thing to do.

Mr. Ryffel confirmed that the location of the project would not place an undue burden on existing transportation facilities because the property is not readily visible from Estero Boulevard. It is a very integrated use of the property and it is well known. People normally come to this type of establishment on the weekends. To keep it "one stop shopping" would limit traffic impacts overall on the island.

Mr. Ryffel was not aware of any greater impact to the public if alcohol is poured into containers as opposed to being sold in packaged containers.

The Hearing Examiner asked if there was anything prohibiting outdoor seating at the subject property at this time, and whether the only difference in approval would be that people could drink alcohol in the outdoor seating area. Mr. Pavese replied that there are no regulations that prohibit people from sitting in chairs outside on the property at this time. There is also no prohibition against there being live entertainment.

Pam Houck, Division of Zoning and Development Services, referred to Mr. Ryffel's earlier statement and asked if there was a package store existing or anticipated at this site, to which Mr. Ryffel stated that, at this time, the Applicant has a package license and they sell beer in cans. Mrs. Houck noted that a package store has different regulations. While it may be permitted in this district, it does have a specific 500-foot setback requirement from residential uses, day-care centers, churches, etc., and would not be allowed unless a variance were granted. A variance has not been requested for the subject property in the past or in this case. She wanted to make it clear whether or not a package store was indeed on the premises or anticipated. Mr. Ryffel stated that the

Applicant sells canned beer which is in a cooler. Mrs. Houck stated that the Applicant would be allowed to have incidental sales of packaged alcoholic beverages.

The Hearing Examiner asked Mrs. Houck if she was making the distinction between a liquor store or package store that sells primary beer and wine, as opposed to one that sells it in conjunction with other items. Mr. Ryffel noted that the Applicant has a package license, rather than a package store. Mrs. Houck pointed out that this was specifically defined in Section 34-1263, the Zoning Ordinance portion of the LDC.

Case 95-05-101.02S (Jimmy B's) was specifically approved as a bar. Case 95-07-161.02S (Jay Ursoleo) was specifically approved as a restaurant. Staff's primary concern, and the reason they limited the subject request by conditions, was because this case was heard previously and granted variance for specific uses. Staff's primary concern related to changing the use of the property to a bar or a restaurant, in that there was no place for parking at the site. The approved variances were not in place for these uses and variances have not been requested.

The Hearing Examiner stated that if the Applicant had come in for a variance, or just consumption on premises, there is no parking requirement for outdoor seating. Mrs. Houck stated that Staff's concern related to a change of use. If the use is changed to a bar, although there would be no parking requirements, a Special Permit would be required for a bar. The Hearing Examiner asked if Staff believed the use would be considered a bar if there was outdoor seating on the beach and on the deck area, but not inside the premises, to which Mrs. Houck replied not necessarily.

In response to the Hearing Examiner's question, Mrs. Houck confirmed that it was possible due to the increase in the use of alcohol on the premises a variance would be required. The Hearing Examiner stated that the concern was that normally a variance would be needed to obtain the other permission. This may be inadvertently intensifying the use of the property to the level where a variance would have been required, and it has not been required in this case.

Mr. Ryffel stated that the use is not intended to be a bar. The Applicant would be selling beer and wine like they would sell sunglasses or another convenience item. The activity includes volleyball and music and he did not feel the request would make any change in intensity at all. If there is an area that should be intense, this was it. Intense uses had to be somewhere, and he could not see why Staff would try to diminish that at this point in the area's history.

Mr. Uhle noted that the variety of mix of uses on the parcel would remain essentially the same. There was no obvious distinction in terms of the impacts with regard to how the alcohol is sold to people walking on the beach or people living in the beach cottages. He did not believe there was any credible evidence to indicate there was any distinction. In addition, the Applicant has established that outdoor seating does not require any additional parking. Furthermore, there is every reason to believe that, if there is an increase in use of this parcel, it is probably going to be caused by people walking along the beach because the parcel is not readily visible from Estero Boulevard and there is no signage on Estero Boulevard. Approval of this request would not result in a tremendous change in the character of the area.

Mr. Uhle stated that he has heard concerns from the Staff, but he has not heard any specific facts or specific LDC requirements that causes the problem that they are concerned about.

The Hearing Examiner asked if a customer would have go into the store to get a drink, or if someone would be serving them outside, and Mr. Uhle stated there would be no service outside. The Hearing Examiner noted that, if he were to approve the request, he would place this type of prohibition on the use. Mr. Ryffel stated that there would be no wait staff.

In response to the Hearing Examiner's question, Mrs. Houck stated that someone would be prohibited from bringing alcohol onto the subject property that they bought elsewhere. Even though it is private property, the Applicant is not licensed for consumption on premises and the use is a retail outlet rather than a private home.

Mr. Uhle stated that County regulations regarding this point are not particularly clear. One of the reasons he asked the hypothetical questions of Mr. Pavese was to indicate that a number of anomalies could come up that really don't have any bearing in terms of the actual impacts of the proposed use on the surrounding neighborhood.

In response to the Hearing Examiner's questions regarding the conditions, Mr. Uhle stated that the Applicant would like to be able to operate their business in the manner describe earlier with the sale of wine and beer by the glass. They would like to keep bottles of wine in a refrigerator and have kegs of beer. They were not asking for a physical structure or for permission to have outside service.

With regard to Condition 2 the Applicant would like a condition that would basically permit the outdoor seating to take place, not simply within the deck, but in an area with the northern boundary being the southernmost boundary of the deck, and then extending 50 feet to the south of that. The Applicant would not have a problem marking that area off. This was an objective standard and one that could be enforced.

If the Staff believes that Condition 3 is not clear enough as to its applicability to outdoor music, the Applicant did not have a problem limiting the hours from 10:00 a.m. to 10:00 p.m. However, Condition 4, needs to be deleted, in that it is "costing" the Applicant a use that they already have. In response to the Hearing Examiner's question, Mr. Uhle stated that it would be appropriate to add language stating that the subject conditions would not conflict with the conditions of the previous variance approval.

Gerald Crowley, property owner of a cottage located approximately 200 feet from the subject property, stated that he believed the COP would be more suitable than the current way the property operates. Currently, people who buy beer at the premises go over to his yard and throw the empty cans over their head. If the consumption was constricted to the area of purchase, this would not happen.

With regard to the hours for outdoor entertainment, he believed 10:00 p.m. was a bit late. He rents to older couples three to four months out of the year. The County shuts down the beach at sunset. There are signs at the access that state that the beach closes at sunset. Therefore, sunrise to sunset would seem like more suitable hours for live entertainment. The Hearing Examiner stated that the hours of sunrise and sunset would vary on the season, to which Mr. Crowley replied yes. Someone might want to go to bed at 8:00 p.m. when the sun goes down at 5:00 p.m.

The Hearing Examiner asked Mr. Crowley if the people staying at this place had any problem with the noise, to which he replied currently his place is not rented. However, last Sunday he was sitting approximately 200 feet from the band and he could not listen to a football game on his television. He had the volume all the way up and he could not hear it. He never received one of the letters that Mr. Ryffel referenced.

Lonnie Clark, Applicant's partner, stated that they did not want to create any noise problem for any of the neighbors. They would be happy to work with any suggestions to correct any problems. Within the immediate vicinity, including Mr. Crowley's property, all the owners have jet ski businesses. These type of businesses allow for motors to be run on the beach. All of the jet ski businesses create noise situations. He did not believe that the music situation would create any additional problem than what is currently going on. He enjoyed having Mr. Crowley as a neighbor and he would certainly be willing to comply with conditions that would create a situation where everyone would be happy.

Mr. Pavese concurred with Mrs. Houck's previous statement. To Staff's knowledge there is no package store existing at the subject location. The uses at Jimmy B's and the Lani Kai are really not comparable to the use on the subject property; they are totally different. The intensity is also not comparable.

The Hearing Examiner asked Mr. Pavese if he prepared the Staff Report, and if it accurately reflected his position at the time he prepared it, to which Mr. Pavese replied yes. He asked Mr. Pavese if anything he had heard during the hearing would change his mind about his recommended conditions, and Mr. Pavese replied no. This included the live entertainment condition, especially in light of what Mr. Crowley has stated.

Mr. Uhle submitted copies of the Hearing Examiner's Decisions for cases 95-05-101.02S and 95-07-161.02S (Applicant's Exhibits 18 and 19), both of which permit outdoor entertainment, but restrict the hours in a way that is consistent to what has been proposed. The Applicant has also indicated that she would not object to limiting the hours of outdoor entertainment to 8:00 p.m., but not the hours of operation.

He could understand where the Staff was coming from in this case, but he believed they were talking about an abstract regulatory kind of problem rather than a practical problem. As depicted in the photographs, this is an area of very intense uses. He did not think that the Staff's proposed conditions address any significant legal or practical problems that would be created by the use of this location.

Mr. Ryffel stated that he had never had a case where there has been so much neighborhood cooperation. No one objected, and he felt that this spoke for itself. He asked if they could have the Hearing Examiner's Decision in as timely a manner as possible, given the situation at the beach, specifically by December 31, 1995.

The Hearing Examiner stated that he did not see a big distinction between the sale of beer and wine in bulk as opposed to in an individual container. He would, however, visit the site before making his final decision.

Mr. Ryffel noted that the property owner had cleaned up the property considerably since he bought it. He has placed 22 garbage cans, even on property that wasn't his, as a way of keeping the area clean. The owners are very good and competent people. He felt they would cooperate with any problems the neighbors may have and he felt they were an asset to the beach. The Hearing Examiner pointed out, however, that the property owner could sell the property and the next people who come in may not be so nice. This was a consideration since any approval would run with the land.

Mr. Ryffel submitted a copy of his presentation and notes (Applicant's Exhibit's 20) for the record.

VII. PUBLIC PARTICIPATION: The following persons appeared at the hearing or became "parties of record" in this case by submitting written materials:

ADDITIONAL APPLICANT'S REPRESENTATIVES:

1. Matt UHLE, Esquire, c/o Humphrey & Knott, P.A., 1625 Hendry St., Ft. Myers, FL 33901
Testimony: See Section VI. Presentation Summary

ADDITIONAL COUNTY STAFF:

1. Joseph M. MADDEN, Jr., Assistant County Attorney, Lee County, P.O. Box 398, Ft. Myers, FL 33902-0398

2. Pam HOUCK, Division of Zoning and Development Services, Lee County, P.O. Box 398, Ft. Myers, FL 33902-0398

FOR:

1. Terry HILL, 1600 Estero Blvd., Ft. Myers Bch., FL 33931
2. ESTERO ISLAND HARDWARE, 1741 Estero Blvd., Ft. Myers Bch., FL 33931
3. H. E. TRACY, 71 Ave. E., Ft. Myers Bch., FL 33931
4. Jeffery M. WILLICH, 4870 Dolphin Ln., Ft. Myers Bch., FL 33931
5. Marc WOODARD, 4265 Bay Beach Ln., Ft. Myers Bch., FL 33931
6. Kenny CATHERS, 1830 Estero Blvd., Ft. Myers Bch., FL 33931
7. SPORTS ADDICTION, 1801 Estero Blvd., Ft. Myers Bch., FL 33931
8. Antonina RIGBY, 307 Fairweather Ln., Ft. Myers Bch., FL 33931
9. GLORIA SHORTLIDGE ESTATE, 70 Ave. E., Ft. Myers Bch., FL 33931
10. FT. MYERS BEACH SCOOTERS, INC., 1698 Estero Blvd., Ft. Myers Bch., FL 33931

AGAINST: NONE

GENERAL:

1. Robert MOFFA, 37728 Lois Dr., Sterling Heights, MI 48310
2. Denise FAIR, c/o Humphrey & Knott, P.A., 1625 Hendry St., Ft. Myers, FL 33901
3. Richard CROWLEY, 808 Sunset Vista Dr., Ft. Myers Bch., FL 33931
Testimony: See Section VI. Presentation Summary.

VIII. LEGAL DESCRIPTION:

Lot 11, Block B, CRESCENT BEACH SUBDIVISION, as recorded in Plat Book 4, Page 45 of the Public Records of Lee County, Florida, lying in Section 19, Township 46 South, Range 24 East, Lee County, Florida.

IX. UNAUTHORIZED COMMUNICATIONS:

Unauthorized communications shall include any direct or indirect communication in any form, whether written, verbal or graphic, with the Hearing Examiner, or the Hearing Examiner's staff, any individual County Commissioner or their executive assistant, by any person outside of a public hearing and not on the record concerning substantive issues in any proposed or pending matter relating to appeals, variances, special permits, rezonings, special exceptions, or any other matter assigned by statute, ordinance or administrative code to the Hearing Examiner for decision or recommendation [Administrative Code AC-2-5]

No person shall knowingly have or attempt to initiate an unauthorized communication with the hearing examiner or any county commissioner [or their staff] [LDC Section 34-52(a)(1), emphasis added]

Any person who knowingly makes or attempts to initiate an unauthorized communication ... [may] be subject to civil or criminal penalties which may include: [Section 34-52(b)(1), emphasis added]

Revocation, suspension or amendment of any permit variance, special exception or rezoning granted as a result of the hearing examiner action which is the subject of the unauthorized communication. [LDC Section 34-52(b)(1)b.2.]; OR

A fine not exceeding \$500.00 per offense, by imprisonment in the county jail for a term not exceeding 60 days, or by both such fine and imprisonment. [LDC Section 1-5(c)]

X. APPEALS:

This Decision becomes final on the date rendered. A Hearing Examiner Decision may be appealed to the Circuit Court in Lee County. Appeals must be filed within thirty (30) days of the date the Hearing Examiner Decision is rendered.

XI. COPIES OF TESTIMONY AND TRANSCRIPTS:

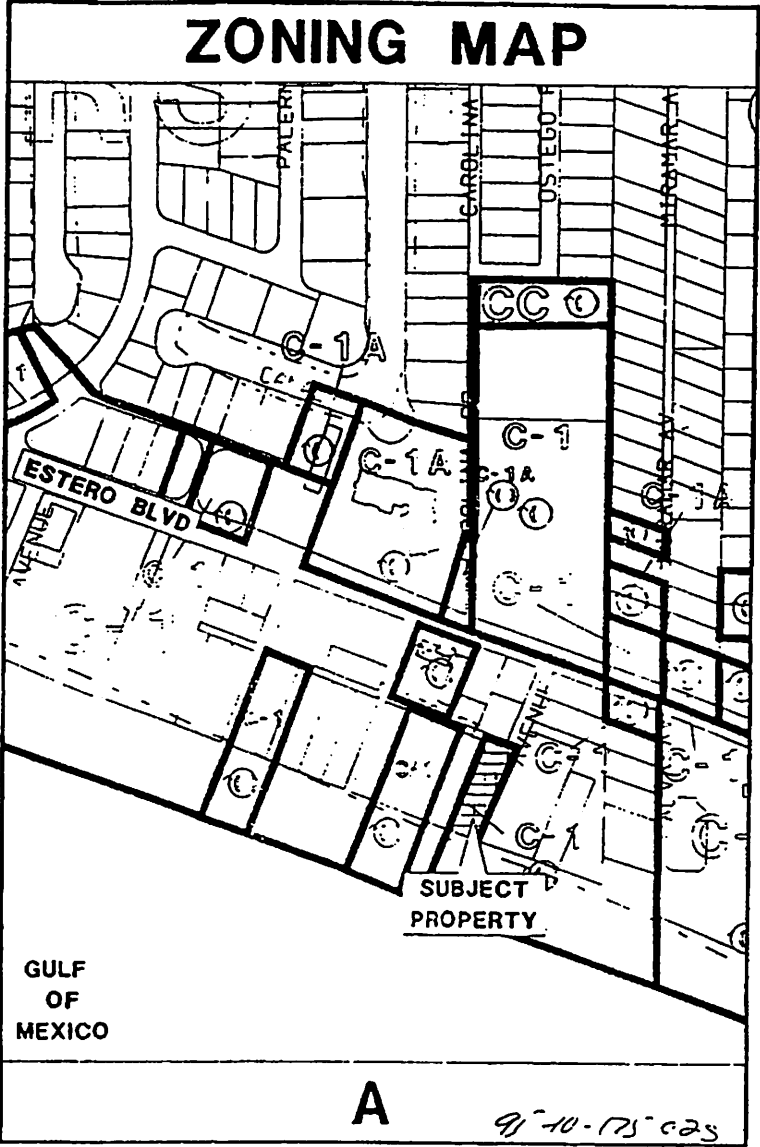
A. A complete verbatim transcript of the testimony presented at the hearing can be purchased from the Official Court Reporter, 20th Judicial Circuit, Lee County Justice Center, Fort Myers, Florida. The original documents and original file in connection with this matter are located at the Lee County Department of Community Development, 1831 Hendry Street, Fort Myers, Florida.

B. The original file and documents used at the hearing will remain in the care and custody of the Department of Community Development. The documents are available for examination and copying by all interested parties during normal business hours.

This decision is rendered this 18th day of December, 1995. Copies of this decision will be delivered to the offices of the Lee County Board of County Commissioners.



SALVATORE TERRITO
LEE COUNTY HEARING EXAMINER
2269 Bay Street
Post Office Box 398
Fort Myers, FL 33902-0398
Telephone: 941/338-3190



50.0.6.1-11-10



10.50
BILLED

Prepared by:

N. Gluck, Zoning and
Development Review Division
P.O. Box 398
Fort Myers, FL 33901

2568964

RESOLUTION NUMBER BZA-88-339

RESOLUTION OF THE BOARD OF ZONING ADJUSTMENTS
OF LEE COUNTY, FLORIDA

WHEREAS, Murray Carslake has properly filed an application for a variance in the C-1 district from the minimum required 10 parking spaces, to zero (0) parking spaces; and

WHEREAS, the subject property is located at 1668 "I" Street, Fort Myers Beach, described more particularly as:

LEGAL DESCRIPTION: In Section 19, Township 46 South, Range 24 East, Lee County, Florida:

Lot 11, Block B, Crescent Beach Subdivision, as recorded in Plat Book 4, Page 45, of the Public Records of Lee County, Florida.

WHEREAS, the applicant has indicated the property's current STRAP number is 19-46-24-07-0000B.0110; and

WHEREAS, proper authorization has been given to Neale E. Montgomery of Pavese, Garner, Haverfield, et al., The Fowler Company, and Gregory E. Fox of Century 21 - AAIM Realty Group, Inc., by Murray Carslake, the owner of the subject parcel, to act as agent to pursue this zoning application; and

WHEREAS, a public hearing was legally and properly advertised and held before the Lee County Board of Zoning Adjustments; and

WHEREAS, in the hearing process the Lee County Board of Zoning Adjustments gave full and complete consideration to the recommendations of the staff, the documents on file with the county, and the testimony of all interested persons.

OR2036

P64731

RECORD VERIFIED - CHARLIE GREEN, CLERK
BY: H. FERNSTROM, D.C.

LEGISLATIVE HISTORY:

Staff recommended approval with conditions. The recommendation is based on the analysis contained in the summary report dated November 21, 1988. The request was found to be consistent with the Lee Plan as it does not conflict with the goals, objectives and policies of the Lee Plan. The Board concurred with staff's recommendations and granted approval with conditions.

NOW, THEREFORE, BE IT RESOLVED BY THE LEE COUNTY BOARD OF ZONING ADJUSTMENTS that the Board of Zoning Adjustments does hereby APPROVE with conditions a variance in the C-1 district from the minimum required 10 parking spaces, to zero (0) parking spaces; and

This approval is conditioned to the following:

1. The commercial use shall be limited to the retail sales of beach oriented convenience items, including packaged food and beverage and beach recreational rentals; and
2. Public access shall be limited to the beach on Gulf side of the business.

The foregoing Resolution was adopted by the Lee County Board of Zoning Adjustments upon a motion by Board Member Jennie Daniel, and seconded by Board Member Douglas Morgan and, upon being put to a vote, the result was as follows:

Jennie Daniel	Aye
Marjorie Berry	Aye
Ellen Peterson	Aye
Douglas Morgan	Aye
Marie Keohane	Aye

DULY PASSED AND ADOPTED this 21st day of November, A.D., 1988.

APPROVED AS TO FORM

BY:

Paul W. Cloyd
Office of the
County Attorney

BOARD OF ZONING ADJUSTMENTS
OF LEE COUNTY, FLORIDA

BY:

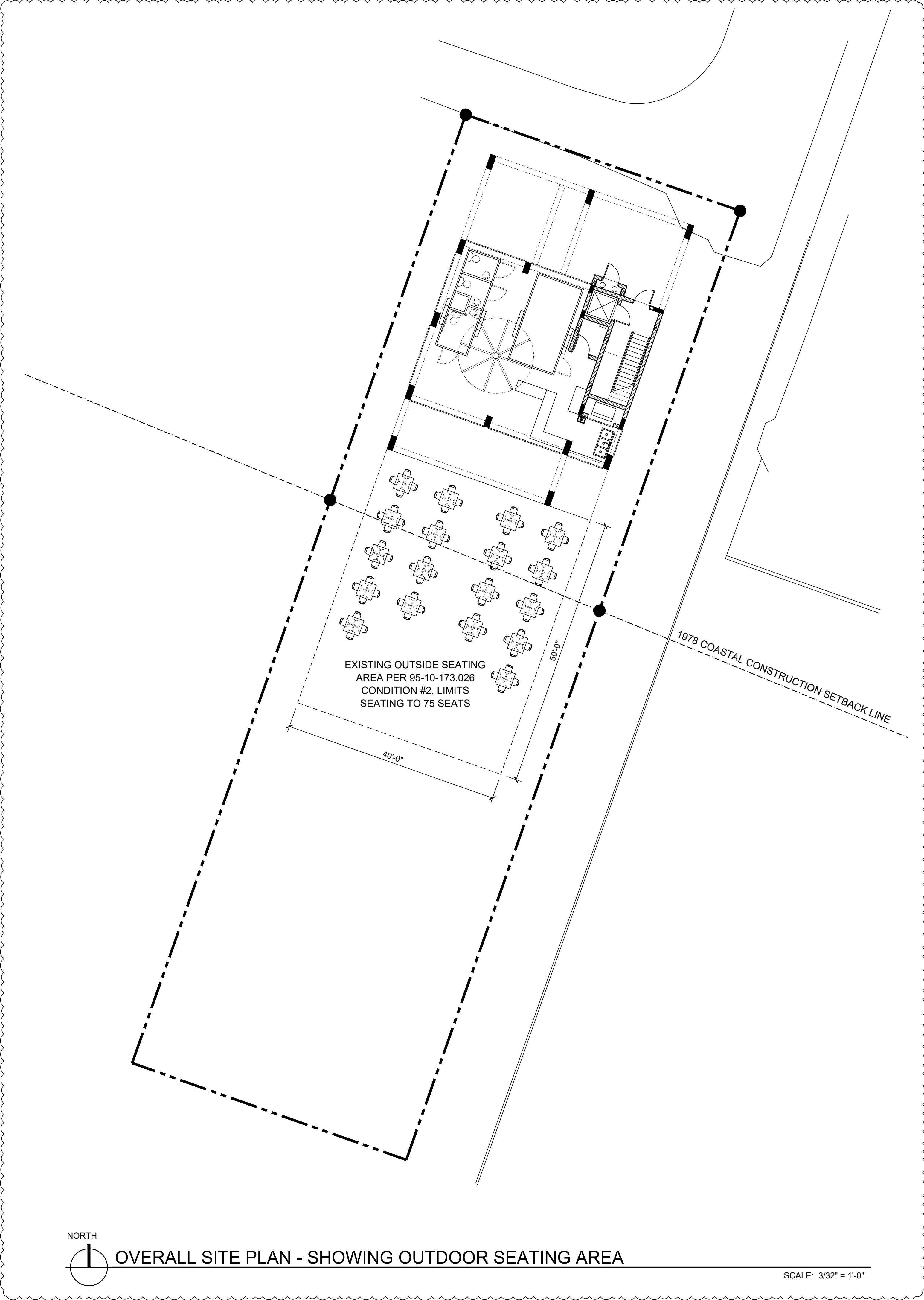
Marie Keohane
Chairman

OR2036

P64732

DEC 21 1988

RECORDED & RETURNED

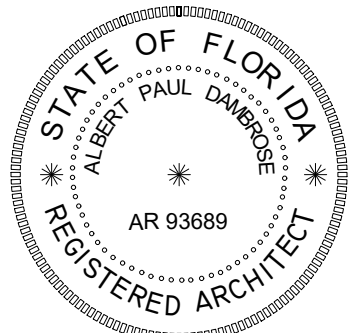


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A NEW BUILDING FOR:
THE BEACH BAR HOUSE

1668 1 STREET
FORT MYERS BEACH, FLORIDA

CONSULTANT:



ALBERT DAMBROSE
AR93689

Digitally signed by
Albert Dambrose AR
93689 State of Florida
DN: C=US,
E=apd@studioad.net,
O=Studio A.D.,
CN=Albert Dambrose
AR 93689 State of
Florida
Date: 2024.04.15
10:18:09-0400

DATE ISSUED: 20 FEB 2024

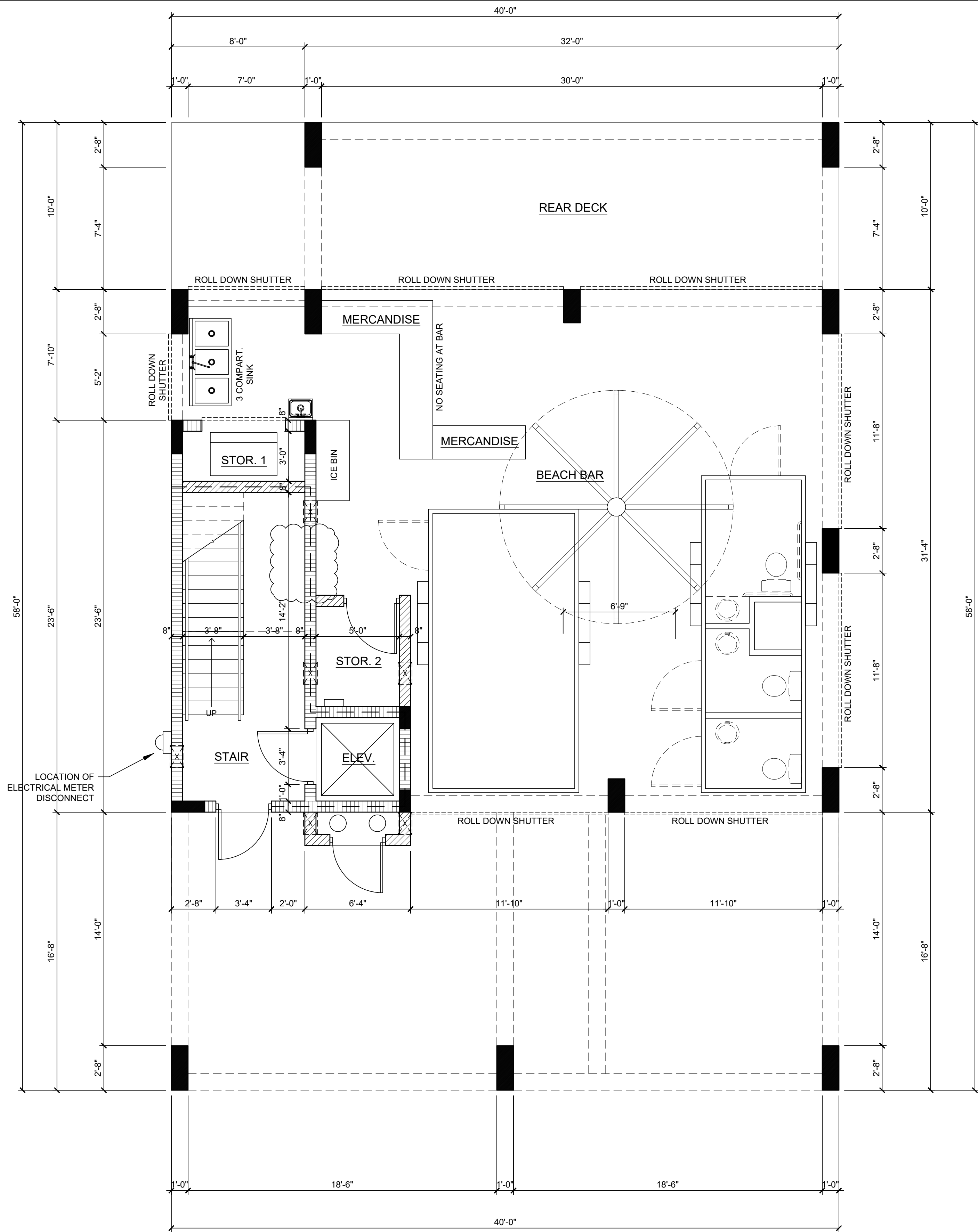
REVISIONS:

1 9 APRIL 2024

SHEET

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OF 1



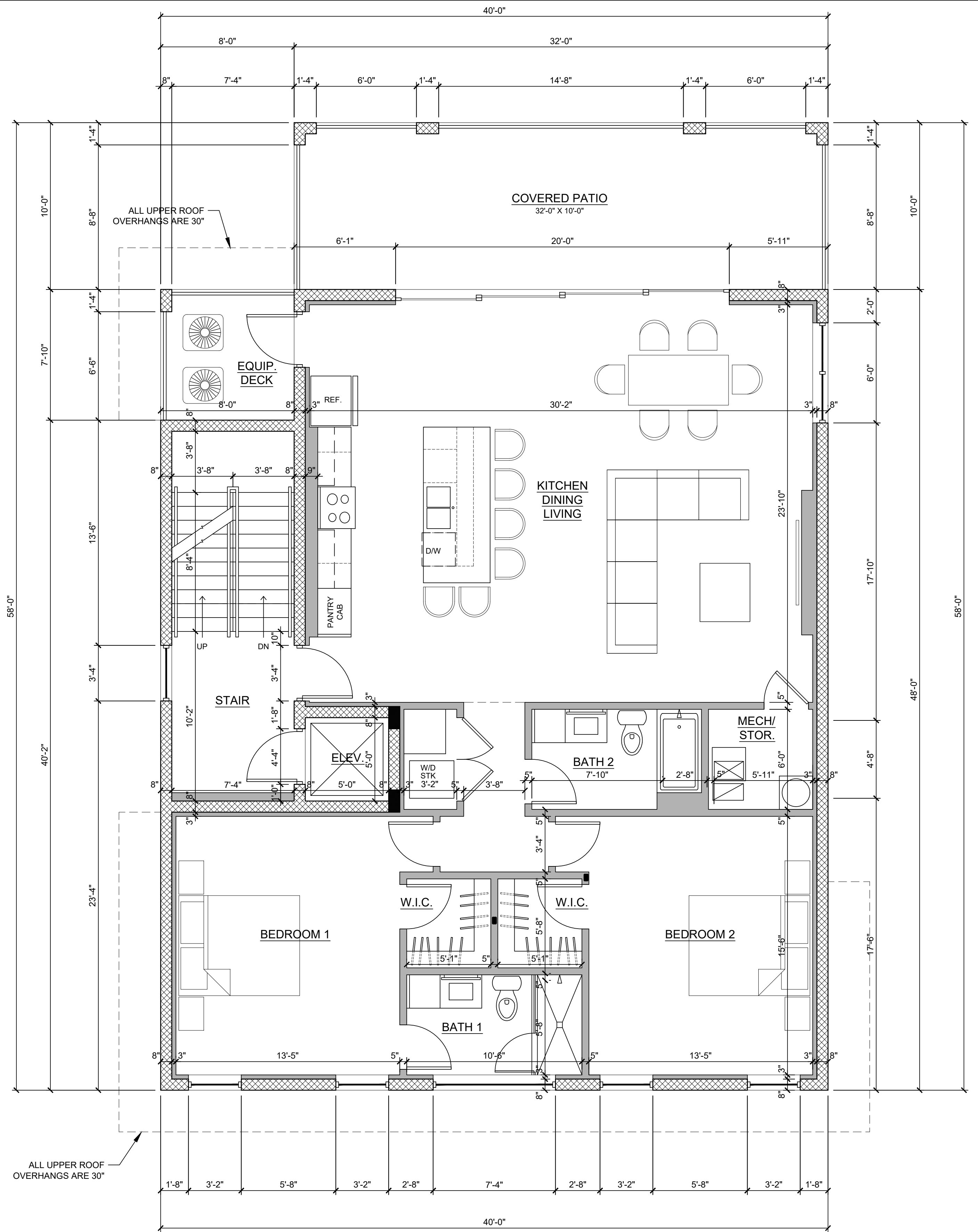
1ST FLOOR SCHEMATIC FLOOR PLAN

SCALE: 1/4" = 1'-0"



WALL SYMBOL LEGEND

- 8" BREAK-AWAY CMU WALL STRUCTURE - REFER TO WALL SECTIONS AND STRUCTURAL SHEETS.
- 8" REINFORCED CONCRETE SHEAR WALL STRUCTURE - REFER TO WALL SECTIONS AND STRUCTURAL SHEETS.
- 8" REINFORCED CMU WALL STRUCTURE - REFER TO WALL SECTIONS AND STRUCTURAL SHEETS.
- 8" REINFORCED CMU PERIMETER WALL W/ 3/4" THICK (R-5) EXTRUDED POLYSTYRENE RIGID INSULATION (RUN UP TO TOP OF CMU WALL) W/ 1/2" THICK, LIGHT TEXTURE FINISH, GYPSUM BOARD ON 1-5/8" METAL FURRING. REFER TO WALL SECTIONS.
- INTERIOR 3-5/8" OR 6" METAL STUD FRAME WALL W/ 1/2" THICK, LIGHT TEXTURE FINISH, GYPSUM BOARD. REFER TO WALL SECTIONS.
- INDICATES LOCATION OF TWO HOUR FIRE RATED CMU BLOCK WALL UP TO FIRST CONCRETE DECK - REFER TO TABLE 722.3.2 AT SHEET A5.
- INDICATES CAST-IN PLACE CONCRETE COLUMN - REFER TO STRUCTURAL PLANS.
- INDICATES STRUCTURAL STEEL COLUMN - REFER TO STRUCTURAL PLANS.



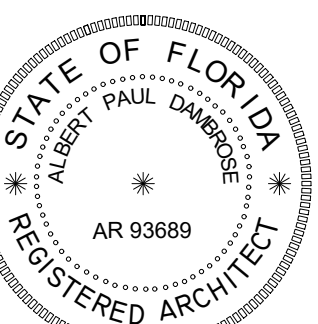
2ND FLOOR SCHEMATIC FLOOR PLAN

SCALE: 1/4" = 1'-0"



A NEW BUILDING FOR:
THE BEACH BAR HOUSE
1668 1 STREET
FORT MYERS BEACH, FLORIDA

CONSULTANT:



ALBERT DAMBROSE
AR93689

DATE ISSUED: 20 FEB 2024

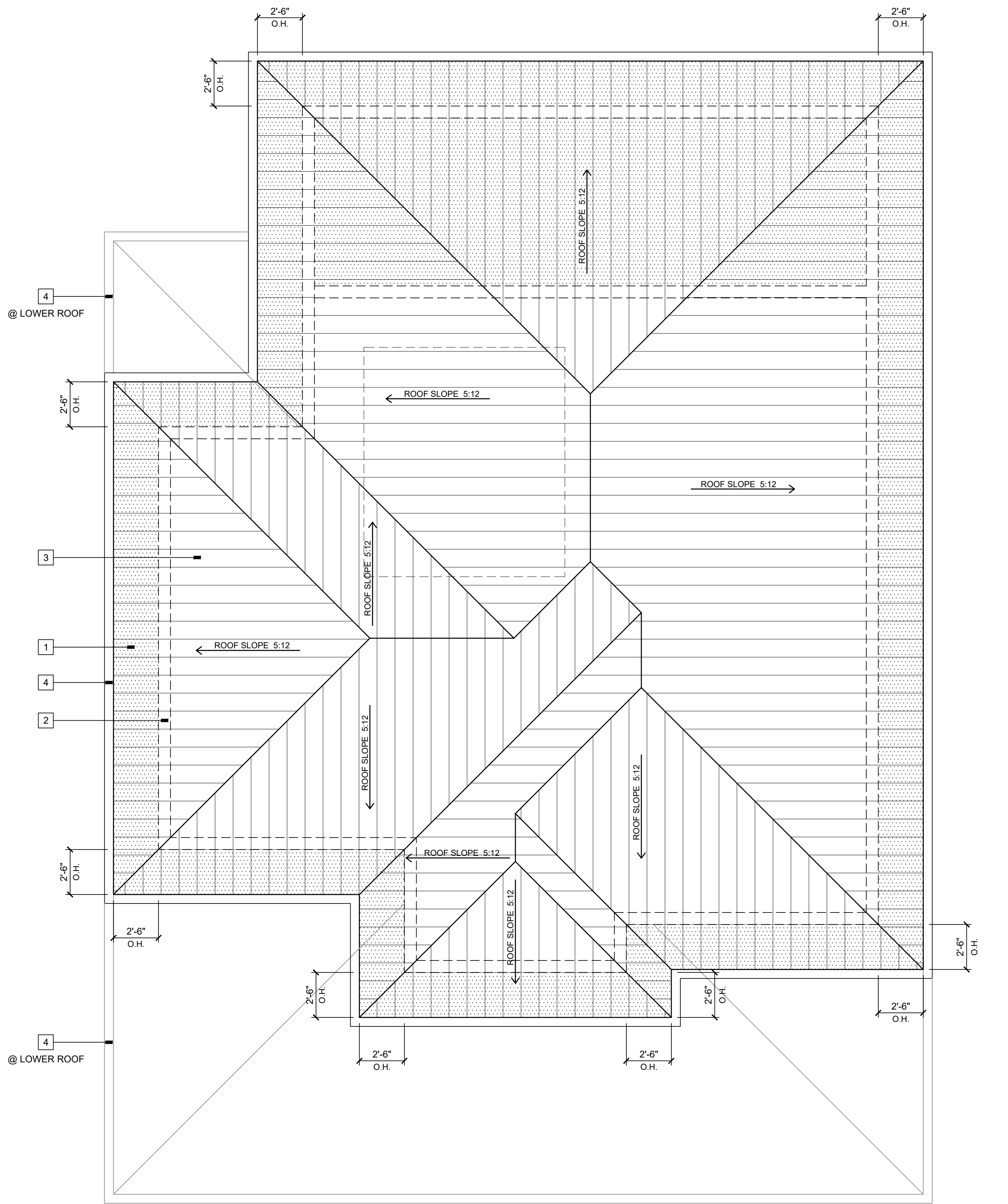
REVISIONS:

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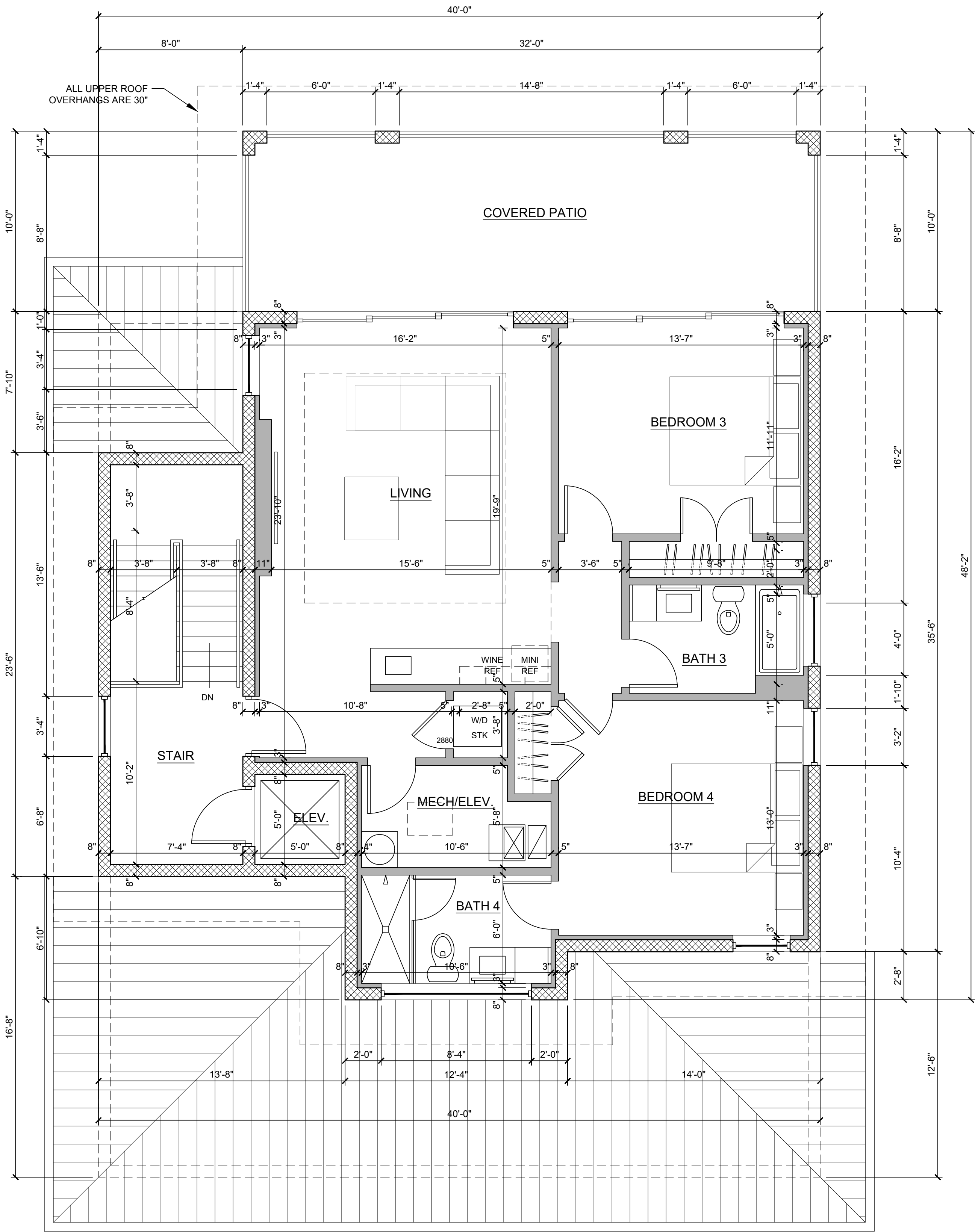
OF 6



SCHEMATIC UPPER ROOF PLAN

SCALE: 1/4" = 1'-0" NORTH

- KEYNOTES
- 1 INDICATES HARDIE BOYS ELEMENTS STAIN SERIES PVC, V-GROOVE SOFFIT PANELS
 - 2 INDICATES PERIMETER 8" CMU WALL OR CONCRETE BEAM BELOW.
 - 3 PROVIDE & INSTALL STANDING SEAM, ALUMINUM ROOFING PANELS W/ 16" WIDE PANELS.
 - 4 INDICATES PERIMETER ROLLED FORMED ALUMINUM GUTTER AT ALL ROOF EDGES AT ALL LEVELS. ALL TIED INTO STORMWATER SYSTEM DESIGN PER CIVIL ENGINEER.

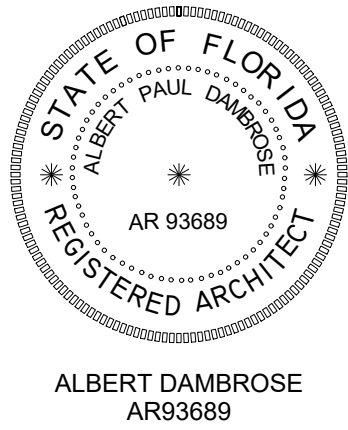


3RD FLOOR SCHEMATIC FLOOR PLAN

SCALE: 1/4" = 1'-0" NORTH

A NEW BUILDING FOR:
THE BEACH BAR HOUSE
1688 1 STREET
FORT MYERS BEACH, FLORIDA

CONSULTANT:



ALBERT DAMBROSE
AR93689

DATE ISSUED: 20 FEB 2024

REVISIONS:

SHEET

A2

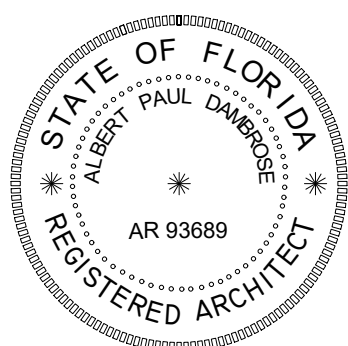
OF

6

A NEW BUILDING FOR:
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CONSULTANT:



ALBERT DAMBROSE
AR93689

DATE ISSUED: 20 FEB 2024

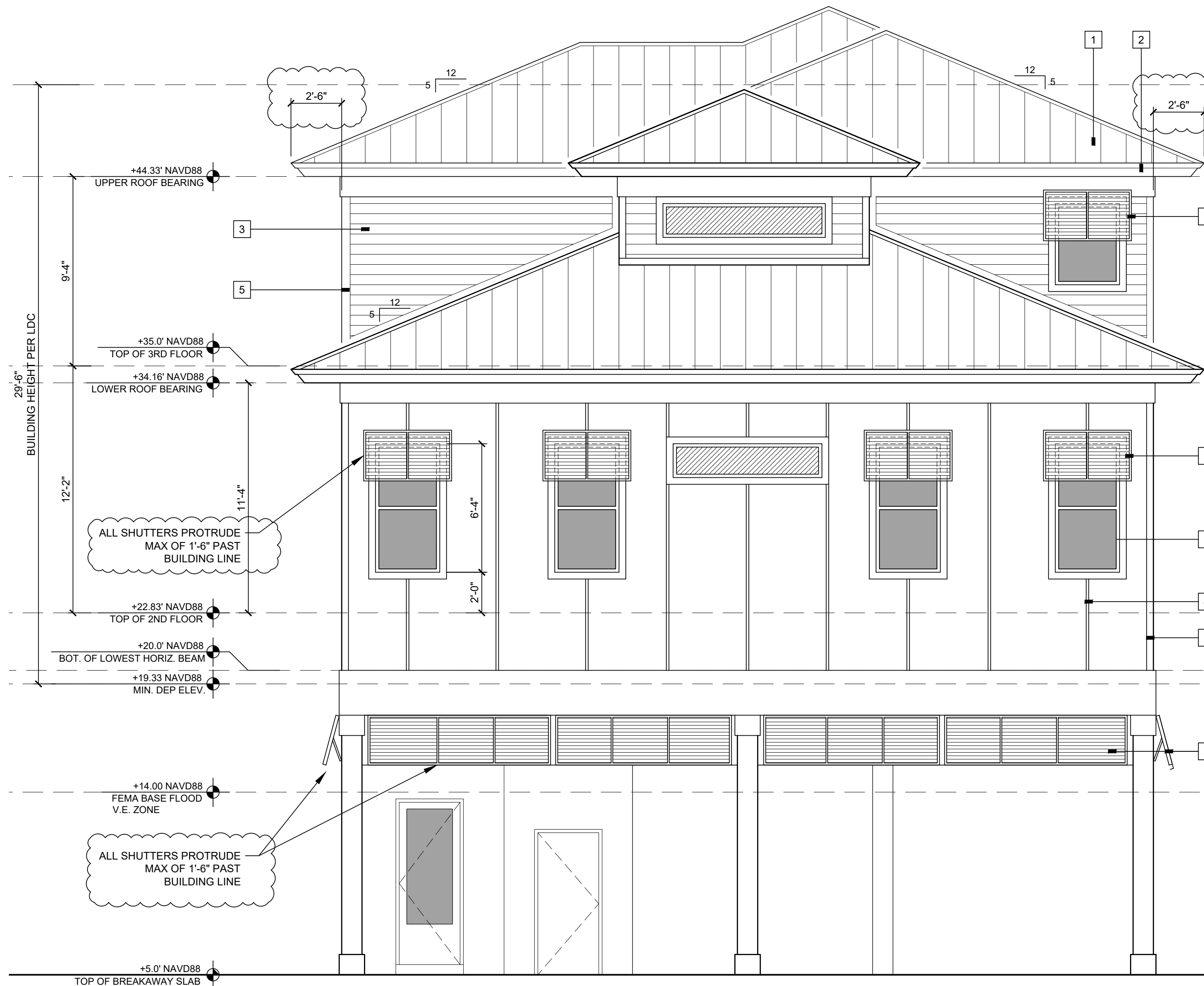
REVISIONS:

1 9 APRIL 2024

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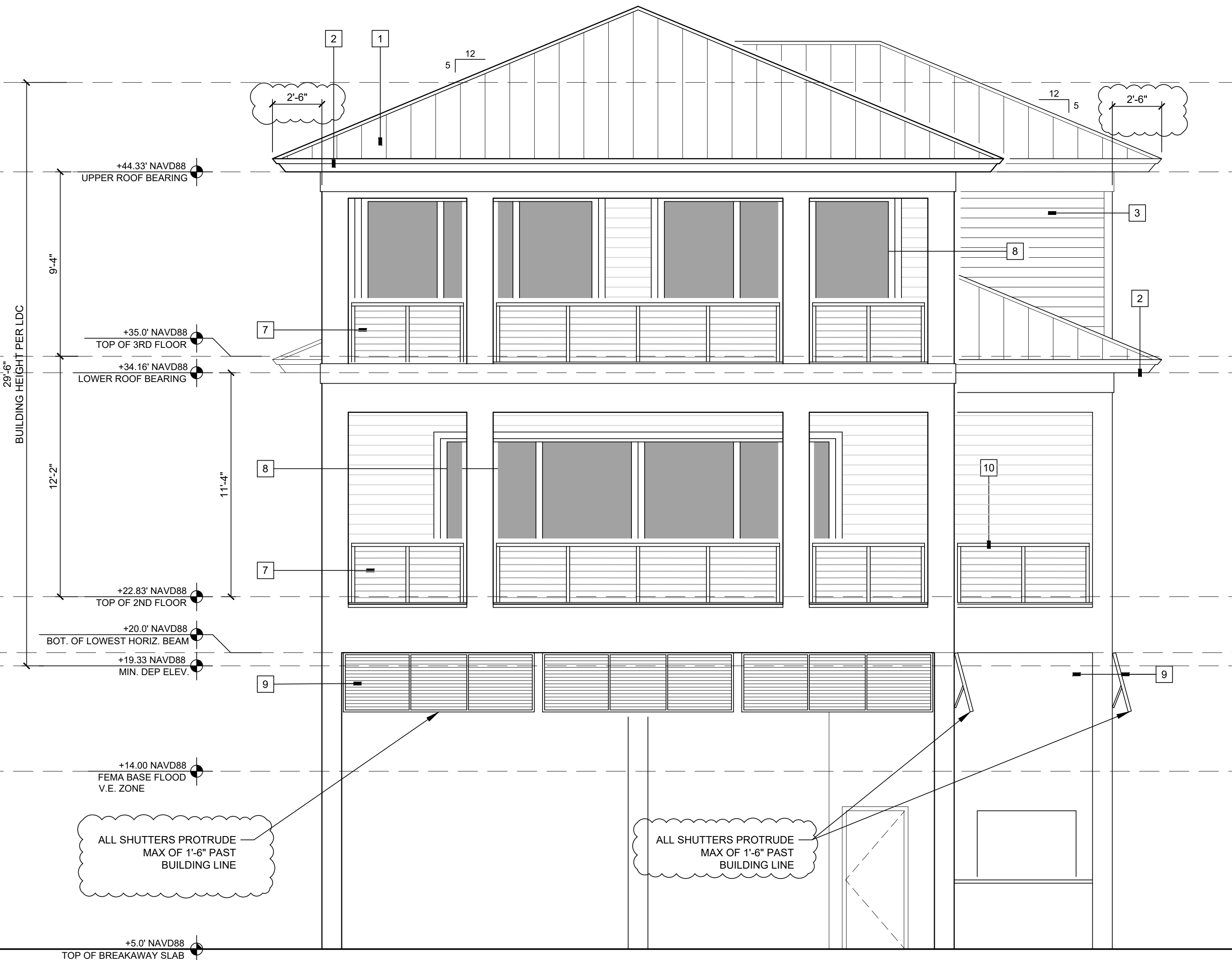
A3

OF 6



FRONT (NORTH EAST) ELEVATION

SCALE: 1/4" = 1'-0"



REAR (SOUTH WEST) ELEVATION

SCALE: 1/4" = 1'-0"

FLORIDA SEA TURTLE NOTE

ALL NEW WINDOWS/DOORS WITH GLAZING SHALL BE TINTED WITH .45 VISIBLE LIGHT TRANSMITTANCE VALUE OR LESS TO COMPLY WITH THE FLORIDA SEA TURTLE PROTECTION CODE.

KEYNOTES

- 1 PROVIDE & INSTALL OWNER SELECT COLOR, ALUMINUM STANDING SEAM METAL ROOFING PANELS W/ 16" WIDE PANELS.
- 2 CONTINUOUS PRE-PAINTED GALVANIZED STEEL DRIP STRIP ON PAINTED 1 X 8 CEMENTITIOUS FASCIA ON 2X SUB-FASCIA.
- 3 SIMULATED SIDING. STUCCO VENEER ON TOP OF CMU BLOCK WALL.
- 4 SIMULATED BOARD AND BATTEN, STUCCO VENEER ON TOP OF CMU BLOCK WALL.
- 5 4" WIDE THICKENED STUCCO BAND TO SIMULATE CORNER TRIM BOARDS. PROVIDE SAME AROUND WINDOWS AND DOORS.
- 6 IMPACT RESISTANT ALUMINUM WINDOW SYSTEM
- 7 36" HIGH POWDER COATED ALUMINUM GUARDRAIL
- 8 IMPACT RESISTANT ALUMINUM SLIDING GLASS DOOR SYSTEM
- 9 POWDER COATED ALUMINUM BAHAMA SHUTTER
- 10 POWDER COATED ALUMINUM GUARDRAIL W/ LOUVERS TO CONVEAL A/C CONDENSER UNITS.

3/28/24, 5:19 PM

BXUV,J995 | UL Product iQ

Design No. J995

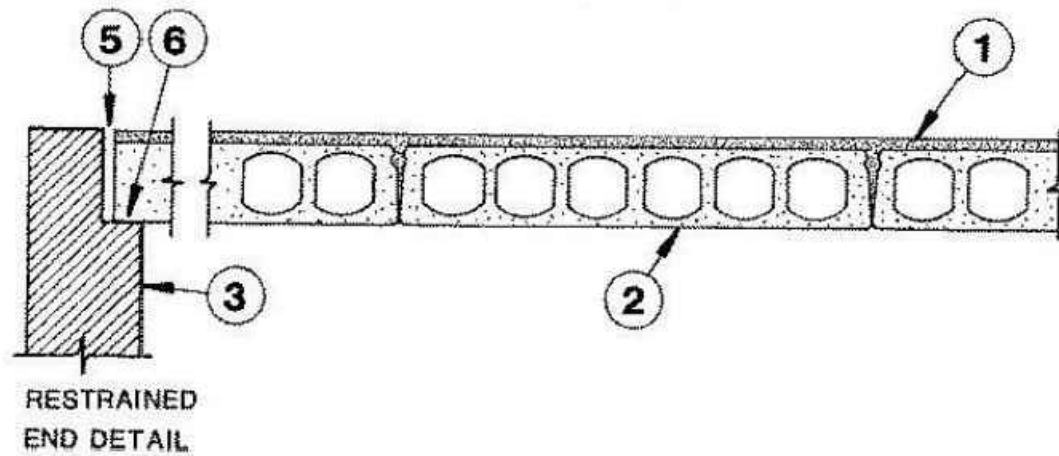
June 8, 2023

Restrained Assembly Ratings — 2, 3 and 4 Hr.

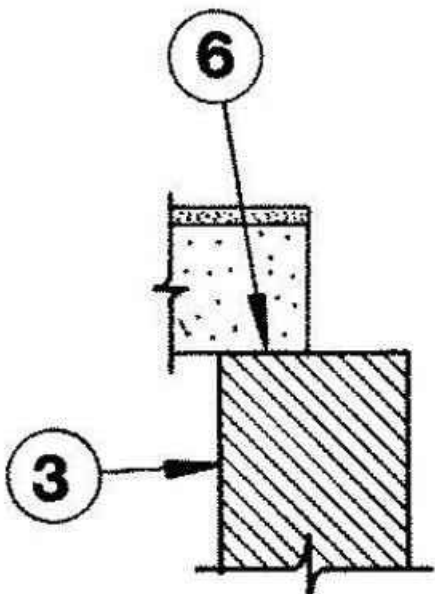
Unrestrained Assembly Rating — 2 Hr.

This design was evaluated using a load design method other than the Limit States Design Method (e.g., Working Stress Design Method). For jurisdictions employing the Limit States Design Method, such as Canada, a load restriction factor shall be used — See Guide BXUV or BXUV7

* Indicates such products shall bear the UL or cUL Certification Mark for jurisdictions employing the UL or cUL Certification (such as Canada), respectively.



RESTRAINED
END DETAIL



UNRESTRAINED END DETAIL

1. Concrete Topping — 3000 psi compressive strength, 110 to 153 pcf unit weight.

Assembly Rating Hr	Min Topping Thkns In.
2	0

https://iq.usprospector.com/en/profile?e=14228

1/2

3/28/24, 5:19 PM

BXUV,J995 | UL Product iQ

3	1-1/2
4	2-5/8

2. Precast Concrete Units* — Nom 8, 10 or 12 in. deep by 4 ft wide units. Carbonate aggregate, cross-section similar to above illustration.

CORES LAB STRUCTURES INC

COUNTY MATERIALS CORP

GAGE BROS CONCRETE PRODUCTS INC

KERKSTRA PRECAST INC

LARRY E KNIGHT INC

OLDCASTLE PRECAST INC

SAY-CORE INC

3. End Detail — Restrained and Unrestrained.

4. Joint (not shown) — Grouted full length with sand-cement grout unless concrete topping is used.

Note: A 3/8 in. wide lateral expansion joint to be provided the full length and depth of the slabs for each 14 ft of width. Expansion obtained with noncombustible, compressible material, for example 6 sheets of 1/8 in. thick ceramic fiber paper.

5. End Clearance — Clearance for expansion at each end of slab shall be equal to (L/17) x (1/4 +/- 1/16) in. where "L" is equal to length of span in ft.

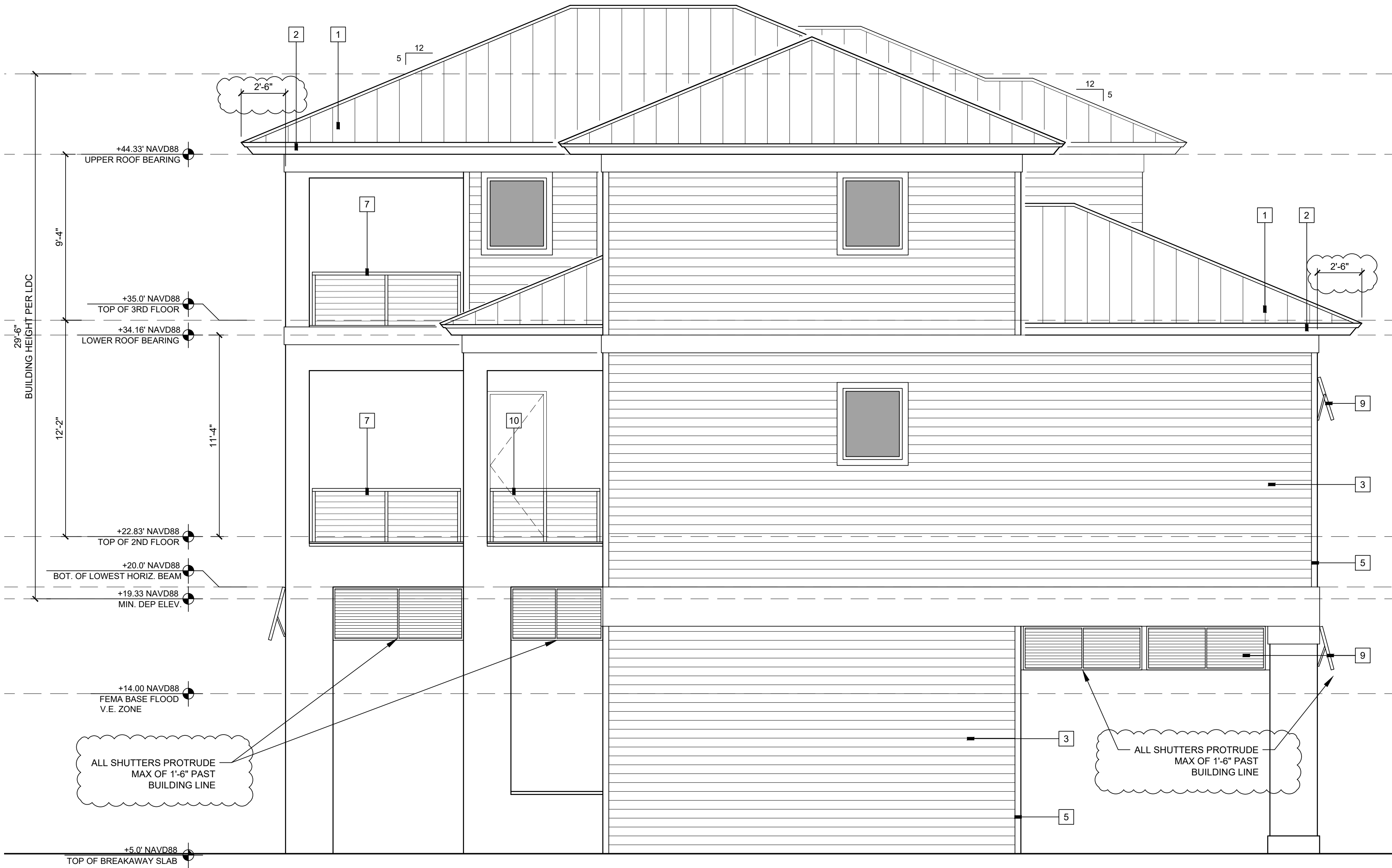
6. Min Bearing — 1-1/2 in. for assembly rating of 3 Hr. or less and 3 in. for assembly rating of 4 Hr.

* Indicates such products shall bear the UL or cUL Certification Mark for jurisdictions employing the UL or cUL Certification (such as Canada), respectively.

Last Updated on 2023-06-08

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2/2



LEFT (SOUTH EAST) ELEVATION

SCALE: 1/4" = 1'-0"

FLORIDA SEA TURTLE NOTE

ALL NEW WINDOWS/DOORS WITH GLAZING SHALL BE TINTED WITH .45 VISIBLE LIGHT TRANSMITTANCE VALUE OR LESS TO COMPLY WITH THE FLORIDA SEA TURTLE PROTECTION CODE.

KEYNOTES

- 1 PROVIDE & INSTALL OWNER SELECT COLOR, ALUMINUM STANDING SEAM METAL ROOFING PANELS W/ 16" WIDE PANELS.
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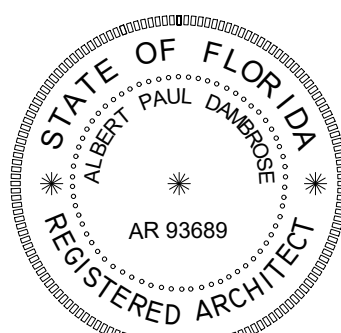
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A NEW BUILDING FOR: THE BEACH BAR HOUSE

1668 1 STREET
FORT MYERS BEACH, FLORIDA

CONSULTANT:



ALBERT DAMBROSE
AR93689

DATE ISSUED: 20 FEB 2024

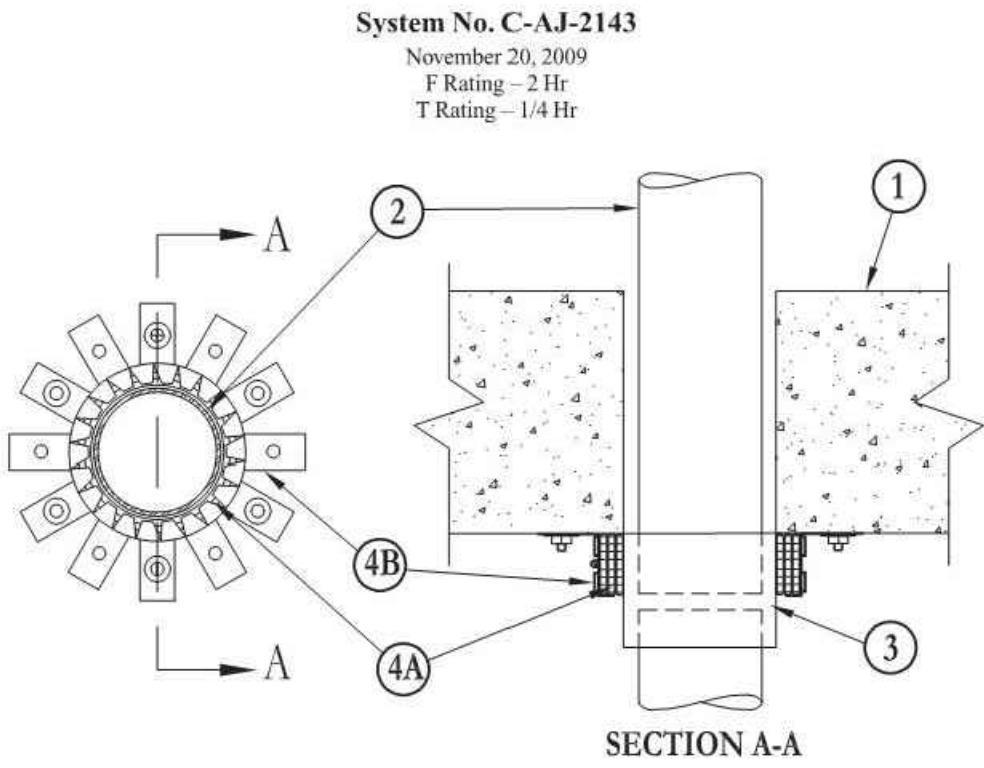
REVISIONS:

1 9 APRIL 2024

SHEET

A4

OF 6



- Floor or Wall Assembly** – Min 4-1/2 in. (114 mm) thick lightweight or normal weight (100-150 pcf or 1600 - 2400 kg/m³) concrete. Wall may also be constructed of any UL Classified **Concrete Blocks***. Diam of opening through floor or wall to be 1/2 to 5/8 in. (13 to 16 mm) larger than the outside diam of through-penetrant (Item 2). Max diam of opening is 5 in. (127 mm). See **Concrete Blocks (CAZT)** category in the Fire Resistance Directory for names of manufacturers.
- Through Penetrants** – One nonmetallic pipe or conduit centered in the through opening. Pipe or conduit to be rigidly supported on both sides of floor or wall assembly. The following types and sizes of nonmetallic pipes or conduits may be used.
 - Polyvinyl Chloride (PVC) Pipe** – Nom 4 in. (102 mm) diam (or smaller) Schedule 40 solid core PVC pipe for use in closed (process or supply) or vented (drain, waste or vent) piping system.
 - Rigid Nonmetallic Conduit** – Nom 4 in. (102 mm) diam (or smaller) Schedule 40 PVC conduit installed in accordance with Article 347 of the National Electrical Code (NEC, No. 70).
 - Chlorinated Polyvinyl Chloride (CPVC) Pipe** – Nom 4 in. (102 mm) diam (or smaller) SDR13.5 CPVC pipe for use in closed (process or supply) piping systems.
- Nonmetallic Pipe Coupling** – Nom 4 in. (102 mm) diam (or smaller) Schedule 40 PVC pipe coupling or nom 4 in. (102 mm) diam (or smaller) SDR13.5 CPVC pipe coupling installed such that the top of the coupling is flush with the bottom surface of the floor assembly or flush with either side of the wall assembly and extending outward.
- Firestop System** – The details of the firestop system shall be as follows:
 - Fill, Void or Cavity Materials* - Wrap Strip** – Nom 1/4 in. (6 mm) thick intumescent elastomeric material faced on one side with aluminum foil, supplied in 2 in. (51 mm) wide strips. Min four layers of wrap strips tightly wrapped around nonmetallic pipe coupling (foil side exposed) with the top edges butted against the underside of the floor. In wall assemblies, a min four layers of wrap strips tightly wrapped around nonmetallic pipe coupling (foil side exposed) and butted tightly against outer surface of wall. For the pipe or conduit on the side of the wall opposite the pipe coupling, the wrap strips shall be wrapped tightly around the pipe or conduit and butted tightly against outer surface of wall. For nom 1/2 in. (13 mm) to nom 1-1/2 in. (38 mm) diam pipes or conduits, a min of one layer of wrap strip is required. For nom 2, 2-1/2 and 3 in. (51, 64 and 76 mm) diam pipes or conduits, a min of two layers of wrap strip is required. For nom 3-1/2 and 4 in. (89 and 102 mm) diam pipes or conduits, a min of three layers of wrap strip is required. Each layer of wrap strip to be installed with butted seams, with butted seams in successive layers staggered. Wrap strip layers temporarily held in position using aluminum foil tape, steel wire tie or equivalent.
 - 3M COMPANY** – FS-195+
 - Steel Collar** – Nom 2 in. (51 mm) deep collar with 1-1/4 in. (32 mm) wide by 2 in. (51 mm) long anchor tabs and min 1/2 in. (13 mm) long tabs to retain wrap strip. Coils of precut min 0.016 in. (0.41 mm) thick (28 gauge) galv sheet steel available from wrap strip manufacturer. As an alternate, collar may be field-fabricated from min 0.016 in. (0.41 mm) thick (28 gauge) galv sheet steel in accordance with instruction sheet supplied by wrap strip manufacturer. Collar, with anchor tabs bent outward 90 degrees, wrapped tightly around wrap strip with min 1 in. (25 mm) overlap at seam and compressed around wrap strip(s) using a min 1/2 in. (13 mm) wide by min 0.028 in. (0.71 mm) thick stainless steel band at the collar midheight. Collar anchor tabs pressed tightly against floor or wall surface(s) and secured to floor or wall surface(s) with 1/4 in. (6 mm) diam by min 1-1/2 in. (38 mm) long steel expansion bolts or equivalent in conjunction with steel nuts and min 1-1/4 in. (32 mm) diam steel fender washers. Min of five anchor bolts used for collar installed around pipe coupling. For the collars installed around pipes or conduits in wall assemblies on the side opposite the pipe coupling, a min of two anchor bolts are required for nom 1/2 to 2 in. (13 to 51 mm) pipes or conduits, a min of three anchor bolts for nom 2-1/2 and 3 in. (64 and 76 mm) pipes or conduits and a min of four anchor bolts for nom 3-1/2 and 4 in. (89 and 102 mm) pipes or conduits, symmetrically located. Retainer tabs bent 90 degrees toward pipe to lock wrap strip(s) in position.

3M Fire Protection Products
www.3m.com/firestop

C-AJ-2143 • 1 of 2

Product Support Line
1-800-328-1687

System No. C-AJ-2143 continued

- Fill, Void or Cavity Materials* - Caulk, Sealant or Putty** (Optional, not required) – Bead of caulk or putty may be applied to outer perimeter of steel collar at its interface with floor or wall surface(s). In floor assemblies, a bead of caulk may be used within the annular space on the top side of the floor.
3M COMPANY – CP-WB+ caulk, FB-3000 WT sealant, MP+ Stix putty, IC 15WB+ caulk or FireDam 150+ caulk.
(Note: CP 25WB+ and FireDam 150+ not suitable for use with CPVC pipes.)

*Bearing the UL Classification Marking

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Through Penetrations

Non-Metallic Pipes

2000 Series

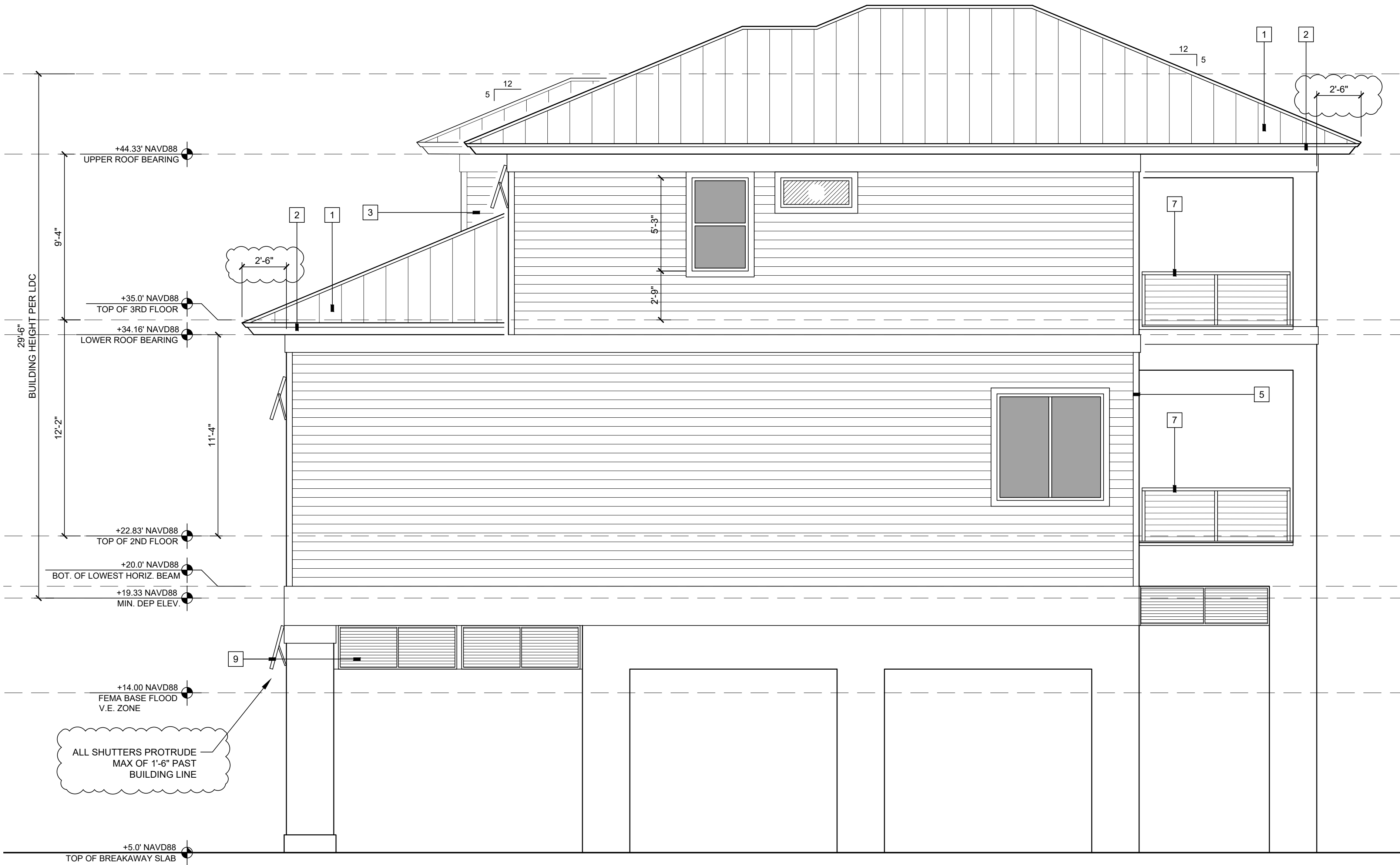
Concrete

CAJ

3M Fire Protection Products
www.3m.com/firestop

C-AJ-2143 • 2 of 2

Product Support Line
1-800-328-1687



RIGHT (NORTH WEST) ELEVATION

SCALE: 1/4" = 1'-0"

FLORIDA SEA TURTLE NOTE

ALL NEW WINDOWS/DOORS WITH GLAZING SHALL BE TINTED WITH .45 VISIBLE LIGHT TRANSMITTANCE VALUE OR LESS TO COMPLY WITH THE FLORIDA SEA TURTLE PROTECTION CODE.

KEYNOTES

- PROVIDE & INSTALL OWNER SELECT COLOR, ALUMINUM STANDING SEAM METAL ROOFING PANELS W/ 16" WIDE PANELS.
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TABLE 722.3.2 MINIMUM EQUIVALENT THICKNESS (inches) OF BEARING OR NONBEARING CONCRETE MASONRY WALLS ^{a,b,d}															
TYPE OF AGGREGATE	FIRE-RESISTANCE RATING (hours)														
	1/2	3/4	1	1 1/4	1 1/2	1 3/4	2	2 1/4	2 1/2	3	3 1/4	3 1/2	3 3/4	4	
Pumice or expanded slag	1.5	1.9	2.1	2.5	2.7	3.0	3.2	3.4	3.6	3.8	4.0	4.2	4.4	4.5	
Expanded shale, clay or slate	1.8	2.2	2.6	2.9	3.3	3.4	3.6	3.8	4.0	4.2	4.4	4.6	4.8	4.9	
Limestone, cinders or unexpanded slag	1.9	2.3	2.7	3.1	3.4	3.7	4.0	4.3	4.5	4.8	5.0	5.2	5.5	5.7	
Calcareous or siliceous gravel	2.0	2.4	2.8	3.2	3.6	3.9	4.2	4.5	4.8	5.0	5.3	5.5	5.8	6.0	

For ST: 1 inch = 25.4 mm.

a. Values between those shown in the table can be determined by direct interpolation.

b. Where combustible members are framed into the wall, the thickness of solid material between the end of each member and the opposite face of the wall, or between members set in from opposite sides, shall not be less than 95 percent of the thickness shown in the table.

c. Requirements of ASTM C 55, ASTM C 73, ASTM C 90 or ASTM C 744 shall apply.

d. Minimum required equivalent thickness corresponding to the hourly fire-resistance rating for units with a combination of aggregate shall be determined by linear interpolation based on the percent by volume of each aggregate used in manufacture.

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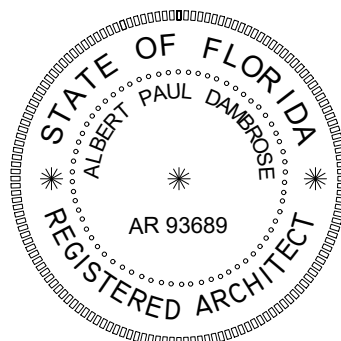
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A NEW BUILDING FOR: THE BEACH BAR HOUSE

1668 1 STREET
FORT MYERS BEACH, FLORIDA

CONSULTANT:



ALBERT DAMBROSE
AR93689

DATE ISSUED: 20 FEB 2024

REVISIONS:

1 9 APRIL 2024

SHEET

A5

OF

6

Through Penetrations

Metallic Pipes

1000 Series

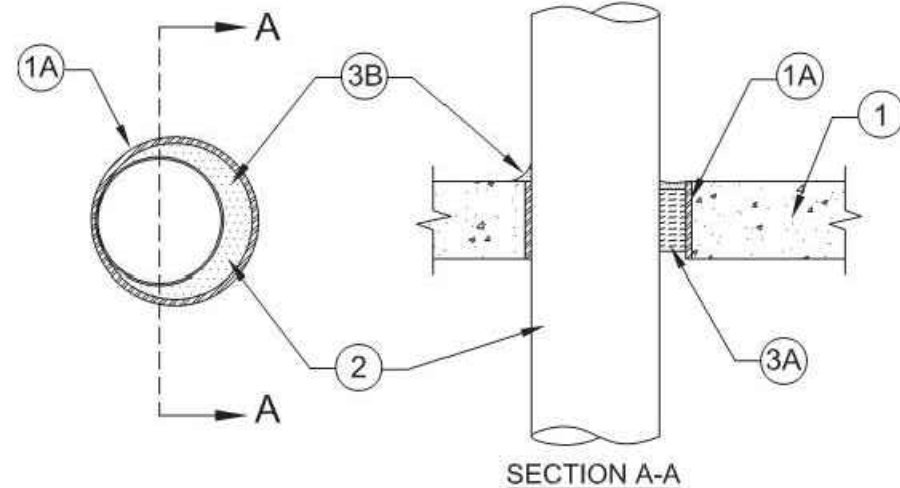
Concrete

CAJ

60

System No. C-AJ-1427

March 05, 2007
F Rating - 3 Hr
T Rating - 0 Hr
W Rating - Class I (See Item 3)



- Floor or Wall Assembly** - Min 2-1/2 in. (64 mm) thick reinforced lightweight or normal weight (100-150 pcf or 1600 - 2400 kg/m³) concrete floors or min 3 in. (76 mm) thick reinforced lightweight or normal weight concrete walls. Floor assembly may also be constructed of any min 6 in. (152 mm) thick UL Classified hollow-core **Precast Concrete Units***. Wall may also be constructed of any UL Classified **Concrete Blocks***. Max diam of opening 12-3/4 in. (324 mm). Max diam of opening in floors constructed of hollow-core concrete is 7 in. (78 mm). See **Concrete Blocks (CAZT)** and **Precast Concrete Units (CFTV)** categories in Fire Resistance Directory for names of manufacturers.
- Steel Sleeve** - (Optional) - Nom 12 in. (305 mm) diam (or smaller) Schedule 10 (or heavier) steel sleeve cast or grouted into floor or wall assembly. Steel sleeve may be installed flush or may project max 2 in. (51 mm) beyond the floor or wall surfaces. As an alternate, nom 12 in. (305 mm) diam (or smaller) sleeve fabricated from nom 0.019 in. (0.48 mm) thick galv steel cast or grouted into floor or wall assembly flush with floor or wall surfaces.
- Through Penetrant** - One metallic pipe, conduit, tubing or flexible metal piping installed concentrically or eccentrically within opening. Annular space between penetrant and periphery of opening or sleeve shall be min of 0 in. (0 mm) (point contact) to max 2 in. (51 mm). Penetrant to be rigidly supported on both sides of floor or wall assembly. The following types and sizes of penetrants may be used:
 - Steel Pipe** - Nom 10 in. (254 mm) diam (or smaller) Schedule 10 (or heavier) steel pipe.
 - Iron Pipe** - Nom 10 in. (254 mm) diam (or smaller) cast or ductile iron pipe.
 - Conduit** - Nom 6 in. (152 mm) diam (or smaller) steel conduit or nom 4 in. (102 mm) diam (or smaller) steel electrical metallic tubing.
 - Copper Tubing** - Nom 4 in. (102 mm) diam (or smaller) Type L (or heavier) copper tubing.
 - Copper Pipe** - Nom 4 in. (102 mm) diam (or smaller) Regular (or heavier) copper pipe.
 - Through Penetrating Product*** - **Flexible Metal Piping** - The following types of steel flexible metal gas piping may be used:
 - Nom 2 in. (51 mm) diam (or smaller) steel flexible metal gas piping. Plastic covering on piping may or may not be removed on both sides of floor or wall assembly.
OMEGA FLEX INC
 - Nom 1 in. (25 mm) diam (or smaller) steel flexible metal gas piping. Plastic covering on piping may or may not be removed on both sides of floor or wall assembly.
GASTITE, DIV OF TITFLEX
 - Nom 1 in. (25 mm) diam (or smaller) steel flexible metal gas piping. Plastic covering on piping may or may not be removed on both sides of floor or wall assembly.
WARD MFG INC
- Firestop System** - The details of the firestop system shall be as follows:
 - Packing Material** - Min 2 in. (51 mm) thickness of min 4 pcf (64 kg/m³) mineral wool batt insulation firmly packed into opening as a permanent form. Packing material to be recessed from top surface of floor or top edge of sleeve or from both surfaces of wall or both ends of sleeve as required to accommodate the required thickness of fill material. In floors constructed of hollow-core concrete, packing material to be recessed from top and bottom surfaces of floor or sleeve as required to accommodate the required thickness of fill material.
 - Fill, Void or Cavity Materials*** - **Caulk or Sealant** - Min 1/2 in. (13 mm) thickness of caulk applied within the annulus, flush with top surface of floor or top edge of sleeve or with both surfaces of wall or both ends of sleeves. In floors constructed of hollow-core concrete, min 1/2 in. (13 mm) thickness of caulk applied within the annulus, flush with top and bottom surfaces of floor or sleeve. Min 1/4 in. (6 mm) diam bead of caulk applied to the penetrant/concrete or penetrant/sleeve interface at the point contact location on the top surface of floor or both surfaces of wall or hollow-core.

3M COMPANY - IC 15WB+, CP 25WB+ caulk or FB-3000 WT sealant
(Note: W Rating applies only when FB-3000 WT is used.)

*Bearing the UL Classification Mark.

This material was extracted and drawn by 3M Fire Protection Products from the 2007 edition of the UL Fire Resistance Directory. © UL

3M Fire Protection Products
www.3m.com/firestop

C-AJ-1427 • 1 of 1

Product Support Line: 1-800-328-1687
Choose option 4 for FAX ON DEMAND



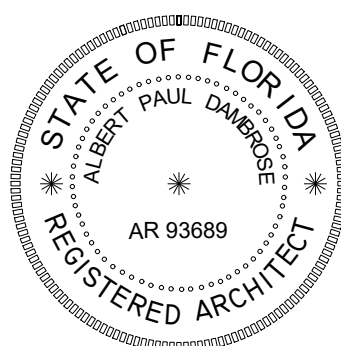
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A NEW BUILDING FOR:
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ALBERT DAMBROSE
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DATE ISSUED: 20 FEB 2024

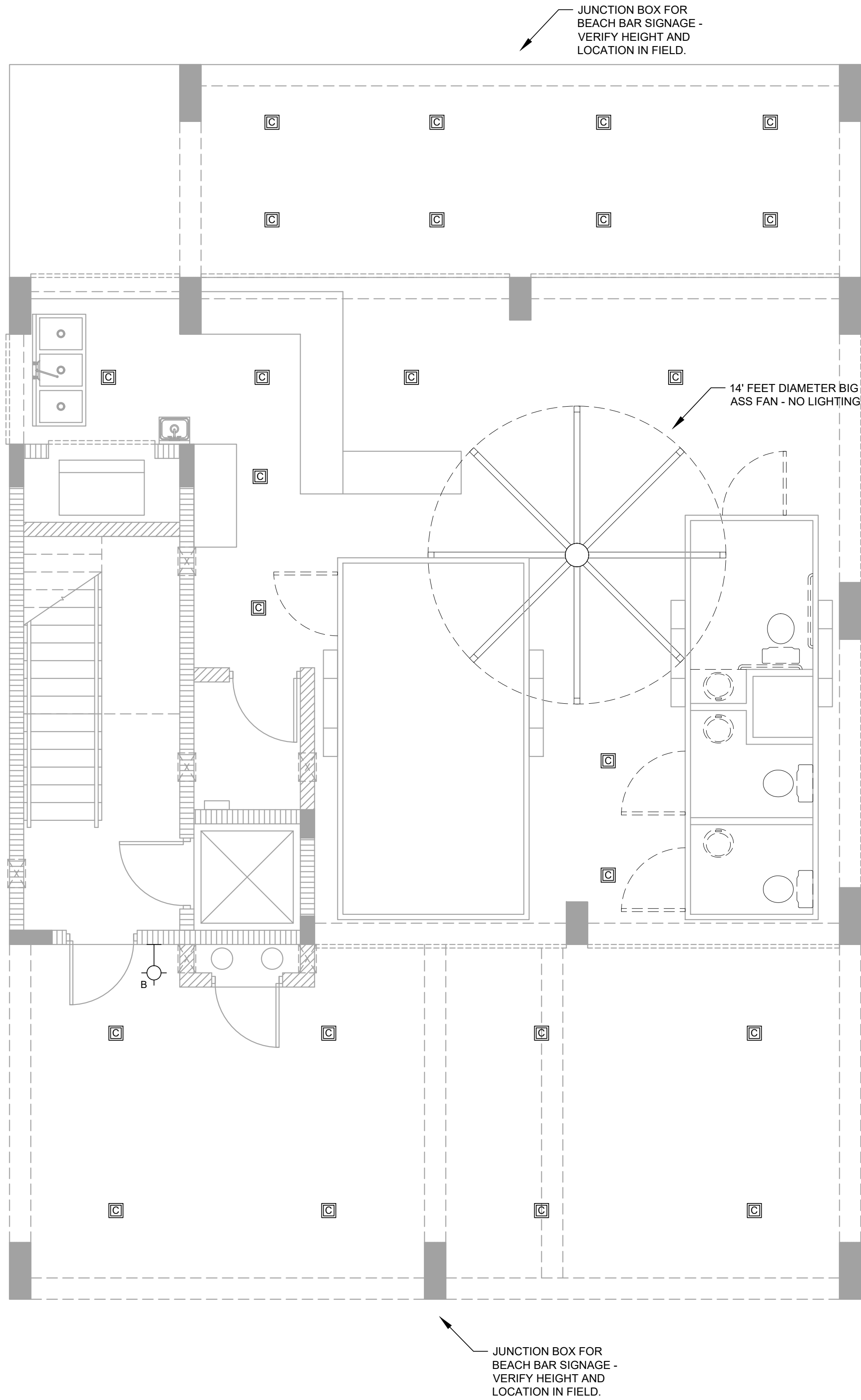
REVISIONS:

1 9 APRIL 2024

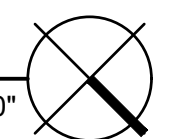
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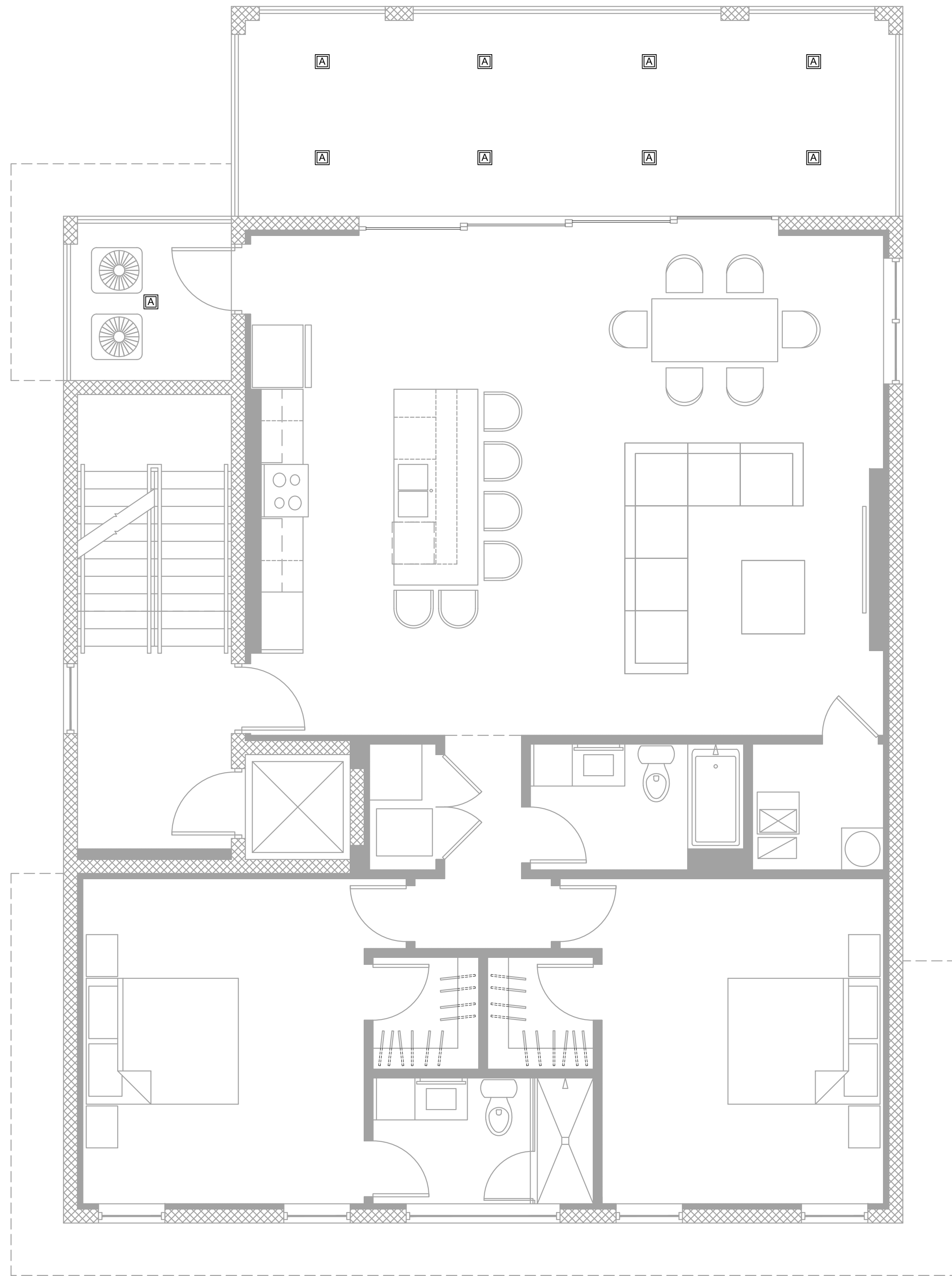
A6

OF 6



1ST FLOOR ELECTRICAL EXTERIOR LIGHTING PLAN

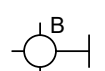
SCALE: 1/4" = 1'-0"  NORTH

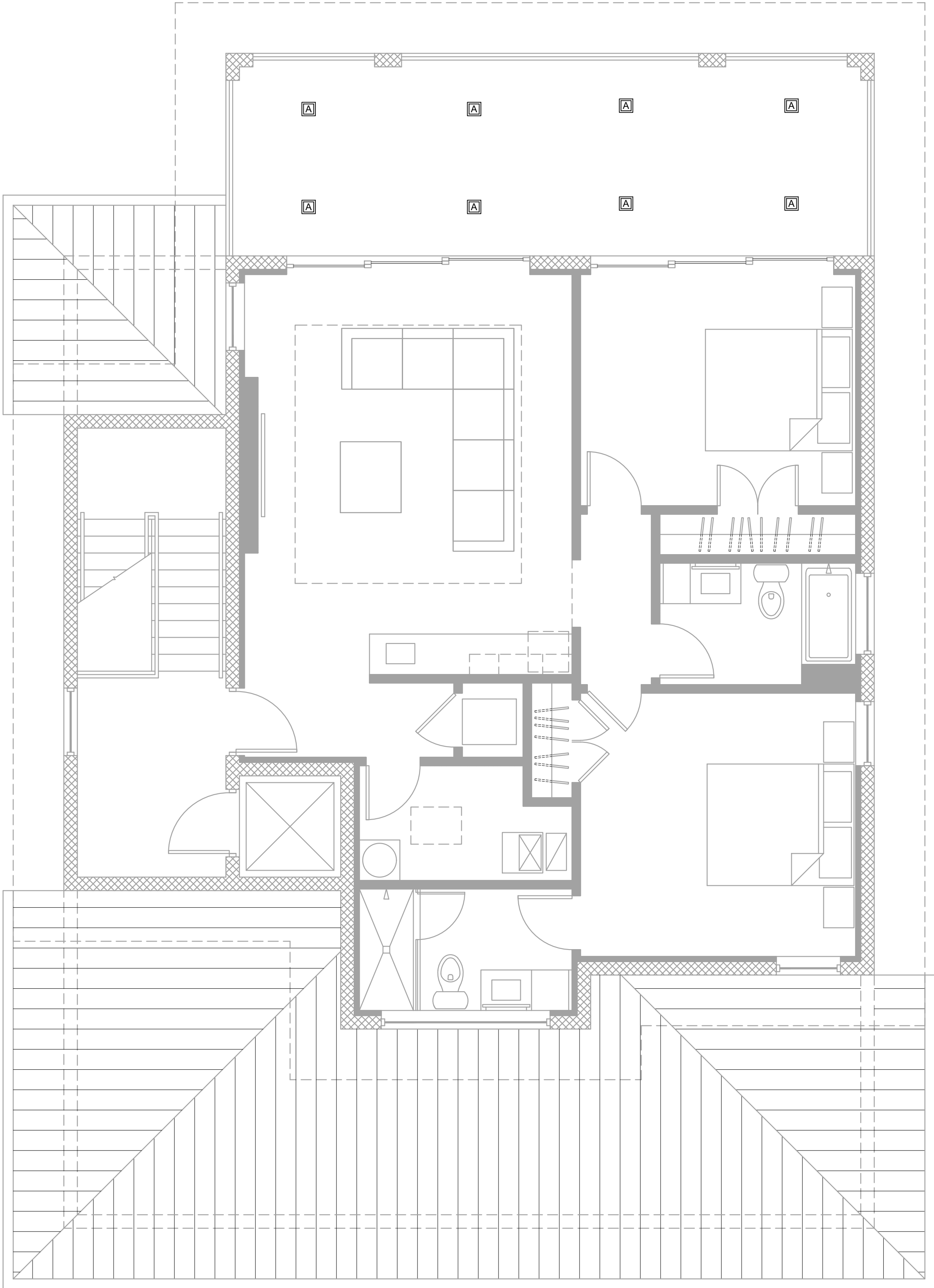


2ND FLOOR ELECTRICAL EXTERIOR LIGHTING PLAN

SCALE: 1/4" = 1'-0"  NORTH

ELECTRICAL SYMBOL LEGEND

-  4' SQUARE RECESSED LED CEILING LIGHT BY BEVELED LIGHTING (AMBER LED DOWNLIGHT) - REFER TO SPECIFICATIONS AT SHEET E3.
-  6' DIA. WALL SCONCE LED LIGHT BY LUMINIS LIGHTING (AMBER LED DOWNLIGHT) - REFER TO SPECIFICATIONS AT SHEET E3.
-  8' ROUND SURFACE MOUNTED CYLINDER LED CEILING LIGHT BY LUMINIS LIGHTING (AMBER LED DOWNLIGHT) - REFER TO SPECIFICATIONS AT SHEET E3.



3RD FLOOR ELECTRICAL EXTERIOR LIGHTING PLAN

SCALE: 1/4" = 1'-0"  NORTH

ELECTRICAL SYMBOL LEGEND

-  4" SQUARE RECESSED LED CEILING LIGHT BY BEVELED LIGHTING (AMBER LED DOWNLIGHT) - REFER TO SPECIFICATIONS AT SHEET E3.
-  6" DIA. WALL SCONCE LED LIGHT BY LUMINIS LIGHTING (AMBER LED DOWNLIGHT) - REFER TO SPECIFICATIONS AT SHEET E3.
-  8" ROUND SURFACE MOUNTED CYLINDER LED CEILING LIGHT BY LUMINIS LIGHTING (AMBER LED DOWNLIGHT) - REFER TO SPECIFICATIONS AT SHEET E3.

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A NEW BUILDING FOR:
THE BEACH BAR HOUSE

1668 1 STREET
FORT MYERS BEACH, FLORIDA

CONSULTANT:

STATE OF FLORIDA
ALBERT PAUL DAMBROSE
AR 93689
REGISTERED ARCHITECT

ALBERT DAMBROSE
AR93689

DATE ISSUED: 20 FEB 2024

REVISIONS:

1	9 APRIL 2024

SHEET
E2
OF 3

BeveLED[®] COLORS - AMBER



PROJECT INFORMATION

PROJECT: **Beach Bar**
DATE: **December 2023**
TYPE: **Fixture 'A'**

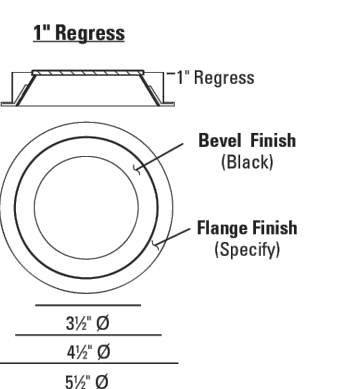
DOWNLIGHT 302A



BeveLED Colors - Amber Recessed Downlight - USAI Lighting's sea turtle-safe lighting series is designed to promote and preserve existing nesting and hatching patterns of endangered sea turtles on the North American coastline. The light output is specifically selected to have minimal impact on the sea turtle's vision in a dark environment, ensuring that the ocean will always be the brightest object in their field of view. Specify these products to meet Florida Fish and Wildlife Conservation sea turtle lighting requirements and give baby sea turtles their best chance of survival.

DELIVERED PERFORMANCE

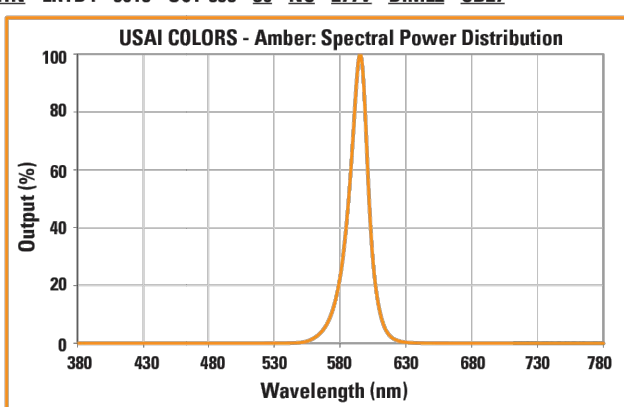
BeveLED COLORS AMBER DOWNLIGHT	15 Watts
Lumens per Watt	32
Source Lumens	800
Delivered Lumens	475



HOW TO SPECIFY

Ordering Example: Specify trim code and housing code to order: Example: **302A - BB1 - S - 21N - LRTD4 - 9015 - UC1-595 - 30 - NC - 277V - DIML2 - CB27**

TRIM	BEVEL STYLE	LENS	FLANGE FINISH	OPTIONAL ACCESSORY
302A Round Downlight 1" Regress Amber LED Coastal Environment	BB1 1" Regress Bevel, Die Cast, Black	S Solite	21N Black Natural Finish 10N White Castal Finish	HX Hex Coil Louver



HOUSING CODE	WATTAGE	ENGINE CODE	REFLECTOR	HOUSING TYPE	VOLTAGE	DIMMING DRIVER	ACCESSORIES
LRTD4	9015	UC1-595	50	NC	120V	DIML2	CB27
LRTD4	9015	15W LED	UC1-595 Monochromatic 900nm Amber Light Engine	NC New Construction FT Flat Housing New Construction NCSM Narrow Width CP Chicago Plenum IC Insulation Contact Rated / Airtight	120V 277V	For use with 120V or 277V DIML2A 50kLED-10K/1%, logarithmic/Lutron controls DIML2B 50kLED-10K/1%, logarithmic/Lutron controls DIML2C 50kLED-10K/1%, linear controls DIML2E 50kLED DALI 0.1% DIML2F 50kLED DMX 0.1% For use with 120V only DIML19 Phase 2-wire dimming, 1% 100V only N/A with FT housing.	CB27 27 C Channel Bars CB28 52 C Channel Bars

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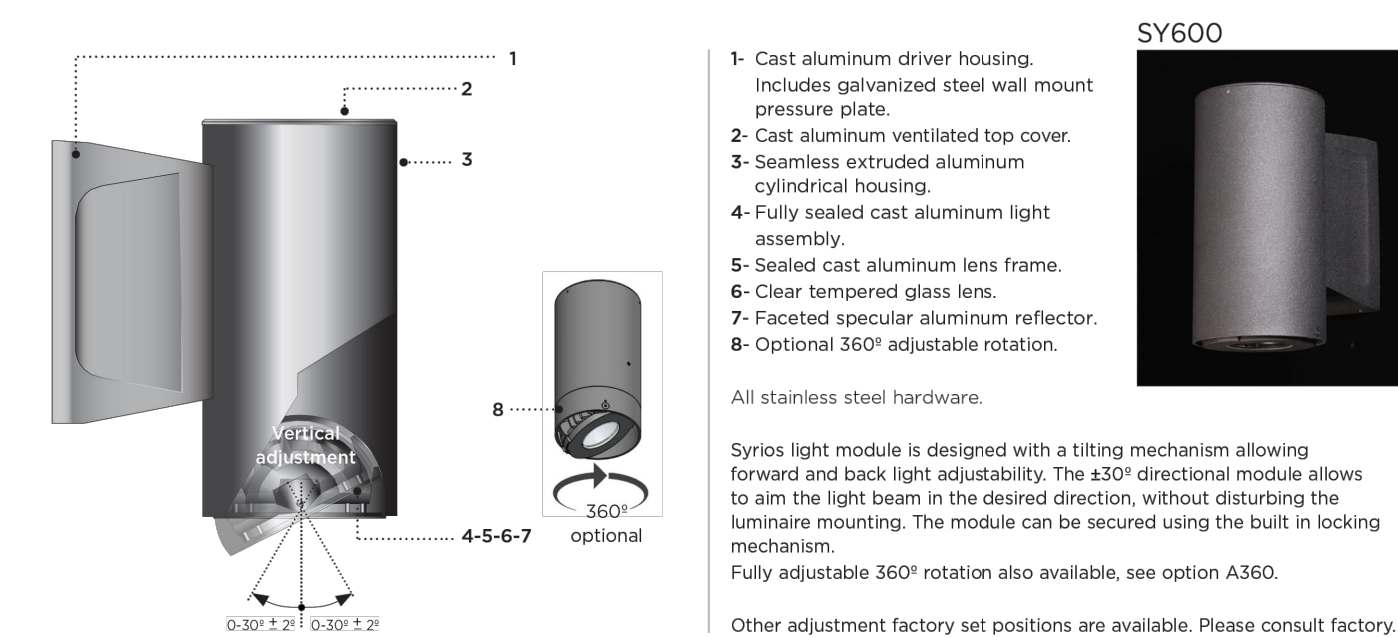
Beach Bar

December 2023 Fixture 'B'

SY600 SERIES SYRIOS

6" WALL UP OR DOWN LIGHT

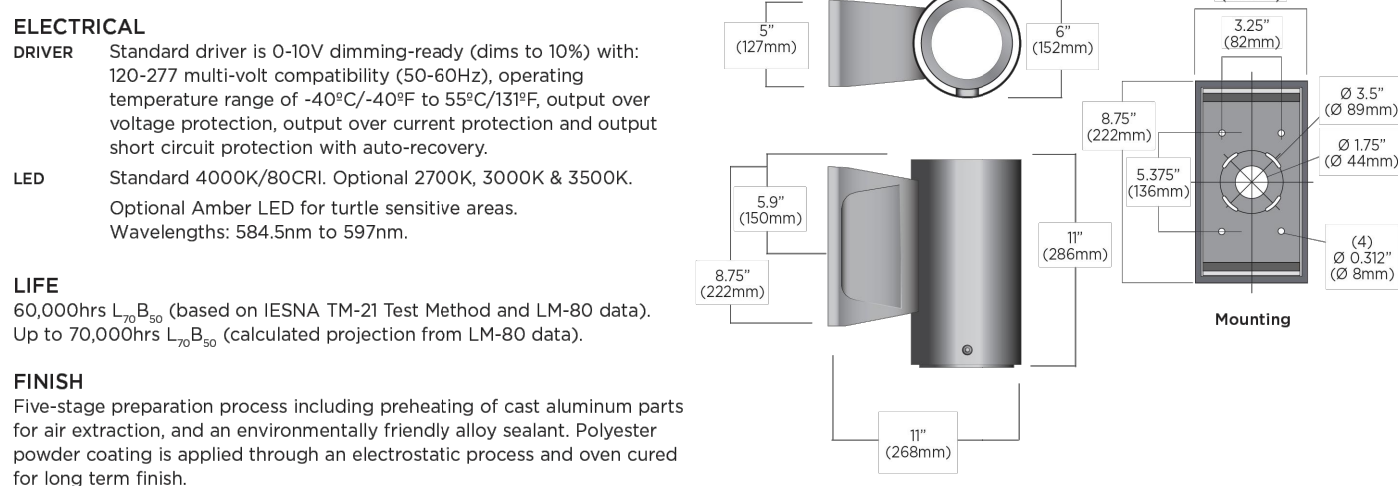
TYPE:	QUANTITY:	PROJECT:
CATALOG NUMBER:	SY600 L1L3K2A	R30 120V CRT-MG
FIXTURE SUFFIX	REFLECTOR VOLTAGE FINISH	OPTION OPTION OPTION



MATERIALS
Syrios is made of corrosion resistant 356 aluminum alloy with a copper (CU) content of less than 0.1%. The main housing is made of seamless extruded aluminum, with an integrally sealed LED light module designed for optimal heat dissipation, and lighting performance. Syrios is standard with a unique proprietary design allowing the sealed LED module to tilt within the cylindrical housing. The top cast aluminum cover includes ventilation slots allowing air circulation and cooling of assembly. Syrios SY600 series is standard with 30° optic. See options section for alternate selection.

MOUNTING
Maximum weight: 9 lbs (4.1 kg)
The mounting plate is designed to fit on a 4" (102mm) octagonal electrical box using 3.5" (89mm) C/C mounting holes. Additional mounting holes are provided as per site requirements.

CERTIFICATION
Certified and approved as per CSA C22.2 No. 250.0 standard and ANSI/UL 1598 standard, for wet location. Rated IP66.



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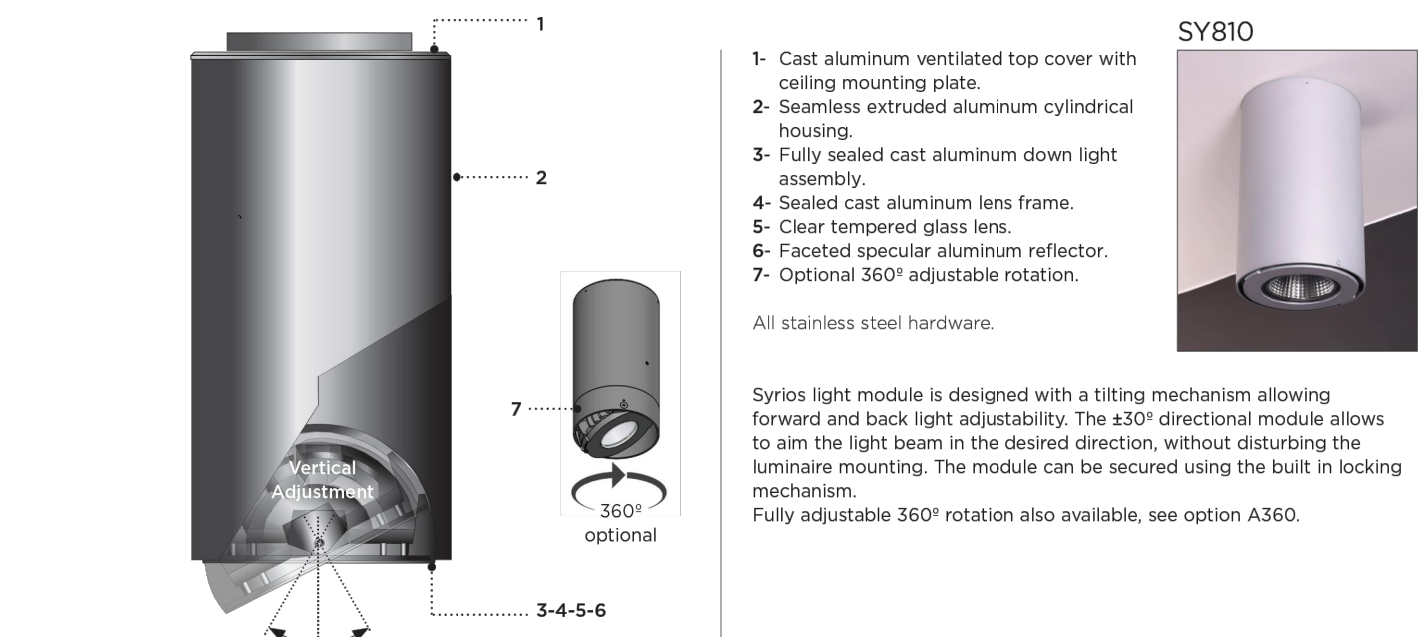
Beach Bar

December 2023 Fixture 'C'

SY810 SERIES SYRIOS

8" SURFACE CEILING DOWN LIGHT

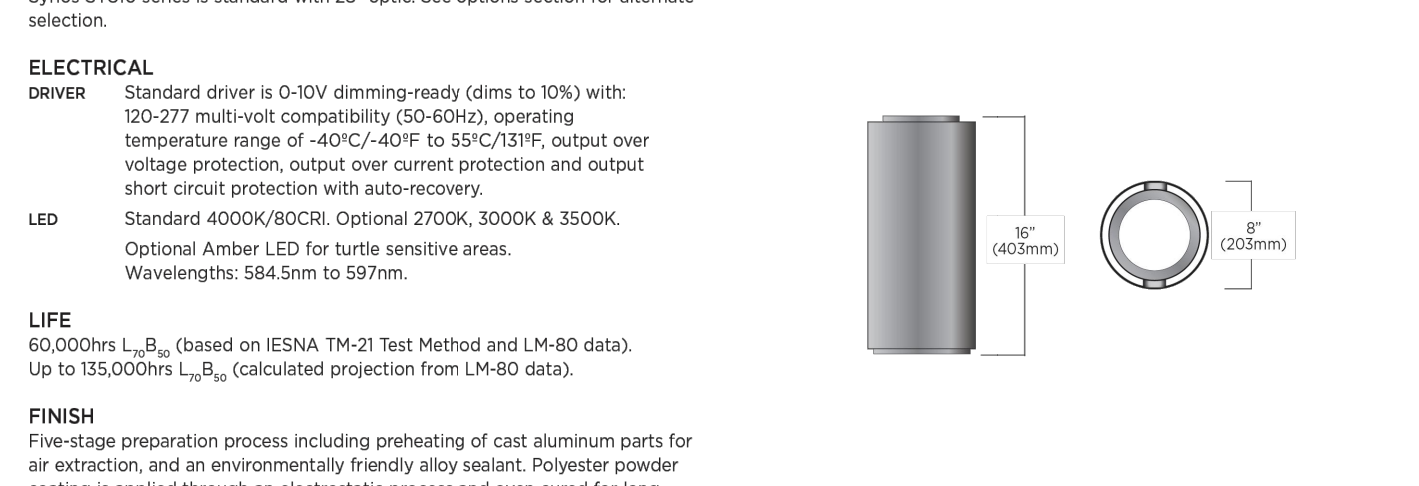
TYPE:	QUANTITY:	PROJECT:
CATALOG NUMBER:	SY810 L1L3K2A	R30 120V CRT-MG
FIXTURE SUFFIX	REFLECTOR VOLTAGE FINISH	OPTION OPTION OPTION



MATERIALS
Syrios is made of corrosion resistant 356 aluminum alloy with a copper (CU) content of less than 0.1%. The main housing is made of seamless extruded aluminum, with an integrally sealed LED light module designed for optimal heat dissipation, and lighting performance. Syrios is standard with a unique proprietary design allowing the sealed LED module to tilt within the cylindrical housing. The top cast aluminum cover includes ventilation slots allowing air circulation and cooling of assembly. Syrios SY810 series is standard with 28° optic. See options section for alternate selection.

MOUNTING
Maximum weight: 20.7 lbs (9.3 kg)
The mounting plate is designed to fit on a 4" (102mm) octagonal electrical box using 3.5" (89mm) C/C mounting holes. Fixture must be installed on a finished ceiling for exterior applications and/or exposed to inclement weather.

CERTIFICATION
Certified and approved as per CSA C22.2 No. 250.0 standard and ANSI/UL 1598 standard, for wet location. Rated IP66.



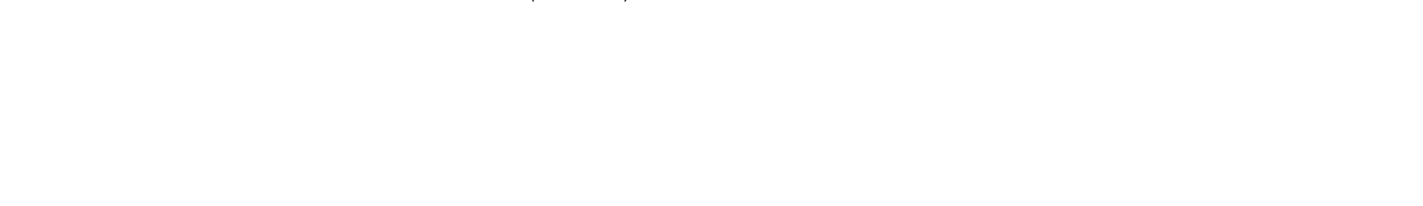
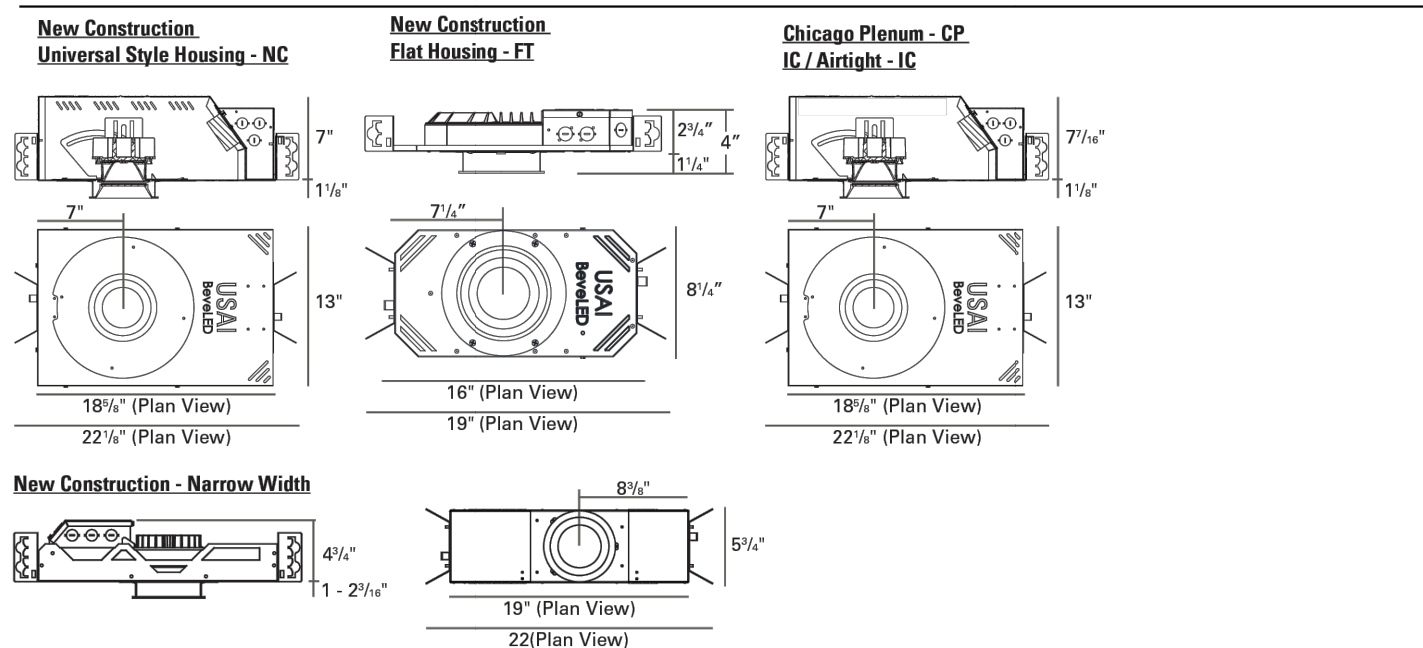
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BeveLED[®] COLORS - AMBER

HOUSING INFORMATION



SPECIFICATIONS

TRIM: 4-1/2" round aperture with a 1" regressed bevel and 1/2" flange, retained by two mounting clips. Die cast aluminum bevel is painted black for brightness control. Flange is available in either black or white contrast painted finish. Trim is gasketed and triple-coated with a corrosion-resistant natorium finish for coastal environments.

TRIM LENS: Trim is shipped with integral solite lens standard.

REFLECTOR: Interchangeable precision injection molded specular polycarbonate reflector optimized for 30°, 50° or 80° beam distribution.

FIELD REPLACEABLE LIGHT ENGINE: Available in a 15W light engine. Engine is field replaceable through the aperture without tools.

COLOR: BeveLED Colors Amber is available in the optimal spectral power distribution for preservation of endangered sea turtle populations, with a light output that is outside the range of sea turtles' visual sensitivity. LEDs are tightly binned for future-to-future color consistency.

RATED LIFE: Based on IESNA LM80-2008 50,000 hours at 70% lumen maintenance (L70).

THERMAL MANAGEMENT: Proprietary high performance aluminum die cast heatsink for maximum LED life. Ambient temperatures at fixture location should not exceed 40°C during normal operation.

FIELD REPLACEABLE DRIVERS: 0-10V, 100% - 10% dim, solid state electronic constant current driver with a high power factor provided standard. DIML2 dimming driver sources 2mA. Specify 120V or 277V. Driver complies with IEEE C62.41 surge protection.

DIMMING OPTIONS: Multiple dimming drivers available. See compatibility chart attached. Some on time delay may be experienced depending on control system used. Note: DIML2A and DIML2B logarithmic control are intended for use with Lutron control systems; DIML2B and 6F linear control are intended for use with non-Lutron controls. DIML2 dimming drivers source 2mA.

NOTES:
• Use of pressure washer voids warranty.

USAI Lighting
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LUMINAIRE SELECTION

MODEL#	LED LIGHT SELECTION	REFLECTORS*	VOLTAGE	FINISH
SY600	AMBER LED ☒ L1L3K2A 263 11W AMBER ☐ L1L3K2A 263 11W AMBER VERY NARROW DISTRIBUTION ☐ L1L3K2NR 1650 31W 80 4000	R15 Narrow optics 15° ☐ BKT Jet black ☐ BZT Bronze ☐ LIL30 3572 40W 80 4000 ☐ LIL35 3572 40W 80 4000 ☐ LIL50 3507 55W 80 4000 ☐ LIL75 7440 77W 80 4000 R55 Wide flood optics 55° ☐ R55 7440 77W 80 4000 R9 Very narrow optics 9° ☐ R9 7440 77W 80 4000	☒ 120V ☐ 347V OPTIONAL ☐ 347V	STANDARD COLORS* ☐ WH1 Snow white ☐ BKT Jet black ☐ BZT Bronze ☐ LIL30 3572 40W 80 4000 ☐ LIL35 3572 40W 80 4000 ☐ LIL50 3507 55W 80 4000 ☐ LIL75 7440 77W 80 4000 OPTIONAL COLORS ☐ CS Custom color ☐ RAL RAL color ENVIRONMENT ☐ MG Marine grade* ☐ NT Natorium™ *Refer to color chart

OPTIONS
☐ FS Fuse
☐ PH Photocell
☐ MS PIR motion sensor (Device is located at bottom of luminaire wall box)*
☐ REML2-50 7W remote emergency battery backup for LED, 90 min. Remote mount 50ft - 12" (305mm) square enclosure with access cover!
☐ REML2-50 7W remote emergency battery backup for LED, 90 min. Remote mount 50ft - 12" (305mm) square enclosure with access cover!

FAUX WOOD COLORS*
☐ ADG American douglas
☐ BRC Birch
☐ CHN Chestnut
☐ CRY Cherry
☐ KNP Knotty pine
☐ MPL Maple
☐ OFL Oak
☐ RSW Rosewood
☐ TEK Teak
☐ WLN Walnut

ACCESSORIES
☐ HL Hexcell louver
☐ SL Solite lens (light loss factor [LLF]: 0.9)
☐ LSL Linear spread lens (Asymmetric lens distribution is achieved when light module is tilted)

MOUNTING
☐ SWK Adaptor box for surface 3/4" conduit feed (4 sides plus back entry)
☐ UP Option required for uplight installation
☐ UH Uniform height matching SY602*

NOTES
 1- Photocell (PH) not available with REML2-50 option.
 2- The remote enclosure must be interior.
 3- Cylindrical housing extended by 1" (25.4mm) for increased cut-off.
 4- PIR motion sensor (MS) not available with REML2-50 option.
 5- 347V not compatible with Amber LED L1L3K2A.
 6- K27 and K35 options not available with the R9 optics.
 7- Faux wood finish not applied to driver housing, lens frame or accessories.
 8- For UH with A360 and/or RG consult factory.
 9- For harsh, coastal environment and exposure to salt water. Longer lead time may apply please contact factory for info.
 10- Only available in WH1 and BKT.

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SY600 SERIES SYRIOS

LUMINAIRE SELECTION

MODEL#	LED LIGHT SELECTION	REFLECTORS*	VOLTAGE	FINISH
SY810	AMBER LED ☒ L1L4K2A 440 11W AMBER ☐ L1L4K2A 440 11W AMBER VERY NARROW DISTRIBUTION ☐ L1L30NR 2954 50W 80 4000	R15 Narrow optics 15° ☐ BKT Jet black ☐ BZT Bronze ☐ LIL30 3572 40W 80 4000 ☐ LIL35 3572 40W 80 4000 ☐ LIL50 3507 55W 80 4000 ☐ LIL75 7440 77W 80 4000 R55 Wide flood optics 55° ☐ R55 7440 77W 80 4000 R9 Very narrow optics 9° ☐ R9 7440 77W 80 4000	☒ 120V ☐ 347V OPTIONAL ☐ 347V	STANDARD COLORS* ☐ WH1 Snow white ☐ BKT Jet black ☐ BZT Bronze ☐ LIL30 3572 40W 80 4000 ☐ LIL35 3572 40W 80 4000 ☐ LIL50 3507 55W 80 4000 ☐ LIL75 7440 77W 80 4000 OPTIONAL COLORS ☐ CS Custom color ☐ RAL RAL color ENVIRONMENT ☐ MG Marine grade* ☐ NT Natorium™ *Refer to color chart

OPTIONS
☐ FS Fuse
☐ PH Photocell
☐ MS PIR motion sensor (Device is located at bottom of luminaire wall box)*
☐ REML2-50 7W remote emergency battery backup for LED, 90 min. Remote mount 50ft - 12" (305mm) square enclosure with access cover!
☐ REML2-50 7W remote emergency battery backup for LED, 90 min. Remote mount 50ft - 12" (305mm) square enclosure with access cover!

FAUX WOOD COLORS*
☐ ADG American douglas
☐ BRC Birch
☐ CHN Chestnut
☐ CRY Cherry
☐ KNP Knotty pine
☐ MPL Maple
☐ OFL Oak
☐ RSW Rosewood
☐ TEK Teak
☐ WLN Walnut

ACCESSORIES
☐ HL Hexcell louver
☐ SL Solite lens (light loss factor [LLF]: 0.9)
☐ LSL Linear spread lens (Asymmetric lens distribution is achieved when light module is tilted)

MOUNTING
☐ SWK Adaptor box for surface 3/4" conduit feed (4 sides plus back entry)
☐ UP Option required for uplight installation
☐ UH Uniform height matching SY602*

NOTES
 1- The remote enclosure must be interior.
 2- Cylindrical housing extended by 1" (25.4mm) for increased cut-off.
 3- L1L75 Lumen is unavailable in 347V.
 4- K27 and K35 options not available with the R9 optics.
 5- Faux wood finish not applied to lens frame, accessories or catenary parts (if selected).
 6- For harsh, coastal environment and exposure to salt water. Longer lead time may apply please contact factory for info.
 7- Only available in WH1 and BKT.

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STUDIO A.D. ARCHITECT

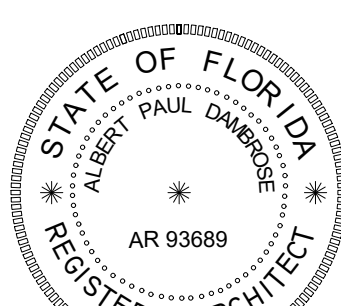
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FORT MYERS BEACH, FLORIDA

CONSULTANT:



ALBERT DAMBROSE
AR93689

DATE ISSUED: 20 FEB 2024

REVISIONS:

9 APRIL 2024

SHEET

E3



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: 1668 I Street
STRAP Number: 19-46-24-W4-0070B.0110
Applicant: B&B Properties of Fort Myers Phone: _____
Contact Name: Greg Boyd Phone: (845) 234-5006
Email: beachbeerboyd@gmail.com Fax: _____
Current Zoning District: Downtown
Future Land Use Map (FLUM) Category: Pedestrian Commercial
FLUM Density Range: FAR 2.5 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*: B&B Properties of Fort Myers Phone: (845) 234-5006
**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: 21050 Saint Peters Drive, Fort Myers Beach, FL 33931
Email: beachbeerboyd@gmail.com Fax: _____
Contact Name: Greg Boyd Phone: (845) 234-5006



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

B. Relationship of Applicant to subject property:

- | | | |
|---|---|--|
| ☐ Owner* | ☐ Land Trust* | ☐ Partnership* |
| ☒ Corporation* | ☐ Association* | ☐ Condominium* |
| ☐ Subdivision* | ☐ Timeshare Condo* | ☐ Contract Purchaser* |
| ☐ Authorized Representative* | ☐ Other* (please indicate) _____ | |

**Applicant must submit a statement under oath that he/she is the authorized representative of the property owner.
Please see PART III to complete the appropriate Affidavit form for the type of applicant.*

C. Authorized Agent(s). Please list the name of Agent authorized to receive correspondence Agents

Name: James Ink c/o Ink Engineering Inc Phone: (239) 940-2504
Address: 2055 West First Street, Ft Myers FL 33901
Email: jink@inkengineeringinc.net Fax: _____

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

Name: _____ 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 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: 34-212(6) Description: Requested
waiver for Traffic Impact Statement

Code Section: _____ Description: _____

Code Section: _____ Description: _____

PART IV – Property Ownership (Single Owner)

☐ Single Owner (individual or husband and wife)

Name: _____ Phone: _____

Mailing Address: _____

Email: _____ Fax: _____

AFFIDAVIT

APPLICATION IS SIGNED BY AN INDIVIDUAL OWNER OR APPLICANT

I, _____ swear or affirm under oath, that I am the owner or the authorized representative of the owner(s) of the property and that:

I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the Town of Fort Myers Beach in accordance with this application and the Land Development Code;

All answers to the questions in this application and any sketches, data or other supplementary matter attached hereto and made a part of this application are honest and true;



COMMUNITY DEVELOPMENT DEPARTMENT

APPLICATION for PUBLIC HEARING

I have authorized the staff of the Town of Fort Myers Beach Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made thru this application; and that

The property will not be transferred, conveyed, sold or subdivided unencumbered by the conditions and restrictions imposed by the approved action.

Signature [Signature]

Printed Name Gregory J. Boyd

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 16th day of MAY, 2024, by

Gregory J. Boyd ☐ who is personally known to me OR ☒ who has produced

Drivers License as identification.



LEROY LEWIS
Notary Public
State of Florida
Comm# HH366302
Expires 2/26/2027

[Signature]
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

Gregory Boyd, 21050 St Peters Dr, Ft Myers Beach, FL 33931

Madeline Boyd, 604 Hudson St #2, Hoboken, NJ 07030

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

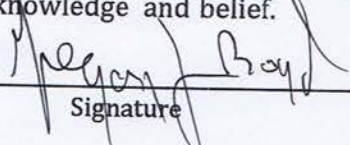
Date of Contract: 5/16/24

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

Gregory S. Boyd
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, Greg Boyd (name), as Manager (title)
of B + B Properties of Fort Myers Beach, LLC (company), swear or affirm under oath, that I am the owner or the authorized representative of the owner(s) of the property and that:

1. I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the Town of Fort Myers Beach in accordance with this application and the Land Development Code;
2. All answers to the questions in this application and any sketches, data or other supplementary matter attached hereto and made a part of this application are honest and true;
3. I have authorized the staff of Fort Myers Beach Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made thru this application; and that
4. The property will not be transferred, conveyed, sold or subdivided unencumbered by the conditions and restrictions imposed by the approved action.



COMMUNITY DEVELOPMENT DEPARTMENT
APPLICATION for PUBLIC HEARING

B + B Properties of Fort Myers Beach, LLC

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

Signature

Gregory Boyd

Typed or Printed Name

Manager

Title

Date

5/17/24

STATE OF Florida COUNTY OF Lee

The foregoing instrument was certified and subscribed before me by means of ___ physical presence OR ☐ online notarization, this 17th day of MAY, 2024, by Gregory S. Boyd ☐ who is personally known to me OR ☒ who has produced Drivers License as identification.

Seal



LEROY LEWIS
Notary Public
State of Florida
Comm# HH366302
Expires 2/26/2027

Notary Public Signature

[Signature]

PART VI- Property Information

A. Legal Description:

STRAP: 19-46-24-W4-0070B.0110

Property Address: 1668 I Street

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: Crescent Beach

Book: 4 Page: 45 Unit: _____ Block: B Lot(s): 11

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) 54 feet
Depth (please provide an average width if irregular in shape) 186 feet
Frontage on street: 54 feet. Frontage on waterbody: 54 feet
Total land area: 0.23 ☒ acres ☐ square feet

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

South on Estero Blvd, Right of Avenue E, subject property as intersection
of Avenue E and I Street fronting the Gulf of Mexico

☒ 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 |



THE BEACH BAR

AMENDMENT #1 FOR DESIGN AND PERMITTING

Summary

This document is an agreement amendment for professional services for providing entitlement services for the design and permitting site and building layout at 1668 I Street, Fort Myers Beach, FL 33931



INK ENGINEERING INC.
CONSULTING ENGINEERS • PLANNING

2055 WEST FIRST STREET
FORT MYERS, FL 33901
JINK@INKENGINEERINGINC.NET

Project Intent:

This document is to serve as an amendment to the existing development agreement for the design and permitting for the site and proposed building at the subject site. The included concept plan includes, but not limited to consistency with the following:

- Town of Fort Myers Beach Comprehensive Plan
- Town of Fort Myers Beach Land Development Code
- Florida Department of Environmental Protection, Coastal Construction Control Line Program
- FEMA Technical Bulletins on construction in a coastal zone.

This work will include application, support and representation for a Commercial Planned Development rezoning action.

Client:

Name: B & B Properties of Fort Myers, LLC
Address: 21050 Sanit Peters Drive
Fort Myers Beach, FL 33931

Parcel Information:

Lot 11, Block B Crescent Beach Subdivision as recorded in Plat Book 4 Page 45 of the official records of Lee County, FL

Strap 19-46-24-W4-0070B.0110

Scope:

The scope of work is to petition the Town of Fort Myers Beach for rezoning the subject property from Downtown to a commercial planned development to increase the allowable Floor Area Ratio from 1.0 to 1.4. This will require a deviation to omit the ground floor parking from the FAR calculations.

Tasks:

The scope of work includes the following tasks:

Task Four – Outside Documents **\$3,500 TM**

- Obtain an Attorney Title Opinion per Fort Myers Beach Land Development Code for rezoning requests.
- Update existing boundary survey to reference Attorney Title Opinion.

Task Five – Commerical Planned Development Application **\$5,000 FF**

- Prepare application for a rezoning application from Downtown to Commercial Planned Development. Application to include:
 - Application
 - CPD Supplemental application
 - Compliance with Comprehensive Plan Narrative
 - Compliance with Design Standards Narrative
 - Compliance with Decision making standards Narrative.
 - Schedule of Deviations and justification Narrative
 - Traffic Impact Statement Waiver request
 - Coordination of other required documents
 - Upload to Town permit portal.

Task Six – Support Application for Sufficiency **\$1,500 FF**

- Prepare documents as required to respond to staff comments to reach sufficiency. Sufficiency is where all information as required by staff has been submitted to prepare a staff report and schedule public hearings.

Task Seven – Public Hearing LPA **\$1,500 FF.**

- Prepare and present petition before the LPA. Note the LPA meets only the third Tuesday of each month. LPA will recommend their findings to Town Council.

Task Eight – Public Hearing Town Council **\$2,000 FF.**

- Prepare and present petition before Town Council for case determination. This is up to two public hearings. Note the Town Council meets only the first and third Monday of each month and not in July.

FF = Fixed Fee, adjusted for allowance reductions
TM = Time and Materials, not to exceed without written authorization

○ **Fee Schedule for additional services, if required and approved**

○ Professional Engineer	\$320.00 per hour
○ Planner	\$250.00 per hour
○ Design Manager	\$200.00 per hour
○ CADD/Project Management	\$175.00 per hour
○ Clerical	\$75.00 per hour
○ Materials	Cost plus 10%

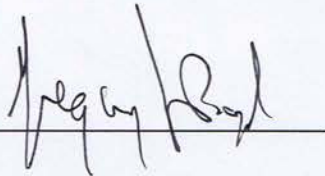
THE ABOVE AGREEMENT HAS BEEN READ AND UNDERSTOOD AND I HEREBY AUTHORIZE the performance of the services as described herein and agrees to pay the charges resulting thereby as identified above. I warrant and represent that I am authorized to enter this agreement.

Accepted this 16 day of May, 2024.

CLIENT –

CONSULTANT – Ink Engineering, Inc

Sign: _____



Name
Title

Sign: _____



Name James Ink P.E.
Title – President

Terms and Conditions

The following standard contractual paragraphs are provided and shall form a basis of this agreement.

Work not specified.

Work not specified in the above proposal items will not be performed without your prior knowledge and written approval. We will provide a fixed fee for additional services, if required. INK ENGINEERING, INC has no control over regulatory changes. Proposal is based on regulations and codes at time of agreement execution unless noted in agreement. You will be notified as soon as it becomes know of any regulatory changes which affect our ability to perform our services at the agreed upon fees. Should this occur, we would negotiate any additional costs that may occur.

Liability

INK ENGINEERING, INC maintains professional liability insurance in the course of business activities. Any damages suffered by the claimant are solely economic in nature and do not include personal injuries or damage to property that is not subject to this contract.

PER FLORIDA STATUTE INDIVIDUAL EMPLOYEE OR AGENTS' MAY NOT BE HELD INDIVIDUALLY LIABLE FOR NEGLIGENCE.

Permit Application/ Submittal Fees

The above stated fees do not include the payment of the listed governmental agency submittal or processing fees. Additional fees may be required and will be provided by owner. Details of application fees will be included in task one findings.

Termination

The Client and consultant jointly reserve the right to terminate or suspend this agreement without cause by giving the other party fifteen (15) days written notice. The Client will pay the Consultant for terminated or suspended services through the date of termination or suspension including the cost to terminate or suspend services provided by others.

Sub-consultant Services

The Consultant will rely on this agreement to obtain services of others and make commitments within the Consultant's office to meet the provisions of this agreement. These services may include but not limited to Surveying Services, Environmental Consultants, Traffic Engineering, Landscape Architecture, and other engineering consultants as required performing services. Any additional Services that are not included and may be required that require sub-consultant services will be added to this agreement at direct costs plus 10% upon written approval from Client.

Reimbursable Expenses

The work as defined above will require the reproduction of numerous documents. These costs are included in this agreement. All travel expenses within Lee County shall be included in this agreement. Owner will approve any other travel.

Invoicing and Payment

Work will be invoiced monthly at completion of tasks, on approximately the 25th day of each month based upon a proration of work completed to date, or at time of completion of the project or a task of the work efforts performed. Payment is expected by the 10th of the following month. If payment is not received within 30 days of the invoice date, a late charge may be added to the invoice in an amount not to exceed 1½% per month of the outstanding balance. Accounts over 60 days' delinquent from date of oldest invoice will have services suspended until entire balance is current.

Retainer

No retainer is required with this agreement.

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: Beach Bar CPD
Authorized Applicant: B&B Properties of Fort Myers
STRAP Number(s): 19-46-24-W4-0070B.0110

Current Property Status: Commercial Bar
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) CPD
☐	Rezoning from: _____ to: _____
☐	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)

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.

[illegible]

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.

[illegible]



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

3/30/2021



Beach Bar CPD Supplement PH-D Narrative

The following narrative is information requested in the Additional Required Information for a Planned Development Application.

C: Comprehensive Plan Compliance:

Goal 4: To keep Fort Myers Beach a healthy and vibrant "small town", while capitalizing on the vitality and amenities available in the beach-resort environment and minimizing the damage that a hurricane could inflict.

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.

Unfortunately, on September 28, 2022, Hurricane Ian swept ashore with a large storm surge that caused catastrophic damage to the island. In one day, beach structures were significantly damaged or destroyed. The Beach Bar CPD is proposed to build back like the pre-Ian uses, retaining commercial uses, and replacing a two-unit residential area with a single-family residential use. Due to the location and town induced property area restrictions this application requests an increase in FAR from 1.0 to 1.4. The 1.4 FAR is consistent with surrounding properties. The increase does not impact any lower density land use.

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 Villas 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. Where commercial uses are permitted, residential uses are encouraged in upper floors. All "Marina" uses in Policy 4-B-7 are also allowed on parcels that were zoned for marina prior to adoption of this plan. Nonresidential uses (including motels and churches) now comprise 58.9% of the land in this category, and this percentage shall not exceed 90%.

Pedestrian Commercial allows for all intended uses.

POLICY 4-C-2 COMMERCIAL INTENSITY The maximum intensity of allowable commercial development in any category may be controlled by height regulations (see Policy 4-C-4) or by other provisions of this plan and the Land Development Code. Standards in the Land Development Code will encourage more intense commercial uses only in the "Pedestrian Commercial" category. The Land Development Code shall specify maximum 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 proposed FAR increase to 1.4 from the allowable 1.0 remains an exceptionally low level from the allowable 2.5 in Pedestrian Commercial Future Land Use.

D: Design Standards Compliance

The Architectural Plans submitted are the same plan set that has been provided with a development order application and have been reviewed with no outstanding comments relating to design standards as required in 34-991 – 34-1010 Land Development Code of the Town of Fort Myers Beach

E: Decision-making compliance

Guidelines for decision-making is found in LDC Section 34-85

The application shall consist of sufficient documentation, plans, and reports such that Town staff can find the application sufficient and prepare a recommendation to the boards having jurisdiction. The application will be heard before the Local Planning Agency to review and determine a recommendation to the Town Council considering substantial competent evidence presented by applicant, staff and public. Town Council will hold two public hearings to hear and consider submitted substantial competent evidence presented by applicant, staff and public. A determination will be issued at the close of the second hearing. Section 34-85 FMBLDC addresses the following requirements. Commentary of compliance is provided.

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

Any errors or ambiguities will be resolved during staff review, LPA hearing and recommendations, and during Town Council public hearings.

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

Hurricane Ian drastically changed the conditions on the island. Prior to the storm the subject property was a two-unit residential structure above a ground level open commercial activity with a bar use per previous entitlement approvals. The rebuilding of the subject property will be a single-family two-story home above the commercial activity use as a walk-up bar. The commercial activity will be same after as pre storm function.

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

Beach Bar CPD is consistent with the Purpose of the zoning chapter by providing needs of the Town and providing safe, healthy, convenient, prosperity and welfare of the citizens of the Town of Fort Myers Beach.

(4) The testimony of the applicant

The applicant will provide a professional presentation at LPA and Town council to present the facts of the case. There will be substantial competent evidence and testimony that will be introduced into the record during the review and public hearing process that will be without question.

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

The application and public hearing testimony of applicant, staff and public will be considered in the recommendations provided by staff and LPA.

(6) The testimony of the public

The public will be afforded an opportunity to comment in the public hearings to voice their opinions. This testimony will be considered, as appropriate, to the request in the decisions and recommendations of the Council and LPA.

(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.

The rebuilding of the Beach Bar is like the pre-Ian use with only a change from two unit residential to single family use. As presented in Section C of this narrative, commentary has been provided of how the proposed application is consistent with the Comprehensive Plan subject to the adoption of the companion Comprehensive Plan Map amendment.

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

Beach Bar CPD is a rebuild of the commercial bar with a larger single-family use to replace the two-family residential use that existed before Hurricane Ian.

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

Public providers of services of Potable Water, Sanitary Sewer, Solid Waste, Public Transportation, Fire, EMS, and Sheriff have serviced the site for many years.

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

Development is like pre-Ian condition and all structures are within Downtown zoning uplands.



(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.

Beach Bar is the same use that has existed for years.

(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.

The service requirement is the same as pre-Ian levels and will not change with the proposed CPD. The site has existing services in place to service the site.

(13) For Planned Development rezonings See 34-216 for additional considerations.

The analysis for this section is included in 34-216(2) as follows:

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

The Schedule of Uses are listed in a specific section of this application narrative. These uses exist in the downtown district.

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

Special Conditions are already restricted by the two previous zoning documents that are to remain.

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

Special Conditions are already restricted by the two previous zoning documents that are to remain.

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

The schedule of uses is the same as existing and the proposed use is the same as pre-Ian. The only proposed change is to increase the FAR to be consistent with the location of property in an intense area of the Pedestrian Commercial Future Land Use.



F: Schedule of Deviations and written Justification

The requested deviation for FAR per 34-675 is attached as a separate document.

Beach Bar CPD Deviation Request and Justification

Deviation Request #1:

Request to deviate from 34-675(c)3 that states, "Floor area ration (FAR). Floor area ratios (see 34-633) of the chapter) shall not exceed: (3) 1.0 for all other properties in the Downtown District" to allow an FAR of 1.4 consistent with properties fronting Estero Blvd per 34-675(c)(2).

Justification:

The subject property was developed as a two unit elevated single story residential structure with a commercial bar facility on the ground level operating under a Lee County Resolution Number BZA-88-339 and Hearing Examiner Case 95-10-173.02s. These entitlements were established before incorporation of the Town of Fort Myers Beach on December 31, 1995. Prior the town incorporating, Lee County did not use Floor Area Ratios to determine density and intensities. The subject property was bound for development by density, setbacks, and heights. The Town adopted their Comprehensive Plan on January 1, 1999. The plan developed Future Land Use categories for determining use and development of the parcels consistent with the Comprehensive Plan. The plan splits the subject property into two future land use categories. They are Pedestrian Commercial and Recreation. Pedestrian Commercial has a maximum Floor Area Ration of 2.5 and Recreation does not allow development. The Town further restricted the use of the subject property with the adoption of the town's Land Development Code setting an allowable FAR of 1.0 on the subject property. These actions changed development rights from development based on density, height, and setbacks to a highly restrictive FAR in a Future Land Use category that is the highest allowable in the Comprehensive Plan. There is only one zoning district (Santos) that allows residential with a FAR of less than the subject property. Santos zoning district is a transitional community that is a buffer between high intensities on Estero Blvd and low-density residential portions of Venetian Gardens Subdivision. The subject property and all lots along Alva Drive and I Street do not provide any transition to a lower density neighborhood. If fact this area is in the heart of Gulf front properties that could support much higher FAR's. This poor planning perspective is further supported in the apparent lack of the town to enforcement of the restrictive FAR at 1560 I Street and 61 Alva Drive.



Beach Bar CPD

Development Regulations and Schedule of Uses

SETBACKS:

Front build to line:	0 to 5 feet
Side setback	5 feet
Rear setback	Not seaward of 1978 CCCL
Waterbody	Not Applicable

FAR (max) 1.4

BUILDING COVERAGE: Not Applicable

HEIGHT:

40 feet above design flood elevation (DFE) and no taller than three stories

SCHEDULE OF USES:

The allowable uses shall be the same as the Downtown zoning district as shown in Table 34-2 Use Sub-Groups Permitted in Each Zoning District and 34-1, Land Uses Assigned to Use Groups



Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

Application for Waiver of Submittal Requirements

Submit a request for waiver of submittal requirements prior to submitting an application for public hearing or administrative action. Requesting a waiver of submittal requirements simultaneously with an application may delay your application. The request and the director's response will become part of the application file.

Waiver is requested for items required for:

Public Hearing

- ☐ General Requirements
- ☐ DRI
- ☒ Planned Development
- ☐ Conventional Rezoning
- ☐ Special Exception
- ☐ Variance
- ☐ Appeal
- ☐ Other

Administrative Action

- ☐ General Requirements
- ☐ Planned Dev. Amendment
- ☐ Commercial Antenna
- ☐ Consumption on Premises
- ☐ Forced Relocation of a Business
- ☐ Interpretation of LDC
- ☐ Minimum Use Determination
- ☐ Setback Variance
- ☐ Other

Name of Project: Beach Bar CPD

Applicant: B&B Properties of Fort Myers

Strap Number: 19-46-24-W4-0070B.0110

Street Address: 1668 I Street

Phone Number: 239-940-2504

Email: jink@nkengineeringinc.net



Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

Application for Waiver of Submittal Requirements

Specific requirements from which waiver is sought

Section Number	Requirement
34-212(6)	Traffic Impact Statement

Scope of project and reasons for request

Explain the nature of the project and give reasons why you think specific requirements are inapplicable or otherwise should be waived.

The existing use before Hurricane Ian was a commercial bar with restrictions and a two unit residential use. Hurricane Ian destroyed the structures. The proposed use is a commercial bar with the same restrictions as pre-Ian and only one single family use. This reduction from two residential uses to one use is a reduction of generated trips and therefore a reduction of intensity to the original pre-Ian use. A TIS would add an unreasonable financial impact to a proposed use that is less than pre-Ian

I hereby state that the information provided above is accurate to the best of my knowledge. I recognize that if my project changes from what is described above approval of this waiver request may no longer be valid.

Signature

Date

Director's Decision ☐ Approved ☐ Denied

Comments:

Signature

Date

Revised 1/6/2017

Town of Fort Myers Beach
2525 Estero Blvd., Fort Myers Beach, Florida 33931
Phone: 239-765-0202 Permits@FortMyersBeachFL.gov Fax: 239-765-0909

Page 2 of 2

SUBMIT



Business Impact Estimate

This form should be included in the agenda packet for the item under which the proposed ordinance is to be considered and must be posted on the Town of Fort Myers Beach's website by the time notice of the proposed ordinance is published.

Proposed ordinance's title/reference:

Ordinance 24-18 AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING A REQUEST TO REZONE THE PROPERTY LOCATED AT 1668 I STREET, GENERALLY IDENTIFIED AS STRAP NUMBER 19-46-24-W4-0070B.0110 FORT MYERS BEACH, FROM DOWNTOWN TO COMMERCIAL PLANNED DEVELOPMENT (CPD) ZONING, WITH DEVIATIONS, FOR A BAR AND RESIDENCE; 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 Town of Fort Myers Beach is of the view that a business impact estimate is not required by state law¹ for the proposed ordinance, but the Town of 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:
 - a. Part II of Chapter 163, Florida Statutes, relating to growth policy, county and municipal planning, and land development regulation, including zoning, development orders, development agreements and development permits;
 - b. Sections 190.005 and 190.046, Florida Statutes, regarding community development districts;
 - c. Section 553.73, Florida Statutes, relating to the Florida Building Code; or
 - d. Section 633.202, Florida Statutes, relating to the Florida Fire Prevention Code.

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

In accordance with the provisions of controlling law, even notwithstanding the fact that an exemption noted above may apply, the Town of 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 is a request by a property owner to allow a higher FAR than is allowed in that zoning district and location.

2. An estimate of the direct economic impact of the proposed ordinance on private, for-profit businesses in the Town of 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 Town of Fort Myers Beach'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 24-18.

Ordinance 24-18 does not impose any new charge or fee on businesses.

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

The Town will not likely incur additional costs.

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

The Town estimates that a one private, for-profit businesses in the Town would potentially be impacted by Ordinance 24-18. The impact should be positive for the business.

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

1. **Request:**

Meeting Date: August 7, 2024

An annual review of approved resolution 23-87 for special exception SEZ20230126 that allows temporary outdoor consumption on premises with retail use at 163 Old San Carlos Boulevard.

Why the action is necessary:

A condition of the resolution approval requires that the case be reviewed every 12 months to ensure the applicant is making progress towards reconstruction of 185 Old San Carlos.

What the action accomplishes:

The special exception allowed the applicant to move the business at 185 Old San Carlos to 163 Old San Carlos, for an outdoor retail business with consumption on premises. Review of the resolution ensures that the applicant will move toward development of the property at 185 Old San Carlos.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

5. **Background:**

The owner of 163 and 185 Old San Carlos requested to temporarily move the existing COP from 185 Old San Carlos, a building severely damaged in Ian, to 163 Old San Carlos for an outdoor bar. The following condition requires that this case be brought back to Town Council every 12 months:

This resolution shall only be in effect until such time as a certificate of occupancy has been granted for the reconstruction of the building at 185 Old San Carlos Blvd. Upon granting a certificate of occupancy for 185 Old San Carlos, Resolution 21-46 shall be reinstated, and this resolution shall expire. This resolution shall come back for review by the Council every 12 months to ensure the applicant is making progress towards the reconstruction of 185 Old San Carlos. The applicant will not be required to submit applications or pay additional fees for the annual review.

Attachments:

1. Staff Report 2024
2. Exhibit A Res 23-87, signed
3. Exhibit B TC SEZ postcard 2024

Financial Impact:

unknown

6. **Alternative Action**

Deny request

7. **Management Recommendations:**

Review and determine if the applicant has met the conditions of the resolution.

8. **Recommended Approval:**

Sarah Propst, Community Development, Planning Manager

Created/Initiated - 7/23/2024

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

Approved - 7/23/2024
Approved - 7/24/2024
Approved - 7/24/2024
Final Approval - 7/27/2024



Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT STAFF REPORT

TYPE OF CASE: Special Exception Amendment

CASE NUMBER: SEZ—Amendment, 20230126

CASE NAME: 163 Old San Carlos Blvd, annual review of Special Exception 20210050 to temporarily move the 2 COP to an adjacent property and to amend conditions of approval.

LPA

HEARING DATE: August 5, 2024 at 9:00 AM

STAFF

RECOMMENDATION: Approve

**PREPARED/
SUBMITTED BY:** Sarah Propst, AICP, PMP

I. APPLICATION SUMMARY

Applicant/Owner: Suzanne Bahan

Request: In August 2023 a special exception was approved to temporarily amend the existing Special Exception Resolution 21-46 to move the allowed use of the Consumption on Premises from 185 Old San Carlos to 163 Old San Carlos due to storm damage and to amend the Conditions of Approval B and C. modification of these conditions allowed consumption on premises outside of the building and allowed live music.

Subject property: See attached site plan

Physical Address: 163 Old San Carlos Blvd.

STRAP #: 24-46-23-W3-0050A.0140

FLU: Pedestrian Commercial

Zoning: Downtown

Adjacent zoning and land uses:

North:	Downtown/ Pedestrian Commercial Severely damaged previous location of SEZ
South:	Downtown/ Pedestrian Commercial Structure (current use unknown)
East:	Downtown/ Pedestrian Commercial Parking Lot
West:	Downtown/ Pedestrian Commercial Vacant Lot

II. BACKGROUND AND ANALYSIS

Background:

In 2021 Resolution 21-46 was approved which allowed for outdoor consumption of alcohol on premises in correlation with a retail store. The conditions of the special exception included:

- A. The 2COP is only valid in conjunction with a retail sales operation within the same business.
- B. No amplified music or entertainment unless within an entirely enclosed building. All activities are subject to the Town's noise regulations.
- C. No consumption of alcohol beyond the footprint of the existing enclosed structure.
- D. Any violation of the conditions of approval shall render the special exception null and void.

The property at 185 Old San Carlos Blvd. was approved for consumption on premises but was severely damaged by Hurricane Ian. The owner of 185 Old San Carlos also owns the adjacent, lot at 163 Old San Carlos. The owner requested a temporary amendment to the special exception to allow for the transfer of the 2COP to 163 Old San Carlos Blvd. This amendment also included modification to conditions B to allow amplified music and live entertainment, outside of a building, and C to allow consumption of alcohol within the confines of a fenced area, rather than within a building.

Analysis:

The outdoor retail store with sales of alcohol and a seating area for patrons is currently operational. Staff is not aware of any complaints regarding this use. Permits have not been applied for the demolition or repair of 185 Old San Carlos Boulevard. The

conditions of approval are listed below and resolution 23-87 is included with the agenda packet.

III. CONDITIONS OF APPROVAL

1. The 2 COP is only valid in conjunction with a retail sales operation within the same business.
2. All music and entertainment on the property will be in compliance with the Town's noise regulations.
3. No consumption of alcohol shall be permitted outside the fenced area, as depicted on the site plan attached.
4. This resolution shall only be in effect until such time as a certificate of occupancy has been granted for the reconstruction of the building at 185 Old San Carlos Blvd. Upon granting a certificate of occupancy for 185 Old San Carlos, Resolution 21-46 shall be reinstated, and this resolution shall expire. This resolution shall come back for review by the Council every 12 months to ensure the applicant is making progress towards the reconstruction of 185 Old San Carlos. The applicant will not be required to submit applications or pay additional fees for the annual review.
5. Any violation of the conditions of approval shall render the special exception null and void.

IV. STAFF REPORT EXHIBITS:

A – Approved Resolution 23-87

B – Postcard to adjacent property owners

RESOLUTION NUMBER 23-87

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING WITH CONDITIONS SPECIAL EXCEPTION SEZ20230126 TO TEMPORARILY ALLOW OUTDOOR CONSUMPTION ON PREMISES WITH A RETAIL USE AND CONDITIONS FOR THE PROPERTY LOCATED AT 163 OLD SAN CARLOS 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, applicant Suzanne Bahan is requesting a special exception for the use of consumption on premises outdoors within 500 feet of a park, in the Downtown zoning district; and

WHEREAS, the STRAP number for the subject property is 24-46-23-W3-0050A.0140

WHEREAS, the Property is located in the “Pedestrian Commercial” category of the Future Land Use Map of the Comprehensive Plan and the “Downtown” 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 August 8, 2023, and at said hearing the LPA gave full and complete consideration to the request of Applicant, recommendations of staff, the documents in the file, and the testimony of all interested persons, as required by Section 34-88 of the LDC. The LPA voted 4-0 to recommend approval of the special exception with conditions; and

WHEREAS, on August 21, 2023 the Town Council held a duly noticed public hearing to fully consider the request of the Applicant, the recommendations of Town staff and the LPA, the documents in the record, and testimony of all interested persons as required by Section 34-88 of the LDC; and

WHEREAS, the Town Council determined it is in the best interest of the Town to approve 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 meet its burden of proof that the requested Special Exception does meet the requirements of the Town Comprehensive Plan and LDC, and approving the Special Exception is in the best interest of the Town to approve. Therefore, based upon the recommendations, testimony, and evidence presented by the Applicant, Town staff, and interested parties and public, the Town Council APPROVES the special exception for the use of permanent shared parking in the Downtown 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.

Section 4. If the Town Council approves/denies the requested special exception and the following conditions of approval are imposed on the Applicant and the Property:

- A. A. The 2 COP is only valid in conjunction with a retail sales operation within the same business.
- B. All music and entertainment on the property will be in compliance with the Town's noise regulations.
- C. No consumption of alcohol shall be permitted outside the fenced area, as depicted on the site plan attached.
- D. This resolution shall only be in effect until such time as a certificate of occupancy has been granted for the reconstruction of the building at 185 Old San Carlos Blvd. Upon granting a certificate of occupancy for 185 Old San Carlos, Resolution 21-46 shall be reinstated, and this resolution shall expire. This resolution shall come back for review by the Council every 12 months to ensure the applicant is making progress towards the reconstruction of 185 Old San Carlos. The applicant will not be required to submit applications or pay additional fees for the annual review.
- E. 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 Council Member Veach and seconded by Council Member Woodson, and upon being put to a vote, the result was as follows:

Dan Allers, Mayor	<u>Aye</u>
Jim Atterholt, Vice Mayor	<u>Absent</u>
John R. King	<u>Aye</u>
Bill Veach	<u>Aye</u>
Karen Woodson	<u>Aye</u>

ADOPTED this 21st day of August, 2023 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers

Dan Allers (Nov 19, 2023 06:17 EST)

Dan Allers, Mayor

ATTEST:

Amy Baker

AMY BAKER (Nov 27, 2023 09:33 EST)

Amy Baker, Town Clerk

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

Becky Vose

Becky Vose (Nov 19, 2023 09:33 EST)

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 16th day of November 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 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: August 5, 2024
CASE: SEZ20230126
ADDRESS: 163 Old San Carlos Blvd
APPLICANT: Suzanne Bahan
REQUEST: A 12-month review of special exception SEZ20230126 RES 23-87 for an outdoor bar, conditions of approval to ensure the applicant is making progress towards the reconstruction of 185 Old San Carlos Blvd.

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 **Town Council** will review the application materials and hear testimony to make a **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

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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»

1. **Request:**

Meeting Date: August 7, 2024

1st Reading and Public Hearing of an Ordinance entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING SECTION 2-94 "QUALIFICATIONS AND APPOINTMENTS OF MEMBERS" AND SECTION 2-96 "REMOVAL OF AGENCY, BOARD, COMMITTEE OR COMMISSION MEMBERS" OF DIVISION 2 "PROCEDURES FOR THE ESTABLISHMENT OF BOARDS, COMMITTEES AND COMMISSIONS" OF ARTICLE IV "BOARDS, COMMISSIONS, COMMITTEES AND OTHER AGENCIES" OF CHAPTER 2 "ADMINISTRATION" AND SECTION 34-113 "COMPOSITION, APPOINTMENT AND COMPENSATION OF MEMBERS" OF DIVISION 3 "LOCAL PLANNING AGENCY" OF ARTICLE II "ZONING PROCEDURES" OF CHAPTER 34 "ZONING DISTRICTS, DESIGN STANDARDS AND NONCONFORMITIES" OF THE CODE OF ORDINANCES OF THE TOWN OF FORT MYERS BEACH, FLORIDA, REMOVING PROPERTY OWNERSHIP AS A QUALIFICATION REQUIREMENT FOR THE MEMBERS OF THE TOWN'S AGENCIES, BOARDS, COMMITTEES OR COMMISSIONS, INCLUDING THE TOWN'S LOCAL PLANNING AGENCY; ELIMINATING DUPLICATIVE LANGUAGE; ADDING A GRANDFATHER PROVISION FOR CURRENT NON-QUALIFYING MEMBERS OF THE TOWN'S BOARDS, AGENCIES, COMMISSIONS, AND COMMITTEES; ADDING A PROVISION TO SECTION 34-113, REGARDING THE MANDATORY ANNUAL FINANCIAL DISCLOSURE FORM AS REQUIRED BY THE FLORIDA COMMISSION ON ETHICS; PROVIDING FOR CODIFICATION, SEVERABILITY, SCRIVENER'S ERRORS, CONFLICTS OF LAW, AND AN EFFECTIVE DATE. Open the public hearing and schedule for second reading and final adoption on August 19, 2024 at 9:00 AM.

Why the action is necessary:

The passage of this ordinance is necessary to ensure only involved members of the community with a vested interest in the Town's operations (i.e. registered voters within the territorial boundaries of Fort Myers Beach) can be appointed to the Town's boards, agencies, commissions, and committees, including the Town's local planning agency; to streamline the Town Code by removing duplicative language; to add a grandfather provision to allow current non-qualifying members of the Town's boards, agencies, commissions or committees to keep their appointment; and to add a clause regarding the mandatory annual financial disclosure for the members of the Town's local planning agency as required by the Florida Commission on Ethics.

What the action accomplishes:

The ordinance restricts the appointment of individuals to the Town's boards, agencies, committees and commissions, including the Town's local planning agency, exclusively to registered voters within the Town's territorial boundaries, removes property ownership as a qualification criteria for appointment, adds a grandfather clause to allow current non-qualifying members to keep their appointment for the full term, eliminates duplicative language from the Code, and adds a reference to the mandatory annual financial disclosure required by Florida Commission on Ethics.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Ordinance

4. **Submitter of Information:**

Nancy Stuparich, Town
Attorney

5. **Background:**

On June 17, 2024, the Town held a first reading of Ordinance 24-17. Following a discussion, the Town Council gave the Town Attorney a directive to research the requirements for the members of various committees and to revise Ordinance 24-17 to add a grandfather provision to the

Ordinance, which resulted in a substantial change to the title of that Ordinance, necessitating a second first reading of this proposed Ordinance at the August 5, 2024 Town Council meeting.

Currently, section 34-113 of the Town Code provides that “[e]xcept for inclusion of members required under Florida law, all members must be residents of, or owners of real property located within, the territorial limits of the Town of Fort Myers Beach at the time of application for membership on the local planning agency and during the period of service on the local planning agency.”

Furthermore, Section 2-94 of the Town Code states that preference shall be given “to a registered voter within the town’s jurisdiction or a property owner within the town’s jurisdiction.” However, Section 2-96 contains contradictory language and states that “[i]n the event that any member is no longer a registered voter within the town’s jurisdiction or a property owner within the town’s jurisdiction ... the town council shall terminate the appointment of such person as a member of the agency, board, committee or commission.”

Section 163.3174, Florida Statutes, discusses the formation and the functions of a local planning agency, and does not set out a residency or a property ownership requirement for the members of a local planning agency.

Section 218.391, Florida Statutes, discusses the functions and operations of an auditor selection committee. This section, just like Section 163.3174, does not set forth residency or property ownership within the jurisdiction as a qualification requirement for the appointed members to serve on the committee.

Based on the Town Council’s discussion and the Town Attorney’s research, the Town Attorney revisions have been made to the prior draft Ordinance to remove property ownership as a qualification criteria for the appointment to the Town’s boards, agencies, commissions or committees. Furthermore, “residency” is ambiguous and raises questions. Therefore, the revised draft ordinance provides that individuals appointed to the Town’s boards, agencies, commissions or committees shall only be required to be registered voters within the Town’s territorial boundaries to qualify for appointment. Voter registration is easier to verify than “residency” and limits appointment to those individuals, who have a vested interest in the Town as a registered voter.

The Town Council further discussed the necessity for inclusion of a grandfather provision, to allow any current members of the Town’s agencies, boards, commissions or committees, including the members of the Town’s local planning agency, who may own property in the Town, but are not registered voters, to keep their appointment for the full term.

The proposed ordinance further adds a provision to Section 34-113 of the Town Code, obligating the members of the Town’s local planning agency to comply with mandatory annual financial disclosure pursuant to the requirements set forth by the Florida Commission on Ethics.

Lastly, to ensure uniformity between the Town Code and the Town’s procedural rules and policies, the Town’s procedural rules and policies will require an amendment to Section 5 as it pertains to the residency requirements of the members of the Town’s advisory boards, agencies, and committees. This amendment can be accomplished by a Resolution at the next Town Council meeting.

Attachments:

1. 24-17, Committee Member Reqs Ordinance (final) 7-30-24 mr
2. 24-17, Business Impact Estimate (final) Committee Member Reqs 7-30-24 mr

3. Committee Member Reqs Ordinance (amended draft) 7-16-24 mr
4. Fort Myers Beach, FL Code of Ordinances Sec. 2-94
5. Fort Myers Beach, FL Code of Ordinances Sec. 2-96
6. Fort Myers Beach, FL Code of Ordinances Sec. 34-113
7. Statutes & Constitution _View Statutes _ Online Sunshine Sec. 163.3174 FS
8. Statutes & Constitution _View Statutes _ Online Sunshine Sec. 218.391 FS
9. 23-182, Council Policies and Procedures

Financial Impact:

None

6. Alternative Action

7. Management Recommendations:

Approve the ordinance.

8. Recommended Approval:

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

Created/Initiated - 7/24/2024
Approved - 7/30/2024
Approved - 7/31/2024
Final Approval - 7/31/2024

ORDINANCE NO. 24-17

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING SECTION 2-94 “QUALIFICATIONS AND APPOINTMENTS OF MEMBERS” AND SECTION 2-96 “REMOVAL OF AGENCY, BOARD, COMMITTEE OR COMMISSION MEMBERS” OF DIVISION 2 “PROCEDURES FOR THE ESTABLISHMENT OF BOARDS, COMMITTEES AND COMMISSIONS” OF ARTICLE IV “BOARDS, COMMISSIONS, COMMITTEES AND OTHER AGENCIES” OF CHAPTER 2 “ADMINISTRATION” AND SECTION 34-113 “COMPOSITION, APPOINTMENT AND COMPENSATION OF MEMBERS” OF DIVISION 3 “LOCAL PLANNING AGENCY” OF ARTICLE II “ZONING PROCEDURES” OF CHAPTER 34 “ZONING DISTRICTS, DESIGN STANDARDS AND NONCONFORMITIES” OF THE CODE OF ORDINANCES OF THE TOWN OF FORT MYERS BEACH, FLORIDA, REMOVING PROPERTY OWNERSHIP AS A QUALIFICATION REQUIREMENT FOR THE MEMBERS OF THE TOWN’S AGENCIES, BOARDS, COMMITTEES OR COMMISSIONS, INCLUDING THE TOWN’S LOCAL PLANNING AGENCY; ELIMINATING DUPLICATIVE LANGUAGE; ADDING A GRANDFATHER PROVISION FOR CURRENT NON-QUALIFYING MEMBERS OF THE TOWN’S BOARDS, AGENCIES, COMMISSIONS, AND COMMITTEES; ADDING A PROVISION TO SECTION 34-113, REGARDING THE MANDATORY ANNUAL FINANCIAL DISCLOSURE FORM AS REQUIRED BY THE FLORIDA COMMISSION ON ETHICS; PROVIDING FOR CODIFICATION, SEVERABILITY, SCRIVENER’S ERRORS, CONFLICTS OF LAW, AND AN EFFECTIVE DATE.

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

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

WHEREAS, on June 6, 2024, the Town Council held a discussion regarding the proposed changes to the Code of Ordinances of the Town of Fort Myers Beach, to eliminate property ownership within the Town’s territorial boundaries as a qualification requirement for the appointed members of the Town’s agencies, boards, committees or commissions, including the Town’s local planning agency; and

WHEREAS, the Town desires to amend the Town Code to remove property ownership as a criteria, qualifying individuals for the Town’s boards, agencies, commissions and committees; and

WHEREAS, the Town wishes to restrict the appointment to those individuals, who are registered voters within the territorial boundaries of the Town; and

WHEREAS, the reasons for removal of the appointed members from the Town's agencies, boards, committees or commissions are already addressed in Section 2-96 of the Town Code; and

WHEREAS, the Town desires to amend Section 2-94 to eliminate the duplicative language related to the removal of the Town's agency, board, committee or commission members; and

WHEREAS, the Town further wishes to add grandfather clauses to Sections 2-94 and 2-96, to allow current non-qualifying members of the Town's agencies, boards, committees or commissions to keep their appointment for the full term, regardless of whether such non-qualifying members meet the required criteria under the Town Code as of the effective date of this ordinance; and

WHEREAS, on the 17th day of June, 2024, the Town Council held a first reading of Ordinance 24-17 and gave direction to the Town Attorney to revise Ordinance 24-17 to add a grandfather clause; and

WHEREAS, the revisions proposed by the Town Council resulted in a substantial change to the title of Ordinance 24-17, necessitating a second first reading of the Ordinance; and

WHEREAS, on the 5th day of August, 2024, the Town Council held a second first reading of this Ordinance and gave full and complete consideration to the request of the proposed ordinance, the recommendation of staff, the documents in the record, and the testimony of all interested persons; and

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

WHEREAS, an advertisement of the public hearing for adoption of the Ordinance was published in the _____ on the ____ day of _____, 2024, which is 10 days prior to the second reading of the proposed Ordinance as required by Section 166.041, 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 interests of the health, safety, and welfare of the Town's residents.

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

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

Section 2. Section 2-94 “Qualifications and appointments of members” and Section 2-96 “Removal of agency, board, committee or commission members” of Division 2 “Procedures for the Establishment of Boards, Committees and Commissions” of Article IV “Boards, Commissions, Committees and Other Agencies” of Chapter 2 “Administration,” as well as Section 34-113 “Composition, appointment and compensation of members” of Division 3 “Local Planning Agency” of Article II “Zoning Procedures” of Chapter 34 “Zoning Districts, Design Standards and Nonconformities” of the Code of Ordinances of the Town of Fort Myers Beach, Florida, are hereby amended to read as follows:

Sec. 2-94. - Qualifications and appointments of members.

In addition to qualifications, which may be specified for membership by state statutes, Charter, ordinance, or resolution, a person appointed to an agency, board, committee, or commission after August 5, 2024, shall be given preference to if that person is a registered voter within the town's jurisdiction the territorial boundaries of the Town of Fort Myers Beach. ~~or a property owner within the town's jurisdiction.~~ Although no specific experience requirements shall be necessary as a prerequisite to appointment, consideration shall be given to applicants who have experience or who have shown interest in the subject matter. ~~If any member is no longer a qualified elector or is convicted of a felony, an offense involving moral turpitude while in office, or has unpaid fines or liens due the Town of Fort Myers Beach, the town council shall terminate the appointment of such person as a member of the agency, board, committee, or commission.~~ Any member of the Town’s board, agency, commission or committee who holds office and who is not a registered voter within the Town’s jurisdiction as of August 5, 2024, shall keep his or her appointment for the full term.

(1) *Anchorage advisory committee.* The anchorage advisory committee shall advise the town council concerning all matters relevant to the management and use of the waters of the town for mooring and anchoring. The anchorage advisory committee shall prepare and submit the Matanzas Harbor Management Plan and any amendments thereto for review and approval by the town council and make recommendations for the establishment of managed municipal anchorages and mooring fields where warranted by objective evidence of environmental damage or user conflicts; or any other topics as assigned by the town council.

(2) *Audit committee.* All members of the audit committee shall be town residents who do not have any direct financial or business interests involving the town. The town council may waive the residency requirements by majority vote if there are an insufficient number of applicants who reside in the town. All members should, through education and experience, possess a basic understanding of governmental financial reporting and auditing. At least one member of the audit committee shall

have accounting, auditing, or related financial management expertise that is specifically relevant to the government sector. The audit committee shall advise the town council on these matters and other matters pursuant to F.S. § 218.391, or any other topics as assigned by the town council.

(3) ~~a.~~ *Bay Oaks Recreational Campus Advisory Board.* The purpose of BORCAB is to serve the town as a community center and recreational facility providing individuals and groups passive and active recreational, social and community activities and events for both residents and visitors. BORCAB members shall work closely and in cooperation with the parks and recreation director, and advise the town council regarding matters concerning the Bay Oaks Recreational Campus and the community pool; or any other topics as assigned by the town council.

~~b.~~ (4) *Community resource advisory board.* The broad objectives of CRAB are to further the welfare of the citizens of the town in the implementation of our community as a "living park" as defined in the comprehensive plan and make recommendations to the town council on acquisition and management of public areas including, but no limited to, pools, parks, beach accesses, streetscapes and other public easements and property to further the living park concept. The CRAB shall advise the town council on these matters or any other topics as assigned by the town council.

~~c.~~ (5) *Cultural and environmental learning center advisory board.* The broad objectives of CELCAB are to ensure and promote the mission of the Mound House and Newton Beach Park to be accomplished through stewardship, advocacy and oversight according to best practices of museums and the requirement as stated in the Florida Communities Trust Agreements for each property. The CELCAB shall advise the town council on these matters or any other topics as assigned by the town council.

(4) (6) *Marine and environmental resource and task force.* The broad objectives of MERTF are to further the welfare of the business owners, residents, and visitors of the town by helping to promote a better, more healthful, safe, and attractive community environment and to ensure that the unique and natural characteristics of our marine and environmental resources are preserved; or any other topics as assigned by the town council.

(5) (7) *Public safety committee.* The PSC shall address any safety and transportation issues specifically assigned to the committee by the town council for the purpose of the health, safety and welfare of the business owners, residents, and visitors to the town. The committee shall review, discuss, and evaluate the most significant safety and transportation issues within the town. The PSC shall advise the town council on these matters or any other topics as assigned by the town council.

(8) *Local Planning Agency*. Notwithstanding the criteria set forth herein, the criteria for the members of the Local Planning Agency of Fort Myers Beach as outlined in section 34-113 shall prevail.

Sec. 2-96. – Removal of agency, board, committee or commission members.

Unless otherwise precluded by state statutes, ordinance, or resolution, any member of an agency, board, committee or commission shall serve at the pleasure of town council and may be removed by town council with or without cause. In the event that any member is no longer a registered voter within the ~~town's jurisdiction~~ territorial boundaries of the Town of Fort Myers Beach ~~or a property owner within the town's jurisdiction~~, or is convicted of a felony, an offense involving moral turpitude, while in office or has unpaid fines or liens due the Town of Fort Myers Beach, the town council shall terminate the appointment of such person as a member of the agency, board, committee or commission. No member of the Town's agency, board, commission, committee, or local planning agency holding office as of August 5, 2024, may be removed for failure to meet the qualification criteria as set forth in section 2-94.

Sec. 34-113. - Composition, appointment and compensation of members.

(a) The local planning agency shall consist of up to seven members appointed by the town council. No members of the local planning agency shall be salaried officials of the town. Membership on the local planning agency shall not affect a person's eligibility for membership on any other advisory committee for the Town of Fort Myers Beach during his/her term of office. One spouse per household will be eligible for membership on the local planning agency during any given term of office. No current member of town council shall be eligible to serve on the local planning agency. Except for inclusion of members required under Florida law, all members must be ~~residents of, or owners of real property located within, the territorial limits of~~ registered voters within the territorial boundaries of the Town of Fort Myers Beach at the time of application for membership on the local planning agency and during the period of service on the local planning agency. All applicants must apply on or before October 1 of the appointment year. Each application must include a short biography and short explanation as to why the applicant wishes to serve on the local planning agency.

(b) The members of the local planning agency shall serve without compensation but may be reimbursed for expenses as are necessary to conduct the work of the agency from funds appropriated by the town council.

(c) In addition to the up to seven voting members, the local planning agency shall also include as a nonvoting member a representative of the Lee County School District, as designated by the Lee County School Board, to attend and participate in those meetings at which the local planning agency considers comprehensive plan amendments and rezonings that would, if approved, increase residential

density on the property that is the subject of the application (see F.S. 163.3174(1), 2002).

(d) All appointed members of the local planning agency must file an annual financial disclosure as required by the Florida Commission on Ethics.

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, Town 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:

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING SECTION 2-94 "QUALIFICATIONS AND APPOINTMENTS OF MEMBERS" AND SECTION 2-96 "REMOVAL OF AGENCY, BOARD, COMMITTEE OR COMMISSION MEMBERS" OF DIVISION 2 "PROCEDURES FOR THE ESTABLISHMENT OF BOARDS, COMMITTEES AND COMMISSIONS" OF ARTICLE IV "BOARDS, COMMISSIONS, COMMITTEES AND OTHER AGENCIES" OF CHAPTER 2 "ADMINISTRATION" AND SECTION 34-113 "COMPOSITION, APPOINTMENT AND COMPENSATION OF MEMBERS" OF DIVISION 3 "LOCAL PLANNING AGENCY" OF ARTICLE II "ZONING PROCEDURES" OF CHAPTER 34 "ZONING DISTRICTS, DESIGN STANDARDS AND NONCONFORMITIES" OF THE CODE OF ORDINANCES OF THE TOWN OF FORT MYERS BEACH, FLORIDA, REMOVING PROPERTY OWNERSHIP AS A QUALIFICATION REQUIREMENT FOR THE MEMBERS OF THE TOWN'S AGENCIES, BOARDS, COMMITTEES OR COMMISSIONS, INCLUDING THE TOWN'S LOCAL PLANNING AGENCY; ELIMINATING DUPLICATIVE LANGUAGE; ADDING A GRANDFATHER PROVISION FOR CURRENT NON-QUALIFYING MEMBERS OF THE TOWN'S BOARDS, AGENCIES, COMMISSIONS, AND COMMITTEES; ADDING A PROVISION TO SECTION 34-113, REGARDING THE MANDATORY ANNUAL FINANCIAL DISCLOSURE FORM AS REQUIRED BY THE FLORIDA COMMISSION ON ETHICS; PROVIDING FOR CODIFICATION, SEVERABILITY, SCRIVENER'S ERRORS, CONFLICTS OF LAW, AND AN EFFECTIVE DATE.

This Business Impact Estimate is provided in accordance with section 166.041(4), Florida Statutes. If one or more boxes are checked below, this means the 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;

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

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

In accordance with the provisions of controlling law, even notwithstanding the fact that an exemption noted above may apply, the 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 language of Sections 2-94 and 2-96 of Division 2 of Article IV of Chapter 2 and Section 34-113 of Division 3 of Article II of Chapter 34 of the Code of Ordinances of the Town of Fort Myers Beach, Florida, restricting the appointment of individuals to the Town's boards, agencies, committees and commissions, including the Town's local planning agency, exclusively to registered voters within the Town's territorial boundaries, removing property ownership as a qualification criteria for appointment, adding a grandfather clause to allow current non-qualifying members to keep their appointment for the full term, deleting duplicative language from the Code, and adding a reference to the mandatory annual financial disclosure required by the Florida Commission on Ethics to Section 34-113. The proposed ordinance promotes the health, safety, welfare, and morals of the residents of the Town by restricting appointment of the members of the Town's boards, agencies, commissions or committees solely to those individuals who have a vested interest in the Town's operations (i.e. registered voters in the Town of Fort Myers Beach, Florida).

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.

None.

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

None.

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

Not applicable.

ORDINANCE NO. 24-~~17~~XX

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING SECTION 2-94 “QUALIFICATIONS AND APPOINTMENTS OF MEMBERS” AND SECTION 2-96 “REMOVAL OF AGENCY, BOARD, COMMITTEE OR COMMISSION MEMBERS” OF DIVISION 2 “PROCEDURES FOR THE ESTABLISHMENT OF BOARDS, COMMITTEES AND COMMISSIONS” OF ARTICLE IV “BOARDS, COMMISSIONS, COMMITTEES AND OTHER AGENCIES” OF CHAPTER 2 “ADMINISTRATION” AND SECTION 34-113 “COMPOSITION, APPOINTMENT AND COMPENSATION OF MEMBERS” OF DIVISION 3 “LOCAL PLANNING AGENCY” OF ARTICLE II “ZONING PROCEDURES” OF CHAPTER 34 “ZONING DISTRICTS, DESIGN STANDARDS AND NONCONFORMITIES” OF THE CODE OF ORDINANCES OF THE TOWN OF FORT MYERS BEACH, FLORIDA, REMOVING ~~RESIDENCY~~ PROPERTY OWNERSHIP AS A QUALIFICATION REQUIREMENT FOR THE MEMBERS OF THE TOWN’S AGENCIES, BOARDS, COMMITTEES OR COMMISSIONS, INCLUDING THE TOWN’S LOCAL PLANNING AGENCY ~~MEMBERS~~; ELIMINATING DUPLICATIVE LANGUAGE; ADDING A GRANDFATHER PROVISION FOR CURRENT NON-QUALIFYING MEMBERS OF THE TOWN’S BOARDS, AGENCIES, COMMISSIONS, AND COMMITTEES; ADDING A PROVISION TO SECTION 34-113, REGARDING THE MANDATORY ANNUAL FINANCIAL DISCLOSURE FORM AS REQUIRED BY THE FLORIDA COMMISSION ON ETHICS; PROVIDING FOR CODIFICATION, SEVERABILITY, SCRIVENER’S ERRORS, CONFLICTS OF LAW, AND AN EFFECTIVE DATE.

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

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

WHEREAS, on June 6, 2024, the Town Council held a discussion regarding the proposed changes to ~~Division 2 of Article IV of Chapter 2 and Division 3 of Article II of Chapter 34 of the Code of Ordinances of the Town of Fort Myers Beach~~ the Code of Ordinances of the Town of Fort Myers Beach, to eliminate property ownership within the Town’s territorial boundaries as a qualification requirement for the ~~appointment~~ appointed ~~of~~ members ~~to of~~ the Town’s agencies, boards, committees ~~or or~~ commissions, including the Town’s local planning agency; and

WHEREAS, the Town desires to amend the Town Code to remove property ownership as a criteria, qualifying individuals for the Town's boards, agencies, commissions and committees; and

WHEREAS, the Town wishes to restrict the appointment to those individuals, who are registered voters within the territorial boundaries of the Town; and

WHEREAS, the reasons for removal of the appointed members from the Town's agencies, boards, committees or commissions members are already addressed in Section 2-96 of the Town's Code; and

WHEREAS, the Town desires to further amend Section 2-94 to eliminate the duplicative language related to the removal of the Town's agency, board, committee or commission members; and

WHEREAS, the Town further wishes to add grandfather clauses to Sections 2-94 and 2-96, to allow current non-qualifying members of the Town's agencies, boards, committees or commissions to keep their appointment for the full term, regardless of whether such non-qualifying members meet the required criteria under the Town Code as of the effective date of this ordinance; remain members in the absence of previously required qualifying criteria under the Town Code; and

WHEREAS, on the 17th day of June, 2024, the Town Council held a first reading of Ordinance 24-17 and gave direction to the Town Attorney to revise Ordinance 24-17 to add a grandfather clause; and

WHEREAS, the revisions proposed by the Town Council resulted in a substantial change to the title of Ordinance 24-17, necessitating a second first reading of the Ordinance; and

WHEREAS, on the ____ 5th day of _____, August, 2024, the Town Council held a second first reading of this Ordinance and gave full and complete consideration to the request of the proposed ordinance, the recommendation of staff, the documents in the record, and the testimony of all interested persons; and

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

WHEREAS, an advertisement of the public hearing for adoption of the Ordinance was published in the _____ on the ____ day of _____, 2024, which is 10 days prior to the second reading of the proposed Ordinance as required by Section 166.041, 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 interests of the health, safety, and welfare of the Town's residents.

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

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

Section 2. Section 2-94 “Qualifications and appointments of members” and Section 2-96 “Removal of agency, board, committee or commission members” of Division 2 “Procedures for the Establishment of Boards, Committees and Commissions” of Article IV “Boards, Commissions, Committees and Other Agencies” of Chapter 2 “Administration,” as well as Section 34-113 “Composition, appointment and compensation of members” of Division 3 “Local Planning Agency” of Article II “Zoning Procedures” of Chapter 34 “Zoning Districts, Design Standards and Nonconformities” of the Code of Ordinances of the Town of Fort Myers Beach, Florida, are hereby amended to read as follows:

Sec. 2-94. - Qualifications and appointments of members.

In addition to qualifications, which may be specified for membership by state statutes, Charter, ordinance, or resolution, a person appointed to an agency, board, committee, or commission after August 5, 2024, shall be given preference to if that person is a registered voter within the town's jurisdiction the territorial boundaries of the Town of Fort Myers Beach. ~~or a property owner within the town's jurisdiction.~~ Although no specific experience requirements shall be necessary as a prerequisite to appointment, consideration shall be given to applicants who have experience or who have shown interest in the subject matter. ~~If any member is no longer a qualified elector or is convicted of a felony, an offense involving moral turpitude while in office, or has unpaid fines or liens due the Town of Fort Myers Beach, the town council shall terminate the appointment of such person as a member of the agency, board, committee, or commission.~~ Any member of the Town's board, agency, commission or committee who holds office and who is not a registered voter within the Town's jurisdiction as of August 5, 2024, shall keep his or her appointment for the full term.

(1) *Anchorage advisory committee.* The anchorage advisory committee shall advise the town council concerning all matters relevant to the management and use of the waters of the town for mooring and anchoring. The anchorage advisory committee shall prepare and submit the Matanzas Harbor Management Plan and any amendments thereto for review and approval by the town council and make recommendations for the establishment of managed municipal anchorages and mooring fields where warranted by objective evidence of environmental damage or user conflicts; or any other topics as assigned by the town council.

(2) *Audit committee.* All members of the audit committee shall be town residents who do not have any direct financial or business interests involving the town. The town council may waive the residency requirements by majority vote if there are an insufficient number of applicants who reside in the town. All members should, through education and experience, possess a basic understanding of governmental financial reporting and auditing. At least one member of the audit committee shall have accounting, auditing, or related financial management expertise that is specifically relevant to the government sector. The audit committee shall advise the town council on these matters and other matters pursuant to F.S. § 218.391, or any other topics as assigned by the town council.

(3) ~~a.~~ *Bay Oaks Recreational Campus Advisory Board.* The purpose of BORCAB is to serve the town as a community center and recreational facility providing individuals and groups passive and active recreational, social and community activities and events for both residents and visitors. BORCAB members shall work closely and in cooperation with the parks and recreation director, and advise the town council regarding matters concerning the Bay Oaks Recreational Campus and the community pool; or any other topics as assigned by the town council.

~~b.~~ (4) *Community resource advisory board.* The broad objectives of CRAB are to further the welfare of the citizens of the town in the implementation of our community as a "living park" as defined in the comprehensive plan and make recommendations to the town council on acquisition and management of public areas including, but no limited to, pools, parks, beach accesses, streetscapes and other public easements and property to further the living park concept. The CRAB shall advise the town council on these matters or any other topics as assigned by the town council.

~~c.~~ (5) *Cultural and environmental learning center advisory board.* The broad objectives of CELCAB are to ensure and promote the mission of the Mound House and Newton Beach Park to be accomplished through stewardship, advocacy and oversight according to best practices of museums and the requirement as stated in the Florida Communities Trust Agreements for each property. The CELCAB shall advise the town council on these matters or any other topics as assigned by the town council.

(4) (6) *Marine and environmental resource and task force.* The broad objectives of MERTF are to further the welfare of the business owners, residents, and visitors of the town by helping to promote a better, more healthful, safe, and attractive community environment and to ensure that the unique and natural characteristics of our marine and environmental resources are preserved; or any other topics as assigned by the town council.

(5) (7) *Public safety committee.* The PSC shall address any safety and transportation issues specifically assigned to the committee by the town council

for the purpose of the health, safety and welfare of the business owners, residents, and visitors to the town. The committee shall review, discuss, and evaluate the most significant safety and transportation issues within the town. The PSC shall advise the town council on these matters or any other topics as assigned by the town council.

(8) Local Planning Agency. Notwithstanding the criteria set forth herein, the criteria for the members of the Local Planning Agency of Fort Myers Beach as outlined in section 34-113 shall prevail.

Sec. 2-96. – Removal of agency, board, committee or commission members.

Unless otherwise precluded by state statutes, ordinance, or resolution, any member of an agency, board, committee or commission shall serve at the pleasure of town council and may be removed by town council with or without cause. In the event that any member is no longer a registered voter within the town's jurisdiction territorial boundaries of the Town of Fort Myers Beach ~~or a property owner within the town's jurisdiction~~, or is convicted of a felony, an offense involving moral turpitude, while in office or has unpaid fines or liens due the Town of Fort Myers Beach, the town council shall terminate the appointment of such person as a member of the agency, board, committee or commission. No member of the Town's agency, board, commission, committee, or local planning agency holding office as of August 5, 2024, may be removed for failure to meet the qualification criteria as set forth in section 2-94.

Sec. 34-113. - Composition, appointment and compensation of members.

(a) The local planning agency shall consist of up to seven members appointed by the town council. No members of the local planning agency shall be salaried officials of the town. Membership on the local planning agency shall not affect a person's eligibility for membership on any other advisory committee for the Town of Fort Myers Beach during his/her term of office. One spouse per household will be eligible for membership on the local planning agency during any given term of office. No current member of town council shall be eligible to serve on the local planning agency. Except for inclusion of members required under Florida law, all members must be ~~residents of, or owners of real property located within, the territorial limits of~~ registered voters within the territorial boundaries of the Town of Fort Myers Beach at the time of application for membership on the local planning agency and during the period of service on the local planning agency. All applicants must apply on or before October 1 of the appointment year. Each application must include a short biography and short explanation as to why the applicant wishes to serve on the local planning agency.

(b) The members of the local planning agency shall serve without compensation but may be reimbursed for expenses as are necessary to conduct the work of the agency from funds appropriated by the town council.

(c) In addition to the up to seven voting members, the local planning agency shall also include as a nonvoting member a representative of the Lee County School District, as designated by the Lee County School Board, to attend and participate in those meetings at which the local planning agency considers comprehensive plan amendments and rezonings that would, if approved, increase residential density on the property that is the subject of the application (see F.S. 163.3174(1), 2002).

(d) All appointed members of the local planning agency must file an annual financial disclosure as required by the Florida Commission on Ethics.

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, Town 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.

Sec. 2-94. - Qualifications and appointments of members.

In addition to qualifications, which may be specified for membership by state statutes, Charter, ordinance, or resolution, a person appointed to an agency, board, committee, or commission shall give preference to a registered voter within the town's jurisdiction or a property owner within the town's jurisdiction. Although no specific experience requirements shall be necessary as a prerequisite to appointment, consideration shall be given to applicants who have experience or who have shown interest in the subject matter. If any member is no longer a qualified elector, or is convicted of a felony, an offense involving moral turpitude while in office, or has unpaid fines or liens due the Town of Fort Myers Beach, the town council shall terminate the appointment of such person as a member of the agency, board, committee, or commission.

- (1) *Anchorage advisory committee.* The anchorage advisory committee shall advise the town council concerning all matters relevant to the management and use of the waters of the town for mooring and anchoring. The anchorage advisory committee shall prepare and submit the Matanzas Harbor Management Plan and any amendments thereto for review and approval by the town council and make recommendations for the establishment of managed municipal anchorages and mooring fields where warranted by objective evidence of environmental damage or user conflicts; or any other topics as assigned by the town council.
- (2) *Audit committee.* All members of the audit committee shall be town residents who do not have any direct financial or business interests involving the town. The town council may waive the residency requirements by majority vote if there are an insufficient number of applicants who reside in the town. All members should, through education and experience, possess a basic understanding of governmental financial reporting and auditing. At least one member of the audit committee shall have accounting, auditing, or related financial management expertise that is specifically relevant to the government sector. The audit committee shall advise the town council on these matters and other matters pursuant to F.S. § 218.391, or any other topics as assigned by the town council.
- (3)
 - a. *Bay Oaks Recreational Campus Advisory Board.* The purpose of BORCAB is to serve the town as a community center and recreational facility providing individuals and groups passive and active recreational, social and community activities and events for both residents and visitors. BORCAB members shall work closely and in cooperation with the parks and recreation director, and advise the town council regarding matters concerning the Bay Oaks Recreational Campus and the community pool; or any other topics as assigned by the town council.
 - b. *Community resource advisory board.* The broad objectives of CRAB are to further the welfare of the citizens of the town in the implementation of our community as a "living park" as defined in the comprehensive plan and make recommendations to the town

council on acquisition and management of public areas including, but no limited to, pools, parks, beach accesses, streetscapes and other public easements and property to further the living park concept. The CRAB shall advise the town council on these matters or any other topics as assigned by the town council.

c. *Cultural and environmental learning center advisory board.* The broad objectives of CELCAB are to ensure and promote the mission of the Mound House and Newton Beach Park to be accomplished through stewardship, advocacy and oversight according to best practices of museums and the requirement as stated in the Florida Communities Trust Agreements for each property. The CELCAB shall advise the town council on these matters or any other topics as assigned by the town council.

(4) *Marine and environmental resource and task force.* The broad objectives of MERTF are to further the welfare of the business owners, residents, and visitors of the town by helping to promote a better, more healthful, safe, and attractive community environment and to ensure that the unique and natural characteristics of our marine and environmental resources are preserved; or any other topics as assigned by the town council.

(5) *Public safety committee.* The PSC shall address any safety and transportation issues specifically assigned to the committee by the town council for the purpose of the health, safety and welfare of the business owners, residents, and visitors to the town. The committee shall review, discuss, and evaluate the most significant safety and transportation issues within the town. The PSC shall advise the town council on these matters or any other topics as assigned by the town council.

(Ord. No. 18-06, § 2, 5-7-2018; Ord. No. 22-10, § 2, 6-6-2022)

Sec. 2-96. - Removal of agency, board, committee or commission members.

Unless otherwise precluded by state statutes, ordinance, or resolution, any member of an agency, board, committee or commission shall serve at the pleasure of town council and may be removed by town council with or without cause. In the event that any member is no longer a registered voter within the town's jurisdiction or a property owner within the town's jurisdiction, or is convicted of a felony, an offense involving moral turpitude while in office or has unpaid fines or liens due the Town of Fort Myers Beach, the town council shall terminate the appointment of such person as a member of the agency, board, committee or commission.

(Ord. No. 18-06, § 4, 5-7-2018)

Sec. 34-113. - Composition, appointment and compensation of members.

- (a) The local planning agency shall consist of up to seven members appointed by the town council. No members of the local planning agency shall be salaried officials of the town. Membership on the local planning agency shall not affect a person's eligibility for membership on any other advisory committee for the Town of Fort Myers Beach during his/her term of office. One spouse per household will be eligible for membership on the local planning agency during any given term of office. No current member of town council shall be eligible to serve on the local planning agency. Except for inclusion of members required under Florida law, all members must be residents of, or owners of real property located within, the territorial limits of the Town of Fort Myers Beach at the time of application for membership on the local planning agency and during the period of service on the local planning agency. All applicants must apply on or before October 1 of the appointment year. Each application must include a short biography and short explanation as to why the applicant wishes to serve on the local planning agency.
- (b) The members of the local planning agency shall serve without compensation but may be reimbursed for expenses as are necessary to conduct the work of the agency from funds appropriated by the town council.
- (c) In addition to the up to seven voting members, the local planning agency shall also include as a nonvoting member a representative of the Lee County School District, as designated by the Lee County School Board, to attend and participate in those meetings at which the local planning agency considers comprehensive plan amendments and rezonings that would, if approved, increase residential density on the property that is the subject of the application (see F.S. 163.3174(1), 2002).

The 2024 Florida Statutes

[Title XI](#)
COUNTY ORGANIZATION AND INTERGOVERNMENTAL
RELATIONS

[Chapter 163](#)
INTERGOVERNMENTAL
PROGRAMS

[View Entire
Chapter](#)

163.3174 Local planning agency.—

(1) The governing body of each local government, individually or in combination as provided in s. [163.3171](#), shall designate and by ordinance establish a “local planning agency,” unless the agency is otherwise established by law. Notwithstanding any special act to the contrary, all local planning agencies or equivalent agencies that first review rezoning and comprehensive plan amendments in each municipality and county shall include a representative of the school district appointed by the school board as a nonvoting member of the local planning agency or equivalent agency to attend those meetings at which the agency considers comprehensive plan amendments and rezonings that would, if approved, increase residential density on the property that is the subject of the application. However, this subsection does not prevent the governing body of the local government from granting voting status to the school board member. The governing body may designate itself as the local planning agency pursuant to this subsection with the addition of a nonvoting school board representative. All local planning agencies shall provide opportunities for involvement by applicable community college boards, which may be accomplished by formal representation, membership on technical advisory committees, or other appropriate means. The local planning agency shall prepare the comprehensive plan or plan amendment after hearings to be held after public notice and shall make recommendations to the governing body regarding the adoption or amendment of the plan. The agency may be a local planning commission, the planning department of the local government, or other instrumentality, including a countywide planning entity established by special act or a council of local government officials created pursuant to s. [163.02](#), provided the composition of the council is fairly representative of all the governing bodies in the county or planning area; however:

(a) If a joint planning entity is in existence on the effective date of this act which authorizes the governing bodies to adopt and enforce a land use plan effective throughout the joint planning area, that entity shall be the agency for those local governments until such time as the authority of the joint planning entity is modified by law.

(b) In the case of chartered counties, the planning responsibility between the county and the several municipalities therein shall be as stipulated in the charter.

(2) Nothing in this act shall prevent the governing body of a local government that participates in creating a local planning agency serving two or more jurisdictions from continuing or creating its own local planning agency. Any such governing body which continues or creates its own local planning agency may designate which local planning agency functions, powers, and duties will be performed by each such local planning agency.

(3) The governing body or bodies shall appropriate funds for salaries, fees, and expenses necessary in the conduct of the work of the local planning agency and shall also establish a schedule of fees to be charged by the agency. To accomplish the purposes and activities authorized by this act, the local planning agency, with the approval of the governing body or bodies and in accord with the fiscal practices thereof, may expend all sums so appropriated and other sums made available for use from fees, gifts, state or federal grants, state or federal loans, and other sources; however, acceptance of loans must be approved by the governing bodies involved.

(4) The local planning agency shall have the general responsibility for the conduct of the comprehensive planning program. Specifically, the local planning agency shall:

(a) Be the agency responsible for the preparation of the comprehensive plan or plan amendment and shall make recommendations to the governing body regarding the adoption or amendment of such plan. During the preparation of the plan or plan amendment and prior to any recommendation to the governing body, the local planning agency shall hold at least one public hearing, with public notice, on the proposed plan or plan amendment. The governing body in cooperation with the local planning agency may designate any agency, committee, department, or person to prepare the comprehensive plan or plan amendment, but final recommendation of the adoption of such plan or plan amendment to the governing body shall be the responsibility of the local planning agency.

(b) Monitor and oversee the effectiveness and status of the comprehensive plan and recommend to the governing body such changes in the comprehensive plan as may from time to time be required, including the periodic evaluation and appraisal of the comprehensive plan required by s. 163.3191.

(c) Review proposed land development regulations, land development codes, or amendments thereto, and make recommendations to the governing body as to the consistency of the proposal with the adopted comprehensive plan, or element or portion thereof, when the local planning agency is serving as the land development regulation commission or the local government requires review by both the local planning agency and the land development regulation commission.

(d) Perform any other functions, duties, and responsibilities assigned to it by the governing body or by general or special law.

(5) All meetings of the local planning agency shall be public meetings, and agency records shall be public records.

History.—s. 6, ch. 75-257; s. 1, ch. 77-223; s. 5, ch. 85-55; s. 2, ch. 92-129; s. 9, ch. 95-310; s. 9, ch. 95-341; s. 1, ch. 2002-296; s. 10, ch. 2011-139; s. 2, ch. 2012-99.

The 2024 Florida Statutes

[Title XIV](#)
TAXATION AND
FINANCE

[Chapter 218](#)
FINANCIAL MATTERS PERTAINING TO POLITICAL
SUBDIVISIONS

[View Entire
Chapter](#)

218.391 Auditor selection procedures.—

(1) Each local governmental entity, district school board, charter school, or charter technical career center, prior to entering into a written contract pursuant to subsection (7), except as provided in subsection (8), shall use auditor selection procedures when selecting an auditor to conduct the annual financial audit required in s. [218.39](#).

(2) The governing body of a county, municipality, special district, district school board, charter school, or charter technical career center shall establish an auditor selection committee.

(a) The auditor selection committee for a county must, at a minimum, consist of each of the county officers elected pursuant to the county charter or s. 1(d), Art. VIII of the State Constitution or their respective designees and one member of the board of county commissioners or its designee.

(b) The auditor selection committee for a municipality, special district, district school board, charter school, or charter technical career center must consist of at least three members. One member of the auditor selection committee must be a member of the governing body of an entity specified in this paragraph, who shall serve as the chair of the committee.

(c) An employee, a chief executive officer, or a chief financial officer of the county, municipality, special district, district school board, charter school, or charter technical career center may not serve as a member of an auditor selection committee established under this subsection; however, an employee, a chief executive officer, or a chief financial officer of the county, municipality, special district, district school board, charter school, or charter technical career center may serve in an advisory capacity.

(d) The primary purpose of the auditor selection committee is to assist the governing body in selecting an auditor to conduct the annual financial audit required in s. [218.39](#); however, the committee may serve other audit oversight purposes as determined by the entity's governing body. The public may not be excluded from the proceedings under this section.

(3) The auditor selection committee shall:

(a) Establish factors to use for the evaluation of audit services to be provided by a certified public accounting firm duly licensed under chapter 473 and qualified to conduct audits in accordance with government auditing standards as adopted by the Florida Board of Accountancy. Such factors shall include, but are not limited to, ability of personnel, experience, ability to furnish the required services, and such other factors as may be determined by the committee to be applicable to its particular requirements.

(b) Publicly announce requests for proposals. Public announcements must include, at a minimum, a brief description of the audit and indicate how interested firms can apply for consideration.

(c) Provide interested firms with a request for proposal. The request for proposal shall include information on how proposals are to be evaluated and such other information the committee determines is necessary for the firm to prepare a proposal.

(d) Evaluate proposals provided by qualified firms. If compensation is one of the factors established pursuant to paragraph (a), it shall not be the sole or predominant factor used to evaluate proposals.

(e) Rank and recommend in order of preference no fewer than three firms deemed to be the most highly qualified to perform the required services after considering the factors established pursuant to paragraph (a). If

fewer than three firms respond to the request for proposal, the committee shall recommend such firms as it deems to be the most highly qualified.

(4) The governing body shall inquire of qualified firms as to the basis of compensation, select one of the firms recommended by the auditor selection committee, and negotiate a contract, using one of the following methods:

(a) If compensation is not one of the factors established pursuant to paragraph (3)(a) and not used to evaluate firms pursuant to paragraph (3)(e), the governing body shall negotiate a contract with the firm ranked first. If the governing body is unable to negotiate a satisfactory contract with that firm, negotiations with that firm shall be formally terminated, and the governing body shall then undertake negotiations with the second-ranked firm. Failing accord with the second-ranked firm, negotiations shall then be terminated with that firm and undertaken with the third-ranked firm. Negotiations with the other ranked firms shall be undertaken in the same manner. The governing body, in negotiating with firms, may reopen formal negotiations with any one of the three top-ranked firms, but it may not negotiate with more than one firm at a time.

(b) If compensation is one of the factors established pursuant to paragraph (3)(a) and used in the evaluation of proposals pursuant to paragraph (3)(d), the governing body shall select the highest-ranked qualified firm or must document in its public records the reason for not selecting the highest-ranked qualified firm.

(c) The governing body may select a firm recommended by the audit committee and negotiate a contract with one of the recommended firms using an appropriate alternative negotiation method for which compensation is not the sole or predominant factor used to select the firm.

(d) In negotiations with firms under this section, the governing body may allow a designee to conduct negotiations on its behalf.

(5) The method used by the governing body to select a firm recommended by the audit committee and negotiate a contract with such firm must ensure that the agreed-upon compensation is reasonable to satisfy the requirements of s. 218.39 and the needs of the governing body.

(6) If the governing body is unable to negotiate a satisfactory contract with any of the recommended firms, the committee shall recommend additional firms, and negotiations shall continue in accordance with this section until an agreement is reached.

(7) Every procurement of audit services shall be evidenced by a written contract embodying all provisions and conditions of the procurement of such services. For purposes of this section, an engagement letter signed and executed by both parties shall constitute a written contract. The written contract shall, at a minimum, include the following:

(a) A provision specifying the services to be provided and fees or other compensation for such services.

(b) A provision requiring that invoices for fees or other compensation be submitted in sufficient detail to demonstrate compliance with the terms of the contract.

(c) A provision specifying the contract period, including renewals, and conditions under which the contract may be terminated or renewed.

(8) Written contracts entered into pursuant to subsection (7) may be renewed. Such renewals may be done without the use of the auditor selection procedures provided in this section. Renewal of a contract shall be in writing.

(9) If the entity fails to select the auditor in accordance with the requirements of subsections (3)-(6), the entity must again perform the auditor selection process in accordance with this section to select an auditor to conduct audits for subsequent fiscal years.

History.—s. 65, ch. 2001-266; s. 1, ch. 2005-32; s. 15, ch. 2019-15.

RESOLUTION NUMBER 23-182

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

WHEREAS, Article VIII, Section 2 of the State Constitution and Chapter 166 of the Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and exercise any power for municipal purposes, except when expressly prohibited by law; and

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

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

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

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

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

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

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

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

Dan Allers, Mayor	Aye
Jim Atterholt, Vice Mayor	Aye
John King, Council Member	Aye
Vacant, Council Member	N/A
Karen Woodson, Council Member	Aye

ADOPTED this 22nd day of January 2024, by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers
Dan Allers (Mar 6, 2024 08:29 EST)
Dan Allers, Mayor

ATTEST:

Amy Baker
Amy Baker (Mar 6, 2024 15:53 EST)
Amy Baker, Town Clerk

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

Nancy Vose
Nancy Vose (Mar 5, 2024 09:52 EST)
Vose Law Firm LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 12th day of February 2024.

EXHIBIT “A”

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EXHIBIT “A”

1. Introduction

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

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

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

2. Town Council Mission and Job Description

Mission:

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

Functions, Powers and Duties:

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

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

Council Member Requirements:

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

3. How Town Council Will Operate

Code of Conduct:

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

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

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

Code of Ethics:

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

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

EXHIBIT “A”

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

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

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

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

Assignment of a Town Council Representative:

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

Sunshine Issues:

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

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

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

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Email and Texting Policy:

Email and texting are convenient ways to communicate with staff, Town Council, residents, and others. However, it presents unique legal and ethical challenges. All email and texts regarding Town business must be properly retained as a public record. Furthermore, any email or text regarding an issue that will come before Council in a quasi-judicial hearing must be properly disclosed as an ex-parte communication as appropriate. Council members must be vigilant to not accidentally violate Sunshine Law requirements. Emailing or texting anyone stating a position on an issue that will come before Town Council is particularly risky. Email and text actions to avoid include:

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

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

Public Records:

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

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

Any use of personal electronic equipment or email accounts for government business is allowed, but for a council member’s own protection, it is suggested that a copy of any documents produced is sent to their Town email account for proper retention. Materials prepared for Town Council meetings, hearings, minutes, and workshop will already be managed by the custodian of public

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records and do not need to be retained by the Council member. If there are any questions on retention of a particular document, consult with the custodian of public records and/or the Town Attorney before destroying.

4. Training Materials and First Meeting

Training Materials:

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

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

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

Training Recommendations:

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

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Election of Officers:

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

Outside Committee Representation:

Charlotte Harbor National Estuary Program – www.chnep.org

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

Coastal Advisory Committee – <https://www.leegov.com/naturalresources/marine/beachmgmnt/CAC>

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

Horizon Council – <https://www.leecountybusiness.com/horizon-council/>

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

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

Human Services Council – <https://www.leegov.com/dhs>

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

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

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Metropolitan Planning Organization – <https://leempo.com/>

Meetings: Third Friday of each month at 9 am*

Mission: The MPO is responsible for conducting a continuing, cooperative, and comprehensive transportation planning process for all of Lee County. It must plan for the movement of both people and goods within the county by all modes of travel – including highways, public transportation, bicycles, and foot. It also plans for the connections (such as airports, seaports, or bus, railroad, and pipeline terminals) linking these modes or tying us to the rest of the world.

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

Southwest Florida Regional Planning Council – www.swfrpc.org

Meetings: Third Thursday of each month at 9 am*

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

Estero Bay Agency on Bay Management – <https://www.esterobayabm.org/contact>

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

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

*Meeting times are subject to change.

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

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

Residency: ~~Except as required by Town Charter, Town Ordinance or Florida statute, residency on Fort Myers Beach will not be a requirement for nomination or election to a committee, commission, or board of the Town.~~ As provided by Sec 2-94 of the Town Code, committee members shall be a registered voter or a property owner in the Town’s jurisdiction.

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

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

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

Voting:

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

Examples of voting procedure:

First Ballot:

Seats available – 9

Candidates – 15

Votes on First Ballot: Results of First Ballot

3 get 5 votes apiece 3 are elected

3 get 4 votes apiece 3 are elected

4 get 3 votes apiece 4 go on a second ballot

3 get 2 votes apiece 3 are eliminated

2 get 0 votes apiece 2 are eliminated

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

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

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Effective Date of Appointment and Follow Up:

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

Ad Hoc Committees:

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

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

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

Outline of Committee Orientation Material:

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

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6. Meeting Preparation and Planning

Meeting Schedule:

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

Source of Items:

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

When an item arises that requires Town Council action either to make a decision or to direct staff or the Town Attorney how to proceed it will appear on the agenda identified as a Council member's request or as an item under the Town Manager's section of the agenda which is the “catch all” for miscellaneous items, or Town Attorney's section, as appropriate. For an item to appear on an agenda, at least two Council members must agree and shall direct the Town Manager to do so, provided time schedules allow. (Note the agenda preparation timetable below).

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

Timetable and Preparation Process:

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

The Council members' packets include complete documentation for agenda items (actions required, implications, backup information, memos, ordinances, resolutions, etc.). A sincere effort is made to see that Council packets are complete; if something is not available, a written

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explanation will be provided. Generally, items requiring documentation (recommendations, memos, ordinances, resolutions, etc.) will not be included on an agenda until the documentation is complete.

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

Continued Hearings and Legislative Issues:

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

Attendance Policy:

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

Participation by Videoconference:

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

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

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

7. Meeting Procedures

Generally, the Order of Agenda Items:

1. Call to Order
2. Invocation
3. Pledge of Allegiance
4. Approval of Final Agenda
5. Public Comment (Any issue can be discussed, but if an agenda item is addressed, the speaker cannot comment at the time such agenda item comes up. For testimony to be considered for a public hearing, it must be made during the hearing).
6. Local Achievements and Recognitions
7. Advisory Committee Items / Reports / Appointments
8. Approval of Minutes
9. Consent Agenda
10. Items Removed from Consent Agenda
11. Public Hearings of proposed ordinances (At conclusion of hearing, requires motion and roll call vote)
12. Administrative Agenda
 - a. Introduction of proposed ordinances (Requires a motion and a majority vote for scheduling the hearing).
 - b. Resolutions (Requires a motion and vote for passage)
 - c. Unfinished business (Items from previous agendas scheduled by Town Manager – should be listed separately on the agenda)
13. Final Public Comment (not limited to agenda items)
14. Town Manager’s Items and Reports
15. Town Attorney’s Items and Reports
11. Council Members Items and Reports
17. Adjournment (Requires a motion and vote – no second is required. It is a privileged motion allowing no discussion before vote)

Conduct of Council Meetings:

- The Mayor will conduct Council meetings, and in the Mayor’s absence the Vice Mayor will do so.
- The Town Clerk shall deliver a nondenominational invocation.
- Robert’s Rules of Order shall be the reference for parliamentary procedure governing the conduct of Town Council meetings when not in conflict with the Town Charter, Town Ordinances, Florida Statutes or these Policies and Procedures. It is not intended that

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Council meetings be unnecessarily formalistic, but rather that parliamentary procedure will be invoked only when necessary to facilitate the business of the meeting.

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

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

Rules of Civility:

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

1. Speakers are permitted to deliver his or her comments without interruption, absent inappropriate language, conduct or personal attacks.
2. Speakers and debates should focus on issues, not on persons or personalities.
3. Persons are encouraged to participate in the governmental process.

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4. To allow time to hear all points of view, speakers are allotted 3 minutes.
5. Sidebar discussions while others are speaking are discouraged in Council Chambers. These discussions are to be removed from the chambers so as not to be disruptive to those conducting and following Council business.
6. Only the speaker recognized by the Chairperson has the floor. Speakers should identify themselves for the record. Speakers should utilize the microphone so that their comments can be recorded.
7. We seek to understand one another's points of view.
8. Anger, rudeness, ridicule, impatience, and lack of respect for others are not acceptable behavior. Demonstrations in support or opposition to a speaker or idea such as clapping, cheering, booing, or hissing or intimidating body language are not permitted in Council Chambers or workshop facilities.
9. We should all take initiative to make things better. Our goal is to foster an environment which encourages a fair discussion and exchange of ideas without fear of personal attacks.
10. No use of profanity will be tolerated.
11. Any email or other digital or internet platform used to communicate with the Town Council, individual members of the Town Council, Town Manager, Town Attorney, or Town staff that contain personal attacks, offensive language or slurs; that are belligerent, sarcastic, accusatory or unsigned shall be deemed by the Town Council as non-compliant with these “Rules of Civility.” Such communications place absolutely no obligation upon Town Council Members, the Town Manager, the Town Attorney or Town staff to respond.

Minutes:

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

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

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Video and/or audio recordings when made are available at the request of the public or anyone who wishes to listen to the meeting or a portion of the meeting. The original video and audio recordings are stored in a secured area for safekeeping. Any request for production of a verbatim transcript, in whole or in part, of any meeting, workshop or other function of the Town Council or any Town committee thereof by a member of the public shall be paid for by the member of the public. Any need for a verbatim transcript requested by Town staff shall require prior consent of payment by the Town Council, except when such requests are required by a court of competent jurisdiction or quasi-judicial officer in the proper exercise of its powers. Video and audio recordings are only the legal record in the absence of approved minutes.

Council Members Items and Reports:

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

Agenda Management:

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

Action List:

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

How Voting Order is Established for Roll Call Votes:

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

Voting Conflicts:

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

“(3)(a) No county, municipal, or other local public officer shall vote in an official capacity upon any measure which would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained, other than an agency as defined in s. 112.312(2); or which he or she knows would inure to the special private gain or loss of a relative or

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business associate of the public officer. Such public officer shall, prior to the vote being taken, publicly state to the assembly the nature of the officer’s interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes.”

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

Guidelines for Legislative Hearing Procedures:

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

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

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

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Guidelines for Quasi-Judicial Land Use Hearing:

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

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

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

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

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

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

8. Reimbursement Procedures

Travel Expenses:

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

Business Expenses:

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

Educational Reimbursement:

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

9. Council Communications Policy and Processing Procedures

Council Communications Policy:

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

EXHIBIT “A”

Mail Processing Procedures:

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

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

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

10. Non-Discrimination and Harassment

Policies:

These policies are documented in the Town Personnel Manual

EXHIBIT “A”

11. Interview/Selection Process for Legal Services

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

INTERVIEW PROCESS FOR LEGAL SERVICES

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

RFP#: _____. Interview date: _____

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

Applicant 1: _____

Applicant 2: _____

Applicant 3: _____

Applicant 4: _____

Applicant 5: _____

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

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

TIME	Applicant Name
1:00 – 1:15	Applicant 1
1:20 – 1:35	Applicant 2
1:40 – 1:55	Applicant 3
2:00 – 2:15	Applicant 4
2:20 – 2:35	Applicant 5

EXHIBIT “A”

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

EXHIBIT “A”

TOWN COUNCIL RANKING SHEET FOR LEGAL SERVICES

RFP# _____

DATE: _____

Councilor Name:

Councilor Signature:

Ranking (#1 is top choice)

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

EXHIBIT “A”

12. Interview/Selection Process for Town Manager

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

INTERVIEW PROCESS FOR TOWN MANAGER

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

RFP# _____ Interview date: _____

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

Applicant

1: _____

Applicant

2: _____

Applicant

3: _____

Applicant

4: _____

Applicant

5: _____

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

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

EXHIBIT “A”

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

EXHIBIT “A”

TOWN COUNCIL RANKING SHEET FOR TOWN MANAGER

RFP# _____

DATE: _____

Councilor Name: _____

Councilor Signature: _____

Ranking (#1 is top choice)

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

EXHIBIT “A”

13.Appointment to Vacant Council Seats

In the event of a vacancy on the Town Council pursuant to Sec. 4-06 of the Town Charter, the Town Council shall:

- 1.Declare and announce at a public meeting the reason the vacancy has been created;
- 2.Direct the Town Manager or designee to notify the public as soon as reasonable by the most appropriate means, including but not limited to posting on the Town’s website, a press release, social media, advertisement, that a vacancy on the Town Council has occurred with instructions on how to apply to serve as a Town Council member and notice that a Form 6 must be filed with the Florida Commission on Ethics pursuant to Florida law.
- 3.Thereafter the Town Council shall appoint an individual, who is qualified as provided in Section 4.01(c) of the Town Charter, to serve as a Town Council member prior to the expiration of the term of the vacant seat.

1. **Request:**

Meeting Date: August 7, 2024

Accept FY2023 Audit Report Prepared by Mauldin & Jenkins

Why the action is necessary:

This is an opportunity for the Board to formally acknowledge and accept the results of the audit.

What the action accomplishes:

Formal acknowledgment and acceptance of audit report for Fiscal Year 2023

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Motion to accept

4. **Submitter of Information:**

Joe Onzick, Finance Director

5. **Background:**

The Town's annual audit was performed by Mauldin & Jenkins. A copy of the audit report was provided to the Town's Audit Committee. On July 29, 2024, there was a presentation by the auditor to the Audit Committee regarding the audit. The Committee reviewed and discussed the audit report with the Finance Director and approved forwarding it to the Town Council for acceptance.

Attachments:

1. FY23 Audit Report

Financial Impact:

Strengthens confidence in financial data and reporting

6. **Alternative Action**

Not accept the audit report

7. **Management Recommendations:**

Accept audit report

8. **Recommended Approval:**

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

Created/Initiated - 7/24/2024
Approved - 7/24/2024
Approved - 7/29/2024
Approved - 7/30/2024
Final Approval - 7/30/2024

TOWN OF FORT MYERS BEACH, FLORIDA

FINANCIAL STATEMENTS

**FOR THE FISCAL YEAR ENDED
SEPTEMBER 30, 2023**



MAULDIN & JENKINS

CPAs & ADVISORS

TOWN OF FORT MYERS BEACH, FLORIDA
FINANCIAL STATEMENTS
FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 2023

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TOWN OF FORT MYERS BEACH, FLORIDA
FINANCIAL STATEMENTS
FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 2023

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INDEPENDENT AUDITOR'S REPORT

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

Report on the Audit of the Financial Statements

Opinions

We have audited the accompanying financial statements of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of the Town of Fort Myers Beach, Florida (the "Town"), as of and for the year ended September 30, 2023, and the related notes to the financial statements, which collectively comprise the Town's basic financial statements as listed in the table of contents.

In our opinion, the financial statements referred to above present fairly, in all material respects, the respective financial position of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of the Town as of September 30, 2023, and the respective changes in financial position and, where applicable, cash flows thereof and the budgetary comparisons for the General Fund, Gas Tax Fund, Building Fund, and Beach Access Fund for the year then ended in accordance with accounting principles generally accepted in the United States of America.

Basis for Opinions

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

Responsibilities of Management for the Financial Statements

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

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

Auditor's Responsibilities for the Audit of the Financial Statements

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

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

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

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

Required Supplementary Information

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

Supplementary Information

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

Other Reporting Required by *Government Auditing Standards*

In accordance with *Government Auditing Standards*, we have also issued our report dated June 28, 2024, on our consideration of the Town's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts and grant agreements and other matters. The purpose of that report is solely to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the Town's internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the Town's internal control over financial reporting and compliance.

Mauldin & Jenkins, LLC

Bradenton, Florida
June 28, 2024

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THE TOWN OF FORT MYERS BEACH, FLORIDA

MANAGEMENT'S DISCUSSION AND ANALYSIS

YEAR ENDED SEPTEMBER 30, 2023

Introduction

As management of the Town of Fort Myers Beach, we offer readers of the Town's financial statements this narrative overview and analysis of the financial activities of the Town for the fiscal year ended September 30, 2023. We encourage readers to read the information presented herein in conjunction with additional information furnished in the Town's financial statements, which follow this narrative.

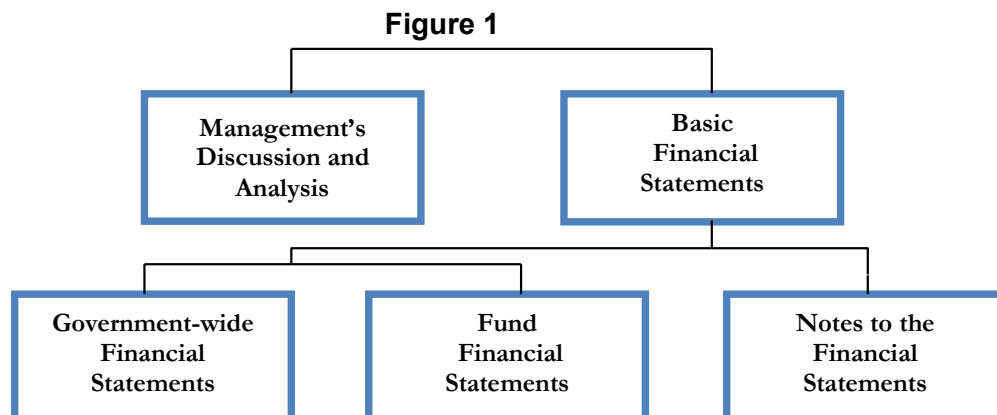
Financial Highlights

- The Town's assets and deferred outflows of resources exceeded its liabilities and deferred inflows of resources by \$68,348,321 (net position). Of this amount, \$30,643,922 is unrestricted net position that may be used to meet the Town's ongoing obligations.
- The Town's total net position increased by \$11,558,889 due primarily to the Town having received significant FEMA reimbursements along with insurance proceeds from damage caused by the catastrophic destruction of Hurricane Ian.
- The Town's combined governmental funds had combined ending fund balances of \$25,959,027 and a combined increase in fund balances of \$16,874,307, primarily due to the Bridge Loan from the state and insurance proceeds mentioned above, a significant increase in building permit revenue as recovery and mitigation efforts were well underway in response to the damage and destruction caused by Hurricane Ian, as well as receiving loan proceeds to fund the Bay Oaks Rec Center, Times Square and Bayside Park community enhancement project expenses incurred the previous year.

Overview of the Financial Statements

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

Required Components of the Annual Financial Report



THE TOWN OF FORT MYERS BEACH, FLORIDA MANAGEMENT'S DISCUSSION AND ANALYSIS YEAR ENDED SEPTEMBER 30, 2023

Basic Financial Statements

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

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

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

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

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

Government-Wide Financial Statements

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

The statement of activities presents information showing how the Town's net position changed during the 2023 fiscal year. The statement reflects the expenses of a given function or segment, offset by program revenues. Program revenues are defined as charges for services, operating grants and contributions, and capital grants and contributions directly associated with a given function. Property taxes and other taxes are reported under general revenue.

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

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

**THE TOWN OF FORT MYERS BEACH, FLORIDA
MANAGEMENT'S DISCUSSION AND ANALYSIS
YEAR ENDED SEPTEMBER 30, 2023**

Fund Financial Statements

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

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

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

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

Government-Wide Financial Analysis

Town of Fort Myers Beach's Net Position

	Governmental Activities		Business-Type Activities		Total	
	2023	2022	2023	2022	2023	2022
Current and other assets	\$ 42,207,156	\$ 14,042,645	\$ 13,682,145	\$ 10,888,143	\$ 55,889,301	\$ 24,930,788
Capital assets	22,703,803	23,079,808	55,497,221	56,365,127	78,201,024	79,444,935
Total assets	64,910,959	37,122,453	69,179,366	67,253,270	134,090,325	104,375,723
Deferred outflows of financial resources	83,109	73,055	15,099	13,273	98,208	86,328
Current and other liabilities	7,625,939	4,519,599	1,335,235	1,201,580	8,961,174	5,721,179
Noncurrent liabilities	15,289,319	1,435,008	41,453,559	40,402,730	56,742,878	41,837,738
Total liabilities	22,915,258	5,954,607	42,788,794	41,604,310	65,704,052	47,558,917
Deferred inflows of financial resources	115,225	96,220	20,935	17,482	136,160	113,702
Net investment in capital assets	19,910,046	22,341,102	15,412,225	18,386,746	35,322,271	40,727,848
Restricted	2,382,128	2,067,795	-	-	2,382,128	2,067,795
Unrestricted	19,671,411	6,735,784	10,972,511	7,258,005	30,643,922	13,993,789
Total net position	\$ 41,963,585	\$ 31,144,681	\$ 26,384,736	\$ 25,644,751	\$ 68,348,321	\$ 56,789,432

**THE TOWN OF FORT MYERS BEACH, FLORIDA
MANAGEMENT'S DISCUSSION AND ANALYSIS
YEAR ENDED SEPTEMBER 30, 2023**

Government-Wide Financial Analysis (Continued)

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

- The assets and deferred outflows of the Town of Fort Myers Beach exceeded liabilities and deferred inflows by \$68,348,321 as of September 30, 2023.
- Total net position increased by 20% over the prior year.
- The net investment in capital assets was 52% of the Town's total net position. The Town uses these capital assets to provide services to citizens; consequently, these assets are not available for future spending. Therefore, although the Town's net investment in capital assets is reported net of the outstanding related debt, the resources needed to repay that debt must be provided by other sources since the capital assets cannot be used to liquidate these liabilities.
- Net assets of the Town subjected to external restrictions on their use were 3.5% of total net position.
- Unrestricted net assets of the Town were 44.6% of total net position.
- Total liabilities of the Town increased by 39%.

Town of Fort Myers Beach's Changes Net Position

	Governmental Activities		Business-Type Activities		Total	
	2023	2022	2023	2022	2023	2022
Program revenues						
Charges for services	\$ 4,866,334	\$ 4,507,770	\$ 5,262,034	\$ 8,596,527	\$ 10,128,368	\$ 13,104,297
Operating grants and contributions	20,262,551	1,858,729	-	-	20,262,551	1,858,729
Capital grants and contributions	71,866	207,396	-	-	71,866	207,396
General revenues						
Property taxes	4,381,829	3,571,341	-	-	4,381,829	3,571,341
Franchise fees	582,166	1,196,064	-	-	582,166	1,196,064
Gas taxes	314,970	389,878	-	-	314,970	389,878
Communications taxes	342,859	564,172	-	-	342,859	564,172
Business taxes	3,149	2,961	-	-	3,149	2,961
Intergovernmental revenues, unrestricted	910,342	1,045,367	-	-	910,342	1,045,367
Investment earnings	946,294	(39,475)	281,497	24,001	1,227,791	(15,474)
Insurance recoveries	9,527,214	-	-	-	9,527,214	-
Total revenues	<u>42,209,574</u>	<u>13,304,203</u>	<u>5,543,531</u>	<u>8,620,528</u>	<u>47,753,105</u>	<u>21,924,731</u>
Program expenses						
Governmental activities						
General government	4,684,636	9,688,214	-	-	4,684,636	9,688,214
Public safety	21,034,676	640,368	-	-	21,034,676	640,368
Physical environment	183,747	216,268	-	-	183,747	216,268
Transportation	2,101,878	2,041,034	-	-	2,101,878	2,041,034
Culture/recreation	3,359,234	4,177,566	-	-	3,359,234	4,177,566
Interest on long-term debt	26,499	28,426	-	-	26,499	28,426
Business-type activities						
Water utility	-	-	4,185,086	8,436,444	4,185,086	8,436,444
Stormwater	-	-	618,460	2,307,457	618,460	2,307,457
Total expenses	<u>31,390,670</u>	<u>16,791,876</u>	<u>4,803,546</u>	<u>10,743,901</u>	<u>36,194,216</u>	<u>27,535,777</u>
Change in net position	<u>10,818,904</u>	<u>(3,487,673)</u>	<u>739,985</u>	<u>(2,123,373)</u>	<u>11,558,889</u>	<u>(5,611,046)</u>
Net position, beginning	<u>31,144,681</u>	<u>34,632,354</u>	<u>25,644,751</u>	<u>27,768,124</u>	<u>56,789,432</u>	<u>62,400,478</u>
Net position, ending	<u>\$ 41,963,585</u>	<u>\$ 31,144,681</u>	<u>\$ 26,384,736</u>	<u>\$ 25,644,751</u>	<u>\$ 68,348,321</u>	<u>\$ 56,789,432</u>

THE TOWN OF FORT MYERS BEACH, FLORIDA MANAGEMENT'S DISCUSSION AND ANALYSIS YEAR ENDED SEPTEMBER 30, 2023

Government-Wide Financial Analysis (Continued)

Governmental activities in the current year increased the Town's net position by \$10,818,904. Key net elements of these activities are as follows:

- Total governmental revenues increased by 215% from the prior year.
- Operating grants and contributions increased 977%, primarily the result of FEMA awards.
- Capital grants and contributions decreased 65% from the prior year.
- Charges for services increased 8% from the prior year, primarily the result of building permit fees.
- Investment earnings increased \$0.9 million.
- Total governmental expenses increased 87% from the prior year, primarily due to the emergency response to the catastrophic impact of Hurricane Ian.

Business-Type Activities

Business-type activities in the current year increased the Town's net position by \$739,985. Key net elements of these activities are as follows:

- Total business-type revenues decreased 36% from the prior year.
- Charges for services increased 40% from the previous year and are 95% of operating revenues.
- The Town did not receive any capital grants and contributions during the current year or the previous year.
- Total business-type expenses decreased 55% from the prior year, primarily the result of a reduction in Bulk Water expense caused by a reduction in water service related to the destruction of Hurricane Ian.

Financial Analysis of the Town's Funds

Governmental Funds

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

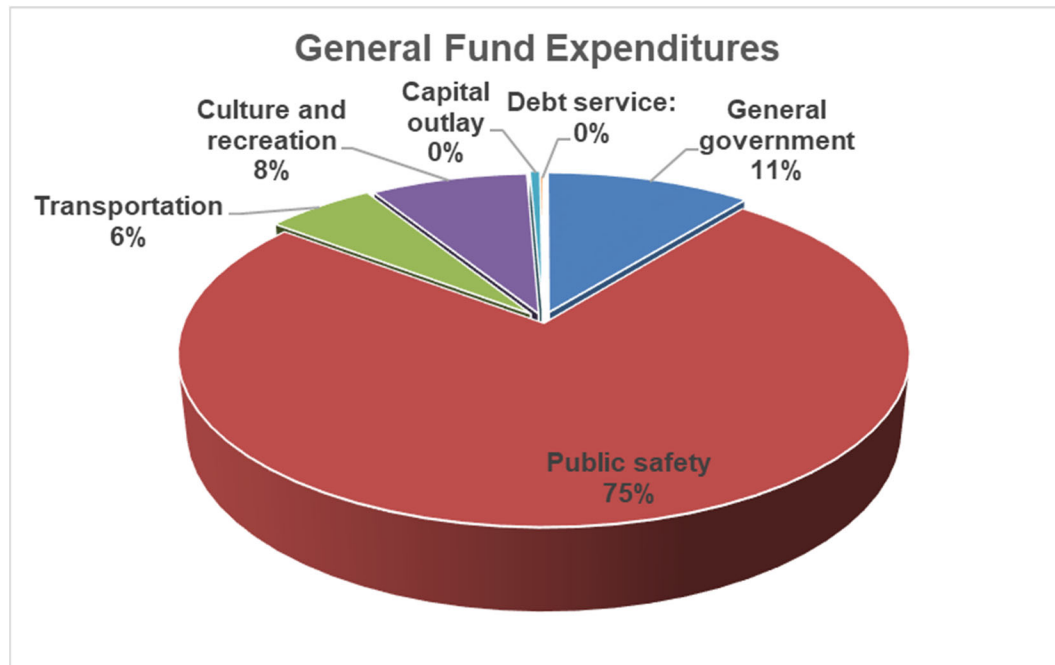
The *General Fund* is the primary operating fund for the Town. The fund accounts for all the financial resources not restricted by federal and state laws, local ordinances, or other outside restrictions. Key components and the highlights in the activities of the *General Fund* are as follows:

- Total assets increased 246% from the prior year.
- Total fund balance increased 116% from the prior year.
- Total revenues increased 191% from the prior year, and expenditures increased 231%, primarily related to emergency response to Hurricane Ian and the federal and state assistance received.

**THE TOWN OF FORT MYERS BEACH, FLORIDA
MANAGEMENT'S DISCUSSION AND ANALYSIS
YEAR ENDED SEPTEMBER 30, 2023**

Governmental Funds (Continued)

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



The *Gas Tax Fund* accounts for gas taxes and other resources restricted for road-related projects. At the end of the current year, the total fund balance was \$1,218,446. The fund balance increased 27% from the prior year.

The *Building Fund* accounts for Town-administered building permits and plans review. At the end of the current year, the fund balance was \$2,682,824. The fund balance increased 438% from the prior year.

The *Beach Access Fund* accounts for the expenditures incurred to maintain the Town's beaches and records the reimbursement received from Lee County Tourist Development Council. The amount of reimbursement decreased 58% from the prior year due to a delay in submitting reimbursements as a result of the ongoing impact of Hurricane Ian.

The *Capital Projects Fund* is maintained by transfers from the *General Fund* and other special revenue funds, as well as bond proceeds. Capital outlays totaled \$230,509 in the current year.

American Rescue Fund is a federally funded relief package used for investments in water, sewer, and infrastructure, as well as lost revenue replacement and general operating expenses. The fund had cash and cash equivalents of \$3,553,056 at September 30, 2023. There was no project activity during the year.

The *Nonmajor Governmental Funds* consist of two special revenue funds, the *Park Impact Fund* and the *Road Impact Fund*. The *Park Impact Fund* had an increase in fee revenue of \$9,134, or 79%, and the *Road Impact Fund* had a decrease in fee revenue of \$12,152, or 22%.

**THE TOWN OF FORT MYERS BEACH, FLORIDA
MANAGEMENT'S DISCUSSION AND ANALYSIS
YEAR ENDED SEPTEMBER 30, 2023**

Proprietary Funds

The *Water Fund* accounts for the assets and activities of the Town's water system. The fund's net position decreased by \$761,011, primarily due to a 51% reduction in revenue resulting from the loss of service to properties damaged or destroyed by Hurricane Ian.

The *Stormwater Fund* accounts for the assets and activities of the Town's stormwater system. The fund's net position increased by \$1,500,996, primarily due to the accumulation of funding intended to repay the SRF loan.

Budgetary Highlights

Revenue budget-to-actual in the General Fund resulted in a positive revenue variance of \$18,937,917, or 80%, greater than fiscal budget. The positive variance was due to an increase of \$10,870,818 in actual intergovernmental revenues (primarily FEMA and FDEM grants), an increase of \$9,491,244 in miscellaneous revenue (primarily insurance proceeds) and an increase of \$918,464 in investment earnings, offset by a decrease of \$2,063,231 in charges for services.

Budget-to-actual expenditures in the General Fund resulted in a negative variance of \$17,991,541, or 76%, greater than fiscal budget, primarily due to an increase of \$20,739,703 of emergency expenditures. This increase was partially offset by savings in all other functional areas as a result of a reallocation of personnel to emergency response in the first part of the year, the duration of which depended upon the position and need.

Expenditures budget-to-actual in the Gas Tax Fund resulted in a positive variance of \$932,307, or 93%, less than fiscal budget, as a result of the Town being focused on emergency response and recovery rather than on capital improvements for which a budget had been provided in the Gas Tax Fund.

Expenditure budget-to-actual in the Building Fund resulted in a positive variance of \$1,307,342, or 55%, due to vacancies and less contractual expenditures than anticipated.

Capital Asset and Debt Administration

Capital Assets

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

	Governmental Activities		Business-Type Activities		Total	
	2023	2022	2023	2022	2023	2022
Land	\$ 11,999,901	\$ 11,999,901	\$ 305,000	\$ 305,000	\$ 12,304,901	\$ 12,304,901
Buildings and leasehold improvements	3,156,560	3,353,349	384,794	434,754	3,541,354	3,788,103
Improvements other than buildings	886,138	1,073,542	-	-	886,138	1,073,542
Office furniture and equipment	36,448	25,123	1,600	2,400	38,048	27,523
Vehicles and other equipment	889,167	683,426	124,954	81,545	1,014,121	764,971
Infrastructure	5,735,589	5,557,267	54,483,109	55,083,974	60,218,698	60,641,241
Construction in progress	-	387,200	197,764	457,454	197,764	844,654
Total capital assets	<u>\$ 22,703,803</u>	<u>\$ 23,079,808</u>	<u>\$ 55,497,221</u>	<u>\$ 56,365,127</u>	<u>\$ 78,201,024</u>	<u>\$ 79,444,935</u>

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

THE TOWN OF FORT MYERS BEACH, FLORIDA MANAGEMENT'S DISCUSSION AND ANALYSIS YEAR ENDED SEPTEMBER 30, 2023

Long-Term Debt

As of September 30, 2023, and 2022 the Town had \$56,070,461 and \$41,158,712, respectively, in long-term debt. The table on the following page provides a breakdown.

	Governmental Activities		Business-Type Activities		Total	
	2023	2022	2023	2022	2023	2022
Refunding bond payable	\$ -	\$ -	\$ 180,000	\$ 360,000	\$ 180,000	\$ 360,000
Capital improvements revenue note	2,793,757	820,786	-	-	2,793,757	820,786
Note payable	11,900,000	-	-	-	11,900,000	-
State revolving fund loans	-	-	41,196,704	39,957,221	41,196,704	39,957,221
Financed purchase payable	-	20,705	-	-	-	20,705
Total debt	<u>\$ 14,693,757</u>	<u>\$ 841,491</u>	<u>\$ 41,376,704</u>	<u>\$ 40,317,221</u>	<u>\$ 56,070,461</u>	<u>\$ 41,158,712</u>

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

Economic Factors and Next Fiscal Year's Budget

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

The following factors were considered in preparing the Town's budget for the 2023-2024 fiscal year:

- As a result of the devastating impact of Hurricane Ian on the Town's capital assets, taxable property value and economy, the Town projected a \$3.5 million loss of revenue in fiscal year 2024. This revenue shortfall was to be funded by a drawdown from the Emergency Bridge Loan from the state.
- The Town identified 31.8 new positions that were needed to support the ongoing recovery efforts in the most efficient and effective manner possible. The additional cost of personnel and benefits was to be funded by a drawdown of \$800 thousand from the American Rescue Plan Fund and by the return of a \$500 thousand contribution to the Capital Fund that was intended to provide project funding but was no longer needed.
- The Town continued planning significant water and stormwater improvements. Pursuant to funding the infrastructure improvements, Ordinance 15-08 established the stormwater utility, Resolution 16-07 adopted February 16, 2016, adopted the user fee to support a dedicated source of funding, and Resolution 20-25 adopted August 17, 2020, authorized an annual rate increase based on a rate study.
- The State of Florida Department of Environmental Protection has approved two stormwater loans totaling \$26 million for the side streets in the Town, and two drinking water loans totaling \$37 million to replace the Town's water distribution lines.
- The Town continued its plan to finish drawing down proceeds from the \$10 million Capital Improvement Revenue Note, Series 2020, to fund community enhancement projects for Bay Oaks Rec Center, Times Square and Bayside Park before the loan was to expire on May 1, 2024.

**THE TOWN OF FORT MYERS BEACH, FLORIDA
MANAGEMENT'S DISCUSSION AND ANALYSIS
YEAR ENDED SEPTEMBER 30, 2023**

- Although the Town was expecting to receive funding from FEMA, the state and other granting agencies, the uncertainty of the amounts and timing made capital budgeting related to recovery difficult. It was therefore decided to amend the budget as the amounts and timing of additional funding and costs of specific projects became more certain.

Requests for Information

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

Town of Fort Myers Beach
Finance
2731 Oak Street
Fort Myers Beach, Florida 33931

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BASIC FINANCIAL STATEMENTS

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TOWN OF FORT MYERS BEACH, FLORIDA

**STATEMENT OF NET POSITION
SEPTEMBER 30, 2023**

	Governmental Activities	Business-Type Activities	Total
Assets			
Cash and cash equivalents	\$ 30,510,692	\$ 10,133,678	\$ 40,644,370
Investments	1,894,918	-	1,894,918
Due from other governments	9,228,459	1,667,451	10,895,910
Accounts receivable, net	222,408	1,502,131	1,724,539
Prepaid expenses	350,679	41,927	392,606
Restricted cash	-	336,958	336,958
Capital assets			
Nondepreciable	11,999,901	502,764	12,502,665
Depreciable	10,703,902	54,994,457	65,698,359
Total assets	<u>64,910,959</u>	<u>69,179,366</u>	<u>134,090,325</u>
Deferred outflows of resources			
Deferred outflows - OPEB	<u>83,109</u>	<u>15,099</u>	<u>98,208</u>
Liabilities			
Accounts payable and other accrued liabilities	4,072,883	917,220	4,990,103
Accrued interest payable	-	81,057	81,057
Unearned revenue	3,553,056	-	3,553,056
Payable from restricted assets			
Customer deposits	-	336,958	336,958
Noncurrent liabilities			
Due within one year	239,693	202,866	442,559
Due in more than one year	15,049,626	41,250,693	56,300,319
Total liabilities	<u>22,915,258</u>	<u>42,788,794</u>	<u>65,704,052</u>
Deferred inflows of resources			
Deferred inflows - OPEB	<u>115,225</u>	<u>20,935</u>	<u>136,160</u>
Net position			
Net investment in capital assets	19,910,046	15,412,225	35,322,271
Restricted for			
Parks and recreation	274,627	-	274,627
Transportation	2,107,501	-	2,107,501
Unrestricted	19,671,411	10,972,511	30,643,922
Total net position	<u>\$ 41,963,585</u>	<u>\$ 26,384,736</u>	<u>\$ 68,348,321</u>

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

TOWN OF FORT MYERS BEACH, FLORIDA

**STATEMENT OF ACTIVITIES
FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 2023**

		Program Revenues			Net (Expense) Revenue and Changes in Net Position		
		Charges for Services	Operating Grants and Contributions	Capital Grants and Contributions	Governmental Activities	Business-Type Activities	Total
Functions/programs	Expenses						
Governmental activities							
General government	\$ 4,684,636	\$ 3,650,192	\$ -	\$ -	\$ (1,034,444)	\$ -	\$ (1,034,444)
Public safety	21,034,676	1,373	19,095,799	8,459	(1,929,045)	-	(1,929,045)
Physical environment	183,747	-	-	-	(183,747)	-	(183,747)
Transportation	2,101,878	-	500,000	42,742	(1,559,136)	-	(1,559,136)
Culture/recreation	3,359,234	1,214,769	666,752	20,665	(1,457,048)	-	(1,457,048)
Interest on long-term debt	26,499	-	-	-	(26,499)	-	(26,499)
Total governmental activities	31,390,670	4,866,334	20,262,551	71,866	(6,189,919)	-	(6,189,919)
Business-type activities							
Water and sewer	4,185,086	3,355,940	-	-	-	(829,146)	(829,146)
Stormwater	618,460	1,906,094	-	-	-	1,287,634	1,287,634
Total business-type activities	4,803,546	5,262,034	-	-	-	458,488	458,488
Total primary government	\$ 36,194,216	\$ 10,128,368	\$ 20,262,551	\$ 71,866	(6,189,919)	458,488	(5,731,431)
General revenues							
Property taxes, levied for general purposes					4,381,829	-	4,381,829
Communication services tax					342,859	-	342,859
Gas taxes					314,970	-	314,970
Franchise fees					582,166	-	582,166
Business taxes					3,149	-	3,149
Intergovernmental revenues, unrestricted					910,342	-	910,342
Investment earnings					946,294	281,497	1,227,791
Insurance recoveries					9,527,214	-	9,527,214
Total general revenues					17,008,823	281,497	17,290,320
Change in net position					10,818,904	739,985	11,558,889
Net position, beginning of year					31,144,681	25,644,751	56,789,432
Net position, end of year					\$ 41,963,585	\$ 26,384,736	\$ 68,348,321

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

TOWN OF FORT MYERS BEACH, FLORIDA
BALANCE SHEET
GOVERNMENTAL FUNDS
SEPTEMBER 30, 2023

	General	Gas Tax	Building	Beach Access	Capital Projects	American Rescue	Nonmajor Governmental Funds	Total Governmental Funds
Assets								
Cash and cash equivalents	\$ 16,902,403	\$ 843,162	\$ 2,862,820	\$ -	\$ 5,185,569	\$ 3,553,056	\$ 1,163,682	\$ 30,510,692
Investments	1,534,662	360,256	-	-	-	-	-	1,894,918
Accounts receivable	210,503	-	11,905	-	-	-	-	222,408
Prepaid items	280,338	-	70,341	-	-	-	-	350,679
Due from other funds	1,151,349	-	-	-	-	-	-	1,151,349
Due from other governments	7,938,461	20,547	-	1,023,058	246,393	-	-	9,228,459
Total assets	<u>\$ 28,017,716</u>	<u>\$ 1,223,965</u>	<u>\$ 2,945,066</u>	<u>\$ 1,023,058</u>	<u>\$ 5,431,962</u>	<u>\$ 3,553,056</u>	<u>\$ 1,163,682</u>	<u>\$ 43,358,505</u>
Liabilities, deferred inflows of resources and fund balances								
Liabilities								
Accounts payable and accrued liabilities	\$ 3,769,102	\$ 5,519	\$ 262,242	\$ 18,505	\$ 17,515	\$ -	\$ -	\$ 4,072,883
Due to other funds	-	-	-	1,151,349	-	-	-	1,151,349
Unearned revenue	-	-	-	-	-	3,553,056	-	3,553,056
Total liabilities	<u>3,769,102</u>	<u>5,519</u>	<u>262,242</u>	<u>1,169,854</u>	<u>17,515</u>	<u>3,553,056</u>	<u>-</u>	<u>8,777,288</u>
Deferred inflows of resources								
Unavailable revenue	<u>7,352,739</u>	<u>-</u>	<u>-</u>	<u>1,023,058</u>	<u>246,393</u>	<u>-</u>	<u>-</u>	<u>8,622,190</u>
Fund balances (deficit)								
Nonspendable								
Prepaid items	280,338	-	70,341	-	-	-	-	350,679
Restricted								
General government - building inspections	-	-	2,612,483	-	-	-	-	2,612,483
Parks and recreation	-	-	-	-	-	-	274,627	274,627
Transportation	-	1,218,446	-	-	-	-	889,055	2,107,501
Committed								
Beach renourishment	100,000	-	-	-	-	-	-	100,000
Capital projects	-	-	-	-	5,168,054	-	-	5,168,054
Workforce housing	159,950	-	-	-	-	-	-	159,950
Public works - landscaping	782,958	-	-	-	-	-	-	782,958
Emergency	1,215,000	-	-	-	-	-	-	1,215,000
Compensated absences	120,000	-	-	-	-	-	-	120,000
Assigned								
Legal and general liability	200,000	-	-	-	-	-	-	200,000
Health	220,000	-	-	-	-	-	-	220,000
Operating reserve	695,000	-	-	-	-	-	-	695,000
Unassigned	<u>13,122,629</u>	<u>-</u>	<u>-</u>	<u>(1,169,854)</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>11,952,775</u>
Total fund balances (deficit)	<u>16,895,875</u>	<u>1,218,446</u>	<u>2,682,824</u>	<u>(1,169,854)</u>	<u>5,168,054</u>	<u>-</u>	<u>1,163,682</u>	<u>25,959,027</u>
Total liabilities, deferred inflows of resources and fund balances	<u>\$ 28,017,716</u>	<u>\$ 1,223,965</u>	<u>\$ 2,945,066</u>	<u>\$ 1,023,058</u>	<u>\$ 5,431,962</u>	<u>\$ 3,553,056</u>	<u>\$ 1,163,682</u>	<u>\$ 43,358,505</u>

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

**TOWN OF FORT MYERS BEACH, FLORIDA
RECONCILIATION OF THE BALANCE SHEET-
GOVERNMENTAL FUNDS TO THE STATEMENT OF NET POSITION
SEPTEMBER 30, 2023**

Fund balances, total governmental funds		\$ 25,959,027
Amounts reported for governmental activities in the statement of net position are different because:		
Capital assets used in governmental activities are not financial resources and therefore, are not reported in the funds.		
Governmental nondepreciable capital assets	\$ 11,999,901	
Governmental depreciable capital assets, net	<u>10,703,902</u>	22,703,803
Deferred outflows, deferred inflows, and the total OPEB liability related to the Town's other post-employment benefits plan are not expected to be liquidated with expendable available financial resources and, therefore are not reported in the funds.		
Deferred outflows - OPEB	83,109	
Deferred inflows - OPEB	(115,225)	
Total OPEB liability	<u>(232,256)</u>	(264,372)
Certain deferred inflows of resources are not available to pay for current period expenditures and, therefore, are reported as unavailable revenue in the funds.		8,622,190
Long-term liabilities, including capital leases and compensated absences are not due and payable in the current period and therefore, are not reported in the funds.		
Compensated absences	(363,306)	
Capital improvements revenue note	(2,793,757)	
Note payable	<u>(11,900,000)</u>	<u>(15,057,063)</u>
Net position of governmental activities		<u>\$ 41,963,585</u>

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

TOWN OF FORT MYERS BEACH, FLORIDA
STATEMENT OF REVENUES, EXPENDITURES AND CHANGES IN FUND BALANCES-
GOVERNMENTAL FUNDS
FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 2023

	General	Gas Tax	Building	Beach Access	Capital Projects	American Rescue	Nonmajor Governmental Funds	Total Governmental Funds
Revenues								
Taxes								
Property	\$ 4,381,829	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 4,381,829
Gas	-	314,970	-	-	-	-	-	314,970
Franchise	582,166	-	-	-	-	-	-	582,166
Communication services	342,859	-	-	-	-	-	-	342,859
Local business	3,149	-	-	-	-	-	-	3,149
Licenses and permits	64,880	-	3,234,504	-	-	-	-	3,299,384
Intergovernmental	12,070,023	7,106	-	420,359	500,000	-	-	12,997,488
Charges for services	1,214,769	-	-	-	-	-	-	1,214,769
Fines and forfeitures	216,478	-	-	-	-	-	-	216,478
Special assessments/impact fees	-	-	-	-	-	-	63,407	63,407
Investment earnings	925,464	3,530	-	17,300	-	-	-	946,294
Miscellaneous	9,661,544	-	1,373	-	-	-	-	9,662,917
Total revenues	<u>29,463,161</u>	<u>325,606</u>	<u>3,235,877</u>	<u>437,659</u>	<u>500,000</u>	<u>-</u>	<u>63,407</u>	<u>34,025,710</u>
Expenditures								
Current								
General government	3,045,036	-	1,051,613	-	-	-	-	4,096,649
Public safety	21,026,053	-	-	-	-	-	-	21,026,053
Transportation	1,617,692	74,680	-	-	407,975	-	-	2,100,347
Culture and recreation	2,331,602	-	-	664,473	-	-	-	2,996,075
Capital outlay	148,113	-	-	379,424	230,509	-	-	758,046
Debt service:								
Principal	12,403	-	-	-	8,302	-	-	20,705
Interest	26,214	-	-	-	285	-	-	26,499
Total expenditures	<u>28,207,113</u>	<u>74,680</u>	<u>1,051,613</u>	<u>1,043,897</u>	<u>647,071</u>	<u>-</u>	<u>-</u>	<u>31,024,374</u>
Excess (deficiency) of revenues over (under) expenditures	<u>1,256,048</u>	<u>250,926</u>	<u>2,184,264</u>	<u>(606,238)</u>	<u>(147,071)</u>	<u>-</u>	<u>63,407</u>	<u>3,001,336</u>
Other financing sources (uses)								
Loan issuance	11,900,000	-	-	-	1,972,971	-	-	13,872,971
Transfers in	-	-	-	-	4,072,739	-	-	4,072,739
Transfers out	(4,072,739)	-	-	-	-	-	-	(4,072,739)
Total other financing sources, net	<u>7,827,261</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>6,045,710</u>	<u>-</u>	<u>-</u>	<u>13,872,971</u>
Change in fund balances	<u>9,083,309</u>	<u>250,926</u>	<u>2,184,264</u>	<u>(606,238)</u>	<u>5,898,639</u>	<u>-</u>	<u>63,407</u>	<u>16,874,307</u>
Fund balances (deficits), beginning of year	<u>7,812,566</u>	<u>967,520</u>	<u>498,560</u>	<u>(563,616)</u>	<u>(730,585)</u>	<u>-</u>	<u>1,100,275</u>	<u>9,084,720</u>
Fund balances (deficit), end of year	<u>\$ 16,895,875</u>	<u>\$ 1,218,446</u>	<u>\$ 2,682,824</u>	<u>\$ (1,169,854)</u>	<u>\$ 5,168,054</u>	<u>\$ -</u>	<u>\$ 1,163,682</u>	<u>\$ 25,959,027</u>

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

TOWN OF FORT MYERS BEACH, FLORIDA
RECONCILIATION OF THE STATEMENT OF REVENUES, EXPENDITURES AND
CHANGES IN FUND BALANCES OF GOVERNMENTAL FUNDS TO THE
STATEMENT OF ACTIVITIES
FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 2023

Net change in fund balances, total governmental funds **\$ 16,874,307**

Amounts reported for governmental activities in the statement
of net position are different because:

Governmental funds report capital outlays as expenditures.
However, in the statement of activities, the cost of these assets
is depreciated over their estimated useful lives.

Capital outlay	\$ 652,890	
Less current year depreciation	<u>(1,028,895)</u>	(376,005)

Revenues in the statement of activities that do not provide current financial resources are not reported as revenues in the funds.		8,183,864
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The issuance of long-term debt provides current financial resources to
governmental funds, while the repayment of principal of long-term debt
consumes the current financial resources of governmental funds. Neither
transaction, however has any effect on net position. This amount is the net
effect of these differences in the treatment of long-term liabilities.

Issuance of long-term debt	(13,872,971)	
Principal repayment of long-term debt	<u>20,705</u>	(13,852,266)

In the governmental funds, current year expenditures related to OPEB are comprised solely of amounts contributed to the plan for the current year. However, in the statement of activities, expenses related to OPEB include amounts that do not require the use of current financial resources. This amount represents the difference in the required accounting treatment of OPEB and related items.		(38,996)
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Some expenses reported in the statement of activities do not
require the use of current financial resources and therefore, are
not reported as expenditures in governmental funds.

Change in compensated absences		<u>28,000</u>
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Change in net position of governmental activities		<u><u>\$ 10,818,904</u></u>
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The accompanying notes to financial statements are an integral part of this statement.

TOWN OF FORT MYERS BEACH, FLORIDA
STATEMENT OF REVENUES, EXPENDITURES AND CHANGES IN FUND
BALANCES-BUDGET AND ACTUAL-GENERAL FUND
FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 2023

	Budgeted Amounts			Variance With Final Budget- Positive (Negative)
	Original	Final	Actual	
Revenues				
Taxes				
Property	\$ 4,246,739	\$ 4,246,739	\$ 4,381,829	\$ 135,090
Franchise	1,042,000	1,042,000	582,166	(459,834)
Communications services	550,000	550,000	342,859	(207,141)
Local business	2,000	2,000	3,149	1,149
Licenses and permits	30,000	30,000	64,880	34,880
Intergovernmental	1,199,205	1,199,205	12,070,023	10,870,818
Charges for services	3,278,000	3,278,000	1,214,769	(2,063,231)
Fines and forfeitures	-	-	216,478	216,478
Investment income	7,000	7,000	925,464	918,464
Miscellaneous	170,300	170,300	9,661,544	9,491,244
Total revenues	<u>10,525,244</u>	<u>10,525,244</u>	<u>29,463,161</u>	<u>18,937,917</u>
Expenditures				
Current				
General government	3,326,410	3,665,210	3,045,036	620,174
Public safety	664,445	286,350	21,026,053	(20,739,703)
Transportation	2,257,402	2,256,802	1,617,692	639,110
Culture and recreation	3,385,935	3,425,830	2,331,602	1,094,228
Capital outlay	-	-	148,113	(148,113)
Debt service:				
Principal	500,000	500,000	12,403	487,597
Interest	81,380	81,380	26,214	55,166
Total expenditures	<u>10,215,572</u>	<u>10,215,572</u>	<u>28,207,113</u>	<u>(17,991,541)</u>
Excess (deficiency) of revenues over (under) expenditures	<u>309,672</u>	<u>309,672</u>	<u>1,256,048</u>	<u>946,376</u>
Other financing sources (uses)				
Loan issuance	-	-	11,900,000	11,900,000
Transfers out	(4,072,739)	(4,072,739)	(4,072,739)	-
Total other financing sources (uses)	<u>(4,072,739)</u>	<u>(4,072,739)</u>	<u>7,827,261</u>	<u>11,900,000</u>
Change in fund balance	<u>(3,763,067)</u>	<u>(3,763,067)</u>	<u>9,083,309</u>	<u>12,846,376</u>
Fund balance, beginning of year	<u>7,812,566</u>	<u>7,812,566</u>	<u>7,812,566</u>	<u>-</u>
Fund balance, end of year	<u>\$ 4,049,499</u>	<u>\$ 4,049,499</u>	<u>\$ 16,895,875</u>	<u>\$ 12,846,376</u>

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

TOWN OF FORT MYERS BEACH, FLORIDA
STATEMENT OF REVENUES, EXPENDITURES AND CHANGES IN FUND
BALANCES-BUDGET AND ACTUAL-GAS TAX FUND
FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 2023

	Budgeted Amounts			Variance With Final Budget- Positive (Negative)
	Original	Final	Actual	
Revenues				
Taxes				
Gas taxes	\$ 232,500	\$ 232,500	\$ 314,970	\$ 82,470
Intergovernmental	-	-	7,106	7,106
Investment loss	-	-	3,530	3,530
Total revenues	<u>232,500</u>	<u>232,500</u>	<u>325,606</u>	<u>93,106</u>
Expenditures				
Current				
Transportation	232,500	232,500	74,680	157,820
Capital outlay	774,487	774,487	-	774,487
Total expenditures	<u>1,006,987</u>	<u>1,006,987</u>	<u>74,680</u>	<u>932,307</u>
Change in fund balance	(774,487)	(774,487)	250,926	1,025,413
Fund balance, beginning of year	<u>967,520</u>	<u>967,520</u>	<u>967,520</u>	<u>-</u>
Fund balance, end of year	<u>\$ 193,033</u>	<u>\$ 193,033</u>	<u>\$ 1,218,446</u>	<u>\$ 1,025,413</u>

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

TOWN OF FORT MYERS BEACH, FLORIDA
STATEMENT OF REVENUES, EXPENDITURES AND CHANGES IN FUND
BALANCES-BUDGET AND ACTUAL-BUILDING FUND
FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 2023

	Budgeted Amounts			Variance With Final Budget- Positive (Negative)
	Original	Final	Actual	
Revenues				
Licenses and permits	\$ 720,000	\$ 3,500,000	\$ 3,234,504	\$ (265,496)
Miscellaneous	-	-	1,373	1,373
Total revenues	<u>720,000</u>	<u>3,500,000</u>	<u>3,235,877</u>	<u>(264,123)</u>
Expenditures				
Current				
General government	1,102,205	2,358,955	1,051,613	1,307,342
Total expenditures	<u>1,102,205</u>	<u>2,358,955</u>	<u>1,051,613</u>	<u>1,307,342</u>
Change in fund balance	(382,205)	1,141,045	2,184,264	1,043,219
Fund balance, beginning of year	<u>498,560</u>	<u>498,560</u>	<u>498,560</u>	<u>-</u>
Fund balance, end of year	<u>\$ 116,355</u>	<u>\$ 1,639,605</u>	<u>\$ 2,682,824</u>	<u>\$ 1,043,219</u>

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

TOWN OF FORT MYERS BEACH, FLORIDA
STATEMENT OF REVENUES, EXPENDITURES AND CHANGES IN FUND
BALANCES-BUDGET AND ACTUAL-BEACH ACCESS FUND
FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 2023

	Budgeted Amounts			Variance With Final Budget- Positive (Negative)
	Original	Final	Actual	
Revenues				
Intergovernmental	\$ 1,408,825	\$ 1,408,825	\$ 420,359	\$ (988,466)
Investment income	-	-	17,300	17,300
Total revenues	<u>1,408,825</u>	<u>1,408,825</u>	<u>437,659</u>	<u>(971,166)</u>
Expenditures				
Current				
Culture and recreation	990,325	990,325	664,473	325,852
Capital outlay	418,500	418,500	379,424	39,076
Total expenditures	<u>1,408,825</u>	<u>1,408,825</u>	<u>1,043,897</u>	<u>364,928</u>
Change in fund balance	-	-	(606,238)	(606,238)
Fund balance (deficit), beginning of year	<u>(563,616)</u>	<u>(563,616)</u>	<u>(563,616)</u>	<u>-</u>
Fund balance (deficit), end of year	<u>\$ (563,616)</u>	<u>\$ (563,616)</u>	<u>\$ (1,169,854)</u>	<u>\$ (606,238)</u>

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

TOWN OF FORT MYERS BEACH, FLORIDA
STATEMENT OF NET POSITION
PROPRIETARY FUNDS
SEPTEMBER 30, 2023

	<u>Water Fund</u>	<u>Stormwater Fund</u>	<u>Total</u>
Assets			
Current assets			
Cash	\$ 2,870,904	\$ 7,262,774	\$ 10,133,678
Accounts receivable, net	1,267,138	234,993	1,502,131
Due from other governments	1,156,515	510,936	1,667,451
Prepaid items	36,108	5,819	41,927
Total current assets	<u>5,330,665</u>	<u>8,014,522</u>	<u>13,345,187</u>
Noncurrent assets			
Restricted cash	336,958	-	336,958
Capital assets, nondepreciable	485,656	17,108	502,764
Capital assets, depreciable, net	37,922,564	17,071,893	54,994,457
Total noncurrent assets	<u>38,745,178</u>	<u>17,089,001</u>	<u>55,834,179</u>
Total assets	<u>44,075,843</u>	<u>25,103,523</u>	<u>69,179,366</u>
Deferred outflows of resources			
Deferred outflow - OPEB	<u>12,374</u>	<u>2,725</u>	<u>15,099</u>
Liabilities			
Current liabilities			
Payable from current assets			
Accounts payable	895,412	21,808	917,220
Accrued interest payable	63,195	17,862	81,057
Compensated absences	15,448	7,418	22,866
Notes payable, due within one year	180,000	-	180,000
Payable from restricted assets			
Customer deposits	336,958	-	336,958
Total current liabilities	<u>1,491,013</u>	<u>47,088</u>	<u>1,538,101</u>
Long-term liabilities			
Compensated absences	7,967	3,826	11,793
Notes payable	27,306,750	13,889,953	41,196,703
Total OPEB liability	34,581	7,616	42,197
Total long-term liabilities	<u>27,349,298</u>	<u>13,901,395</u>	<u>41,250,693</u>
Total liabilities	<u>28,840,311</u>	<u>13,948,483</u>	<u>42,788,794</u>
Deferred inflows of resources			
Deferred Inflows - OPEB	<u>17,156</u>	<u>3,779</u>	<u>20,935</u>
Net position			
Net investment in capital assets	11,702,241	3,709,984	15,412,225
Unrestricted	3,528,509	7,444,002	10,972,511
Total net position	<u>\$ 15,230,750</u>	<u>\$ 11,153,986</u>	<u>\$ 26,384,736</u>

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

TOWN OF FORT MYERS BEACH, FLORIDA
STATEMENT OF REVENUES, EXPENSES AND CHANGES IN NET POSITION
PROPRIETARY FUNDS
FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 2023

	Water Fund	Stormwater Fund	Total
Operating revenues			
Charges for services	\$ 3,352,838	\$ 1,906,094	\$ 5,258,932
Miscellaneous	3,102	-	3,102
Total operating revenues	<u>3,355,940</u>	<u>1,906,094</u>	<u>5,262,034</u>
Operating expenses			
Bulk water	1,265,162	-	1,265,162
Depreciation expense	1,091,638	466,027	1,557,665
Repairs and maintenance	31,380	5,792	37,172
Salaries and benefits	775,443	108,131	883,574
Insurance	109,212	-	109,212
Power	25,576	-	25,576
Professional services	12,274	-	12,274
Other operating supplies and expenses	762,812	41,740	804,552
Total operating expenses	<u>4,073,497</u>	<u>621,690</u>	<u>4,695,187</u>
Operating income (loss)	<u>(717,557)</u>	<u>1,284,404</u>	<u>566,847</u>
Nonoperating revenues (expenses)			
Interest income	68,135	213,362	281,497
Interest expense	(123,123)	-	(123,123)
Gain on disposal of capital assets	11,534	3,230	14,764
Total nonoperating revenues (expenses)	<u>(43,454)</u>	<u>216,592</u>	<u>173,138</u>
Change in net position	<u>(761,011)</u>	<u>1,500,996</u>	<u>739,985</u>
Net position, beginning of year	<u>15,991,761</u>	<u>9,652,990</u>	<u>25,644,751</u>
Net position, end of year	<u><u>\$ 15,230,750</u></u>	<u><u>\$ 11,153,986</u></u>	<u><u>\$ 26,384,736</u></u>

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

TOWN OF FORT MYERS BEACH, FLORIDA
STATEMENT OF CASH FLOWS
PROPRIETARY FUNDS
FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 2023

	Water Fund	Stormwater Fund	Total
Cash flows from operating activities			
Cash received from customers	\$ 2,823,907	\$ 1,805,204	\$ 4,629,111
Cash paid to suppliers	(2,067,140)	(72,603)	(2,139,743)
Cash paid to employees	(791,874)	(98,727)	(890,601)
Net cash provided by (used by) operating activities	<u>(35,107)</u>	<u>1,633,874</u>	<u>1,598,767</u>
Cash flows from capital and related financing activities			
Principal payment on notes payable and bonds	(180,000)	-	(180,000)
Proceeds from loan	629,282	1,433,492	2,062,774
Interest paid	(124,752)	-	(124,752)
Acquisition and construction of capital assets	(633,311)	(41,684)	(674,995)
Net cash provided by (used by) capital and related financing activities	<u>(308,781)</u>	<u>1,391,808</u>	<u>1,083,027</u>
Cash flows from investing activities			
Interest received	<u>68,135</u>	<u>213,362</u>	<u>281,497</u>
Net change in cash and cash equivalents	(275,753)	3,239,044	2,963,291
Cash and cash equivalents, beginning of year	<u>3,483,615</u>	<u>4,023,730</u>	<u>7,507,345</u>
Cash and cash equivalents, end of year	<u><u>\$ 3,207,862</u></u>	<u><u>\$ 7,262,774</u></u>	<u><u>\$ 10,470,636</u></u>
Reconciliation of cash and cash equivalents to statement of net position			
Cash and cash equivalents	\$ 2,870,904	\$ 7,262,774	\$ 10,133,678
Restricted cash	336,958	-	336,958
Total cash and cash equivalents	<u><u>\$ 3,207,862</u></u>	<u><u>\$ 7,262,774</u></u>	<u><u>\$ 10,470,636</u></u>
Reconciliation of operating income (loss) to net cash provided by (used by) operating activities			
Operating income (loss)	\$ (717,557)	\$ 1,284,404	\$ 566,847
Adjustment to reconcile operating income (loss) to net cash provided by (used by) operating activities			
Depreciation expense	1,091,638	466,027	1,557,665
Decrease (increase) in assets			
Accounts receivable	(517,798)	(24,638)	(542,436)
Prepaid items	(15,785)	(5,294)	(21,079)
Due from other funds	-	-	-
Deferred outflow - OPEB	(1,497)	(329)	(1,826)
Increase (decrease) in liabilities			
Accounts payable	145,249	(19,777)	125,472
Due to other funds	(14,235)	(76,252)	(90,487)
Customer deposits	9,812	-	9,812
Compensated absences	(22,237)	8,125	(14,112)
Deferred inflow - OPEB	2,830	623	3,453
Total OPEB liability	4,473	985	5,458
Net cash provided by (used by) operating activities	<u><u>\$ (35,107)</u></u>	<u><u>\$ 1,633,874</u></u>	<u><u>\$ 1,598,767</u></u>

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

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TOWN OF FORT MYERS BEACH, FLORIDA

NOTES TO THE FINANCIAL STATEMENTS SEPTEMBER 30, 2023

NOTE 1 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

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

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

A. Reporting Entity

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

B. Government-Wide and Fund Financial Statements

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

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

TOWN OF FORT MYERS BEACH, FLORIDA

NOTES TO THE FINANCIAL STATEMENTS SEPTEMBER 30, 2023

NOTE 1 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

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

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

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

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

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

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

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

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

The Town reports the following major proprietary funds:

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

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

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

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

TOWN OF FORT MYERS BEACH, FLORIDA

NOTES TO THE FINANCIAL STATEMENTS SEPTEMBER 30, 2023

NOTE 1 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

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

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

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

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

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

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

TOWN OF FORT MYERS BEACH, FLORIDA

NOTES TO THE FINANCIAL STATEMENTS SEPTEMBER 30, 2023

NOTE 1 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

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

Cash and Investments

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

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

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

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

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

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

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

Receivables

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

TOWN OF FORT MYERS BEACH, FLORIDA

NOTES TO THE FINANCIAL STATEMENTS SEPTEMBER 30, 2023

NOTE 1 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

Interfund Transactions

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

Prepaid Items

Payments made to vendors for services that will benefit periods beyond September 30, 2023 are recorded as prepaid items using the consumption method by recording an asset for the prepaid amount and reflecting the expenditure/expense in the year in which services are consumed. At the fund reporting level, an equal amount of fund balance is reported as nonspendable as this amount is not available for general appropriation.

Restricted Assets

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

Capital Assets

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

Capital assets are recorded at cost if purchased or constructed. Donated capital assets are recorded at their acquisition value at the date of donation. The costs of normal maintenance and repairs that do not add to the value of the asset or materially extend asset lives are not capitalized. The Town follows a capitalization policy that calls for the capitalization of all capital assets that have costs of \$5,000 or more and useful lives in excess of one year. Property, plant and equipment are depreciated using the straight-line method over the following estimated useful lives:

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

TOWN OF FORT MYERS BEACH, FLORIDA

NOTES TO THE FINANCIAL STATEMENTS SEPTEMBER 30, 2023

NOTE 1 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

Deferred Outflows/Inflows of Resources

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

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

Long-Term Obligations

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

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

Compensated Absences

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

Fund Balance/Net Position

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

TOWN OF FORT MYERS BEACH, FLORIDA

NOTES TO THE FINANCIAL STATEMENTS SEPTEMBER 30, 2023

NOTE 1 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

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

Fund balances are classified as follows:

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

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

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

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

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

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

TOWN OF FORT MYERS BEACH, FLORIDA

NOTES TO THE FINANCIAL STATEMENTS SEPTEMBER 30, 2023

NOTE 1 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

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

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

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

- Committed
- Assigned
- Unassigned

Property Taxes

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

Key dates in the property tax cycle (latest date, where appropriate) are as follows:

July 1	Assessment roll validated
September 30	Millage resolution approved and taxes levied following certificate of assessment roll
October 1	Beginning of fiscal year for which tax is to be levied
November 1	Property taxes due and payable (levy date) with various discount provisions through March 1
April 1	Taxes become delinquent
Prior to June 1	Tax certificates sold by Lee County Tax Collector

TOWN OF FORT MYERS BEACH, FLORIDA

NOTES TO THE FINANCIAL STATEMENTS SEPTEMBER 30, 2023

NOTE 2 – STEWARDSHIP, COMPLIANCE AND ACCOUNTABILITY

Budgetary Information

The Town follows the procedures enumerated below in establishing the legally adopted budgetary data reflected in the fund financial statements:

1. On or before July 15 of each year, the Town Manager is to submit to the Town Council a proposed operating budget, including a Town Manager's message explaining the budget, for the fiscal year commencing the following October 1. The operating budget will include a complete financial plan of all Town funds and activities for the ensuing fiscal year.
2. The Town Council shall publish in one or more newspapers of general circulation the time and place of public hearings. Public hearings are then conducted to obtain taxpayer comments.
3. Prior to October 1, the budget is legally enacted through passage of a resolution required by Town Charter and as required by the State of Florida.
4. Budgets are adopted on a basis consistent with accounting principles generally accepted in the United States of America.
5. Budget amounts, as shown in the fund financial statements, are as originally adopted and as finally amended by the Town Council. If, during the fiscal year, additional revenues become available for appropriation in excess of those estimated in the budget, the Town Council may make supplemental appropriations by resolution for the year up to the amount of such excess. There were no supplemental appropriations during the year.
6. The annual budgets serve as the legal authorization for expenditures. Expenditures cannot legally exceed the total amount budgeted for each fund. The Town Council must approve all budget amendments, which change the legally adopted total appropriation for a fund. Authority to transfer budget within a fund is delegated to the Town Council. Appropriations lapse at the fiscal year-end.

Deficit Fund Balance

The Beach Access Fund reported a deficit of \$1,169,854. The Town expects the deficit to be recovered from subsequent reimbursement requests from the Tourist Development Council and the recognition of unavailable revenues for the Beach Access Fund.

Excess of Expenditures over Appropriations

For the year ended September 30, 2023, expenditures exceeded appropriations in public safety and capital outlay areas of the General Fund by \$20,739,703 and \$148,113.

TOWN OF FORT MYERS BEACH, FLORIDA

NOTES TO THE FINANCIAL STATEMENTS SEPTEMBER 30, 2023

NOTE 3 – CASH AND INVESTMENTS

Deposits

Custodial credit risk for deposits is the risk that, in the event of the failure of a depository financial institution, a government will not be able to recover deposits or will not be able to recover collateral securities that are in the possession of an outside party. In accordance with its policy, all Town depositories are banks designated by the Florida State Treasurer as qualified public depositories. Chapter 280 of the Florida Statutes, *Florida Security for Public Deposits Act*, provides procedures for public depositories to ensure public monies in banks and saving and loans are collateralized with the Treasurer as agent for the public entities. Chapter 280 defines deposits as demand deposit accounts, time deposit accounts, and non-negotiable certificates of deposit.

Financial institutions qualifying as public depositories shall deposit with the Treasurer eligible collateral having a market value equal to or in excess of the average daily balance of public deposits times the depository collateral pledging level required pursuant to Chapter 280 as computed and reported monthly or 125% of the average monthly balance, whichever is greater. The Public Deposit Security Trust Fund has a procedure to allocate and recover losses in the event of a default or insolvency. When public deposits are made in accordance with Chapter 280, no public depositor shall be liable for any loss thereof, and therefore, the Town is not exposed to custodial credit risk.

Investments

As of September 30, 2023, the Town had the following investments:

Investment Type	Percent of Portfolio	Fair Value
Florida Municipal Investment Trust (FMIT)	77.42%	\$ 1,467,138
SBA Florida PRIME	22.58%	427,780
		<u>\$ 1,894,918</u>

The FMIT is an external investment pool. The Town's investment in the FMIT is not evidenced by securities that exist in physical or book form and, therefore, disclosures for concentration of credit risk and custodial credit risk are not applicable. The Town's investment at FMIT is in the Intermediate High Quality Bond Fund. This fund was rated AAa/S3 by Fitch Ratings as of September 30, 2023. The Town's investment policy addresses interest rate risk by requiring that the Town's investment portfolio be structured so that securities mature to meet cash requirements for ongoing operations and/or long-term debt payments, thereby avoiding the need to sell securities on the open market prior to maturity. The weighted average days to maturity (WAM) of the FMIT Intermediate High Quality Bond Fund at September 30, 2023 was 4.9 years.

TOWN OF FORT MYERS BEACH, FLORIDA

NOTES TO THE FINANCIAL STATEMENTS SEPTEMBER 30, 2023

NOTE 3 – CASH AND INVESTMENTS (CONTINUED)

In accordance with GASBS No. 79, *Certain External Investment Pools and Pool Participants*, the Florida State Board of Administration's (SBA) Florida Prime meets the necessary criteria to elect to measure all of the investments in Florida PRIME at amortized cost. Therefore, the Town's participant account balance should also be considered the fair value of its investment and exempt from the GASBS No. 72, *Fair Value Measurement and Application*. The WAM of the Florida PRIME at September 30, 2023 was 35 days and the weighted average life (WAL) was 75 days. The Florida PRIME is rated AAAM by *Standards and Poor's*. The Florida PRIME is administered by SBA under the regulatory oversight of the State of Florida, Chapter 19-7, *Florida Administrative Code*.

With regard to redemption gates, Chapter 218.409(8)(a), Florida Statutes, states that "The principal, and any part thereof, of each account constituting the trust fund is subject to payment at any time from the moneys in the trust fund. However, the Executive Director may, in good faith, on the occurrence of an event that has a material impact on liquidity or operations of the trust fund, for 48 hours limit contributions to or withdrawals from the trust fund to ensure that the Board can invest moneys entrusted to it in exercising its fiduciary responsibility. Such action must be immediately disclosed to all participants, the Trustees, the Joint Legislative Auditing Committee, the Investment Advisory Council, and the Participant Local Government Advisory Council. The Trustees shall convene an emergency meeting as soon as practicable from the time the Executive Director has instituted such measures and review the necessity of those measures. If the Trustees are unable to convene an emergency meeting before the expiration of the 48-hour moratorium on contributions and withdrawals, the moratorium may be extended by the Executive Director until the Trustees are able to meet to review the necessity for the moratorium. If the Trustees agree with such measures, the Trustees shall vote to continue the measures for up to an additional 15 days. The Trustees must convene and vote to continue any such measures before the expiration of the time limit set, but in no case may the time limit set by the Trustees exceed 15 days."

With regard to liquidity fees, Florida Statute 218.409(4) provides authority for the SBA to impose penalties for early withdrawal, subject to disclosure in the enrollment materials of the amount and purpose of such fees. At present, no such disclosure has been made.

As of September 30, 2023, there were no redemption fees or maximum transaction amounts, or any other requirements that serve to limit a participant's daily access to 100% of their account value. Florida PRIME did not participate in a securities lending program in the period October 1, 2022 through September 30, 2023.

Fair Value Measurements

The Town categorizes its fair value measurements within the fair value hierarchy established by GAAP. The hierarchy is based on the valuation inputs used to measure the fair value of the asset. Level 1 inputs are quoted prices in active markets for identical assets; Level 2 inputs are significant other observable inputs; and Level 3 inputs are significant unobservable inputs.

The Town has the following recurring fair value measurements as of September 30, 2023: FMIT (Intermediate High Quality Bond Fund) of \$1.47 million based on market-corroborated date (Level 2).

TOWN OF FORT MYERS BEACH, FLORIDA

NOTES TO THE FINANCIAL STATEMENTS SEPTEMBER 30, 2023

NOTE 4 – ACCOUNTS RECEIVABLE

Receivables at September 30, 2023, including the applicable allowances for uncollectible accounts, are as follows:

	Accounts Receivable	Due from Other Governments	Less Allowance for Doubtful Accounts	Total
Governmental activities				
General Fund	\$ 210,503	\$ 7,938,461	\$ -	\$ 8,148,964
Gas Tax Fund	-	20,547	-	20,547
Building Fund	11,905	-	-	11,905
Beach Access	-	1,023,058	-	1,023,058
Capital Projects	-	246,393	-	246,393
Governmental activities subtotal	<u>222,408</u>	<u>9,228,459</u>	<u>-</u>	<u>9,450,867</u>
Business-type activities				
Water Fund	1,442,138	1,156,515	(175,000)	2,423,653
Stormwater	234,993	510,936	-	745,929
Business-type activities subtotal	<u>1,677,131</u>	<u>1,667,451</u>	<u>(175,000)</u>	<u>3,169,582</u>
Total	<u>\$ 1,899,539</u>	<u>\$ 10,895,910</u>	<u>\$ (175,000)</u>	<u>\$ 12,620,449</u>

NOTE 5 – INTERFUND RECEIVABLES, PAYABLES, AND TRANSFERS

At September 30, 2023, the Town reported the following due from/to other funds:

	Due from Other Funds	Due to Other Funds
General	\$ 1,151,349	\$ -
Beach Access	-	1,151,349
Total	<u>\$ 1,151,349</u>	<u>\$ 1,151,349</u>

These balances resulted from the time lag between the dates that: (1) interfund goods and services are provided or reimbursable expenditures occur, and (2) payments between funds are made.

At September 30, 2023, the Town reported the following interfund transfers:

	Transfers In	Transfers Out
General	\$ -	\$ 4,072,739
Capital Projects	4,072,739	-
Total	<u>\$ 4,072,739</u>	<u>\$ 4,072,739</u>

Transfers of resources from a fund to the fund through which resources are to be expended, are recorded as transfers and are reported as other financing sources (uses) in the governmental funds and as transfers in (out) in the proprietary funds.

These transfers from the General Fund were used to fund capital projects for the year ended September 30, 2023.

TOWN OF FORT MYERS BEACH, FLORIDA

NOTES TO THE FINANCIAL STATEMENTS SEPTEMBER 30, 2023

NOTE 6 – CAPITAL ASSETS

Capital asset activity for the year ended September 30, 2023 was as follows:

	<u>Beginning Balance</u>	<u>Additions</u>	<u>Deletions</u>	<u>Transfers</u>	<u>Ending Balance</u>
Governmental Activities					
Capital assets, not being depreciated					
Land	\$11,999,901	\$ -	\$ -	\$ -	\$11,999,901
Construction in progress	387,200	38,147	-	(425,347)	-
Total capital assets, not being depreciated	<u>12,387,101</u>	<u>38,147</u>	<u>-</u>	<u>(425,347)</u>	<u>11,999,901</u>
Capital assets, being depreciated					
Buildings and improvements	5,049,336	-	-	-	5,049,336
Improvements other than buildings	2,070,916	-	-	-	2,070,916
Office furniture and equipment	594,688	46,663	-	-	641,351
Vehicles and other equipment	1,779,719	405,780	-	-	2,185,499
Infrastructure	7,778,965	162,300	-	425,347	8,366,612
Total capital assets, being depreciated	<u>17,273,624</u>	<u>614,743</u>	<u>-</u>	<u>425,347</u>	<u>18,313,714</u>
Less accumulated depreciation for					
Buildings and improvements	(1,695,987)	(196,789)	-	-	(1,892,776)
Improvements other than buildings	(997,374)	(187,404)	-	-	(1,184,778)
Office furniture and equipment	(569,565)	(35,338)	-	-	(604,903)
Vehicles and other equipment	(1,096,293)	(200,039)	-	-	(1,296,332)
Infrastructure	(2,221,698)	(409,325)	-	-	(2,631,023)
Total accumulated depreciation	<u>(6,580,917)</u>	<u>(1,028,895)</u>	<u>-</u>	<u>-</u>	<u>(7,609,812)</u>
Total capital assets, being depreciated, net	<u>10,692,707</u>	<u>(414,152)</u>	<u>-</u>	<u>425,347</u>	<u>10,703,902</u>
Governmental activities capital assets, net	<u>\$23,079,808</u>	<u>\$ (376,005)</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$22,703,803</u>

TOWN OF FORT MYERS BEACH, FLORIDA

NOTES TO THE FINANCIAL STATEMENTS SEPTEMBER 30, 2023

NOTE 6 – CAPITAL ASSETS (CONTINUED)

	Beginning Balance	Additions	Deletions	Transfers	Ending Balance
Business-Type Activities					
Capital assets not being depreciated					
Land	\$ 305,000	\$ -	\$ -	\$ -	\$ 305,000
Construction in progress	457,454	601,364	-	(861,054)	197,764
Total capital assets, not being depreciated	762,454	601,364	-	(861,054)	502,764
Capital assets being depreciated					
Computer equipment	63,516	-	-	-	63,516
Buildings and leasehold improvements	1,071,033	-	-	-	1,071,033
Vehicles and other equipment	341,777	73,631	-	-	415,408
Infrastructure	61,153,003	-	(1,572,634)	861,054	60,441,423
Total capital assets, being depreciated	62,629,329	73,631	(1,572,634)	861,054	61,991,380
Less accumulated depreciation for					
Computer equipment	(61,116)	(800)	-	-	(61,916)
Buildings and leasehold improvements	(636,279)	(49,960)	-	-	(686,239)
Vehicles and other equipment	(260,232)	(30,222)	-	-	(290,454)
Infrastructure	(6,069,029)	(1,476,683)	1,587,398	-	(5,958,314)
Total accumulated depreciation	(7,026,656)	(1,557,665)	1,587,398	-	(6,996,923)
Total capital assets, being depreciated, net	55,602,673	(1,484,034)	14,764	861,054	54,994,457
Business-type activities capital assets, net	\$56,365,127	\$ (882,670)	\$ 14,764	\$ -	\$55,497,221

Depreciation expense was charged to functions/programs as follows:

Governmental Activities

General government	\$ 481,959
Transportation	5,637
Physical environment	183,747
Culture and recreation	357,552
Total depreciation expense, governmental activities	<u>\$ 1,028,895</u>

Business-Type Activities

Water	\$ 1,091,638
Stormwater	466,027
Total depreciation expense, business-type activities	<u>\$ 1,557,665</u>

TOWN OF FORT MYERS BEACH, FLORIDA

NOTES TO THE FINANCIAL STATEMENTS SEPTEMBER 30, 2023

NOTE 7 – LONG-TERM OBLIGATIONS

Long-Term Obligations

Changes in long-term obligations for the year ended September 30, 2023 are as follows:

	Beginning Balance	Additions	Reductions	Ending Balance	Due Within One Year
Governmental Activities					
Compensated absences	\$ 391,306	\$ 208,151	\$ (236,151)	\$ 363,306	\$ 239,693
Capital improvements revenue note	820,786	1,972,971	-	2,793,757	-
Emergency bridge loan	-	11,900,000	-	11,900,000	-
Financed purchase	20,705	-	(20,705)	-	-
Total OPEB liability	202,211	77,222	(47,177)	232,256	-
	<u>\$ 1,435,008</u>	<u>\$ 14,158,344</u>	<u>\$ (304,033)</u>	<u>\$ 15,289,319</u>	<u>\$ 239,693</u>
Business-Type Activities					
Utility revenue refunding bonds	\$ 360,000	\$ -	\$ (180,000)	\$ 180,000	\$ 180,000
Notes payable from direct borrowings:					
State revolving fund loans	39,957,221	1,239,483	-	41,196,704	-
Compensated absences	48,771	8,416	(22,529)	34,658	22,866
Total OPEB liability	36,738	13,628	(8,169)	42,197	-
	<u>\$40,402,730</u>	<u>\$ 1,261,527</u>	<u>\$ (210,698)</u>	<u>\$41,453,559</u>	<u>\$ 202,866</u>

For the governmental activities, compensated absences and other post-employment benefits are generally liquidated by the General Fund.

Governmental Activities

\$10,000,000 Capital Improvement Revenue Note, Series 2020 – Issued for the purpose of providing funding for various capital improvement projects of the Town and to pay the costs of issuance related thereto. The note bears interest at 3.15% through November 1, 2030, and are payable from and secured by a lien upon and pledge of the net revenues of the public service tax revenues. Monthly interest payments are due commencing on December 1, 2020 until the note is paid in full and principal payments paid monthly commencing on December 1, 2023. Final maturities will be determined after all funds have been drawn. The amount outstanding as of September 30, 2023 was \$2,793,757.

\$11,900,000 Emergency Bridge Loan – Issued for the purpose of providing funding for governmental services caused by lost revenues due to Hurricane Ian by the State of Florida. The note bears interest at 10% to be payable only at the date of final repayment. This loan is payable from and secured by a lien upon and pledge of the Town's non-ad valorem revenues. This loan has a ten-year repayment period and currently has no payments due for three years. The amount outstanding as of September 30, 2023 was \$11,900,000.

TOWN OF FORT MYERS BEACH, FLORIDA

NOTES TO THE FINANCIAL STATEMENTS SEPTEMBER 30, 2023

NOTE 7 – LONG-TERM OBLIGATIONS (CONTINUED)

Business-Type Activities

\$1,980,000 Utility Revenue Refunding Bonds, Series 2013 – Issued for the principal purpose of paying off the Town's Public Utility Revenue Note, Series 2010 which was issued to refinance monies expended to acquire the water system of the Town and pay certain capital costs for additions and/or improvements to the water system. The bonds bear interest at 1.81% and are payable from and secured by a lien upon and pledge of the net revenues of the utility. Additionally, payment of the bonds is secured by a covenant to budget and appropriate non-ad valorem revenues for payment of principal and interest in the event the utility's net revenues are insufficient to make those payments. Annual principal payments of \$180,000 plus interest are due on October 1 through final maturity on October 1, 2023. The outstanding balance as of September 30, 2023 was \$180,000.

Notes Payable from Direct Borrowings:

\$15,723,946 State Revolving Fund Loan – issued for the purpose of funding the water main improvement projects. The loan bears interest ranging from 0.92% to 1.24% and is collateralized by a subordinated pledge of the net revenues of the utility. Principal and interest is payable in 60 semi-annual payments of \$260,259 through November 2038. The outstanding balance as of September 30, 2023 was \$13,240,065.

\$20,329,458 State Revolving Fund Loan – issued for the purpose of funding the water main improvement projects. The loan bears interest of 0.98% and is collateralized by a subordinated pledge of the net revenues of the utility. Principal and interest is payable in 40 semi-annual payments of \$574,614 commencing upon project completion. The outstanding balance as of September 30, 2023, including amounts receivable for eligible expenses, was \$14,066,685.

\$9,364,684 State Revolving Fund Loan – issued for the purpose of funding the stormwater management system project. The loan bears interest ranging from 0.32% to 0.49% and is collateralized by a subordinated pledge of the net revenues of the utility. Principal and interest is payable in 60 semi-annual payments of \$259,081 through October 2050. The outstanding balance as of September 30, 2023 was \$8,930,895.

\$16,204,800 State Revolving Fund Loan – issued for the purpose of funding the stormwater management system project. The loan does not bear interest and is collateralized by a subordinated pledge of the net revenues of the utility. Principal and interest is payable in 40 semi-annual payments of \$413,222 commencing upon the project completion. The outstanding balance as of September 30, 2023, including amounts receivable for eligible expenses, was \$4,959,059.

Due to Hurricane Ian, the State has pushed back all state revolving fund loan payments for two years. As such they are all excluded from the following table. Annual debt service requirements to maturity for the business-type activities as of September 30, 2023 are as follows:

	Principal	Interest	Total
2024	\$ 180,000	\$ 1,629	\$ 181,629
	\$ 180,000	\$ 1,629	\$ 181,629

TOWN OF FORT MYERS BEACH, FLORIDA

NOTES TO THE FINANCIAL STATEMENTS SEPTEMBER 30, 2023

NOTE 7 – LONG-TERM OBLIGATIONS (CONTINUED)

Loan Agreements

The loan agreements contain various covenants, including such items as debt service coverage, reporting requirements, and maintenance of facilities. Management believes that it has complied, in all material respects, with the covenants of the loan agreement for the year ended September 30, 2023.

NOTE 8 – FINANCED PURCHASE

The Town has entered into an agreement for the financing of various mower equipment. The agreement has been recorded at the present value of the future minimum payments as of the inception date. This agreement was paid in full during September 30, 2023.

NOTE 9 – RETIREMENT PLAN

The Town sponsors a defined contribution pension plan entitled the Town of Fort Myers Beach Pension Plan (Plan 002) as well as a governmental 457(b) plan entitled the Town of Fort Myers Beach Deferred Compensation Plan (Plan 001). Plan 001 covers eligible regular full-time and part-time employees, while Plan 002 covers only eligible regular full-time employees.

The Plans are being administered by the Town, and administrative services are being provided by a third-party under an Administrative Services Agreement. Effective April 1, 2020, the Town switched service providers (from Valic to Massachusetts Mutual Life Insurance Company), while simultaneously adopting restated plan documents and reducing the employer contribution for Plan number 002 from 10% to 4% of an employee's Code §415 Compensation. However, under a "grandfather" provision in Plan number 002, employees who were in full-time status prior to April 1, 2020, and who remain in full-time status onwards without a break in service, will remain eligible for a 10% employer contribution. Plan number 001 is funded only by voluntary employee contributions. Employee and employer contributions vest 100% to the employee upon contribution to the Plans.

For the year ended September 30, 2023, employer contributions to Plan number 002 was \$343,010.

TOWN OF FORT MYERS BEACH, FLORIDA

NOTES TO THE FINANCIAL STATEMENTS SEPTEMBER 30, 2023

NOTE 10 – SELF-INSURANCE

On October 1, 2018, the Town became a member of the Florida Local Government Health Insurance Consortium ("the Consortium"). The Consortium is a public entity risk pool organized under the provision of the Florida Interlocal Cooperation Act of 1969 with the objective of obtaining preferential pricing on health care services and diversification of self-insurance risk. The Consortium's membership is comprised of county and municipal governments located in Florida.

The Consortium is fully funded by its members. Each member funds their claim liability separately. Stop loss insurance levels are set up for each member to cap their claim liability. Each member's rates, as determined by actuarial calculation, are generated based on their own benefits, census, and experience. Additionally, members pledge a percentage of their claim fund surplus towards a cross share arrangement which creates a pool of money used to pay claims on behalf of members whose total claims for the year exceed their maximum claim fund for the year. This arrangement keeps the stop loss costs lower for every member and creates equity within the group by recognizing variations in the size of member communities and their varying risk retention levels. In the event of a shortfall, members must fund the difference. For this purpose, the Town has created a budgetary reserve of \$100,000 for the year ended September 30, 2023.

NOTE 11 – OTHER POST-EMPLOYMENT BENEFITS

Plan Description and Funding Policy

The post-employment healthcare benefits plan is a single-employer defined benefit plan administered by the Town. Pursuant to the provisions of Section 112.0801, Florida Statutes, former employees and eligible dependents who retire from the Town may continue to participate in the Town's group health insurance plan. The Town subsidizes the premium rates paid by retirees by allowing them to participate in the plan at a reduced or blended group (implicitly subsidized) premium rate. These rates provide an implicit subsidy for retirees because, on an actuarial basis, their current and future claims are expected to result in higher costs to the plan on average than those of active employees. The post-employment healthcare benefits plan does not issue a stand-alone financial report.

As of October 1, 2021, there were 61 active plan members, there were no inactive retirees and eligible dependents receiving post-employment healthcare benefits, and there were no inactive employees entitled to but not yet receiving benefits.

Contribution requirements for the post-employment healthcare benefits of the Town are established and may be amended by Town Council. The Town has not advance funded or established a funding methodology for the annual other post-employment benefit (OPEB) costs or the net OPEB obligation. Currently, retirees pay 100% of the cost of the healthcare insurance premiums. The Town's actuarially required contributions are based on a projected pay-as-you-go basis. Therefore, no assets are accumulated in a trust that meets the criteria in paragraph 4 of GASB Statement No. 75.

TOWN OF FORT MYERS BEACH, FLORIDA

NOTES TO THE FINANCIAL STATEMENTS SEPTEMBER 30, 2023

NOTE 11 – OTHER POST-EMPLOYMENT BENEFITS (CONTINUED)

Total OPEB Liability of the Town

The Town's total OPEB liability was measured as of September 30, 2022, and was determined by an actuarial valuation as of October 1, 2021, with the actuary using standard techniques to roll forward the liability to the measurement date.

Actuarial Assumptions. The total OPEB liability in the October 1, 2021, actuarial valuation was determined using the following actuarial assumptions, applied to all periods included in the measurement:

Inflation Rate:	2.50%
Salary Increase:	3.00%
Discount Rate:	4.77%
Initial Trend Rate:	8.50%
Ultimate Trend Rate:	5.00%
Years to Ultimate:	4
Participation Rate:	80%

Mortality Basis. Sex-distinct rates set forth in the PUB-2010 Mortality Table (without income adjustments) for general employees, with full generational improvements in mortality using Scale MP-2020.

Discount Rate. Given the Town's decision not to fund the program, all future benefit payments were discounted using a high quality municipal bond rate of 4.77%. The high quality municipal bond rate was based on the week closest but not later than the measurement date of the Bond Buyer 20-Bond Index as published by the Federal Reserve. The 20-Bond Index consists of 20 general obligation bonds that mature in 20 years. The average rating of the 20 bonds is roughly equivalent to Moody's Investors Service's Aa2 rating and Standard & Poor's Corp.'s AA.

Changes in the Total OPEB Liability of the Town. The changes in the total OPEB liability of the Town for the year ended September 30, 2023 were as follows:

Total OPEB Liability	
Service Cost	\$ 54,431
Interest	13,548
Change in Benefit Terms	-
Differences Between Expected and Actual Experience	22,871
Employer Contributions	-
Changes of Assumptions	(36,406)
Benefit Payments	(18,940)
Net Change in Total OPEB Liability	<u>35,504</u>
 Total OPEB Liability - Beginning	 238,949
Total OPEB Liability - Ending	<u><u>\$ 274,453</u></u>

TOWN OF FORT MYERS BEACH, FLORIDA

NOTES TO THE FINANCIAL STATEMENTS SEPTEMBER 30, 2023

NOTE 11 – OTHER POST-EMPLOYMENT BENEFITS (CONTINUED)

Changes in assumptions reflect a change in the discount rate from 2.43% for the reporting period ended September 30, 2022, to 4.77% for the reporting period ended September 30, 2023.

The required schedule of changes in the Town's total OPEB liability and related ratios immediately following the notes to the financial statements presents multi-year trend information about the total OPEB liability.

Sensitivity of the Total OPEB Liability to Changes in the Discount Rate. The following presents the total OPEB liability of the Town, as well as what the Town's total OPEB liability would be if it were calculated using a discount rate that is 1-percentage-point lower (3.77%) or 1-percentage-point higher (5.77%) than the current discount rate:

		3.77% Discount Rate	4.77% Discount Rate	5.77% Discount Rate
Total OPEB Liability	\$	313,386	\$ 274,453	\$ 241,583

Sensitivity of the Total OPEB Liability to Changes in the Healthcare Cost Trend Rates. The following presents the total OPEB liability of the Town, as well as what the Town's total OPEB liability would be if it were calculated using healthcare cost trend rates that are 1-percentage-point lower or 1-percentage-point higher than the current healthcare cost trend rates:

		Trend Rate Minus 1%	8.50% Graded Down to 5.00%	Trend Rate Plus 1%
Total OPEB Liability	\$	227,806	\$ 274,453	\$ 334,698

Actuarial valuations involve estimates of the value of reported amounts and assumptions about the probability of events far into the future, and actuarially determined amounts are subject to continual revisions as results are compared to past expectations and new estimates are made about the future. Actuarial calculations reflect a long-term perspective. Calculations are based on the substantive plan in effect as of September 30, 2023, and the current sharing pattern of costs between employer and inactive employees.

OPEB Expense and Deferred Outflows/Inflows of Resources Related to OPEB. For the year ended September 30, 2023, the Town recognized OPEB expense of \$46,081. At September 30, 2023, the Town reported deferred outflows of resources and deferred inflows of resources related to OPEB from the following sources:

Description	Deferred Outflows of Resources	Deferred Inflows of Resources
Differences between expected and actual experience	\$ 35,119	\$ 68,685
Change of assumptions	63,089	67,475
	<u>\$ 98,208</u>	<u>\$ 136,160</u>

TOWN OF FORT MYERS BEACH, FLORIDA

NOTES TO THE FINANCIAL STATEMENTS SEPTEMBER 30, 2023

NOTE 11 – OTHER POST-EMPLOYMENT BENEFITS (CONTINUED)

Amounts reported as deferred outflows and inflows of resources related to OPEB will be recognized in OPEB expense as follows:

Fiscal Year Ending	
2024	\$ (2,958)
2025	(2,958)
2026	(2,958)
2027	(2,958)
2028	(2,958)
Thereafter	(23,162)
	<u>\$ (37,952)</u>

NOTE 12 – RISK MANAGEMENT

The Town is exposed to various risks of loss related to torts; theft of, damage to and destruction of assets; errors and omissions; injuries to employees; and natural disasters.

The Town participates in the public entity risk pool administered by the Florida League of Cities, Inc. for general/professional liability, property and workers compensation. The Town pays an annual premium to Florida League of Cities, Inc. for this insurance program. Participation in this risk pool is non-assessable. There were no significant reductions in insurance coverage in the past three fiscal years. The amount of settlements did not exceed insurance coverage in each of the past three fiscal years.

The Florida League of Cities, Inc. published financial report for the year ended September 30, 2023, can be obtained from the Florida League of Cities, Inc., Public Risk Service, 135 East Colonial Drive, Orlando, Florida 32853-0065.

The Town retains the risk of loss up to a deductible amount (ranging from \$0 to \$250) with the risk of loss in excess of this amount transferred to the pool with limits of liability of \$1,000,000 to \$3,000,000 per occurrence.

The Town carries commercial coverage for all other risks of loss such as for mooring field operations and flood insurance for Town owned buildings. There have been no significant reductions in insurance coverage in the prior year, and claims have not exceeded coverage in any of the past three fiscal years. Due to Hurricane Ian and the extensive damage, there were claims in excess of coverage which the Town anticipates being reimbursed from Federal disaster area assistance.

TOWN OF FORT MYERS BEACH, FLORIDA

NOTES TO THE FINANCIAL STATEMENTS SEPTEMBER 30, 2023

NOTE 13 – COMMITMENTS AND CONTINGENCIES (CONTINUED)

The Town has received federal and state grants for specific purposes that are subject to review and audit by the grantor agencies. Such audits could lead to the disallowance of certain expenditures previously reimbursed by those agencies. Based upon prior experience, management of the Town believes such disallowances, if any, will not be significant.

In fiscal year 2003, the State of Florida and Lee County provided funding toward the purchase of property known as the "Jim and Ellie Newton Property." The Town is required to comply with the terms of the grant agreements as to the use and maintenance of the acquired property. Title to this property would revert to the State of Florida if the Town does not comply with the terms of the grant agreement. In addition, the Town would be required to repay Lee County the original funding amount of \$969,230 plus interest at 12% per annum.

The Town is a defendant in various lawsuits. The Town is not in a position at this time to predict the outcome of the lawsuits or the exact amount of costs and/or potential recovery. The Town plans to contest these matters unless settled. The Town believes the outcome of these lawsuits will not have a material effect on the financial statements.

As of year-end, the Town has no ongoing construction contracts and commitments relating to capital projects within the Town.

NOTE 14 – ECONOMIC DEPENDENCY

On August 3, 2001, a Bulk Water Agreement was entered into with Lee County, Florida, to provide the Town with potable water. Lee County is currently the only source of the Town's potable water that it supplies to the residents of the Town of Fort Myers Beach. The Bulk Water Agreement is for 25 years. The inter-local agreement provides that the County may, from time to time, increase the rate charged for the cost of bulk water provided to the Town. Effective October 1, 2014, Lee County raised its rate from \$3.20 to \$3.84 per 1,000 gallons. The Town conducted a rate study which recommended adjustments to the Town's rates to cover anticipated costs of the reserve and debt payment for the water relocation project. As a result, the Town revised its base rate effective August 15, 2016, to pass this increase on to its customers.

NOTE 15 – SUBSEQUENT EVENTS

The Town has evaluated all subsequent events through June 28, 2024 the date the financial statements were available to be issued.

REQUIRED SUPPLEMENTARY INFORMATION

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TOWN OF FORT MYERS BEACH, FLORIDA

**SCHEDULE OF CHANGES IN THE TOTAL OPEB LIABILITY
SEPTEMBER 30, 2023**

	2023	2022	2021	2020	2019	2018	2017
Total OPEB Liability							
Service cost	\$ 54,431	\$ 42,724	\$ 27,556	\$ 24,301	\$ 31,025	\$ 23,443	\$ 21,172
Interest	13,548	5,105	3,609	6,975	5,735	5,008	2,777
Differences between expected and actual experience	22,871	(19,058)	16,140	(45,248)	(32,437)	(8,725)	-
Employer contributions	-	-	-	-	-	(1,220)	-
Changes of assumptions	(36,406)	49,277	(13,368)	(13,164)	41,636	(17,690)	-
Benefit payments	(18,940)	(12,817)	(2,598)	(1,994)	(1,919)	-	(187)
Net change in total OPEB liability	35,504	65,231	31,339	(29,130)	44,040	816	23,762
Total OPEB liability - beginning	238,949	173,718	142,379	171,509	127,469	126,653	102,891
Total OPEB liability - ending	<u>\$ 274,453</u>	<u>\$ 238,949</u>	<u>\$ 173,718</u>	<u>\$ 142,379</u>	<u>\$ 171,509</u>	<u>\$ 127,469</u>	<u>\$ 126,653</u>
 Covered-employee payroll	 <u>\$ 3,007,128</u>	 <u>\$ 2,309,591</u>	 <u>\$ 2,408,360</u>	 <u>\$ 2,311,759</u>	 <u>\$ 2,118,269</u>	 <u>\$ 2,002,493</u>	 <u>\$ 2,152,467</u>
 OPEB liability as a percentage of covered-employee payroll	 <u>9.13%</u>	 <u>10.35%</u>	 <u>7.21%</u>	 <u>6.16%</u>	 <u>8.10%</u>	 <u>6.37%</u>	 <u>5.88%</u>

Notes to the Schedule

The schedule will present 10 years of information once it is accumulated.

No assets are accumulated in a trust that meets the criteria of GASBs No. 75, paragraph 4, to pay related benefits.

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SUPPLEMENTARY INFORMATION

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**TOWN OF FORT MYERS BEACH, FLORIDA
COMBINING BALANCE SHEET
NONMAJOR GOVERNMENTAL FUNDS
SEPTEMBER 30, 2023**

	Special Revenue Funds		Nonmajor Governmental Funds
	Park Impact	Road Impact	
Assets			
Cash	\$ 274,627	\$ 889,055	\$ 1,163,682
Total assets	<u>\$ 274,627</u>	<u>\$ 889,055</u>	<u>\$ 1,163,682</u>
Liabilities and fund balances			
Liabilities			
Accounts payable and accrued liabilities	\$ -	\$ -	\$ -
Total liabilities	<u>-</u>	<u>-</u>	<u>-</u>
Fund balances			
Restricted			
Parks and recreation	274,627	-	274,627
Transportation	-	889,055	889,055
Total fund balances	<u>274,627</u>	<u>889,055</u>	<u>1,163,682</u>
Total liabilities and fund balances	<u>\$ 274,627</u>	<u>\$ 889,055</u>	<u>\$ 1,163,682</u>

TOWN OF FORT MYERS BEACH, FLORIDA
COMBINING STATEMENT OF REVENUES, EXPENDITURES AND CHANGES IN
FUND BALANCES–NONMAJOR GOVERNMENTAL FUNDS
FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 2023

	Special Revenue Funds		Nonmajor
	Park	Road	Governmental
	Impact	Impact	Funds
Revenues			
Impact fees	\$ 20,665	\$ 42,742	\$ 63,407
Total revenues	<u>20,665</u>	<u>42,742</u>	<u>63,407</u>
Expenditures			
Capital outlay	-	-	-
Total expenditures	<u>-</u>	<u>-</u>	<u>-</u>
Change in fund balances	20,665	42,742	63,407
Fund balances, beginning of year	<u>253,962</u>	<u>846,313</u>	<u>1,100,275</u>
Fund balances, end of year	<u>\$ 274,627</u>	<u>\$ 889,055</u>	<u>\$ 1,163,682</u>

OTHER REPORTS

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**INDEPENDENT AUDITOR'S REPORT ON INTERNAL CONTROL OVER FINANCIAL
REPORTING AND ON COMPLIANCE AND OTHER MATTERS BASED ON AN AUDIT OF
FINANCIAL STATEMENTS PERFORMED IN ACCORDANCE WITH
GOVERNMENT AUDITING STANDARDS**

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

We have audited, in accordance with the auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, the financial statements of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of the Town of Fort Myers Beach, Florida (the "Town"), as of and for the year ended September 30, 2023, and the related notes to the financial statements, which collectively comprise the Town's basic financial statements, and have issued our report thereon dated June 28, 2024.

Internal Control Over Financial Reporting

In planning and performing our audit of the financial statements, we considered the Town's internal control over financial reporting (internal control) as a basis for designing audit procedures that are appropriate in the circumstances for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the Town's internal control. Accordingly, we do not express an opinion on the effectiveness of the Town's internal control.

A *deficiency in internal control* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A *material weakness* is a deficiency, or a combination of deficiencies, in internal control such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented or detected and corrected on a timely basis. A *significant deficiency* is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

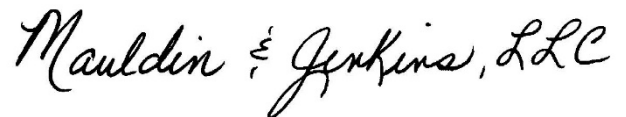
Our consideration of internal control was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control that might be material weaknesses or, significant deficiencies. Given these limitations, during our audit we did not identify any deficiencies in internal control that we consider to be material weaknesses. However, material weaknesses or significant deficiencies may exist that were not identified.

Compliance and Other Matters

As part of obtaining reasonable assurance about whether the Town's financial statements are free of material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the financial statements. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

Purpose of this Report

The purpose of this report is solely to describe the scope of our testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the entity's internal control or on compliance. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the entity's internal control and compliance. Accordingly, this communication is not suitable for any other purpose.

A handwritten signature in black ink that reads "Mauldin & Jenkins, LLC". The script is cursive and fluid, with the letters "M", "J", and "L" being particularly large and stylized.

Bradenton, Florida
June 28, 2024

**INDEPENDENT AUDITOR'S REPORT ON COMPLIANCE FOR EACH MAJOR
FEDERAL PROGRAM AND STATE PROJECT AND ON INTERNAL CONTROL OVER
COMPLIANCE REQUIRED BY THE UNIFORM GUIDANCE AND CHAPTER 10.550,
RULES OF THE AUDITOR GENERAL**

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

Report on Compliance for Each Major Federal Program and State Project

Opinion on Each Major Federal Program and State Project

We have audited the Town of Fort Myers Beach, Florida's (the "Town") compliance with the types of compliance requirements identified as subject to audit in the OMB *Compliance Supplement* and the requirements described in the *Department of Financial Services' State Projects Compliance Supplement* that could have a direct and material effect on each of the Town's major federal programs and state projects for the year ended September 30, 2023. The Town's major federal programs and state financial assistance projects are identified in the summary of auditor's results section of the accompanying schedule of findings and questioned costs.

In our opinion, the Town complied, in all material respects, with the types of compliance requirements referred to above that could have a direct and material effect on each of its major federal programs and state projects for the year ended September 30, 2023.

Basis for Opinion on Each Major Federal Program and State Project

We conducted our audit of compliance in accordance with auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in Government Auditing Standards, issued by the Comptroller General of the United States; the audit requirements of Title 2 U.S. *Code of Federal Regulations* Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance); and Chapter 10.550, Rules of the Auditor General. Our responsibilities under those standards and the Uniform Guidance are further described in the Auditor's Responsibilities for the Audit of Compliance section of our report.

We are required to be independent of the Town and to meet our other ethical responsibilities, in accordance with relevant ethical requirements relating to our audit. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion on compliance for each major federal program. Our audit does not provide a legal determination of Town's compliance with the compliance requirements referred to above.

Responsibilities of Management for Compliance

Management is responsible for compliance with the requirements referred to above and for the design, implementation, and maintenance of effective internal control over compliance with the requirements of laws, statutes, regulations, rules, and provisions of contracts or grant agreements applicable to Town's federal and state programs.

Auditor's Responsibilities for the Audit of Compliance

Our objectives are to obtain reasonable assurance about whether material noncompliance with the compliance requirements referred to above occurred, whether due to fraud or error, and express an opinion on the Town's compliance based on our audit. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with generally accepted auditing standards, *Government Auditing Standards*, and the Uniform Guidance will always detect material noncompliance when it exists. The risk of not detecting material noncompliance resulting from fraud is higher than for that resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Noncompliance with the compliance requirements referred to above is considered material if there is a substantial likelihood that, individually or in the aggregate, it would influence the judgment made by a reasonable user of the report on compliance about the Town's compliance with the requirements of each major federal program as a whole.

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

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material noncompliance, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the Town's compliance with the compliance requirements referred to above and performing such other procedures as we considered necessary in the circumstances.
- Obtain an understanding of the Town's internal control over compliance relevant to the audit in order to design audit procedures that are appropriate in the circumstances and to test and report on internal control over compliance in accordance with the Uniform Guidance, but not for the purpose of expressing an opinion on the effectiveness of the Town's internal control over compliance. Accordingly, no such opinion is expressed.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit and any significant deficiencies and material weaknesses in internal control over compliance that we identified during the audit.

Report on Internal Control Over Compliance

A *deficiency in internal control over compliance* exists when the design or operation of a control over compliance does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, noncompliance with a type of compliance requirement of a federal program on a timely basis. A *material weakness in internal control over compliance* is a deficiency, or a combination of deficiencies, in internal control over compliance, such that there is a reasonable possibility that material noncompliance with a type of compliance requirement of a federal program will not be prevented, or detected and corrected, on a timely basis. A *significant deficiency in internal control over compliance* is a deficiency, or a combination of deficiencies, in internal control over compliance with a type of compliance requirement of a federal program that is less severe than a material weakness in internal control over compliance, yet important enough to merit attention by those charged with governance.

Our consideration of internal control over compliance was for the limited purpose described in the Auditor's Responsibilities for the Audit of Compliance section above and was not designed to identify all deficiencies in internal control over compliance that might be material weaknesses or significant deficiencies in internal control over compliance. Given these limitations, during our audit we did not identify any deficiencies in internal control over compliance that we consider to be material weaknesses, as defined above. However, material weaknesses or significant deficiencies in internal control over compliance may exist that were not identified.

Our audit was not designed for the purpose of expressing an opinion on the effectiveness of internal control over compliance. Accordingly, no such opinion is expressed.

The purpose of this report on internal control over compliance is solely to describe the scope of our testing of internal control over compliance and the results of that testing based on the requirements of the Uniform Guidance and Chapter 10.550, Rules of the Auditor General. Accordingly, this report is not suitable for any other purpose. The Town has received federal and state grants for specific purposes that are subject to review and audit by the grantor agencies. Such audits could lead to the disallowance of certain expenditures previously reimbursed by those agencies. Based upon prior experience, management of the Town believes such disallowances, if any, will not be significant.

Mauldin & Jenkins, LLC

Bradenton, Florida
June 28, 2024

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TOWN OF FORT MYERS BEACH, FLORIDA

**SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS AND STATE FINANCIAL ASSISTANCE
FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 2023**

Federal/State Agency, Pass-through Entity, Federal/State Program	AL / CSFA No.	Grantors No.	Expenditures	Passed Through to Subrecipients
Federal Awards:				
U.S. Department of Environmental Protection				
Passed through Florida Department of Environmental Protection				
Capitalization Grants for Drinking Water SRF	66.468	DW360801 - 140129	\$ 567,244	\$ -
Total U.S. Department of Environmental Protection			<u>567,244</u>	<u>-</u>
U.S. Department of Homeland Security				
Passed through Florida Department of Environmental Protection				
Disaster Grant - Public Assistance	97.036	4673DR-PL	17,172,927	-
Disaster Grant - Public Assistance	97.036	4734DR-FL	333,996	-
Total U.S. Department of Homeland Security			<u>17,506,923</u>	<u>-</u>
Total Expenditures of Federal Awards			<u><u>\$ 18,074,167</u></u>	<u><u>\$ -</u></u>
State Awards:				
State of Florida Department of Environmental Protection				
Wastewater Treatment Facility Construction	37.077	SW360860	\$ 672,239	\$ -
Beach Management Funding Assistance Program	37.003		115,878	-
Clean Vessel Act	37.084	MV429	1,439	-
Total State of Florida Department of Environmental Protection			<u>789,556</u>	<u>-</u>
State of Florida Department of Commerce				
Local Economic Development Initiatives	40.012	N/A	<u>3,085,208</u>	<u>-</u>
State of Florida Fish and Wildlife Conservation Commission				
Florida Boating Improvement Program	77.006	N/A	<u>130,515</u>	<u>-</u>
Total Expenditures of State Financial Assistance			<u><u>\$ 4,005,279</u></u>	<u><u>\$ -</u></u>

TOWN OF FORT MYERS BEACH, FLORIDA
NOTES TO SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS AND
STATE FINANCIAL ASSISTANCE
FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 2023

NOTE 1. BASIS OF PRESENTATION

The accompanying schedule of expenditures of federal awards and state financial assistance includes the federal and state grant activity of the Town of Fort Myers Beach, Florida (the "Town"), and is presented on the modified accrual basis of accounting.

The information in this schedule is presented in accordance with the requirements of Title 2 U.S. *Code of Federal Regulations (CFR)* Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* and Chapter 10.550, Rules of the Auditor General of the State of Florida. Therefore, some amounts presented in the schedule may differ from amounts presented in, or used in the preparation of, the basic financial statements.

NOTE 2. DE MINIMIS INDIRECT COST RATE

The Town chose not to use the 10% de minimis cost rate for the year ended September 30, 2023.

NOTE 3. NON-CASH AWARDS

The Town did not receive non-cash federal or state awards during the year ended September 30, 2023.

NOTE 4. CONTINGENCIES

Grant monies received and disbursed by the Town are for specific purposes and are subject to review by the grantor agencies. Such audits may result in disallowed expenditures under the terms of the grants. Based upon prior experience, the Town does not believe that such disallowances, if any, would be material.

NOTE 5. LOANS OUTSTANDING

The Town had \$41,196,704 in State Revolving Fund loans outstanding at September 30, 2023.

**TOWN OF FORT MYERS BEACH, FLORIDA
SCHEDULE OF FINDINGS AND QUESTIONED COSTS
FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 2023**

**SECTION I
SUMMARY OF AUDIT RESULTS**

Financial Statements

Type of report the auditor issued on whether the financial statements audited were prepared in accordance with GAAP:

Unmodified

Internal control over financial reporting:
Material weaknesses identified?

___ yes X no

Significant deficiencies identified not considered
to be material weaknesses?

___ yes X none reported

Noncompliance material to financial statements noted?

___ yes X none reported

Federal Programs

Internal control over major federal programs:
Material weaknesses identified?

___ yes X no

Significant deficiencies identified not considered
to be material weaknesses?

___ yes X none reported

Type of auditor's report issued on compliance for
major federal programs:

Unmodified

Any audit findings disclosed that are required to
be reported in accordance with the 2 CFR 200.516(a)?

___ yes X no

Identification of major federal program:

AL Number

97.036

Name of Federal Program or Cluster

U.S. Department of Homeland Security –
Disaster Grant – Public Assistance

Identification of major state financial assistance project:

CSFA Number

40.012

Name of State Program or Cluster

Florida Department of Commerce –
Local Economic Development Initiatives

Dollar threshold used to distinguish between
Type A and Type B federal programs:

\$750,000

Dollar threshold used to distinguish between
Type A and Type B state projects:

\$750,000

Auditee qualified as low-risk auditee?

___ yes X no

**TOWN OF FORT MYERS BEACH, FLORIDA
SCHEDULE OF FINDINGS AND QUESTIONED COSTS
FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 2023**

**SECTION II
FINANCIAL STATEMENT FINDINGS AND RESPONSES**

None noted.

**SECTION III
FEDERAL PROGRAMS FINDINGS AND QUESTIONED COSTS**

None noted.

**SECTION IV
STATE PROJECTS FINDINGS AND QUESTIONED COSTS**

None noted.

**SECTION V
SUMMARY SCHEDULE OF PRIOR AUDIT FINDINGS**

None.

INDEPENDENT AUDITOR'S MANAGEMENT LETTER

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

Report on the Financial Statements

We have audited the financial statements of the Town of Fort Myers Beach, Florida (the "Town"), as of and for the fiscal year ended September 30, 2023, and have issued our report thereon dated June 28, 2024.

Auditor's Responsibility

We conducted our audit in accordance with auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; the audit requirements of Title 2 U.S. *Code of Federal Regulations* Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance); and Chapter 10.550, Rules of the Auditor General.

Other Reporting Requirements

We have issued our Independent Auditor's Report on Internal Control over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with *Government Auditing Standards*; Independent Auditor's Report on Compliance for Each Major Federal Program and State Project and Report on Internal Control over Compliance; Schedule of Findings and Questioned Costs; and Independent Accountant's Report on an examination conducted in accordance with *AICPA Professional Standards*, AT-C Section 315, regarding compliance requirements in accordance with Chapter 10.550, Rules of the Auditor General. Disclosures in these reports, which are dated June 28, 2024, should be considered in conjunction with this management letter.

Prior Audit Findings

Section 10.554(1)(i)1., Rules of the Auditor General, requires that we determine whether or not corrective actions have been taken to address findings and recommendations made in the preceding annual financial audit report. There were no findings and recommendations made in the preceding financial audit report.

Official Title and Legal Authority

Section 10.554(1)(i)4., Rules of the Auditor General, requires that the name or official title and legal authority for the primary government and each component unit of the reporting entity be disclosed in this management letter, unless disclosed in the notes to the financial statements. The Town discloses this information in the notes to the financial statements.

Financial Condition and Management

Sections 10.554(1)(i)5.a. and 10.556(7), Rules of the Auditor General, require us to apply appropriate procedures and communicate the results of our determination as to whether or not the Town has met one or more of the conditions described in Section 218.503(1), Florida Statutes, and to identify the specific condition(s) met. In connection with our audit, we determined that the Town did not meet any of the conditions described in Section 218.503(1), Florida Statutes.

Pursuant to Sections 10.554(1)(i)5.b. and 10.556(8), Rules of the Auditor General, we applied financial condition assessment procedures. It is management's responsibility to monitor the Town's financial condition, and our financial condition assessment was based in part on representations made by management and the review of financial information provided by same.

Section 10.554(1)(i)2., Rules of the Auditor General, requires that we communicate any recommendations to improve financial management. In connection with our audit, we did not have any such recommendations.

Special District Component Units

Section 10.554(1)(i)5.c, Rules of the Auditor General, requires, if appropriate, that we communicate the failure of a special district that is a component unit of a county, municipality, or special district, to provide the financial information necessary for proper reporting of the component unit, within the audited financial statements of the county, municipality, or special district in accordance with Section 218.39(3)(b), Florida Statutes. The Town does not have any special district component units.

Additional Matters

Section 10.554(1)(i)3., Rules of the Auditor General, require us to communicate noncompliance with provisions of contracts or grant agreements, or abuse, that have occurred, or are likely to have occurred, that have an effect on the financial statements that is less than material but which warrants the attention of those charged with governance. In connection with our audit, we did not note any such findings.

Purpose of this Letter

Our management letter is intended solely for the information and use of the Legislative Auditing Committee, members of the Florida Senate and the Florida House of Representatives, the Florida Auditor General, federal and other granting agencies, the Mayor and Members of the Town Council Members, and applicable management, and is not intended to be and should not be used by anyone other than these specified parties.



Bradenton, Florida
June 28, 2024

INDEPENDENT ACCOUNTANT'S REPORT

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

We have examined the Town of Fort Myers Beach, Florida's (the "Town") compliance with Section 218.415, Florida Statutes, regarding the investment of public funds during the year ended September 30, 2023. Management of the Town is responsible for the Town's compliance with those requirements. Our responsibility is to express an opinion on the Town's compliance based on our examination.

Our examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. Those standards require that we plan and perform the examination to obtain reasonable assurance about whether the Town complied, in all material respects, with the specified requirements referenced above. An examination involves performing procedures to obtain evidence about whether the Town complied with the specified requirements. The nature, timing and extent of the procedures selected depend on our judgement, including an assessment of the risks of material noncompliance, whether due to fraud or error. We believe that the evidence we obtained is sufficient and appropriate to provide a reasonable basis for our opinion.

Our examination does not provide a legal determination on the Town's compliance with specified requirements.

We are required to be independent and to meet our ethical responsibilities in accordance with relevant ethical requirements relating to the examination engagement.

In our opinion, the Town complied, in all material respects, with the aforementioned requirements during the year ended September 30, 2023.

This report is intended solely for the information and use of the Town and the Auditor General, State of Florida, and is not intended to be and should not be used by anyone other than these specified parties.

Mauldin & Jenkins, LLC

Bradenton, Florida
June 28, 2024

THIS PAGE INTENTIONALLY LEFT BLANK.

1. **Request:**

Meeting Date: August 7, 2024

Authorize the Mayor to execute Amendment #2 to the previous Non-Exclusive Right of Way Agreement with Bandes Construction Company, Inc. to extend the agreement for two additional months under the same terms and conditions.

Why the action is necessary:

Allows the Licensee to continue to utilize Town right of way for proposed purposes within the agreement.

What the action accomplishes:

Authorizes the Mayor to execute an amendment to extend the previous Non-Exclusive Right of Way License Agreement with Bandes Construction Company.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

Thomas Yozzo, Operations &
Compliance Manager

5. **Background:**

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

Attachments:

1. Second Amendment Bandes Construction
2. Bandes Construction Co-Non-Exclusive Right of Way License Agreement
3. First Amendment to Bandes Agreement Executed

Financial Impact:

6. **Alternative Action**

Do not approve the second amendment

7. **Management Recommendations:**

Authorize the Mayor to execute

8. **Recommended Approval:**

Raleigh Baker, Neighborhood Services Coordinator
Thomas Yozzo, Operations & Compliance Manager
Frankie Kropacek, Operations & Compliance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 7/15/2024
Approved - 7/15/2024
Approved - 7/16/2024
Approved - 7/24/2024
Approved - 7/24/2024
Final Approval - 7/27/2024

**SECOND AMENDMENT TO NON-EXCLUSIVE
RIGHT OF WAY LICENSE AGREEMENT**

THIS SECOND AMENDMENT is to that certain Non-Exclusive Right of Way Agreement, dated the 14th day of February, as amended on the 10th day of July _____, (“Agreement”) and is made and entered into this 10th day of July 2024, (“Amendment”), by and between the **TOWN OF FORT MYERS BEACH**, a Florida municipal corporation, (hereinafter, the “Town” or “Licensor”), and **BANDES CONSTRUCTION COMPANY, INC.**, a Florida Corporation, their successors and assigns, (collectively hereinafter, “Bandes” or “Licensee”).

WITNESSETH:

WHEREAS, the Town and Bandes entered into the Agreement to allow Bandes to use eleven (11) metered parking spaces on the Town’s property located at the corner of Old San Carlos Blvd. & Estero Blvd., Fort Myers Beach, as shown in Exhibit “A” of the Agreement, (the “Property”), for the location of construction equipment and dumpsters, which will remain on the Property, subject to the terms of the Agreement; and

WHEREAS, the Agreement expired on July 1, 2024; and

WHEREAS, the Town and Bandes mutually desire to extend the duration of the Agreement retroactively from July 1, 2024 through September 1, 2024; and

WHEREAS, the extension is in the best interests of the Town and is consistent with promotion of the health, safety, and welfare of its residents.

NOW, THEREFORE, in consideration of the covenants to be kept and performed by each of the parties hereto, and other good and valuable consideration paid by Bandes to the Town, receipt and sufficiency of which is hereby acknowledged, it is agreed as follows:

1. **DURATION.** Paragraph 7 of the Agreement, as amended, is hereby further amended to extend the duration of the Agreement, as amended, to September 1, 2024.

2. **REMAINING TERMS.** Other than the duration of the Agreement, as amended, all other terms and conditions of the Agreement, as amended, shall remain in full force and effect.

3. **EFFECTIVE DATE.** The effective date of this Second Amendment shall be retroactive to July 1, 2024.

IN WITNESS WHEREOF, the Town and Bandes have executed this Second Amendment as of the date and year first above written.

[Signatures and Attestation on the Following Page]

WITNESSES:

Yolanda Lynch

1st Witness Signature

Yolanda Lynch

1st Witness Print Name

[Signature]

2nd Witness Signature

Jeremy Brown

2nd Witness Print Name

LICENSEE: Bandes Construction Company,
Inc.

Robert Bandes

Print Name

[Signature]

President

Print Title

LICENSOR: Town of Fort Myers Beach

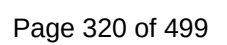
Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, Town Attorney



For Recording Purposes Only

**THIS INSTRUMENT PREPARED BY
AND AFTER RECORDING RETURN TO:**

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

NON-EXCLUSIVE RIGHT OF WAY LICENSE AGREEMENT

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

RECITALS

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

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

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

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

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

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

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

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

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

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

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

To the Licensor:

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

To the Licensee:

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

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

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

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

WITNESSES:

Print Name: Lisa Miller

Print Name: Jeremy Brown

LICENSEE: Bandes Construction Company Inc.

Print Name: _____

Title: President

LICENSOR: TOWN OF FORT MYERS BEACH

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, Town Attorney



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

2/27/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Bowen, Miclette & Britt of Florida, LLC 850 Concourse Parkway S Suite #105 Maitland FL 32751	CONTACT NAME: Michelle Rushing PHONE (A/C, No, Ext): 407-647-1616 FAX (A/C, No): 407-628-1635 E-MAIL ADDRESS: mrrushing@bmbinc.com												
INSURED Bandes Construction Co., Inc. 1368 Spalding Rd Ste C Dunedin FL 34698	INSURER(S) AFFORDING COVERAGE <table><tr><td>INSURER A : North River Insurance Co.</td><td>NAIC # 21105</td></tr><tr><td>INSURER B : Insurance Co of the West</td><td>27847</td></tr><tr><td>INSURER C : National Fire Ins Co of Hartford</td><td>20478</td></tr><tr><td>INSURER D : Continental Casualty Co.</td><td>20443</td></tr><tr><td>INSURER E :</td><td></td></tr><tr><td>INSURER F :</td><td></td></tr></table>	INSURER A : North River Insurance Co.	NAIC # 21105	INSURER B : Insurance Co of the West	27847	INSURER C : National Fire Ins Co of Hartford	20478	INSURER D : Continental Casualty Co.	20443	INSURER E :		INSURER F :	
INSURER A : North River Insurance Co.	NAIC # 21105												
INSURER B : Insurance Co of the West	27847												
INSURER C : National Fire Ins Co of Hartford	20478												
INSURER D : Continental Casualty Co.	20443												
INSURER E :													
INSURER F :													

COVERAGES**CERTIFICATE NUMBER:** 2005481145**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS														
C	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PROJECT ☐ LOC OTHER:	Y	Y	7015418560	8/29/2023	8/29/2024	<table><tr><td>EACH OCCURRENCE</td><td>\$ 1,000,000</td></tr><tr><td>DAMAGE TO RENTED PREMISES (Ea occurrence)</td><td>\$ 100,000</td></tr><tr><td>MED EXP (Any one person)</td><td>\$ 15,000</td></tr><tr><td>PERSONAL & ADV INJURY</td><td>\$ 1,000,000</td></tr><tr><td>GENERAL AGGREGATE</td><td>\$ 2,000,000</td></tr><tr><td>PRODUCTS - COM/OP AGG</td><td>\$ 2,000,000</td></tr><tr><td>Deductible</td><td>\$ 10,000</td></tr></table>	EACH OCCURRENCE	\$ 1,000,000	DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 100,000	MED EXP (Any one person)	\$ 15,000	PERSONAL & ADV INJURY	\$ 1,000,000	GENERAL AGGREGATE	\$ 2,000,000	PRODUCTS - COM/OP AGG	\$ 2,000,000	Deductible	\$ 10,000
EACH OCCURRENCE	\$ 1,000,000																				
DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 100,000																				
MED EXP (Any one person)	\$ 15,000																				
PERSONAL & ADV INJURY	\$ 1,000,000																				
GENERAL AGGREGATE	\$ 2,000,000																				
PRODUCTS - COM/OP AGG	\$ 2,000,000																				
Deductible	\$ 10,000																				
D	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☒ ALL OWNED AUTOS ☒ HIRED AUTOS ☐ SCHEDULED AUTOS ☒ NON-OWNED AUTOS	Y	Y	7015418557	8/29/2023	8/29/2024	<table><tr><td>COMBINED SINGLE LIMIT (Ea accident)</td><td>\$ 1,000,000</td></tr><tr><td>BODILY INJURY (Per person)</td><td>\$</td></tr><tr><td>BODILY INJURY (Per accident)</td><td>\$</td></tr><tr><td>PROPERTY DAMAGE (Per accident)</td><td>\$</td></tr><tr><td></td><td>\$</td></tr></table>	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000	BODILY INJURY (Per person)	\$	BODILY INJURY (Per accident)	\$	PROPERTY DAMAGE (Per accident)	\$		\$				
COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000																				
BODILY INJURY (Per person)	\$																				
BODILY INJURY (Per accident)	\$																				
PROPERTY DAMAGE (Per accident)	\$																				
	\$																				
A	☐ UMBRELLA LIAB ☒ OCCUR ☒ EXCESS LIAB ☐ CLAIMS-MADE DED ☒ RETENTION \$ 0	Y	Y	5821219107	8/29/2023	8/29/2024	<table><tr><td>EACH OCCURRENCE</td><td>\$ 5,000,000</td></tr><tr><td>AGGREGATE</td><td>\$ 10,000,000</td></tr><tr><td></td><td>\$</td></tr></table>	EACH OCCURRENCE	\$ 5,000,000	AGGREGATE	\$ 10,000,000		\$								
EACH OCCURRENCE	\$ 5,000,000																				
AGGREGATE	\$ 10,000,000																				
	\$																				
B	☒ WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y	N/A	WFL506193402	8/29/2023	8/29/2024	<table><tr><td>☒ PER STATUTE</td><td>☐ OTH-ER</td></tr><tr><td>E.L. EACH ACCIDENT</td><td>\$ 1,000,000</td></tr><tr><td>E.L. DISEASE - EA EMPLOYEE</td><td>\$ 1,000,000</td></tr><tr><td>E.L. DISEASE - POLICY LIMIT</td><td>\$ 1,000,000</td></tr></table>	☒ PER STATUTE	☐ OTH-ER	E.L. EACH ACCIDENT	\$ 1,000,000	E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000	E.L. DISEASE - POLICY LIMIT	\$ 1,000,000						
☒ PER STATUTE	☐ OTH-ER																				
E.L. EACH ACCIDENT	\$ 1,000,000																				
E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000																				
E.L. DISEASE - POLICY LIMIT	\$ 1,000,000																				

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

The following policy provisions and/or endorsements form part of the policies of insurance represented by this certificate of insurance. The terms contained in the policies and/or endorsements supersede the representations made herein. Electronic copies of the policy provisions and/or endorsements listed below are available by emailing contact person shown above.

When required by written contract, those parties listed in said contract, including the certificate holder, are added as an additional insured with respect to the general liability, including on-going and completed operations, auto liability and umbrella liability as afforded by the policy and/or endorsements.

When required by written contract, waiver of subrogation, with respect to the general liability, auto liability, worker's compensation and umbrella is granted to See Attached...

CERTIFICATE HOLDER**CANCELLATION**

Town of Fort Myers Beach
2525 Estero Blvd.
Fort Myers Beach FL 33931

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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AGENCY CUSTOMER ID: BANDESCONS

LOC #: _____



ADDITIONAL REMARKS SCHEDULE

Page 1 of 1

AGENCY Bowen, Midgette & Britt of Florida, LLC		NAMED INSURED Bandes Construction Co., Inc. 1368 Spalding Rd Ste C Dunedin FL 34698
POLICY NUMBER		
CARRIER	NAIC CODE	EFFECTIVE DATE:

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: 25 FORM TITLE: CERTIFICATE OF LIABILITY INSURANCE

those parties listed in said contract, including the certificate holder.

The general liability, auto liability, & umbrella liability certified herein are primary and non-contributory to other insurance available, but only to the extent required by written contract.

30-day notice of cancellation applies.

**CNA PARAMOUNT****Contractors' General Liability Extension Endorsement**

It is understood and agreed that this endorsement amends the **COMMERCIAL GENERAL LIABILITY COVERAGE PART** as follows. If any other endorsement attached to this policy amends any provision also amended by this endorsement, then that other endorsement controls with respect to such provision, and the changes made by this endorsement with respect to such provision do not apply.

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VALLEY FORGE INSURANCE COMPANY

Insured Name: BANDES CONSTRUCTION COMPANY, INC.

Policy No: 7015418560

Endorsement No:

Effective Date: 08/29/2023

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CNA PARAMOUNT

Contractors' General Liability Extension Endorsement

1. ADDITIONAL INSURED

- a. **WHO IS AN INSURED** is amended to include as an **Insured** any person or organization described in paragraphs A. through H. below whom a **Named Insured** is required to add as an additional insured on this **Coverage Part** under a written contract or written agreement, provided such contract or agreement:

- (1) is currently in effect or becomes effective during the term of this **Coverage Part**; and
- (2) was executed prior to:

- (a) the **bodily injury** or **property damage**; or
- (b) the offense that caused the **personal and advertising injury**,
for which such additional insured seeks coverage.

- b. However, subject always to the terms and conditions of this policy, including the limits of insurance, the Insurer will not provide such additional insured with:

- (1) a higher limit of insurance than required by such contract or agreement; or
- (2) coverage broader than required by such contract or agreement, and in no event broader than that described by the applicable paragraph A. through H. below.

Any coverage granted by this endorsement shall apply only to the extent permissible by law.

A. Controlling Interest

Any person or organization with a controlling interest in a **Named Insured**, but only with respect to such person or organization's liability for **bodily injury**, **property damage** or **personal and advertising injury** arising out of:

- 1. such person or organization's financial control of a **Named Insured**; or
- 2. premises such person or organization owns, maintains or controls while a **Named Insured** leases or occupies such premises;

provided that the coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

B. Co-owner of Insured Premises

A co-owner of a premises co-owned by a **Named Insured** and covered under this insurance but only with respect to such co-owner's liability for **bodily injury**, **property damage** or **personal and advertising injury** as co-owner of such premises.

C. Lessor of Equipment

Any person or organization from whom a **Named Insured** leases equipment, but only with respect to liability for **bodily injury**, **property damage** or **personal and advertising injury** caused, in whole or in part, by the **Named Insured's** maintenance, operation or use of such equipment, provided that the **occurrence** giving rise to such **bodily injury**, **property damage** or the offense giving rise to such **personal and advertising injury** takes place prior to the termination of such lease.

D. Lessor of Land

Any person or organization from whom a **Named Insured** leases land but only with respect to liability for **bodily injury**, **property damage** or **personal and advertising injury** arising out of the ownership, maintenance or use of such land, provided that the **occurrence** giving rise to such **bodily injury**, **property damage** or the offense giving rise to such **personal and advertising injury** takes place prior to the termination of such lease. The

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VALLEY FORGE INSURANCE COMPANY

Insured Name: BANDES CONSTRUCTION COMPANY, INC.

Policy No: 7015418560

Endorsement No: 8

Effective Date: 08/29/2023

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**Contractors' General Liability Extension Endorsement**

coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

E. Lessor of Premises

An owner or lessor of premises leased to the **Named Insured**, or such owner or lessor's real estate manager, but only with respect to liability for **bodily injury, property damage or personal and advertising injury** arising out of the ownership, maintenance or use of such part of the premises leased to the **Named Insured**, and provided that the **occurrence** giving rise to such **bodily injury or property damage**, or the offense giving rise to such **personal and advertising injury**, takes place prior to the termination of such lease. The coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

F. Mortgagee, Assignee or Receiver

A mortgagee, assignee or receiver of premises but only with respect to such mortgagee, assignee or receiver's liability for **bodily injury, property damage or personal and advertising injury** arising out of the **Named Insured's** ownership, maintenance, or use of a premises by a **Named Insured**.

The coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

G. State or Governmental Agency or Subdivision or Political Subdivisions – Permits

A state or governmental agency or subdivision or political subdivision that has issued a permit or authorization but only with respect to such state or governmental agency or subdivision or political subdivision's liability for **bodily injury, property damage or personal and advertising injury** arising out of:

1. the following hazards in connection with premises a **Named Insured** owns, rents, or controls and to which this insurance applies:
 - a. the existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoistaway openings, sidewalk vaults, street banners, or decorations and similar exposures; or
 - b. the construction, erection, or removal of elevators; or
 - c. the ownership, maintenance or use of any elevators covered by this insurance; or
2. the permitted or authorized operations performed by a **Named Insured** or on a **Named Insured's** behalf.

The coverage granted by this paragraph does not apply to:

- a. **Bodily injury, property damage or personal and advertising injury** arising out of operations performed for the state or governmental agency or subdivision or political subdivision; or
- b. **Bodily injury or property damage** included within the **products-completed operations hazard**.

With respect to this provision's requirement that additional insured status must be requested under a written contract or agreement, the Insurer will treat as a written contract any governmental permit that requires the **Named Insured** to add the governmental entity as an additional insured.

H. Trade Show Event Lessor

1. With respect to a **Named Insured's** participation in a trade show event as an exhibitor, presenter or displayer, any person or organization whom the **Named Insured** is required to include as an additional insured, but only with respect to such person or organization's liability for **bodily injury, property damage or personal and advertising injury** caused by:

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VALLEY FORGE INSURANCE COMPANY

Insured Name: BANDES CONSTRUCTION COMPANY, INC.

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**Contractors' General Liability Extension Endorsement**

- a. the **Named Insured's** acts or omissions; or
 - b. the acts or omissions of those acting on the **Named Insured's** behalf,
in the performance of the **Named Insured's** ongoing operations at the trade show event premises during the trade show event.
2. The coverage granted by this paragraph does not apply to **bodily injury** or **property damage** included within the **products-completed operations hazard**.

2. ADDITIONAL INSURED - PRIMARY AND NON-CONTRIBUTORY TO ADDITIONAL INSURED'S INSURANCE

The **Other Insurance** Condition in the **COMMERCIAL GENERAL LIABILITY CONDITIONS** Section is amended to add the following paragraph:

If the **Named Insured** has agreed in writing in a contract or agreement that this insurance is primary and non-contributory relative to an additional insured's own insurance, then this insurance is primary, and the Insurer will not seek contribution from that other insurance. For the purpose of this Provision 2., the additional insured's own insurance means insurance on which the additional insured is a named insured. Otherwise, and notwithstanding anything to the contrary elsewhere in this Condition, the insurance provided to such person or organization is excess of any other insurance available to such person or organization.

3. BODILY INJURY – EXPANDED DEFINITION

Under **DEFINITIONS**, the definition of **bodily injury** is deleted and replaced by the following:

Bodily injury means physical injury, sickness or disease sustained by a person, including death, humiliation, shock, mental anguish or mental injury sustained by that person at any time which results as a consequence of the physical injury, sickness or disease.

4. BROAD KNOWLEDGE OF OCCURRENCE/ NOTICE OF OCCURRENCE

Under **CONDITIONS**, the condition entitled **Duties in The Event of Occurrence, Offense, Claim or Suit** is amended to add the following provisions:

A. BROAD KNOWLEDGE OF OCCURRENCE

The **Named Insured** must give the Insurer or the Insurer's authorized representative notice of an **occurrence**, offense or **claim** only when the **occurrence**, offense or **claim** is known to a natural person **Named Insured**, to a partner, executive officer, manager or member of a **Named Insured**, or an **employee** designated by any of the above to give such notice.

B. NOTICE OF OCCURRENCE

The **Named Insured's** rights under this **Coverage Part** will not be prejudiced if the **Named Insured** fails to give the Insurer notice of an **occurrence**, offense or **claim** and that failure is solely due to the **Named Insured's** reasonable belief that the **bodily injury** or **property damage** is not covered under this **Coverage Part**. However, the **Named Insured** shall give written notice of such **occurrence**, offense or **claim** to the Insurer as soon as the **Named Insured** is aware that this insurance may apply to such **occurrence**, offense or **claim**.

5. BROAD NAMED INSURED

WHO IS AN INSURED is amended to delete its Paragraph 3. in its entirety and replace it with the following:

3. Pursuant to the limitations described in Paragraph 4. below, any organization in which a **Named Insured** has management control:
 - a. on the effective date of this **Coverage Part**; or

**Contractors' General Liability Extension Endorsement**

- B.** Solely for the purpose of the coverage provided by this **PROPERTY DAMAGE – ELEVATORS** Provision, the **Other Insurance** conditions is amended to add the following paragraph:

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis that is Property insurance covering property of others damaged from the use of elevators.

23. SUPPLEMENTARY PAYMENTS

The section entitled **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B** is amended as follows:

- A.** Paragraph 1.b. is amended to delete the \$250 limit shown for the cost of bail bonds and replace it with a \$5,000. limit; and
- B.** Paragraph 1.d. is amended to delete the limit of \$250 shown for daily loss of earnings and replace it with a \$1,000. limit.

24. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS

If the **Named Insured** unintentionally fails to disclose all existing hazards at the inception date of the **Named Insured's Coverage Part**, the Insurer will not deny coverage under this **Coverage Part** because of such failure.

25. WAIVER OF SUBROGATION - BLANKET

Under **CONDITIONS**, the condition entitled **Transfer Of Rights Of Recovery Against Others To Us** is amended to add the following:

The Insurer waives any right of recovery the Insurer may have against any person or organization because of payments the Insurer makes for injury or damage arising out of:

1. the **Named Insured's** ongoing operations; or
2. **your work** included in the **products-completed operations hazard**.

However, this waiver applies only when the **Named Insured** has agreed in writing to waive such rights of recovery in a written contract or written agreement, and only if such contract or agreement:

1. is in effect or becomes effective during the term of this **Coverage Part**; and
2. was executed prior to the **bodily injury, property damage or personal and advertising injury** giving rise to the claim.

26. WRAP-UP EXTENSION: OCIP, CCIP, OR CONSOLIDATED (WRAP-UP) INSURANCE PROGRAMS

Note: The following provision does not apply to any public construction project in the state of Oklahoma, nor to any construction project in the state of Alaska, that is not permitted to be insured under a **consolidated (wrap-up) Insurance program** by applicable state statute or regulation.

If the endorsement **EXCLUSION – CONSTRUCTION WRAP-UP** is attached to this policy, or another exclusionary endorsement pertaining to Owner Controlled Insurance Programs (O.C.I.P.) or Contractor Controlled Insurance Programs (C.C.I.P.) is attached, then the following changes apply:

- A.** The following wording is added to the above-referenced endorsement:

With respect to a **consolidated (wrap-up) Insurance program** project in which the **Named Insured** is or was involved, this exclusion does not apply to those sums the **Named Insured** become legally obligated to pay as **damages** because of:

1. **Bodily injury, property damage, or personal or advertising injury** that occurs during the **Named Insured's** ongoing operations at the project, or during such operations of anyone acting on the **Named Insured's** behalf; nor



CONTRACTORS EXTENDED COVERAGE ENDORSEMENT - BUSINESS AUTO PLUS

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

I. LIABILITY COVERAGE

A. Who Is An Insured

The following is added to **Section II, Paragraph A.1., Who Is An Insured:**

1. a. Any incorporated entity of which the Named Insured owns a majority of the voting stock on the date of inception of this Coverage Form; provided that,
 - b. The insurance afforded by this provision **A.1.** does not apply to any such entity that is an **insured** under any other liability "policy" providing **auto** coverage.
2. Any organization you newly acquire or form, other than a limited liability company, partnership or joint venture, and over which you maintain majority ownership interest.

The insurance afforded by this provision **A.2.:**

- a. Is effective on the acquisition or formation date, and is afforded only until the end of the policy period of this Coverage Form, or the next anniversary of its inception date, whichever is earlier.
- b. Does not apply to:
 - (1) **Bodily injury or property damage** caused by an **accident** that occurred before you acquired or formed the organization; or
 - (2) Any such organization that is an **insured** under any other liability "policy" providing **auto** coverage.
3. Any person or organization that you are required by a written contract to name as an additional insured is an **insured** but only with respect to their legal liability for acts or omissions of a person, who qualifies as an **insured** under **SECTION II – WHO IS AN INSURED** and for whom Liability Coverage is afforded under this policy. If required by written contract, this insurance will be primary and non-contributory to insurance on which the additional insured is a Named Insured.
4. An **employee** of yours is an **insured** while operating an **auto** hired or rented under a contract or agreement in that **employee's** name, with your permission, while performing duties related to the conduct of your business.

"Policy", as used in this provision **A. Who Is An Insured**, includes those policies that were in force on the inception date of this Coverage Form but:

1. Which are no longer in force; or
2. Whose limits have been exhausted.

B. Bail Bonds and Loss of Earnings

Section II, Paragraphs A.2. (2) and A.2. (4) are revised as follows:

1. In **a.(2)**, the limit for the cost of bail bonds is changed from \$2,000 to \$5,000; and
2. In **a.(4)**, the limit for the loss of earnings is changed from \$250 to \$500 a day.

Form No: CNA63359XX (04-2012)

Endorsement Effective Date:

Endorsement Expiration Date:

Endorsement No: 12; Page: 1 of 4

Underwriting Company: Transportation Insurance Company, 151 N Franklin St, Chicago, IL 60606

Policy No: BUA 7015418557

Policy Effective Date: **8/29/23**

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C. Fellow Employee

Section II, Paragraph B.5 does not apply.

Such coverage as is afforded by this provision C. is excess over any other collectible insurance.

II. PHYSICAL DAMAGE COVERAGE

A. Glass Breakage – Hitting A Bird Or Animal – Falling Objects Or Missiles

The following is added to **Section III, Paragraph A.3.:**

With respect to any covered **auto**, any deductible shown in the Declarations will not apply to glass breakage if such glass is repaired, in a manner acceptable to us, rather than replaced.

B. Transportation Expenses

Section III, Paragraph A.4.a. is revised, with respect to transportation expense incurred by you, to provide:

- a. \$60 per day, in lieu of \$20; subject to
- b. \$1,800 maximum, in lieu of \$600.

C. Loss of Use Expenses

Section III, Paragraph A.4.b. is revised, with respect to loss of use expenses incurred by you, to provide:

- a. \$1,000 maximum, in lieu of \$600.

D. Hired "Autos"

The following is added to **Section III, Paragraph A.:**

5. Hired "Autos"

If Physical Damage coverage is provided under this policy, and such coverage does not extend to Hired Autos, then Physical Damage coverage is extended to:

- a. Any covered **auto** you lease, hire, rent or borrow without a driver; and
- b. Any covered **auto** hired or rented by your **employee** without a driver, under a contract in that individual **employee's** name, with your permission, while performing duties related to the conduct of your business.
- c. The most we will pay for any one **accident** or **loss** is the actual cash value, cost of repair, cost of replacement or \$75,000, whichever is less, minus a \$500 deductible for each covered **auto**. No deductible applies to **loss** caused by fire or lightning.
- d. The physical damage coverage as is provided by this provision is equal to the physical damage coverage(s) provided on your owned **autos**.
- e. Such physical damage coverage for hired **autos** will:
 - (1) Include loss of use, provided it is the consequence of an **accident** for which the Named Insured is legally liable, and as a result of which a monetary loss is sustained by the leasing or rental concern.
 - (2) Such coverage as is provided by this provision will be subject to a limit of \$750 per **accident**.

E. Airbag Coverage

The following is added to **Section III, Paragraph B.3.:**

The accidental discharge of an airbag shall not be considered mechanical breakdown.

Form No: CNA63359XX (04-2012)

Endorsement Effective Date:

Endorsement Expiration Date:

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F. Electronic Equipment

Section III, Paragraphs B.4.c and B.4.d. are deleted and replaced by the following:

- c. Physical Damage Coverage on a covered **auto** also applies to **loss** to any permanently installed electronic equipment including its antennas and other accessories
- d. A \$100 per occurrence deductible applies to the coverage provided by this provision.

G. Diminution In Value

The following is added to **Section III, Paragraph B.6.**:

Subject to the following, the **diminution in value** exclusion does not apply to:

- a. Any covered **auto** of the private passenger type you lease, hire, rent or borrow, without a driver for a period of 30 days or less, while performing duties related to the conduct of your business; and
- b. Any covered **auto** of the private passenger type hired or rented by your **employee** without a driver for a period of 30 days or less, under a contract in that individual **employee's** name, with your permission, while performing duties related to the conduct of your business.
- c. Such coverage as is provided by this provision is limited to a **diminution in value** loss arising directly out of accidental damage and not as a result of the failure to make repairs; faulty or incomplete maintenance or repairs; or the installation of substandard parts.
- d. The most we will pay for **loss** to a covered **auto** in any one accident is the lesser of:
 - (1) \$5,000; or
 - (2) 20% of the **auto's** actual cash value (ACV).

III. Drive Other Car Coverage – Executive Officers

The following is added to **Sections II and III**:

- 1. Any **auto** you don't own, hire or borrow is a covered **auto** for Liability Coverage while being used by, and for Physical Damage Coverage while in the care, custody or control of, any of your "executive officers", except:
 - a. An **auto** owned by that "executive officer" or a member of that person's household; or
 - b. An **auto** used by that "executive officer" while working in a business of selling, servicing, repairing or parking **autos**.

Such Liability and/or Physical Damage Coverage as is afforded by this provision.

- (1) Equal to the greatest of those coverages afforded any covered **auto**; and
- (2) Excess over any other collectible insurance.

- 2. For purposes of this provision, "executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document, and, while a resident of the same household, includes that person's spouse.

Such "executive officers" are **insureds** while using a covered **auto** described in this provision.

IV. BUSINESS AUTO CONDITIONS

A. Duties In The Event Of Accident, Claim, Suit Or Loss

The following is added to **Section IV, Paragraph A.2.a.**:

Form No: CNA63359XX (04-2012)

Endorsement Effective Date:

Endorsement Expiration Date:

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Underwriting Company: Transportation Insurance Company, 151 N Franklin St, Chicago, IL 60606

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- (4) Your **employees** may know of an **accident** or **loss**. This will not mean that you have such knowledge, unless such **accident** or **loss** is known to you or if you are not an individual, to any of your executive officers or partners or your insurance manager.

The following is added to **Section IV, Paragraph A.2.b.**:

- (6) Your **employees** may know of documents received concerning a claim or **suit**. This will not mean that you have such knowledge, unless receipt of such documents is known to you or if you are not an individual, to any of your executive officers or partners or your insurance manager.

B. Transfer Of Rights Of Recovery Against Others To Us

The following is added to **Section IV, Paragraph A.5. Transfer Of Rights Of Recovery Against Others To Us**:

We waive any right of recovery we may have, because of payments we make for injury or damage, against any person or organization for whom or which you are required by written contract or agreement to obtain this waiver from us.

This injury or damage must arise out of your activities under a contract with that person or organization.

You must agree to that requirement prior to an **accident** or **loss**.

C. Concealment, Misrepresentation or Fraud

The following is added to **Section IV, Paragraph B.2.**:

Your failure to disclose all hazards existing on the date of inception of this Coverage Form shall not prejudice you with respect to the coverage afforded provided such failure or omission is not intentional.

D. Other Insurance

The following is added to **Section IV, Paragraph B.5.**:

Regardless of the provisions of Paragraphs **5.a.** and **5.d.** above, the coverage provided by this policy shall be on a primary non-contributory basis. This provision is applicable only when required by a written contract.

That written contract must have been entered into prior to **Accident** or **Loss**.

E. Policy Period, Coverage Territory

Section IV, Paragraph B. 7.(5).(a). is revised to provide:

- a. 45 days of coverage in lieu of 30 days.

V. DEFINITIONS

Section V. paragraph C. is deleted and replaced by the following:

Bodily injury means bodily injury, sickness or disease sustained by a person, including mental anguish, mental injury or death resulting from any of these.

Form No: CNA63359XX (04-2012)

Endorsement Effective Date:

Endorsement Expiration Date:

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Underwriting Company: Transportation Insurance Company, 151 N Franklin St, Chicago, IL 60606

Policy No: BUA 7015418557

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WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Schedule

**ANY PERSON OR ORGANIZATION FOR WHOM THE NAMED INSURED IS
REQUIRED UNDER WRITTEN CONTRACT TO FURNISH THIS WAIVER,
FOR FLORIDA OPERATIONS ONLY.**

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.
(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective **08/29/2023** Policy No. **WFL 5061934 02**
Insured **BANDES CONSTRUCTION CO INC**
Insurance Company **INSURANCE COMPANY OF THE WEST**

Endorsement No.
Premium \$ **INCL.**

Countersigned By _____



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

2/27/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Bowen, Miclette & Britt of Florida, LLC 850 Concourse Parkway S Suite #105 Maitland FL 32751		CONTACT NAME: Michelle Rushing PHONE (A/C, No. Ext): 407-647-1616 E-MAIL ADDRESS: mrushing@bmbinc.com FAX (A/C, No): 407-628-1635	
		INSURER(S) AFFORDING COVERAGE	
		INSURER A: North River Insurance Co.	
		INSURER B: Insurance Co of the West	
		INSURER C: National Fire Ins Co of Hartford	
		INSURER D: Continental Casualty Co.	
		INSURER E:	
		INSURER F:	

COVERAGES **CERTIFICATE NUMBER:** 2005481145 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
C	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PROJECT ☐ LOC OTHER:	Y	Y	7015418560	8/29/2023	8/29/2024	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 15,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 Deductible \$ 10,000
D	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☒ ALL OWNED AUTOS ☒ HIRED AUTOS ☐ SCHEDULED AUTOS ☒ NON-OWNED AUTOS	Y	Y	7015418557	8/29/2023	8/29/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	☐ UMBRELLA LIAB ☒ EXCESS LIAB ☐ CLAIMS-MADE ☐ DED ☒ RETENTION \$ 0	Y	Y	5821219107	8/29/2023	8/29/2024	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 10,000,000 \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y	N/A	WFL508193402	8/29/2023	8/29/2024	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
The following policy provisions and/or endorsements form part of the policies of insurance represented by this certificate of insurance. The terms contained in the policies and/or endorsements supersede the representations made herein. Electronic copies of the policy provisions and/or endorsements listed below are available by emailing contact person shown above.

When required by written contract, those parties listed in said contract, including the certificate holder, are added as an additional insured with respect to the general liability, including on-going and completed operations, auto liability and umbrella liability as afforded by the policy and/or endorsements.

When required by written contract, waiver of subrogation, with respect to the general liability, auto liability, worker's compensation and umbrella is granted to See Attached...

CERTIFICATE HOLDER Town of Fort Myers Beach 2525 Estero Blvd. Fort Myers Beach FL 33931	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
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ADDITIONAL REMARKS SCHEDULE

AGENCY Bowen, Miclette & Britt of Florida, LLC		NAMED INSURED Bandes Construction Co., Inc. 1368 Spalding Rd Ste C Dunedin FL 34698
POLICY NUMBER		
CARRIER	NAIC CODE	EFFECTIVE DATE:

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
 FORM NUMBER: 25 FORM TITLE: CERTIFICATE OF LIABILITY INSURANCE

those parties listed in said contract, including the certificate holder.

The general liability, auto liability, & umbrella liability certified herein are primary and non-contributory to other insurance available, but only to the extent required by written contract.

30-day notice of cancellation applies.

**CNA PARAMOUNT****Contractors' General Liability Extension Endorsement**

It is understood and agreed that this endorsement amends the **COMMERCIAL GENERAL LIABILITY COVERAGE PART** as follows. If any other endorsement attached to this policy amends any provision also amended by this endorsement, then that other endorsement controls with respect to such provision, and the changes made by this endorsement with respect to such provision do not apply.

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VALLEY FORGE INSURANCE COMPANY

Insured Name: BANDES CONSTRUCTION COMPANY, INC.

Policy No: 7015418560

Endorsement No:

Effective Date: 08/29/2023

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**Contractors' General Liability Extension Endorsement****1. ADDITIONAL INSURED**

- a. **WHO IS AN INSURED** is amended to include as an **Insured** any person or organization described in paragraphs A. through H. below whom a **Named Insured** is required to add as an additional insured on this **Coverage Part** under a written contract or written agreement, provided such contract or agreement:

(1) is currently in effect or becomes effective during the term of this **Coverage Part**; and

(2) was executed prior to:

(a) the **bodily injury** or **property damage**; or

(b) the offense that caused the **personal and advertising injury**,

for which such additional insured seeks coverage.

- b. However, subject always to the terms and conditions of this policy, including the limits of insurance, the Insurer will not provide such additional insured with:

(1) a higher limit of insurance than required by such contract or agreement; or

(2) coverage broader than required by such contract or agreement, and in no event broader than that described by the applicable paragraph A. through H. below.

Any coverage granted by this endorsement shall apply only to the extent permissible by law.

A. Controlling Interest

Any person or organization with a controlling interest in a **Named Insured**, but only with respect to such person or organization's liability for **bodily injury**, **property damage** or **personal and advertising injury** arising out of:

1. such person or organization's financial control of a **Named Insured**; or

2. premises such person or organization owns, maintains or controls while a **Named Insured** leases or occupies such premises;

provided that the coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

B. Co-owner of Insured Premises

A co-owner of a premises co-owned by a **Named Insured** and covered under this insurance but only with respect to such co-owner's liability for **bodily injury**, **property damage** or **personal and advertising injury** as co-owner of such premises.

C. Lessor of Equipment

Any person or organization from whom a **Named Insured** leases equipment, but only with respect to liability for **bodily injury**, **property damage** or **personal and advertising injury** caused, in whole or in part, by the **Named Insured's** maintenance, operation or use of such equipment, provided that the **occurrence** giving rise to such **bodily injury**, **property damage** or the offense giving rise to such **personal and advertising injury** takes place prior to the termination of such lease.

D. Lessor of Land

Any person or organization from whom a **Named Insured** leases land but only with respect to liability for **bodily injury**, **property damage** or **personal and advertising injury** arising out of the ownership, maintenance or use of such land, provided that the **occurrence** giving rise to such **bodily injury**, **property damage** or the offense giving rise to such **personal and advertising injury** takes place prior to the termination of such lease. The

**Contractors' General Liability Extension Endorsement**

coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

E. Lessor of Premises

An owner or lessor of premises leased to the **Named Insured**, or such owner or lessor's real estate manager, but only with respect to liability for **bodily injury, property damage or personal and advertising injury** arising out of the ownership, maintenance or use of such part of the premises leased to the **Named Insured**, and provided that the occurrence giving rise to such **bodily injury or property damage**, or the offense giving rise to such **personal and advertising injury**, takes place prior to the termination of such lease. The coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

F. Mortgagee, Assignee or Receiver

A mortgagee, assignee or receiver of premises but only with respect to such mortgagee, assignee or receiver's liability for **bodily injury, property damage or personal and advertising injury** arising out of the **Named Insured's** ownership, maintenance, or use of a premises by a **Named Insured**.

The coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

G. State or Governmental Agency or Subdivision or Political Subdivisions – Permits

A state or governmental agency or subdivision or political subdivision that has issued a permit or authorization but only with respect to such state or governmental agency or subdivision or political subdivision's liability for **bodily injury, property damage or personal and advertising injury** arising out of:

1. the following hazards in connection with premises a **Named Insured** owns, rents, or controls and to which this insurance applies:
 - a. the existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoistaway openings, sidewalk vaults, street banners, or decorations and similar exposures; or
 - b. the construction, erection, or removal of elevators; or
 - c. the ownership, maintenance or use of any elevators covered by this insurance; or
2. the permitted or authorized operations performed by a **Named Insured** or on a **Named Insured's** behalf.

The coverage granted by this paragraph does not apply to:

- a. **Bodily injury, property damage or personal and advertising injury** arising out of operations performed for the state or governmental agency or subdivision or political subdivision; or
- b. **Bodily injury or property damage** included within the **products-completed operations hazard**.

With respect to this provision's requirement that additional insured status must be requested under a written contract or agreement, the Insurer will treat as a written contract any governmental permit that requires the **Named Insured** to add the governmental entity as an additional insured.

H. Trade Show Event Lessor

1. With respect to a **Named Insured's** participation in a trade show event as an exhibitor, presenter or displayer, any person or organization whom the **Named Insured** is required to include as an additional insured, but only with respect to such person or organization's liability for **bodily injury, property damage or personal and advertising injury** caused by:

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**Contractors' General Liability Extension Endorsement**

- a. the **Named Insured's** acts or omissions; or
 - b. the acts or omissions of those acting on the **Named Insured's** behalf,
- in the performance of the **Named Insured's** ongoing operations at the trade show event premises during the trade show event.
2. The coverage granted by this paragraph does not apply to **bodily injury** or **property damage** included within the **products-completed operations hazard**.

2. ADDITIONAL INSURED - PRIMARY AND NON-CONTRIBUTORY TO ADDITIONAL INSURED'S INSURANCE

The **Other Insurance** Condition in the **COMMERCIAL GENERAL LIABILITY CONDITIONS** Section is amended to add the following paragraph:

If the **Named Insured** has agreed in writing in a contract or agreement that this insurance is primary and non-contributory relative to an additional insured's own insurance, then this insurance is primary, and the Insurer will not seek contribution from that other insurance. For the purpose of this Provision 2., the additional insured's own insurance means insurance on which the additional insured is a named insured. Otherwise, and notwithstanding anything to the contrary elsewhere in this Condition, the insurance provided to such person or organization is excess of any other insurance available to such person or organization.

3. BODILY INJURY – EXPANDED DEFINITION

Under **DEFINITIONS**, the definition of **bodily injury** is deleted and replaced by the following:

Bodily injury means physical injury, sickness or disease sustained by a person, including death, humiliation, shock, mental anguish or mental injury sustained by that person at any time which results as a consequence of the physical injury, sickness or disease.

4. BROAD KNOWLEDGE OF OCCURRENCE/ NOTICE OF OCCURRENCE

Under **CONDITIONS**, the condition entitled **Duties In The Event of Occurrence, Offense, Claim or Suit** is amended to add the following provisions:

A. BROAD KNOWLEDGE OF OCCURRENCE

The **Named Insured** must give the Insurer or the Insurer's authorized representative notice of an **occurrence**, offense or **claim** only when the **occurrence**, offense or **claim** is known to a natural person **Named Insured**, to a partner, executive officer, manager or member of a **Named Insured**, or an **employee** designated by any of the above to give such notice.

B. NOTICE OF OCCURRENCE

The **Named Insured's** rights under this **Coverage Part** will not be prejudiced if the **Named Insured** fails to give the Insurer notice of an **occurrence**, offense or **claim** and that failure is solely due to the **Named Insured's** reasonable belief that the **bodily injury** or **property damage** is not covered under this **Coverage Part**. However, the **Named Insured** shall give written notice of such **occurrence**, offense or **claim** to the Insurer as soon as the **Named Insured** is aware that this insurance may apply to such **occurrence**, offense or **claim**.

5. BROAD NAMED INSURED

WHO IS AN INSURED is amended to delete its Paragraph 3. in its entirety and replace it with the following:

3. Pursuant to the limitations described in Paragraph 4. below, any organization in which a **Named Insured** has management control:
 - a. on the effective date of this **Coverage Part**; or

**Contractors' General Liability Extension Endorsement**

- B. Solely for the purpose of the coverage provided by this **PROPERTY DAMAGE – ELEVATORS** Provision, the **Other Insurance** conditions is amended to add the following paragraph:

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis that is Property insurance covering property of others damaged from the use of elevators.

23. SUPPLEMENTARY PAYMENTS

The section entitled **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B** is amended as follows:

- A. Paragraph 1.b. is amended to delete the \$250 limit shown for the cost of bail bonds and replace it with a \$5,000. limit; and
- B. Paragraph 1.d. is amended to delete the limit of \$250 shown for daily loss of earnings and replace it with a \$1,000. limit.

24. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS

If the **Named Insured** unintentionally fails to disclose all existing hazards at the inception date of the **Named Insured's Coverage Part**, the Insurer will not deny coverage under this **Coverage Part** because of such failure.

25. WAIVER OF SUBROGATION - BLANKET

Under **CONDITIONS**, the condition entitled **Transfer Of Rights Of Recovery Against Others To Us** is amended to add the following:

The Insurer waives any right of recovery the Insurer may have against any person or organization because of payments the Insurer makes for injury or damage arising out of:

1. the **Named Insured's** ongoing operations; or
2. **your work** included in the **products-completed operations hazard**.

However, this waiver applies only when the **Named Insured** has agreed in writing to waive such rights of recovery in a written contract or written agreement, and only if such contract or agreement:

1. is in effect or becomes effective during the term of this **Coverage Part**; and
2. was executed prior to the **bodily injury, property damage or personal and advertising injury** giving rise to the claim.

26. WRAP-UP EXTENSION: OCIP, CCIP, OR CONSOLIDATED (WRAP-UP) INSURANCE PROGRAMS

Note: The following provision does not apply to any public construction project in the state of Oklahoma, nor to any construction project in the state of Alaska, that is not permitted to be insured under a **consolidated (wrap-up) insurance program** by applicable state statute or regulation.

If the endorsement **EXCLUSION – CONSTRUCTION WRAP-UP** is attached to this policy, or another exclusionary endorsement pertaining to Owner Controlled Insurance Programs (O.C.I.P.) or Contractor Controlled Insurance Programs (C.C.I.P.) is attached, then the following changes apply:

- A. The following wording is added to the above-referenced endorsement:

With respect to a **consolidated (wrap-up) insurance program** project in which the **Named Insured** is or was involved, this exclusion does not apply to those sums the **Named Insured** become legally obligated to pay as **damages** because of:

1. **Bodily injury, property damage, or personal or advertising injury** that occurs during the **Named Insured's** ongoing operations at the project, or during such operations of anyone acting on the **Named Insured's** behalf; nor



CONTRACTORS EXTENDED COVERAGE ENDORSEMENT - BUSINESS AUTO PLUS

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

I. LIABILITY COVERAGE

A. Who Is An Insured

The following is added to **Section II, Paragraph A.1., Who Is An Insured:**

1. a. Any incorporated entity of which the Named Insured owns a majority of the voting stock on the date of inception of this Coverage Form; provided that,
 - b. The insurance afforded by this provision **A.1.** does not apply to any such entity that is an **insured** under any other liability "policy" providing **auto** coverage.
2. Any organization you newly acquire or form, other than a limited liability company, partnership or joint venture, and over which you maintain majority ownership interest.

The insurance afforded by this provision **A.2.:**

- a. Is effective on the acquisition or formation date, and is afforded only until the end of the policy period of this Coverage Form, or the next anniversary of its inception date, whichever is earlier.
- b. Does not apply to:
 - (1) **Bodily injury or property damage** caused by an **accident** that occurred before you acquired or formed the organization; or
 - (2) Any such organization that is an **insured** under any other liability "policy" providing **auto** coverage.
3. Any person or organization that you are required by a written contract to name as an additional insured is an **insured** but only with respect to their legal liability for acts or omissions of a person, who qualifies as an **insured** under **SECTION II – WHO IS AN INSURED** and for whom Liability Coverage is afforded under this policy. If required by written contract, this insurance will be primary and non-contributory to insurance on which the additional insured is a Named Insured.
4. An **employee** of yours is an **insured** while operating an **auto** hired or rented under a contract or agreement in that **employee's** name, with your permission, while performing duties related to the conduct of your business.

"Policy", as used in this provision **A. Who Is An Insured**, includes those policies that were in force on the inception date of this Coverage Form but:

1. Which are no longer in force; or
2. Whose limits have been exhausted.

B. Bail Bonds and Loss of Earnings

Section II, Paragraphs A.2. (2) and A.2. (4) are revised as follows:

1. In **a.(2)**, the limit for the cost of bail bonds is changed from \$2,000 to \$5,000; and
2. In **a.(4)**, the limit for the loss of earnings is changed from \$250 to \$500 a day.

Form No: CNA63359XX (04-2012)

Endorsement Effective Date:

Endorsement Expiration Date:

Endorsement No: 12; Page: 1 of 4

Underwriting Company: Transportation Insurance Company, 151 N Franklin St, Chicago, IL 60606

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C. Fellow Employee

Section II, Paragraph B.5 does not apply.

Such coverage as is afforded by this provision C. is excess over any other collectible insurance.

II. PHYSICAL DAMAGE COVERAGE

A. Glass Breakage – Hitting A Bird Or Animal – Falling Objects Or Missiles

The following is added to **Section III, Paragraph A.3.:**

With respect to any covered **auto**, any deductible shown in the Declarations will not apply to glass breakage if such glass is repaired, in a manner acceptable to us, rather than replaced.

B. Transportation Expenses

Section III, Paragraph A.4.a. is revised, with respect to transportation expense incurred by you, to provide:

- a. \$60 per day, in lieu of \$20; subject to
- b. \$1,800 maximum, in lieu of \$600.

C. Loss of Use Expenses

Section III, Paragraph A.4.b. is revised, with respect to loss of use expenses incurred by you, to provide:

- a. \$1,000 maximum, in lieu of \$600.

D. Hired "Autos"

The following is added to **Section III, Paragraph A.:**

5. Hired "Autos"

If Physical Damage coverage is provided under this policy, and such coverage does not extend to Hired Autos, then Physical Damage coverage is extended to:

- a. Any covered **auto** you lease, hire, rent or borrow without a driver; and
- b. Any covered **auto** hired or rented by your **employee** without a driver, under a contract in that individual **employee's** name, with your permission, while performing duties related to the conduct of your business.
- c. The most we will pay for any one **accident** or **loss** is the actual cash value, cost of repair, cost of replacement or \$75,000, whichever is less, minus a \$500 deductible for each covered **auto**. No deductible applies to **loss** caused by fire or lightning.
- d. The physical damage coverage as is provided by this provision is equal to the physical damage coverage(s) provided on your owned **autos**.
- e. Such physical damage coverage for hired **autos** will:
 - (1) Include loss of use, provided it is the consequence of an **accident** for which the Named Insured is legally liable, and as a result of which a monetary loss is sustained by the leasing or rental concern.
 - (2) Such coverage as is provided by this provision will be subject to a limit of \$750 per **accident**.

E. Airbag Coverage

The following is added to **Section III, Paragraph B.3.:**

The accidental discharge of an airbag shall not be considered mechanical breakdown.

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F. Electronic Equipment

Section III, Paragraphs B.4.c and B.4.d. are deleted and replaced by the following:

- c. Physical Damage Coverage on a covered **auto** also applies to **loss** to any permanently installed electronic equipment including its antennas and other accessories
- d. A \$100 per occurrence deductible applies to the coverage provided by this provision.

G. Diminution In Value

The following is added to **Section III, Paragraph B.6.:**

Subject to the following, the **diminution in value** exclusion does not apply to:

- a. Any covered **auto** of the private passenger type you lease, hire, rent or borrow, without a driver for a period of 30 days or less, while performing duties related to the conduct of your business; and
- b. Any covered **auto** of the private passenger type hired or rented by your **employee** without a driver for a period of 30 days or less, under a contract in that individual **employee's** name, with your permission, while performing duties related to the conduct of your business.
- c. Such coverage as is provided by this provision is limited to a **diminution in value** loss arising directly out of accidental damage and not as a result of the failure to make repairs; faulty or incomplete maintenance or repairs; or the installation of substandard parts.
- d. The most we will pay for **loss** to a covered **auto** in any one accident is the lesser of:
 - (1) \$5,000; or
 - (2) 20% of the **auto's** actual cash value (ACV).

III. Drive Other Car Coverage – Executive Officers

The following is added to **Sections II and III:**

- 1. Any **auto** you don't own, hire or borrow is a covered **auto** for Liability Coverage while being used by, and for Physical Damage Coverage while in the care, custody or control of, any of your "executive officers", except:
 - a. An **auto** owned by that "executive officer" or a member of that person's household; or
 - b. An **auto** used by that "executive officer" while working in a business of selling, servicing, repairing or parking **autos**.

Such Liability and/or Physical Damage Coverage as is afforded by this provision.

- (1) Equal to the greatest of those coverages afforded any covered **auto**; and
- (2) Excess over any other collectible insurance.

- 2. For purposes of this provision, "executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document, and, while a resident of the same household, includes that person's spouse.

Such "executive officers" are **insureds** while using a covered **auto** described in this provision.

IV. BUSINESS AUTO CONDITIONS

A. Duties In The Event Of Accident, Claim, Suit Or Loss

The following is added to **Section IV, Paragraph A.2.a.:**

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- (4) Your **employees** may know of an **accident** or **loss**. This will not mean that you have such knowledge, unless such **accident** or **loss** is known to you or if you are not an individual, to any of your executive officers or partners or your insurance manager.

The following is added to **Section IV, Paragraph A.2.b.:**

- (6) Your **employees** may know of documents received concerning a claim or **suit**. This will not mean that you have such knowledge, unless receipt of such documents is known to you or if you are not an individual, to any of your executive officers or partners or your insurance manager.

B. Transfer Of Rights Of Recovery Against Others To Us

The following is added to **Section IV, Paragraph A.5. Transfer Of Rights Of Recovery Against Others To Us:**

We waive any right of recovery we may have, because of payments we make for injury or damage, against any person or organization for whom or which you are required by written contract or agreement to obtain this waiver from us.

This injury or damage must arise out of your activities under a contract with that person or organization.

You must agree to that requirement prior to an **accident** or **loss**.

C. Concealment, Misrepresentation or Fraud

The following is added to **Section IV, Paragraph B.2.:**

Your failure to disclose all hazards existing on the date of inception of this Coverage Form shall not prejudice you with respect to the coverage afforded provided such failure or omission is not intentional.

D. Other Insurance

The following is added to **Section IV, Paragraph B.5.:**

Regardless of the provisions of Paragraphs 5.a. and 5.d. above, the coverage provided by this policy shall be on a primary non-contributory basis. This provision is applicable only when required by a written contract.

That written contract must have been entered into prior to **Accident** or **Loss**.

E. Policy Period, Coverage Territory

Section IV, Paragraph B. 7.(5).(a). is revised to provide:

- a. 45 days of coverage in lieu of 30 days.

V. DEFINITIONS

Section V. paragraph C. is deleted and replaced by the following:

Bodily injury means bodily injury, sickness or disease sustained by a person, including mental anguish, mental injury or death resulting from any of these.

Form No: CNA63359XX (04-2012)

Endorsement Effective Date:

Endorsement Expiration Date:

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Underwriting Company: Transportation Insurance Company, 151 N Franklin St, Chicago, IL 60606

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WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Schedule

**ANY PERSON OR ORGANIZATION FOR WHOM THE NAMED INSURED IS
REQUIRED UNDER WRITTEN CONTRACT TO FURNISH THIS WAIVER,
FOR FLORIDA OPERATIONS ONLY.**

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.
(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective **08/29/2023** Policy No. **WFL 5061934 02**
Insured **BANDES CONSTRUCTION CO INC**
Insurance Company **INSURANCE COMPANY OF THE WEST**

Endorsement No.
Premium \$ **INCL.**

Countersigned By _____



CRUM & FORSTER®
A FAIRFAX COMPANY

Policy #5821219107
Effective Dates: 08/29/2023-08/29/2024

EXCESS LIABILITY COVERAGE FORM

Various provisions in this Policy restrict coverage. Read the entire Policy carefully to determine rights, duties and what is and is not covered.

Throughout this Policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this Policy. The words "we", "us" and "our" refer to the company providing this insurance. The word "insured" means any person or organization qualifying as such under the "controlling underlying insurance".

Other words and phrases that appear in quotation marks in this Policy have special meaning. Refer to **SECTION IV – DEFINITIONS**. Other words and phrases that are not defined under this Policy but defined in the "controlling underlying insurance" will have the meaning described in the policy of "controlling underlying insurance".

SECTION I – COVERAGES

1. Insuring Agreement

- a. We will pay on behalf of the insured the "ultimate net loss" in excess of the "retained limit" because of "injury or damage" to which this insurance applies.

We will have the right and duty to defend the insured against any "suit" seeking damages for such "injury or damage" when the "retained limit" has been paid in full. When we have no duty to defend, we will have the right to defend, or to associate in the defense of, the insured against any "suit" seeking damages for "injury or damage".

However, we will have no duty to defend the insured against any "suit" seeking damages for which insurance under this Policy does not apply.

At our discretion, we may investigate any "event" that may involve this insurance and settle any resultant claim or "suit".

But:

- (1) The amount we will pay for "ultimate net loss" is limited as described in **SECTION II – LIMITS OF INSURANCE**; and
- (2) Our right and duty to defend ends when we have paid the applicable limit of insurance in the payment of judgments or settlements under this Policy. However, if the policy of "controlling underlying insurance" specifies that limits are reduced by defense expenses, our right and duty to defend ends when we have paid the applicable limit of insurance in the payment of defense expenses, judgments, or settlements under this Policy.
- b. The insurance under this Policy will follow the same provisions, exclusions, conditions and limitations that are contained in the applicable "controlling underlying insurance", unless otherwise directed by this Policy. To the extent such provisions differ or conflict, the provisions of this Policy will apply. However, the coverage under this Policy will not be broader than that provided by any "underlying insurance".
- If any applicable "underlying insurance" does not pay for "ultimate net loss" for any reason other than the exhaustion of its applicable limit of insurance by payment of claims or "suits", then this Policy will not cover such "ultimate net loss".
- c. There may be more than one "controlling underlying insurance" listed in the Schedule of Underlying Insurance, and there may be terms and provisions in those respective policies that are in conflict and which are not superseded by the provisions of this Policy. In such a case, the provisions, exclusions and

limitations of the "controlling underlying insurance" applicable to the particular "event" for which a claim is made or "suit" is brought will apply.

- d. If any other limit, such as a sublimit, is specified in the "underlying insurance", this insurance does not apply to "injury or damage" arising out of that exposure unless that limit is specified in the Schedule of Underlying Insurance.
- e. Any person or entity qualifying as an additional insured under the "controlling underlying insurance" will be an additional insured under this Policy. If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the minimum amount of insurance required by the contract or agreement less any amounts payable by "underlying insurance" and all other insurance available to the additional insured. Under no circumstances will we pay on behalf of the additional insured an amount exceeding the available Limit of Insurance applicable under this Policy.

Additional insured coverage, as provided by this Policy, will not be broader than coverage provided by any "underlying insurance".

2. Exclusions

Insurance provided under this Policy does not apply to:

a. Asbestos

"Injury or damage", loss, cost or expense directly or indirectly caused by, resulting from, in consequence of, or in any way involving asbestos or any materials containing asbestos in whatever form or quantity.

This exclusion applies regardless of any other contributing or aggravating cause or "event" that contributes concurrently or in any sequence to the "injury or damage", loss, cost or expense.

b. Auto

"Injury or damage", loss, cost or expense payable under or resulting from any of the following auto coverages:

- (1) First-party physical damage coverage;
- (2) No-fault coverage;
- (3) Personal injury protection or auto medical payments coverage; or
- (4) Uninsured or underinsured motorists' coverage.

c. Pollution

(1) "Injury or damage" which would not have occurred in whole or part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release, or escape of "pollutants" at any time.

(2) Any loss, cost or expense arising out of any:

- (a) Request, demand, order, or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify, neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
- (b) Claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, or in any way responding to, or assessing the effects of "pollutants".

This exclusion applies whether or not such "pollutants" have any function in your business, operations, premises, site, or location.

d. Workers' Compensation and Similar Laws

Any obligation of any insured under a workers' compensation, disability benefits, unemployment compensation law, or any similar law.

SECTION II – LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
 - a. Insureds;
 - b. Claims made or "suits" brought or number of vehicles involved;
 - c. Persons or organizations making claims or bringing "suits"; or
 - d. Limits available under any "underlying insurance".
2. The Limits of Insurance as shown in the Declarations will apply as follows:
 - a. This insurance only applies in excess of the "retained limit".
 - b. The Total Policy Aggregate Limit, if stated in the Declarations, is the most we will pay for the sum of all "ultimate net loss" for all "injury or damage" covered under this Policy other than any claims for damages arising out of the ownership, maintenance, or use of a covered auto. The Total Policy Aggregate Limit applies regardless of the sums indicated in the Declarations for any General Aggregate Limit or Products-Completed Operations Aggregate Limit, and applies collectively, rather than separately, to all locations or projects.
 - c. Subject to 2.b. above, the General Aggregate Limit, if stated in the Declarations, is the most we will pay for the sum of all "ultimate net loss" for all "injury or damage" covered under this Policy other than any claims for damages falling within the products-completed operations hazard or arising out of the ownership, maintenance or use of a covered auto.

Subject to 2.b. above, the Products-Completed Operations Aggregate Limit, if stated in the Declarations, is the most we will pay for the sum of all "ultimate net loss" for all "injury or damage" included within the products-completed operations hazard.

However, if any "underlying insurance" does not provide separate aggregate limits for "ultimate net loss" within the products-completed operations hazard, the General Aggregate set forth above is the most we will pay for all "ultimate net loss", including "ultimate net loss" within the products-completed operations hazard. Under such circumstances, any limit appearing in the Declarations for a Products-Completed Operations Aggregate Limit does not apply.
 - d. Subject to Paragraph 2.b. and 2.c. above, the Each Occurrence Limit is the most we will pay for the sum of all "ultimate net loss" under this Policy because of all "injury or damage" arising out of any one "event".
 - e. If the Limits of Insurance of the "controlling underlying insurance" are reduced by defense expenses by the terms of that policy, any payments for defense expenses we make will reduce our applicable Limits of Insurance in the same manner.
3. The Aggregate Limits of "underlying insurance", where applicable, shall be unimpaired at the attachment date of this Policy, and for the purpose of this insurance, only "events" to which this insurance applies, taking place during the Policy Period of this Policy, shall be considered in determining the extent of any exhaustion of the Aggregate Limits of "underlying insurance", where applicable.
4. If this Policy and any other policy issued by us, or by any other affiliated insurance company within the Crum & Forster group of companies, applies to the same incident, "event," act, offense, claim, "suit," or occurrence for which any insured under this Policy is legally liable, then the maximum limit of insurance payable for all "injury or damage" covered under the policies will not exceed the highest applicable Each Occurrence limit of insurance available under any one policy for the incident, "event," act, offense, claim, "suit," or occurrence. However, this does not apply to any other insurance issued to you by us, or by any affiliated insurance company within the Crum & Forster group of companies, which is specifically written to be either primary or in excess of this Policy.

The General Aggregate Limit, the Products-Completed Operations Aggregate Limit, and the Total Policy Aggregate Limit of this Policy apply separately to each consecutive annual period of this Policy and to any remaining period of this Policy of less than 12 months, starting with the beginning of the Policy Period shown in

the Declarations, unless the Policy Period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

SECTION III – CONDITIONS

The following conditions apply:

1. Appeals

If any "underlying insurer" or insured elects not to appeal a judgment in excess of the amount of the "retained limit", we may do so at our own expense. We also will pay for taxable court costs, pre and post judgment interest and disbursements associated with such appeal. In no event will this provision increase our liability beyond the applicable Limits of Insurance described in **SECTION II – LIMITS OF INSURANCE**.

2. Bankruptcy

a. Bankruptcy or Insolvency of Insured

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Policy.

b. Bankruptcy of Underlying Insurer

Bankruptcy or insolvency of any "underlying insurer" will not relieve us of our obligations under this Policy. However, insurance provided under this Policy will not replace any "underlying insurance" in the event of bankruptcy or insolvency of the "underlying insurer". The insurance provided under this Policy will apply as if the "underlying insurance" were in full effect and recoverable.

3. Cancellation

a. The first Named Insured shown in the Declarations may cancel this Policy by mailing or delivering to us advance written notice of cancellation.

b. We may cancel this Policy by mailing or delivering to the first Named Insured written notice of cancellation at least:

(1) 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or

(2) 30 days before the effective date of cancellation if we cancel for any other reason.

c. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.

d. Notice of cancellation will state the effective date of cancellation. The Policy Period will end on that date.

e. If this Policy is cancelled, subject to any audit, we will send the first Named Insured any premium refund due. If we cancel, any refund will be pro rata. If the first Named Insured cancels, any refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.

f. If notice is mailed, proof of mailing will be sufficient proof of notice.

4. Changes

This Policy contains all the agreements between you and us concerning the insurance afforded. The first Named Insured is authorized by all other insureds to make changes in the terms and conditions of this Policy, with our consent, provided, however, that this Policy's terms and conditions can be amended or waived only by written endorsement issued by us and made a part of this Policy.

5. Duties in the Event of a Claim, Event, or Suit

a. You must see to it that we are notified as soon as practicable of an "event", regardless of the amount, which may result in a claim under this Policy. To the extent possible, notice should include:

(1) How, when and where the "event" took place;

- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any "injury or damage" arising out of the "event".
- b. If a claim is made or "suit" is brought against any insured, you must:
 - (1) Immediately record the specifics of the claim or "suit" and the date received; and
 - (2) Notify us as soon as practicable.You must see to it that we receive written notice of the claim or "suit" as soon as practicable.
- c. You and any other insured involved must:
 - (1) Immediately send us copies of any demands, notices, summonses, or legal papers received in connection with the claim or "suit";
 - (2) Authorize us to obtain records and other information;
 - (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
 - (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of "injury or damage" to which this insurance may also apply.
- d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

6. Examination of Your Books and Records

We may examine and audit your books and records as they relate to this Policy at any time during the Policy Period and up to three years afterward.

7. First Named Insured Duties

The first Named Insured is the person or organization first named in the Declarations and is responsible for the payment of all premiums. The first Named Insured will act on behalf of all other insureds for giving and receiving of notice of cancellation or the receipt of any return premium that may become payable.

The first Named Insured will furnish us, as soon as practicable, with a complete copy of any "underlying insurance" and any subsequently issued endorsements or policies which may in any way affect the insurance provided under this Policy.

8. Legal Action Against Us

No person or organization has a right under this Policy to join us as a party or otherwise bring us into a "suit" asking for damages from an insured or to sue us on this Policy unless all of its terms have been fully complied with. A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured, but we will not be liable for damages that are not payable under the terms of this Policy or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured, "underlying insurer" and the claimant or the claimant's legal representative.

9. Loss Payable

Liability under this Policy does not apply to a given claim unless and until the insured or insured's "underlying insurer" has become obligated to pay the "retained limit", and the obligation of the insured to pay the "ultimate net loss" in excess of the "retained limit" has been determined by a final settlement or judgment or written agreement among the insured, claimant, "underlying insurer" (or a representative of one or more of these) and us.

10. Maintenance of/Changes to Underlying Insurance

Any "underlying insurance" must be maintained in full effect during the Policy Period of this Policy, without change of coverage or reduction of limits except for the reduction of aggregate limits in accordance with the provisions of such "underlying insurance" that results from "injury or damage" to which this insurance applies. Such exhaustion or reduction of limits is not a failure to maintain "underlying insurance".

Failure to maintain "underlying insurance" will not invalidate insurance provided under this Policy, but insurance provided under this Policy will apply as if the "underlying insurance" were in full effect.

The first Named Insured must notify us in writing, as soon as practicable, if any "underlying insurance" is cancelled, not renewed, replaced, otherwise terminated, or if the limits or scope of coverage of any "underlying insurance" is changed.

11. Other Insurance

- a. If other insurance that is not "underlying insurance" applies to any claim or "suit" that is also covered under this Policy, then this Policy shall apply in excess of and shall not contribute with such other insurance.
- b. When a person or organization that is an additional insured under all "underlying insurance" requires in a written contract with you that this insurance be non-contributory, then we shall not seek contribution from other insurers that provide coverage to the additional insured as a Named Insured for "ultimate net loss" sustained by such additional insured after all underlying limits have been exhausted. If an additional insured has coverage under any other policy[ies] as an additional insured, this Policy applies excess of all such insurance, and this Policy will not contribute to any "ultimate net loss". This provision does not apply to any policy in which the additional insured is a Named Insured on such other policy and where this Policy is required by written contract or written agreement to provide coverage to the additional insured on a primary and non-contributory basis.

The provisions of this Other Insurance condition will not apply if such other insurance is specifically written to be excess of this Policy. If no other insurer defends, we may undertake to do so in accordance with the defense provisions set forth elsewhere in this Policy, but we will be entitled to the insured's rights against all those other insurers.

12. Premium

The premium, as stated in the Declarations of this Policy, is a flat premium, unless there is a rate per an exposure base shown on this Policy, and an endorsement stating such is attached to this Policy. In that case, the premium is subject to adjustment in accordance with the terms of that endorsement.

The premium, as stated in the Declarations of this Policy, may be adjusted if an additional premium charge is made to the "underlying insurance" or if there is an increase in the risk assumed by us during the Policy Period of this Policy.

13. Transfer of Defense

a. Defense Transferred to Us

When the "retained limit" has been paid in full, we will cooperate in the transfer of control to us of any outstanding claims or "suits" seeking damages to which this insurance applies and which would have been covered by the "underlying insurance" had the applicable "retained limit" not been exhausted.

Where the settlement of any "suit" defended by any "underlying insurer" results, or will result, in the exhaustion of the "retained limit" and also will require the payment of a portion of the Limits of Insurance under this Policy in order to effectuate the settlement, we will have the right, but not the duty, to assume the transfer of the defense of the insured with respect to that "suit", but we will be under no obligation to have the defense transferred to us unless and until the "retained limit" has been paid in full.

Where the satisfaction of any judgment entered against the insured in a "suit" defended by any "underlying insurer" results, or will result, in the exhaustion of the "retained limit" and also will require the payment of a portion of the Limits of Insurance under this Policy in order to effectuate the satisfaction of that judgment, we will have the right, but not the duty, to defend the insured with respect to that "suit", but we will be under no obligation to have the defense transferred to us.

b. Defense Transferred by Us

When our limits of insurance have been exhausted, our duty to provide a defense will cease. We will cooperate in the transfer of control of defense to any insurer specifically written as excess over this Policy of any outstanding claims or "suits" seeking damages to which this insurance applies and which would have been covered had the applicable limit not been exhausted.

In the event that there is no insurance written as excess over this Policy, we will cooperate in the transfer of control to the insured and its designated representative.

14. Transfer of Rights of Recovery Against Others to Us

If you have rights to recover all or part of any payment we have made under this Policy, those rights are transferred to us. You must do nothing after loss to impair them. At our request, you will bring "suit" or transfer those rights to us and help us enforce them.

If you and any insurer providing "underlying insurance", prior to the time of an "event", waive in writing any right of recovery against a specific person or organization for any liability, we also will waive any rights we may have against such person or organization to the same extent waived by you and any insurer providing "underlying insurance".

The amount recovered shall be apportioned in the inverse order of payment of the "ultimate net loss" to the extent of the actual payment. The expenses of all such recovery proceedings shall be apportioned in the ratio of respective recoveries.

SECTION IV – DEFINITIONS

As used in this Policy:

1. **"Controlling underlying insurance"** means a policy of insurance listed in the Schedule of Underlying Insurance and identified as "controlling underlying insurance".
2. **"Event"** means an occurrence, offense, accident, act, or other event to which the applicable "controlling underlying insurance" applies.
3. **"Injury or damage"** means any injury or damage covered in the applicable "controlling underlying insurance" arising from an "event".
4. **"Pollutants"** mean any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned, or reclaimed.
5. **"Retained limit"** means the sum of all applicable "underlying insurance" shown in the Schedule of Underlying Insurance and any other insurance or self-insurance applicable to the claim or "suit", except insurance specifically written to apply in excess of this Policy.
6. **"Suit"** means a civil proceeding in which damages because of "injury or damage" to which this insurance applies are alleged. "Suit" includes:
 - a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
 - b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent or the "underlying insurer's" consent.
7. **"Ultimate net loss"** means the total sum, after reduction for recoveries or salvages collectible, that the insured becomes legally obligated to pay as damages by reason of:
 - a. Settlements, judgments, binding arbitration; or
 - b. Other binding alternate dispute resolution proceeding entered into with our consent.

"Ultimate net loss" includes defense expenses if the "controlling underlying insurance" specifies that limits are reduced by defense expenses.
8. **"Underlying insurance"** means the policy or policies (including any renewal or replacement of such policies) of insurance listed in the Schedule of Underlying Insurance including the "controlling underlying insurance" and any self-insured retentions.
9. **"Underlying insurer"** means any insurer that provides a policy of insurance listed in the Schedule of Underlying Insurance.

**FIRST AMENDMENT TO NON-EXCLUSIVE RIGHT OF WAY
LICENSE AGREEMENT**

THIS FIRST AMENDMENT TO NON-EXCLUSIVE RIGHT OF WAY LICENSE AGREEMENT, is made and entered into this 26th day of April, 2024, ("Amendment"), and is by and between the **TOWN OF FORT MYERS BEACH**, a political subdivision of the State of Florida, (hereinafter, the "Town" or "Licensor"), and **BANDES CONSTRUCTION COMPANY, INC.**, a Florida Corporation, their successors and assigns, (collectively hereinafter, "Bandes" or "Licensee"), and amends that certain **NON-EXCLUSIVE RIGHT OF WAY LICENSE AGREEMENT** entered into on the 26th day of April, 2024 ("Agreement"); and

WHEREAS, the Town and Bandes entered into the Agreement to allow Bandes to use the Town's property located at the corner of Old San Carlos Blvd. & Estero Blvd., Fort Myers Beach, situating eleven (11) metered parking spaces, which is more explicitly identified and reflected in Exhibit "A" of the Agreement, (the "Property"), for the location of construction equipment and dumpsters, which will remain on the Property, subject to the terms of the Agreement; and

WHEREAS, the Agreement expired on March 15, 2024; and

WHEREAS, the Town and Bandes mutually desire to extend the duration of the Agreement retroactively from March 15, 2024, through July 1, 2024; and

WHEREAS, the extension is in the best interests of the Town and is consistent with promotion of the health, safety, and welfare of its residents.

NOW, THEREFORE, in consideration of the covenants to be kept and performed by each of the parties hereto, and other good and valuable consideration paid by Bandes to the Town, receipt and sufficiency of which is hereby acknowledged, it is agreed as follows:

1. **DURATION.** Paragraph 7 of the Agreement is hereby amended to grant unto Bandes the continued non-exclusive right of way license to use the Property, retroactively from March 15, 2024, through July 1, 2024.

2. **REMAINING TERMS.** Other than the duration of the Agreement, which duration shall be extended retroactively from March 15, 2024, through July 1, 2024, all other terms and conditions of the Agreement shall remain in force and effect.

IN WITNESS WHEREOF, the Town and Bandes have executed this Amendment to the Agreement as of the date and year first above written.

[Signatures and Attestation on the Following Page]

Town of Fort Myers Beach

MAY 3 2024

Received by: _____

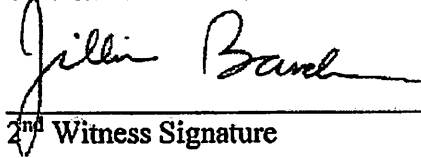
WITNESSES:



1st Witness Signature

Lisa Miller

1st Witness Print Name



2nd Witness Signature

Jillian Bandes

2nd Witness Print Name

LICENSEE: Bandes Construction Company, Inc.



Print Name: Robert Bandes

President

Print Title

LICENSOR: Town of Fort Myers Beach

Dan Allers

Dan Allers (May 14, 2024 15:23 EDT)

Dan Allers, Mayor of Fort Myers Beach

ATTEST:



Amy Baker, Town Clerk

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

Becky Vose

Becky Vose (May 14, 2024 22:23 EDT)

Vose Law Firm, Town Attorney

For Recording Purposes Only

**THIS INSTRUMENT PREPARED BY
AND AFTER RECORDING RETURN TO:**

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

NON-EXCLUSIVE RIGHT OF WAY LICENSE AGREEMENT

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

RECITALS

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

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

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

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

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

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

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

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

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

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

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

To the Licensor:

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

To the Licensee:

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

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

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

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

WITNESSES:

Print Name: Lisa Miller

Print Name: Jeremy Brown

LICENSEE: Bandes Construction Company Inc.

Print Name: _____

Title: President

LICENSOR: TOWN OF FORT MYERS BEACH

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, Town Attorney



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

2/27/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Bowen, Miclette & Britt of Florida, LLC 850 Concourse Parkway S Suite #105 Maitland FL 32751	CONTACT NAME: Michelle Rushing PHONE (A/C, No, Ext): 407-647-1616 FAX (A/C, No): 407-628-1635 E-MAIL ADDRESS: mrrushing@bmbinc.com												
INSURED Bandes Construction Co., Inc. 1368 Spalding Rd Ste C Dunedin FL 34698	INSURER(S) AFFORDING COVERAGE <table><tr><td>INSURER A : North River Insurance Co.</td><td>NAIC # 21105</td></tr><tr><td>INSURER B : Insurance Co of the West</td><td>27847</td></tr><tr><td>INSURER C : National Fire Ins Co of Hartford</td><td>20478</td></tr><tr><td>INSURER D : Continental Casualty Co.</td><td>20443</td></tr><tr><td>INSURER E :</td><td></td></tr><tr><td>INSURER F :</td><td></td></tr></table>	INSURER A : North River Insurance Co.	NAIC # 21105	INSURER B : Insurance Co of the West	27847	INSURER C : National Fire Ins Co of Hartford	20478	INSURER D : Continental Casualty Co.	20443	INSURER E :		INSURER F :	
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INSURER D : Continental Casualty Co.	20443												
INSURER E :													
INSURER F :													

COVERAGES**CERTIFICATE NUMBER:** 2005481145**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS														
C	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PROJECT ☐ LOC OTHER:	Y	Y	7015418560	8/29/2023	8/29/2024	<table><tr><td>EACH OCCURRENCE</td><td>\$ 1,000,000</td></tr><tr><td>DAMAGE TO RENTED PREMISES (Ea occurrence)</td><td>\$ 100,000</td></tr><tr><td>MED EXP (Any one person)</td><td>\$ 15,000</td></tr><tr><td>PERSONAL & ADV INJURY</td><td>\$ 1,000,000</td></tr><tr><td>GENERAL AGGREGATE</td><td>\$ 2,000,000</td></tr><tr><td>PRODUCTS - COM/OP AGG</td><td>\$ 2,000,000</td></tr><tr><td>Deductible</td><td>\$ 10,000</td></tr></table>	EACH OCCURRENCE	\$ 1,000,000	DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 100,000	MED EXP (Any one person)	\$ 15,000	PERSONAL & ADV INJURY	\$ 1,000,000	GENERAL AGGREGATE	\$ 2,000,000	PRODUCTS - COM/OP AGG	\$ 2,000,000	Deductible	\$ 10,000
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GENERAL AGGREGATE	\$ 2,000,000																				
PRODUCTS - COM/OP AGG	\$ 2,000,000																				
Deductible	\$ 10,000																				
D	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☒ ALL OWNED AUTOS ☒ HIRED AUTOS ☐ SCHEDULED AUTOS ☒ NON-OWNED AUTOS	Y	Y	7015418557	8/29/2023	8/29/2024	<table><tr><td>COMBINED SINGLE LIMIT (Ea accident)</td><td>\$ 1,000,000</td></tr><tr><td>BODILY INJURY (Per person)</td><td>\$</td></tr><tr><td>BODILY INJURY (Per accident)</td><td>\$</td></tr><tr><td>PROPERTY DAMAGE (Per accident)</td><td>\$</td></tr><tr><td></td><td>\$</td></tr></table>	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000	BODILY INJURY (Per person)	\$	BODILY INJURY (Per accident)	\$	PROPERTY DAMAGE (Per accident)	\$		\$				
COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000																				
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	\$																				
A	☐ UMBRELLA LIAB ☒ OCCUR ☒ EXCESS LIAB ☐ CLAIMS-MADE ☐ DED ☒ RETENTION \$ 0	Y	Y	5821219107	8/29/2023	8/29/2024	<table><tr><td>EACH OCCURRENCE</td><td>\$ 5,000,000</td></tr><tr><td>AGGREGATE</td><td>\$ 10,000,000</td></tr><tr><td></td><td>\$</td></tr></table>	EACH OCCURRENCE	\$ 5,000,000	AGGREGATE	\$ 10,000,000		\$								
EACH OCCURRENCE	\$ 5,000,000																				
AGGREGATE	\$ 10,000,000																				
	\$																				
B	☒ WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below Y / N ☒ N / A		Y	WFL506193402	8/29/2023	8/29/2024	<table><tr><td>☒ PER STATUTE ☐ OTH-ER</td><td></td></tr><tr><td>E.L. EACH ACCIDENT</td><td>\$ 1,000,000</td></tr><tr><td>E.L. DISEASE - EA EMPLOYEE</td><td>\$ 1,000,000</td></tr><tr><td>E.L. DISEASE - POLICY LIMIT</td><td>\$ 1,000,000</td></tr></table>	☒ PER STATUTE ☐ OTH-ER		E.L. EACH ACCIDENT	\$ 1,000,000	E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000	E.L. DISEASE - POLICY LIMIT	\$ 1,000,000						
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E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000																				
E.L. DISEASE - POLICY LIMIT	\$ 1,000,000																				

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

The following policy provisions and/or endorsements form part of the policies of insurance represented by this certificate of insurance. The terms contained in the policies and/or endorsements supersede the representations made herein. Electronic copies of the policy provisions and/or endorsements listed below are available by emailing contact person shown above.

When required by written contract, those parties listed in said contract, including the certificate holder, are added as an additional insured with respect to the general liability, including on-going and completed operations, auto liability and umbrella liability as afforded by the policy and/or endorsements.

When required by written contract, waiver of subrogation, with respect to the general liability, auto liability, worker's compensation and umbrella is granted to See Attached...

CERTIFICATE HOLDER**CANCELLATION**

Town of Fort Myers Beach
2525 Estero Blvd.
Fort Myers Beach FL 33931

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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AGENCY CUSTOMER ID: BANDESCONS

LOC #: _____



ADDITIONAL REMARKS SCHEDULE

Page 1 of 1

AGENCY Bowen, Midgette & Britt of Florida, LLC		NAMED INSURED Bandes Construction Co., Inc. 1368 Spalding Rd Ste C Dunedin FL 34698
POLICY NUMBER		
CARRIER	NAIC CODE	EFFECTIVE DATE:

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: 25 FORM TITLE: CERTIFICATE OF LIABILITY INSURANCE

those parties listed in said contract, including the certificate holder.

The general liability, auto liability, & umbrella liability certified herein are primary and non-contributory to other insurance available, but only to the extent required by written contract.

30-day notice of cancellation applies.

**CNA PARAMOUNT****Contractors' General Liability Extension Endorsement**

It is understood and agreed that this endorsement amends the **COMMERCIAL GENERAL LIABILITY COVERAGE PART** as follows. If any other endorsement attached to this policy amends any provision also amended by this endorsement, then that other endorsement controls with respect to such provision, and the changes made by this endorsement with respect to such provision do not apply.

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VALLEY FORGE INSURANCE COMPANY

Insured Name: BANDES CONSTRUCTION COMPANY, INC.

Policy No: 7015418560

Endorsement No:

Effective Date: 08/29/2023

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**Contractors' General Liability Extension Endorsement****1. ADDITIONAL INSURED**

- a. **WHO IS AN INSURED** is amended to include as an **Insured** any person or organization described in paragraphs A. through H. below whom a **Named Insured** is required to add as an additional insured on this **Coverage Part** under a written contract or written agreement, provided such contract or agreement:

(1) is currently in effect or becomes effective during the term of this **Coverage Part**; and

(2) was executed prior to:

(a) the **bodily injury** or **property damage**; or

(b) the offense that caused the **personal and advertising injury**,

for which such additional insured seeks coverage.

- b. However, subject always to the terms and conditions of this policy, including the limits of insurance, the Insurer will not provide such additional insured with:

(1) a higher limit of insurance than required by such contract or agreement; or

(2) coverage broader than required by such contract or agreement, and in no event broader than that described by the applicable paragraph A. through H. below.

Any coverage granted by this endorsement shall apply only to the extent permissible by law.

A. Controlling Interest

Any person or organization with a controlling interest in a **Named Insured**, but only with respect to such person or organization's liability for **bodily injury**, **property damage** or **personal and advertising injury** arising out of:

1. such person or organization's financial control of a **Named Insured**; or

2. premises such person or organization owns, maintains or controls while a **Named Insured** leases or occupies such premises;

provided that the coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

B. Co-owner of Insured Premises

A co-owner of a premises co-owned by a **Named Insured** and covered under this insurance but only with respect to such co-owner's liability for **bodily injury**, **property damage** or **personal and advertising injury** as co-owner of such premises.

C. Lessor of Equipment

Any person or organization from whom a **Named Insured** leases equipment, but only with respect to liability for **bodily injury**, **property damage** or **personal and advertising injury** caused, in whole or in part, by the **Named Insured's** maintenance, operation or use of such equipment, provided that the **occurrence** giving rise to such **bodily injury**, **property damage** or the offense giving rise to such **personal and advertising injury** takes place prior to the termination of such lease.

D. Lessor of Land

Any person or organization from whom a **Named Insured** leases land but only with respect to liability for **bodily injury**, **property damage** or **personal and advertising injury** arising out of the ownership, maintenance or use of such land, provided that the **occurrence** giving rise to such **bodily injury**, **property damage** or the offense giving rise to such **personal and advertising injury** takes place prior to the termination of such lease. The

**Contractors' General Liability Extension Endorsement**

coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

E. Lessor of Premises

An owner or lessor of premises leased to the **Named Insured**, or such owner or lessor's real estate manager, but only with respect to liability for **bodily injury, property damage or personal and advertising injury** arising out of the ownership, maintenance or use of such part of the premises leased to the **Named Insured**, and provided that the occurrence giving rise to such **bodily injury or property damage**, or the offense giving rise to such **personal and advertising injury**, takes place prior to the termination of such lease. The coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

F. Mortgagee, Assignee or Receiver

A mortgagee, assignee or receiver of premises but only with respect to such mortgagee, assignee or receiver's liability for **bodily injury, property damage or personal and advertising injury** arising out of the **Named Insured's** ownership, maintenance, or use of a premises by a **Named Insured**.

The coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

G. State or Governmental Agency or Subdivision or Political Subdivisions – Permits

A state or governmental agency or subdivision or political subdivision that has issued a permit or authorization but only with respect to such state or governmental agency or subdivision or political subdivision's liability for **bodily injury, property damage or personal and advertising injury** arising out of:

1. the following hazards in connection with premises a **Named Insured** owns, rents, or controls and to which this insurance applies:
 - a. the existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoistaway openings, sidewalk vaults, street banners, or decorations and similar exposures; or
 - b. the construction, erection, or removal of elevators; or
 - c. the ownership, maintenance or use of any elevators covered by this insurance; or
2. the permitted or authorized operations performed by a **Named Insured** or on a **Named Insured's** behalf.

The coverage granted by this paragraph does not apply to:

- a. **Bodily injury, property damage or personal and advertising injury** arising out of operations performed for the state or governmental agency or subdivision or political subdivision; or
- b. **Bodily injury or property damage** included within the **products-completed operations hazard**.

With respect to this provision's requirement that additional insured status must be requested under a written contract or agreement, the Insurer will treat as a written contract any governmental permit that requires the **Named Insured** to add the governmental entity as an additional insured.

H. Trade Show Event Lessor

1. With respect to a **Named Insured's** participation in a trade show event as an exhibitor, presenter or displayer, any person or organization whom the **Named Insured** is required to include as an additional insured, but only with respect to such person or organization's liability for **bodily injury, property damage or personal and advertising injury** caused by:

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VALLEY FORGE INSURANCE COMPANY

Insured Name: BANDES CONSTRUCTION COMPANY, INC.

Policy No: 7015418560

Endorsement No: 8

Effective Date: 8/29/2023

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**Contractors' General Liability Extension Endorsement**

- a. the **Named Insured's** acts or omissions; or
 - b. the acts or omissions of those acting on the **Named Insured's** behalf,
in the performance of the **Named Insured's** ongoing operations at the trade show event premises during the trade show event.
2. The coverage granted by this paragraph does not apply to **bodily injury** or **property damage** included within the **products-completed operations hazard**.

2. ADDITIONAL INSURED - PRIMARY AND NON-CONTRIBUTORY TO ADDITIONAL INSURED'S INSURANCE

The **Other Insurance** Condition in the **COMMERCIAL GENERAL LIABILITY CONDITIONS** Section is amended to add the following paragraph:

If the **Named Insured** has agreed in writing in a contract or agreement that this insurance is primary and non-contributory relative to an additional insured's own insurance, then this insurance is primary, and the Insurer will not seek contribution from that other insurance. For the purpose of this Provision 2., the additional insured's own insurance means insurance on which the additional insured is a named insured. Otherwise, and notwithstanding anything to the contrary elsewhere in this Condition, the insurance provided to such person or organization is excess of any other insurance available to such person or organization.

3. BODILY INJURY – EXPANDED DEFINITION

Under **DEFINITIONS**, the definition of **bodily injury** is deleted and replaced by the following:

Bodily injury means physical injury, sickness or disease sustained by a person, including death, humiliation, shock, mental anguish or mental injury sustained by that person at any time which results as a consequence of the physical injury, sickness or disease.

4. BROAD KNOWLEDGE OF OCCURRENCE/ NOTICE OF OCCURRENCE

Under **CONDITIONS**, the condition entitled **Duties in The Event of Occurrence, Offense, Claim or Suit** is amended to add the following provisions:

A. BROAD KNOWLEDGE OF OCCURRENCE

The **Named Insured** must give the Insurer or the Insurer's authorized representative notice of an **occurrence**, offense or **claim** only when the **occurrence**, offense or **claim** is known to a natural person **Named Insured**, to a partner, executive officer, manager or member of a **Named Insured**, or an **employee** designated by any of the above to give such notice.

B. NOTICE OF OCCURRENCE

The **Named Insured's** rights under this **Coverage Part** will not be prejudiced if the **Named Insured** fails to give the Insurer notice of an **occurrence**, offense or **claim** and that failure is solely due to the **Named Insured's** reasonable belief that the **bodily injury** or **property damage** is not covered under this **Coverage Part**. However, the **Named Insured** shall give written notice of such **occurrence**, offense or **claim** to the Insurer as soon as the **Named Insured** is aware that this insurance may apply to such **occurrence**, offense or **claim**.

5. BROAD NAMED INSURED

WHO IS AN INSURED is amended to delete its Paragraph 3. in its entirety and replace it with the following:

3. Pursuant to the limitations described in Paragraph 4. below, any organization in which a **Named Insured** has management control:
 - a. on the effective date of this **Coverage Part**; or

**Contractors' General Liability Extension Endorsement**

- B. Solely for the purpose of the coverage provided by this **PROPERTY DAMAGE – ELEVATORS** Provision, the **Other Insurance** conditions is amended to add the following paragraph:

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis that is Property insurance covering property of others damaged from the use of elevators.

23. SUPPLEMENTARY PAYMENTS

The section entitled **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B** is amended as follows:

- A. Paragraph 1.b. is amended to delete the \$250 limit shown for the cost of bail bonds and replace it with a \$5,000. limit; and
- B. Paragraph 1.d. is amended to delete the limit of \$250 shown for daily loss of earnings and replace it with a \$1,000. limit.

24. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS

If the **Named Insured** unintentionally fails to disclose all existing hazards at the inception date of the **Named Insured's Coverage Part**, the Insurer will not deny coverage under this **Coverage Part** because of such failure.

25. WAIVER OF SUBROGATION - BLANKET

Under **CONDITIONS**, the condition entitled **Transfer Of Rights Of Recovery Against Others To Us** is amended to add the following:

The Insurer waives any right of recovery the Insurer may have against any person or organization because of payments the Insurer makes for injury or damage arising out of:

1. the **Named Insured's** ongoing operations; or
2. **your work** included in the **products-completed operations hazard**.

However, this waiver applies only when the **Named Insured** has agreed in writing to waive such rights of recovery in a written contract or written agreement, and only if such contract or agreement:

1. is in effect or becomes effective during the term of this **Coverage Part**; and
2. was executed prior to the **bodily injury, property damage or personal and advertising injury** giving rise to the claim.

26. WRAP-UP EXTENSION: OCIP, CCIP, OR CONSOLIDATED (WRAP-UP) INSURANCE PROGRAMS

Note: The following provision does not apply to any public construction project in the state of Oklahoma, nor to any construction project in the state of Alaska, that is not permitted to be insured under a **consolidated (wrap-up) Insurance program** by applicable state statute or regulation.

If the endorsement **EXCLUSION – CONSTRUCTION WRAP-UP** is attached to this policy, or another exclusionary endorsement pertaining to Owner Controlled Insurance Programs (O.C.I.P.) or Contractor Controlled Insurance Programs (C.C.I.P.) is attached, then the following changes apply:

- A. The following wording is added to the above-referenced endorsement:

With respect to a **consolidated (wrap-up) Insurance program** project in which the **Named Insured** is or was involved, this exclusion does not apply to those sums the **Named Insured** become legally obligated to pay as **damages** because of:

1. **Bodily injury, property damage, or personal or advertising injury** that occurs during the **Named Insured's** ongoing operations at the project, or during such operations of anyone acting on the **Named Insured's** behalf; nor



CONTRACTORS EXTENDED COVERAGE ENDORSEMENT - BUSINESS AUTO PLUS

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

I. LIABILITY COVERAGE

A. Who Is An Insured

The following is added to **Section II, Paragraph A.1., Who Is An Insured:**

1. a. Any incorporated entity of which the Named Insured owns a majority of the voting stock on the date of inception of this Coverage Form; provided that,
 - b. The insurance afforded by this provision **A.1.** does not apply to any such entity that is an **insured** under any other liability "policy" providing **auto** coverage.
2. Any organization you newly acquire or form, other than a limited liability company, partnership or joint venture, and over which you maintain majority ownership interest.

The insurance afforded by this provision **A.2.:**

- a. Is effective on the acquisition or formation date, and is afforded only until the end of the policy period of this Coverage Form, or the next anniversary of its inception date, whichever is earlier.
- b. Does not apply to:
 - (1) **Bodily injury or property damage** caused by an **accident** that occurred before you acquired or formed the organization; or
 - (2) Any such organization that is an **insured** under any other liability "policy" providing **auto** coverage.
3. Any person or organization that you are required by a written contract to name as an additional insured is an **insured** but only with respect to their legal liability for acts or omissions of a person, who qualifies as an **insured** under **SECTION II – WHO IS AN INSURED** and for whom Liability Coverage is afforded under this policy. If required by written contract, this insurance will be primary and non-contributory to insurance on which the additional insured is a Named Insured.
4. An **employee** of yours is an **insured** while operating an **auto** hired or rented under a contract or agreement in that **employee's** name, with your permission, while performing duties related to the conduct of your business.

"Policy", as used in this provision **A. Who Is An Insured**, includes those policies that were in force on the inception date of this Coverage Form but:

1. Which are no longer in force; or
2. Whose limits have been exhausted.

B. Bail Bonds and Loss of Earnings

Section II, Paragraphs A.2. (2) and A.2. (4) are revised as follows:

1. In **a.(2)**, the limit for the cost of bail bonds is changed from \$2,000 to \$5,000; and
2. In **a.(4)**, the limit for the loss of earnings is changed from \$250 to \$500 a day.

Form No: CNA63359XX (04-2012)

Endorsement Effective Date:

Endorsement Expiration Date:

Endorsement No: 12; Page: 1 of 4

Underwriting Company: Transportation Insurance Company, 151 N Franklin St, Chicago, IL 60606

Policy No: BUA 7015418557

Policy Effective Date: **8/29/23**

Policy Page: 71 of 94



C. Fellow Employee

Section II, Paragraph B.5 does not apply.

Such coverage as is afforded by this provision C. is excess over any other collectible insurance.

II. PHYSICAL DAMAGE COVERAGE

A. Glass Breakage – Hitting A Bird Or Animal – Falling Objects Or Missiles

The following is added to **Section III, Paragraph A.3.:**

With respect to any covered **auto**, any deductible shown in the Declarations will not apply to glass breakage if such glass is repaired, in a manner acceptable to us, rather than replaced.

B. Transportation Expenses

Section III, Paragraph A.4.a. is revised, with respect to transportation expense incurred by you, to provide:

- a. \$60 per day, in lieu of \$20; subject to
- b. \$1,800 maximum, in lieu of \$600.

C. Loss of Use Expenses

Section III, Paragraph A.4.b. is revised, with respect to loss of use expenses incurred by you, to provide:

- a. \$1,000 maximum, in lieu of \$600.

D. Hired "Autos"

The following is added to **Section III, Paragraph A.:**

5. Hired "Autos"

If Physical Damage coverage is provided under this policy, and such coverage does not extend to Hired Autos, then Physical Damage coverage is extended to:

- a. Any covered **auto** you lease, hire, rent or borrow without a driver; and
- b. Any covered **auto** hired or rented by your **employee** without a driver, under a contract in that individual **employee's** name, with your permission, while performing duties related to the conduct of your business.
- c. The most we will pay for any one **accident** or **loss** is the actual cash value, cost of repair, cost of replacement or \$75,000, whichever is less, minus a \$500 deductible for each covered **auto**. No deductible applies to **loss** caused by fire or lightning.
- d. The physical damage coverage as is provided by this provision is equal to the physical damage coverage(s) provided on your owned **autos**.
- e. Such physical damage coverage for hired **autos** will:
 - (1) Include loss of use, provided it is the consequence of an **accident** for which the Named Insured is legally liable, and as a result of which a monetary loss is sustained by the leasing or rental concern.
 - (2) Such coverage as is provided by this provision will be subject to a limit of \$750 per **accident**.

E. Airbag Coverage

The following is added to **Section III, Paragraph B.3.:**

The accidental discharge of an airbag shall not be considered mechanical breakdown.

Form No: CNA63359XX (04-2012)

Endorsement Effective Date:

Endorsement Expiration Date:

Endorsement No: 12; Page: 2 of 4

Underwriting Company: Transportation Insurance Company, 151 N Franklin St, Chicago, IL 60606

Policy No: BUA 7015418557

Policy Effective Date: 8/29/23

Policy Page: 72 of 94



F. Electronic Equipment

Section III, Paragraphs B.4.c and B.4.d. are deleted and replaced by the following:

- c. Physical Damage Coverage on a covered **auto** also applies to **loss** to any permanently installed electronic equipment including its antennas and other accessories
- d. A \$100 per occurrence deductible applies to the coverage provided by this provision.

G. Diminution In Value

The following is added to **Section III, Paragraph B.6.:**

Subject to the following, the **diminution in value** exclusion does not apply to:

- a. Any covered **auto** of the private passenger type you lease, hire, rent or borrow, without a driver for a period of 30 days or less, while performing duties related to the conduct of your business; and
- b. Any covered **auto** of the private passenger type hired or rented by your **employee** without a driver for a period of 30 days or less, under a contract in that individual **employee's** name, with your permission, while performing duties related to the conduct of your business.
- c. Such coverage as is provided by this provision is limited to a **diminution in value** loss arising directly out of accidental damage and not as a result of the failure to make repairs; faulty or incomplete maintenance or repairs; or the installation of substandard parts.
- d. The most we will pay for **loss** to a covered **auto** in any one accident is the lesser of:
 - (1) \$5,000; or
 - (2) 20% of the **auto's** actual cash value (ACV).

III. Drive Other Car Coverage – Executive Officers

The following is added to **Sections II and III:**

- 1. Any **auto** you don't own, hire or borrow is a covered **auto** for Liability Coverage while being used by, and for Physical Damage Coverage while in the care, custody or control of, any of your "executive officers", except:
 - a. An **auto** owned by that "executive officer" or a member of that person's household; or
 - b. An **auto** used by that "executive officer" while working in a business of selling, servicing, repairing or parking **autos**.

Such Liability and/or Physical Damage Coverage as is afforded by this provision.

- (1) Equal to the greatest of those coverages afforded any covered **auto**; and
- (2) Excess over any other collectible insurance.

- 2. For purposes of this provision, "executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document, and, while a resident of the same household, includes that person's spouse.

Such "executive officers" are **insureds** while using a covered **auto** described in this provision.

IV. BUSINESS AUTO CONDITIONS

A. Duties In The Event Of Accident, Claim, Suit Or Loss

The following is added to **Section IV, Paragraph A.2.a.:**

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Endorsement Expiration Date:

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- (4) Your **employees** may know of an **accident** or **loss**. This will not mean that you have such knowledge, unless such **accident** or **loss** is known to you or if you are not an individual, to any of your executive officers or partners or your insurance manager.

The following is added to **Section IV, Paragraph A.2.b.**:

- (6) Your **employees** may know of documents received concerning a claim or **suit**. This will not mean that you have such knowledge, unless receipt of such documents is known to you or if you are not an individual, to any of your executive officers or partners or your insurance manager.

B. Transfer Of Rights Of Recovery Against Others To Us

The following is added to **Section IV, Paragraph A.5. Transfer Of Rights Of Recovery Against Others To Us**:

We waive any right of recovery we may have, because of payments we make for injury or damage, against any person or organization for whom or which you are required by written contract or agreement to obtain this waiver from us.

This injury or damage must arise out of your activities under a contract with that person or organization.

You must agree to that requirement prior to an **accident** or **loss**.

C. Concealment, Misrepresentation or Fraud

The following is added to **Section IV, Paragraph B.2.**:

Your failure to disclose all hazards existing on the date of inception of this Coverage Form shall not prejudice you with respect to the coverage afforded provided such failure or omission is not intentional.

D. Other Insurance

The following is added to **Section IV, Paragraph B.5.**:

Regardless of the provisions of Paragraphs 5.a. and 5.d. above, the coverage provided by this policy shall be on a primary non-contributory basis. This provision is applicable only when required by a written contract.

That written contract must have been entered into prior to **Accident** or **Loss**.

E. Policy Period, Coverage Territory

Section IV, Paragraph B. 7.(5).(a). is revised to provide:

- a. 45 days of coverage in lieu of 30 days.

V. DEFINITIONS

Section V. paragraph C. is deleted and replaced by the following:

Bodily injury means bodily injury, sickness or disease sustained by a person, including mental anguish, mental injury or death resulting from any of these.

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WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Schedule

**ANY PERSON OR ORGANIZATION FOR WHOM THE NAMED INSURED IS
REQUIRED UNDER WRITTEN CONTRACT TO FURNISH THIS WAIVER,
FOR FLORIDA OPERATIONS ONLY.**

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.
(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective **08/29/2023** Policy No. **WFL 5061934 02**
Insured **BANDES CONSTRUCTION CO INC**
Insurance Company **INSURANCE COMPANY OF THE WEST**

Endorsement No.
Premium \$ **INCL.**

Countersigned By _____



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

2/27/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Bowen, Miclette & Britt of Florida, LLC 850 Concourse Parkway S Suite #105 Maitland FL 32751		CONTACT NAME: Michelle Rushing PHONE (A/C, No. Ext): 407-647-1616 E-MAIL ADDRESS: mrushing@bmbinc.com FAX (A/C, No): 407-628-1635	
		INSURER(S) AFFORDING COVERAGE	
		INSURER A: North River Insurance Co.	
		INSURER B: Insurance Co of the West	
		INSURER C: National Fire Ins Co of Hartford	
		INSURER D: Continental Casualty Co.	
		INSURER E:	
		INSURER F:	

COVERAGES **CERTIFICATE NUMBER:** 2005481145 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
C	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PROJECT ☐ LOC OTHER:	Y	Y	7015418560	8/29/2023	8/29/2024	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 15,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 Deductible \$ 10,000
D	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☒ ALL OWNED AUTOS ☒ HIRED AUTOS ☐ SCHEDULED AUTOS ☒ NON-OWNED AUTOS	Y	Y	7015418557	8/29/2023	8/29/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	☐ UMBRELLA LIAB ☒ EXCESS LIAB ☐ CLAIMS-MADE DED ☒ RETENTION \$ 0	Y	Y	5821219107	8/29/2023	8/29/2024	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 10,000,000 \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y	N/A	WFL508193402	8/29/2023	8/29/2024	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
The following policy provisions and/or endorsements form part of the policies of insurance represented by this certificate of insurance. The terms contained in the policies and/or endorsements supersede the representations made herein. Electronic copies of the policy provisions and/or endorsements listed below are available by emailing contact person shown above.

When required by written contract, those parties listed in said contract, including the certificate holder, are added as an additional insured with respect to the general liability, including on-going and completed operations, auto liability and umbrella liability as afforded by the policy and/or endorsements.

When required by written contract, waiver of subrogation, with respect to the general liability, auto liability, worker's compensation and umbrella is granted to See Attached...

CERTIFICATE HOLDER Town of Fort Myers Beach 2525 Estero Blvd. Fort Myers Beach FL 33931	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
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**ADDITIONAL REMARKS SCHEDULE**Page 1 of 1

AGENCY Bowen, Miclette & Britt of Florida, LLC		NAMED INSURED Bandes Construction Co., Inc. 1368 Spalding Rd Ste C Dunedin FL 34698
POLICY NUMBER		
CARRIER	NAIC CODE	EFFECTIVE DATE:

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: 25 FORM TITLE: CERTIFICATE OF LIABILITY INSURANCE

those parties listed in said contract, including the certificate holder.

The general liability, auto liability, & umbrella liability certified herein are primary and non-contributory to other insurance available, but only to the extent required by written contract.

30-day notice of cancellation applies.

**CNA PARAMOUNT****Contractors' General Liability Extension Endorsement**

It is understood and agreed that this endorsement amends the **COMMERCIAL GENERAL LIABILITY COVERAGE PART** as follows. If any other endorsement attached to this policy amends any provision also amended by this endorsement, then that other endorsement controls with respect to such provision, and the changes made by this endorsement with respect to such provision do not apply.

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VALLEY FORGE INSURANCE COMPANY

Insured Name: BANDES CONSTRUCTION COMPANY, INC.

Policy No: 7015418560

Endorsement No:

Effective Date: 08/29/2023

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**Contractors' General Liability Extension Endorsement****1. ADDITIONAL INSUREDS**

- a. **WHO IS AN INSURED** is amended to include as an **Insured** any person or organization described in paragraphs A. through H. below whom a **Named Insured** is required to add as an additional insured on this **Coverage Part** under a written contract or written agreement, provided such contract or agreement:

(1) is currently in effect or becomes effective during the term of this **Coverage Part**; and

(2) was executed prior to:

(a) the **bodily injury** or **property damage**; or

(b) the offense that caused the **personal and advertising injury**,

for which such additional insured seeks coverage.

- b. However, subject always to the terms and conditions of this policy, including the limits of insurance, the Insurer will not provide such additional insured with:

(1) a higher limit of insurance than required by such contract or agreement; or

(2) coverage broader than required by such contract or agreement, and in no event broader than that described by the applicable paragraph A. through H. below.

Any coverage granted by this endorsement shall apply only to the extent permissible by law.

A. Controlling Interest

Any person or organization with a controlling interest in a **Named Insured**, but only with respect to such person or organization's liability for **bodily injury**, **property damage** or **personal and advertising injury** arising out of:

1. such person or organization's financial control of a **Named Insured**; or

2. premises such person or organization owns, maintains or controls while a **Named Insured** leases or occupies such premises;

provided that the coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

B. Co-owner of Insured Premises

A co-owner of a premises co-owned by a **Named Insured** and covered under this insurance but only with respect to such co-owner's liability for **bodily injury**, **property damage** or **personal and advertising injury** as co-owner of such premises.

C. Lessor of Equipment

Any person or organization from whom a **Named Insured** leases equipment, but only with respect to liability for **bodily injury**, **property damage** or **personal and advertising injury** caused, in whole or in part, by the **Named Insured's** maintenance, operation or use of such equipment, provided that the **occurrence** giving rise to such **bodily injury**, **property damage** or the offense giving rise to such **personal and advertising injury** takes place prior to the termination of such lease.

D. Lessor of Land

Any person or organization from whom a **Named Insured** leases land but only with respect to liability for **bodily injury**, **property damage** or **personal and advertising injury** arising out of the ownership, maintenance or use of such land, provided that the **occurrence** giving rise to such **bodily injury**, **property damage** or the offense giving rise to such **personal and advertising injury** takes place prior to the termination of such lease. The

**Contractors' General Liability Extension Endorsement**

coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

E. Lessor of Premises

An owner or lessor of premises leased to the **Named Insured**, or such owner or lessor's real estate manager, but only with respect to liability for **bodily injury, property damage or personal and advertising injury** arising out of the ownership, maintenance or use of such part of the premises leased to the **Named Insured**, and provided that the occurrence giving rise to such **bodily injury or property damage**, or the offense giving rise to such **personal and advertising injury**, takes place prior to the termination of such lease. The coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

F. Mortgagee, Assignee or Receiver

A mortgagee, assignee or receiver of premises but only with respect to such mortgagee, assignee or receiver's liability for **bodily injury, property damage or personal and advertising injury** arising out of the **Named Insured's** ownership, maintenance, or use of a premises by a **Named Insured**.

The coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

G. State or Governmental Agency or Subdivision or Political Subdivisions – Permits

A state or governmental agency or subdivision or political subdivision that has issued a permit or authorization but only with respect to such state or governmental agency or subdivision or political subdivision's liability for **bodily injury, property damage or personal and advertising injury** arising out of:

1. the following hazards in connection with premises a **Named Insured** owns, rents, or controls and to which this insurance applies:
 - a. the existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoistaway openings, sidewalk vaults, street banners, or decorations and similar exposures; or
 - b. the construction, erection, or removal of elevators; or
 - c. the ownership, maintenance or use of any elevators covered by this insurance; or
2. the permitted or authorized operations performed by a **Named Insured** or on a **Named Insured's** behalf.

The coverage granted by this paragraph does not apply to:

- a. **Bodily injury, property damage or personal and advertising injury** arising out of operations performed for the state or governmental agency or subdivision or political subdivision; or
- b. **Bodily injury or property damage** included within the **products-completed operations hazard**.

With respect to this provision's requirement that additional insured status must be requested under a written contract or agreement, the Insurer will treat as a written contract any governmental permit that requires the **Named Insured** to add the governmental entity as an additional insured.

H. Trade Show Event Lessor

1. With respect to a **Named Insured's** participation in a trade show event as an exhibitor, presenter or displayer, any person or organization whom the **Named Insured** is required to include as an additional insured, but only with respect to such person or organization's liability for **bodily injury, property damage or personal and advertising injury** caused by:

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**Contractors' General Liability Extension Endorsement**

- a. the **Named Insured's** acts or omissions; or
 - b. the acts or omissions of those acting on the **Named Insured's** behalf,
- in the performance of the **Named Insured's** ongoing operations at the trade show event premises during the trade show event.
2. The coverage granted by this paragraph does not apply to **bodily injury** or **property damage** included within the **products-completed operations hazard**.

2. ADDITIONAL INSURED - PRIMARY AND NON-CONTRIBUTORY TO ADDITIONAL INSURED'S INSURANCE

The **Other Insurance** Condition in the **COMMERCIAL GENERAL LIABILITY CONDITIONS** Section is amended to add the following paragraph:

If the **Named Insured** has agreed in writing in a contract or agreement that this insurance is primary and non-contributory relative to an additional insured's own insurance, then this insurance is primary, and the Insurer will not seek contribution from that other insurance. For the purpose of this Provision 2., the additional insured's own insurance means insurance on which the additional insured is a named insured. Otherwise, and notwithstanding anything to the contrary elsewhere in this Condition, the insurance provided to such person or organization is excess of any other insurance available to such person or organization.

3. BODILY INJURY – EXPANDED DEFINITION

Under **DEFINITIONS**, the definition of **bodily injury** is deleted and replaced by the following:

Bodily injury means physical injury, sickness or disease sustained by a person, including death, humiliation, shock, mental anguish or mental injury sustained by that person at any time which results as a consequence of the physical injury, sickness or disease.

4. BROAD KNOWLEDGE OF OCCURRENCE/ NOTICE OF OCCURRENCE

Under **CONDITIONS**, the condition entitled **Duties In The Event of Occurrence, Offense, Claim or Suit** is amended to add the following provisions:

A. BROAD KNOWLEDGE OF OCCURRENCE

The **Named Insured** must give the Insurer or the Insurer's authorized representative notice of an **occurrence**, offense or **claim** only when the **occurrence**, offense or **claim** is known to a natural person **Named Insured**, to a partner, executive officer, manager or member of a **Named Insured**, or an **employee** designated by any of the above to give such notice.

B. NOTICE OF OCCURRENCE

The **Named Insured's** rights under this **Coverage Part** will not be prejudiced if the **Named Insured** fails to give the Insurer notice of an **occurrence**, offense or **claim** and that failure is solely due to the **Named Insured's** reasonable belief that the **bodily injury** or **property damage** is not covered under this **Coverage Part**. However, the **Named Insured** shall give written notice of such **occurrence**, offense or **claim** to the Insurer as soon as the **Named Insured** is aware that this insurance may apply to such **occurrence**, offense or **claim**.

5. BROAD NAMED INSURED

WHO IS AN INSURED is amended to delete its Paragraph 3. in its entirety and replace it with the following:

3. Pursuant to the limitations described in Paragraph 4. below, any organization in which a **Named Insured** has management control:
- a. on the effective date of this **Coverage Part**; or

**Contractors' General Liability Extension Endorsement**

- B. Solely for the purpose of the coverage provided by this **PROPERTY DAMAGE – ELEVATORS** Provision, the **Other Insurance** conditions is amended to add the following paragraph:

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis that is Property insurance covering property of others damaged from the use of elevators.

23. SUPPLEMENTARY PAYMENTS

The section entitled **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B** is amended as follows:

- A. Paragraph 1.b. is amended to delete the \$250 limit shown for the cost of bail bonds and replace it with a \$5,000. limit; and
- B. Paragraph 1.d. is amended to delete the limit of \$250 shown for daily loss of earnings and replace it with a \$1,000. limit.

24. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS

If the **Named Insured** unintentionally fails to disclose all existing hazards at the inception date of the **Named Insured's Coverage Part**, the Insurer will not deny coverage under this **Coverage Part** because of such failure.

25. WAIVER OF SUBROGATION - BLANKET

Under **CONDITIONS**, the condition entitled **Transfer Of Rights Of Recovery Against Others To Us** is amended to add the following:

The Insurer waives any right of recovery the Insurer may have against any person or organization because of payments the Insurer makes for injury or damage arising out of:

1. the **Named Insured's** ongoing operations; or
2. **your work** included in the **products-completed operations hazard**.

However, this waiver applies only when the **Named Insured** has agreed in writing to waive such rights of recovery in a written contract or written agreement, and only if such contract or agreement:

1. is in effect or becomes effective during the term of this **Coverage Part**; and
2. was executed prior to the **bodily injury, property damage or personal and advertising injury** giving rise to the claim.

26. WRAP-UP EXTENSION: OCIP, CCIP, OR CONSOLIDATED (WRAP-UP) INSURANCE PROGRAMS

Note: The following provision does not apply to any public construction project in the state of Oklahoma, nor to any construction project in the state of Alaska, that is not permitted to be insured under a **consolidated (wrap-up) insurance program** by applicable state statute or regulation.

If the endorsement **EXCLUSION – CONSTRUCTION WRAP-UP** is attached to this policy, or another exclusionary endorsement pertaining to Owner Controlled Insurance Programs (O.C.I.P.) or Contractor Controlled Insurance Programs (C.C.I.P.) is attached, then the following changes apply:

- A. The following wording is added to the above-referenced endorsement:

With respect to a **consolidated (wrap-up) insurance program** project in which the **Named Insured** is or was involved, this exclusion does not apply to those sums the **Named Insured** become legally obligated to pay as **damages** because of:

1. **Bodily injury, property damage, or personal or advertising injury** that occurs during the **Named Insured's** ongoing operations at the project, or during such operations of anyone acting on the **Named Insured's** behalf; nor



CONTRACTORS EXTENDED COVERAGE ENDORSEMENT - BUSINESS AUTO PLUS

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

I. LIABILITY COVERAGE

A. Who Is An Insured

The following is added to **Section II, Paragraph A.1., Who Is An Insured:**

1. a. Any incorporated entity of which the Named Insured owns a majority of the voting stock on the date of inception of this Coverage Form; provided that,
 - b. The insurance afforded by this provision **A.1.** does not apply to any such entity that is an **insured** under any other liability "policy" providing **auto** coverage.
2. Any organization you newly acquire or form, other than a limited liability company, partnership or joint venture, and over which you maintain majority ownership interest.

The insurance afforded by this provision **A.2.:**

- a. Is effective on the acquisition or formation date, and is afforded only until the end of the policy period of this Coverage Form, or the next anniversary of its inception date, whichever is earlier.
- b. Does not apply to:
 - (1) **Bodily injury or property damage** caused by an **accident** that occurred before you acquired or formed the organization; or
 - (2) Any such organization that is an **insured** under any other liability "policy" providing **auto** coverage.
3. Any person or organization that you are required by a written contract to name as an additional insured is an **insured** but only with respect to their legal liability for acts or omissions of a person, who qualifies as an **insured** under **SECTION II – WHO IS AN INSURED** and for whom Liability Coverage is afforded under this policy. If required by written contract, this insurance will be primary and non-contributory to insurance on which the additional insured is a Named Insured.
4. An **employee** of yours is an **insured** while operating an **auto** hired or rented under a contract or agreement in that **employee's** name, with your permission, while performing duties related to the conduct of your business.

"Policy", as used in this provision **A. Who Is An Insured**, includes those policies that were in force on the inception date of this Coverage Form but:

1. Which are no longer in force; or
2. Whose limits have been exhausted.

B. Bail Bonds and Loss of Earnings

Section II, Paragraphs A.2. (2) and A.2. (4) are revised as follows:

1. In **a.(2)**, the limit for the cost of bail bonds is changed from \$2,000 to \$5,000; and
2. In **a.(4)**, the limit for the loss of earnings is changed from \$250 to \$500 a day.

Form No: CNA63359XX (04-2012)

Endorsement Effective Date:

Endorsement Expiration Date:

Endorsement No: 12; Page: 1 of 4

Underwriting Company: Transportation Insurance Company, 151 N Franklin St, Chicago, IL 60606

Policy No: BUA 7015418557

Policy Effective Date: 8/29/23

Policy Page: 71 of 94



C. Fellow Employee

Section II, Paragraph B.5 does not apply.

Such coverage as is afforded by this provision C. is excess over any other collectible insurance.

II. PHYSICAL DAMAGE COVERAGE

A. Glass Breakage – Hitting A Bird Or Animal – Falling Objects Or Missiles

The following is added to **Section III, Paragraph A.3.:**

With respect to any covered **auto**, any deductible shown in the Declarations will not apply to glass breakage if such glass is repaired, in a manner acceptable to us, rather than replaced.

B. Transportation Expenses

Section III, Paragraph A.4.a. is revised, with respect to transportation expense incurred by you, to provide:

- a. \$60 per day, in lieu of \$20; subject to
- b. \$1,800 maximum, in lieu of \$600.

C. Loss of Use Expenses

Section III, Paragraph A.4.b. is revised, with respect to loss of use expenses incurred by you, to provide:

- a. \$1,000 maximum, in lieu of \$600.

D. Hired "Autos"

The following is added to **Section III, Paragraph A.:**

5. Hired "Autos"

If Physical Damage coverage is provided under this policy, and such coverage does not extend to Hired Autos, then Physical Damage coverage is extended to:

- a. Any covered **auto** you lease, hire, rent or borrow without a driver; and
- b. Any covered **auto** hired or rented by your **employee** without a driver, under a contract in that individual **employee's** name, with your permission, while performing duties related to the conduct of your business.
- c. The most we will pay for any one **accident** or **loss** is the actual cash value, cost of repair, cost of replacement or \$75,000, whichever is less, minus a \$500 deductible for each covered **auto**. No deductible applies to **loss** caused by fire or lightning.
- d. The physical damage coverage as is provided by this provision is equal to the physical damage coverage(s) provided on your owned **autos**.
- e. Such physical damage coverage for hired **autos** will:
 - (1) Include loss of use, provided it is the consequence of an **accident** for which the Named Insured is legally liable, and as a result of which a monetary loss is sustained by the leasing or rental concern.
 - (2) Such coverage as is provided by this provision will be subject to a limit of \$750 per **accident**.

E. Airbag Coverage

The following is added to **Section III, Paragraph B.3.:**

The accidental discharge of an airbag shall not be considered mechanical breakdown.

Form No: CNA63359XX (04-2012)

Endorsement Effective Date:

Endorsement Expiration Date:

Endorsement No: 12; Page: 2 of 4

Underwriting Company: Transportation Insurance Company, 151 N Franklin St, Chicago, IL 60606

Policy No: BUA 7015418557

Policy Effective Date: 8/29/23 ?

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F. Electronic Equipment

Section III, Paragraphs B.4.c and B.4.d. are deleted and replaced by the following:

- c. Physical Damage Coverage on a covered **auto** also applies to **loss** to any permanently installed electronic equipment including its antennas and other accessories
- d. A \$100 per occurrence deductible applies to the coverage provided by this provision.

G. Diminution In Value

The following is added to **Section III, Paragraph B.6.:**

Subject to the following, the **diminution in value** exclusion does not apply to:

- a. Any covered **auto** of the private passenger type you lease, hire, rent or borrow, without a driver for a period of 30 days or less, while performing duties related to the conduct of your business; and
- b. Any covered **auto** of the private passenger type hired or rented by your **employee** without a driver for a period of 30 days or less, under a contract in that individual **employee's** name, with your permission, while performing duties related to the conduct of your business.
- c. Such coverage as is provided by this provision is limited to a **diminution in value** loss arising directly out of accidental damage and not as a result of the failure to make repairs; faulty or incomplete maintenance or repairs; or the installation of substandard parts.
- d. The most we will pay for **loss** to a covered **auto** in any one accident is the lesser of:
 - (1) \$5,000; or
 - (2) 20% of the **auto's** actual cash value (ACV).

III. Drive Other Car Coverage – Executive Officers

The following is added to **Sections II and III:**

- 1. Any **auto** you don't own, hire or borrow is a covered **auto** for Liability Coverage while being used by, and for Physical Damage Coverage while in the care, custody or control of, any of your "executive officers", except:
 - a. An **auto** owned by that "executive officer" or a member of that person's household; or
 - b. An **auto** used by that "executive officer" while working in a business of selling, servicing, repairing or parking **autos**.

Such Liability and/or Physical Damage Coverage as is afforded by this provision.

- (1) Equal to the greatest of those coverages afforded any covered **auto**; and
- (2) Excess over any other collectible insurance.

- 2. For purposes of this provision, "executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document, and, while a resident of the same household, includes that person's spouse.

Such "executive officers" are **insureds** while using a covered **auto** described in this provision.

IV. BUSINESS AUTO CONDITIONS

A. Duties In The Event Of Accident, Claim, Suit Or Loss

The following is added to **Section IV, Paragraph A.2.a.:**

Form No: CNA63359XX (04-2012)

Endorsement Effective Date:

Endorsement Expiration Date:

Endorsement No: 12; Page: 3 of 4

Underwriting Company: Transportation Insurance Company, 151 N Franklin St, Chicago, IL 60606

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- (4) Your **employees** may know of an **accident** or **loss**. This will not mean that you have such knowledge, unless such **accident** or **loss** is known to you or if you are not an individual, to any of your executive officers or partners or your insurance manager.

The following is added to **Section IV, Paragraph A.2.b.:**

- (6) Your **employees** may know of documents received concerning a claim or **suit**. This will not mean that you have such knowledge, unless receipt of such documents is known to you or if you are not an individual, to any of your executive officers or partners or your insurance manager.

B. Transfer Of Rights Of Recovery Against Others To Us

The following is added to **Section IV, Paragraph A.5. Transfer Of Rights Of Recovery Against Others To Us:**

We waive any right of recovery we may have, because of payments we make for injury or damage, against any person or organization for whom or which you are required by written contract or agreement to obtain this waiver from us.

This injury or damage must arise out of your activities under a contract with that person or organization.

You must agree to that requirement prior to an **accident** or **loss**.

C. Concealment, Misrepresentation or Fraud

The following is added to **Section IV, Paragraph B.2.:**

Your failure to disclose all hazards existing on the date of inception of this Coverage Form shall not prejudice you with respect to the coverage afforded provided such failure or omission is not intentional.

D. Other Insurance

The following is added to **Section IV, Paragraph B.5.:**

Regardless of the provisions of Paragraphs 5.a. and 5.d. above, the coverage provided by this policy shall be on a primary non-contributory basis. This provision is applicable only when required by a written contract.

That written contract must have been entered into prior to **Accident** or **Loss**.

E. Policy Period, Coverage Territory

Section IV, Paragraph B. 7.(5).(a). is revised to provide:

- a. 45 days of coverage in lieu of 30 days.

V. DEFINITIONS

Section V. paragraph C. is deleted and replaced by the following:

Bodily injury means bodily injury, sickness or disease sustained by a person, including mental anguish, mental injury or death resulting from any of these.

Form No: CNA63359XX (04-2012)

Endorsement Effective Date:

Endorsement Expiration Date:

Endorsement No: 12; Page: 4 of 4

Underwriting Company: Transportation Insurance Company, 151 N Franklin St, Chicago, IL 60606

Policy No: BUA 7015418557

Policy Effective Date: 8/29/23

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WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Schedule

**ANY PERSON OR ORGANIZATION FOR WHOM THE NAMED INSURED IS
REQUIRED UNDER WRITTEN CONTRACT TO FURNISH THIS WAIVER,
FOR FLORIDA OPERATIONS ONLY.**

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.
(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective **08/29/2023** Policy No. **WFL 5061934 02**
Insured **BANDES CONSTRUCTION CO INC**
Insurance Company **INSURANCE COMPANY OF THE WEST**

Endorsement No.
Premium \$ **INCL.**

Countersigned By _____



CRUM & FORSTER®
A FAIRFAX COMPANY

Policy #5821219107
Effective Dates: 08/29/2023-08/29/2024

EXCESS LIABILITY COVERAGE FORM

Various provisions in this Policy restrict coverage. Read the entire Policy carefully to determine rights, duties and what is and is not covered.

Throughout this Policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this Policy. The words "we", "us" and "our" refer to the company providing this insurance. The word "insured" means any person or organization qualifying as such under the "controlling underlying insurance".

Other words and phrases that appear in quotation marks in this Policy have special meaning. Refer to **SECTION IV – DEFINITIONS**. Other words and phrases that are not defined under this Policy but defined in the "controlling underlying insurance" will have the meaning described in the policy of "controlling underlying insurance".

SECTION I – COVERAGES

1. Insuring Agreement

- a. We will pay on behalf of the insured the "ultimate net loss" in excess of the "retained limit" because of "injury or damage" to which this insurance applies.

We will have the right and duty to defend the insured against any "suit" seeking damages for such "injury or damage" when the "retained limit" has been paid in full. When we have no duty to defend, we will have the right to defend, or to associate in the defense of, the insured against any "suit" seeking damages for "injury or damage".

However, we will have no duty to defend the insured against any "suit" seeking damages for which insurance under this Policy does not apply.

At our discretion, we may investigate any "event" that may involve this insurance and settle any resultant claim or "suit".

But:

- (1) The amount we will pay for "ultimate net loss" is limited as described in **SECTION II – LIMITS OF INSURANCE**; and

- (2) Our right and duty to defend ends when we have paid the applicable limit of insurance in the payment of judgments or settlements under this Policy. However, if the policy of "controlling underlying insurance" specifies that limits are reduced by defense expenses, our right and duty to defend ends when we have paid the applicable limit of insurance in the payment of defense expenses, judgments, or settlements under this Policy.

- b. The insurance under this Policy will follow the same provisions, exclusions, conditions and limitations that are contained in the applicable "controlling underlying insurance", unless otherwise directed by this Policy. To the extent such provisions differ or conflict, the provisions of this Policy will apply. However, the coverage under this Policy will not be broader than that provided by any "underlying insurance".

If any applicable "underlying insurance" does not pay for "ultimate net loss" for any reason other than the exhaustion of its applicable limit of insurance by payment of claims or "suits", then this Policy will not cover such "ultimate net loss".

- c. There may be more than one "controlling underlying insurance" listed in the Schedule of Underlying Insurance, and there may be terms and provisions in those respective policies that are in conflict and which are not superseded by the provisions of this Policy. In such a case, the provisions, exclusions and

limitations of the "controlling underlying insurance" applicable to the particular "event" for which a claim is made or "suit" is brought will apply.

- d. If any other limit, such as a sublimit, is specified in the "underlying insurance", this insurance does not apply to "injury or damage" arising out of that exposure unless that limit is specified in the Schedule of Underlying Insurance.
- e. Any person or entity qualifying as an additional insured under the "controlling underlying insurance" will be an additional insured under this Policy. If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the minimum amount of insurance required by the contract or agreement less any amounts payable by "underlying insurance" and all other insurance available to the additional insured. Under no circumstances will we pay on behalf of the additional insured an amount exceeding the available Limit of Insurance applicable under this Policy.

Additional insured coverage, as provided by this Policy, will not be broader than coverage provided by any "underlying insurance".

2. Exclusions

Insurance provided under this Policy does not apply to:

a. Asbestos

"Injury or damage", loss, cost or expense directly or indirectly caused by, resulting from, in consequence of, or in any way involving asbestos or any materials containing asbestos in whatever form or quantity.

This exclusion applies regardless of any other contributing or aggravating cause or "event" that contributes concurrently or in any sequence to the "injury or damage", loss, cost or expense.

b. Auto

"Injury or damage", loss, cost or expense payable under or resulting from any of the following auto coverages:

- (1) First-party physical damage coverage;
- (2) No-fault coverage;
- (3) Personal injury protection or auto medical payments coverage; or
- (4) Uninsured or underinsured motorists' coverage.

c. Pollution

(1) "Injury or damage" which would not have occurred in whole or part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release, or escape of "pollutants" at any time.

(2) Any loss, cost or expense arising out of any:

- (a) Request, demand, order, or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify, neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
- (b) Claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, or in any way responding to, or assessing the effects of "pollutants".

This exclusion applies whether or not such "pollutants" have any function in your business, operations, premises, site, or location.

d. Workers' Compensation and Similar Laws

Any obligation of any insured under a workers' compensation, disability benefits, unemployment compensation law, or any similar law.

SECTION II – LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
 - a. Insureds;
 - b. Claims made or "suits" brought or number of vehicles involved;
 - c. Persons or organizations making claims or bringing "suits"; or
 - d. Limits available under any "underlying insurance".
2. The Limits of Insurance as shown in the Declarations will apply as follows:
 - a. This insurance only applies in excess of the "retained limit".
 - b. The Total Policy Aggregate Limit, if stated in the Declarations, is the most we will pay for the sum of all "ultimate net loss" for all "injury or damage" covered under this Policy other than any claims for damages arising out of the ownership, maintenance, or use of a covered auto. The Total Policy Aggregate Limit applies regardless of the sums indicated in the Declarations for any General Aggregate Limit or Products-Completed Operations Aggregate Limit, and applies collectively, rather than separately, to all locations or projects.
 - c. Subject to 2.b. above, the General Aggregate Limit, if stated in the Declarations, is the most we will pay for the sum of all "ultimate net loss" for all "injury or damage" covered under this Policy other than any claims for damages falling within the products-completed operations hazard or arising out of the ownership, maintenance or use of a covered auto.

Subject to 2.b. above, the Products-Completed Operations Aggregate Limit, if stated in the Declarations, is the most we will pay for the sum of all "ultimate net loss" for all "injury or damage" included within the products-completed operations hazard.

However, if any "underlying insurance" does not provide separate aggregate limits for "ultimate net loss" within the products-completed operations hazard, the General Aggregate set forth above is the most we will pay for all "ultimate net loss", including "ultimate net loss" within the products-completed operations hazard. Under such circumstances, any limit appearing in the Declarations for a Products-Completed Operations Aggregate Limit does not apply.
 - d. Subject to Paragraph 2.b. and 2.c. above, the Each Occurrence Limit is the most we will pay for the sum of all "ultimate net loss" under this Policy because of all "injury or damage" arising out of any one "event".
 - e. If the Limits of Insurance of the "controlling underlying insurance" are reduced by defense expenses by the terms of that policy, any payments for defense expenses we make will reduce our applicable Limits of Insurance in the same manner.
3. The Aggregate Limits of "underlying insurance", where applicable, shall be unimpaired at the attachment date of this Policy, and for the purpose of this insurance, only "events" to which this insurance applies, taking place during the Policy Period of this Policy, shall be considered in determining the extent of any exhaustion of the Aggregate Limits of "underlying insurance", where applicable.
4. If this Policy and any other policy issued by us, or by any other affiliated insurance company within the Crum & Forster group of companies, applies to the same incident, "event," act, offense, claim, "suit," or occurrence for which any insured under this Policy is legally liable, then the maximum limit of insurance payable for all "injury or damage" covered under the policies will not exceed the highest applicable Each Occurrence limit of insurance available under any one policy for the incident, "event," act, offense, claim, "suit," or occurrence. However, this does not apply to any other insurance issued to you by us, or by any affiliated insurance company within the Crum & Forster group of companies, which is specifically written to be either primary or in excess of this Policy.

The General Aggregate Limit, the Products-Completed Operations Aggregate Limit, and the Total Policy Aggregate Limit of this Policy apply separately to each consecutive annual period of this Policy and to any remaining period of this Policy of less than 12 months, starting with the beginning of the Policy Period shown in

the Declarations, unless the Policy Period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

SECTION III – CONDITIONS

The following conditions apply:

1. Appeals

If any "underlying insurer" or insured elects not to appeal a judgment in excess of the amount of the "retained limit", we may do so at our own expense. We also will pay for taxable court costs, pre and post judgment interest and disbursements associated with such appeal. In no event will this provision increase our liability beyond the applicable Limits of Insurance described in **SECTION II – LIMITS OF INSURANCE**.

2. Bankruptcy

a. Bankruptcy or Insolvency of Insured

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Policy.

b. Bankruptcy of Underlying Insurer

Bankruptcy or insolvency of any "underlying insurer" will not relieve us of our obligations under this Policy. However, insurance provided under this Policy will not replace any "underlying insurance" in the event of bankruptcy or insolvency of the "underlying insurer". The insurance provided under this Policy will apply as if the "underlying insurance" were in full effect and recoverable.

3. Cancellation

a. The first Named Insured shown in the Declarations may cancel this Policy by mailing or delivering to us advance written notice of cancellation.

b. We may cancel this Policy by mailing or delivering to the first Named Insured written notice of cancellation at least:

(1) 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or

(2) 30 days before the effective date of cancellation if we cancel for any other reason.

c. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.

d. Notice of cancellation will state the effective date of cancellation. The Policy Period will end on that date.

e. If this Policy is cancelled, subject to any audit, we will send the first Named Insured any premium refund due. If we cancel, any refund will be pro rata. If the first Named Insured cancels, any refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.

f. If notice is mailed, proof of mailing will be sufficient proof of notice.

4. Changes

This Policy contains all the agreements between you and us concerning the insurance afforded. The first Named Insured is authorized by all other insureds to make changes in the terms and conditions of this Policy, with our consent, provided, however, that this Policy's terms and conditions can be amended or waived only by written endorsement issued by us and made a part of this Policy.

5. Duties in the Event of a Claim, Event, or Suit

a. You must see to it that we are notified as soon as practicable of an "event", regardless of the amount, which may result in a claim under this Policy. To the extent possible, notice should include:

(1) How, when and where the "event" took place;

- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any "injury or damage" arising out of the "event".
- b. If a claim is made or "suit" is brought against any insured, you must:
 - (1) Immediately record the specifics of the claim or "suit" and the date received; and
 - (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.
- c. You and any other insured involved must:
 - (1) Immediately send us copies of any demands, notices, summonses, or legal papers received in connection with the claim or "suit";
 - (2) Authorize us to obtain records and other information;
 - (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
 - (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of "injury or damage" to which this insurance may also apply.
- d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

6. Examination of Your Books and Records

We may examine and audit your books and records as they relate to this Policy at any time during the Policy Period and up to three years afterward.

7. First Named Insured Duties

The first Named Insured is the person or organization first named in the Declarations and is responsible for the payment of all premiums. The first Named Insured will act on behalf of all other insureds for giving and receiving of notice of cancellation or the receipt of any return premium that may become payable.

The first Named Insured will furnish us, as soon as practicable, with a complete copy of any "underlying insurance" and any subsequently issued endorsements or policies which may in any way affect the insurance provided under this Policy.

8. Legal Action Against Us

No person or organization has a right under this Policy to join us as a party or otherwise bring us into a "suit" asking for damages from an insured or to sue us on this Policy unless all of its terms have been fully complied with. A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured, but we will not be liable for damages that are not payable under the terms of this Policy or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured, "underlying insurer" and the claimant or the claimant's legal representative.

9. Loss Payable

Liability under this Policy does not apply to a given claim unless and until the insured or insured's "underlying insurer" has become obligated to pay the "retained limit", and the obligation of the insured to pay the "ultimate net loss" in excess of the "retained limit" has been determined by a final settlement or judgment or written agreement among the insured, claimant, "underlying insurer" (or a representative of one or more of these) and us.

10. Maintenance of/Changes to Underlying Insurance

Any "underlying insurance" must be maintained in full effect during the Policy Period of this Policy, without change of coverage or reduction of limits except for the reduction of aggregate limits in accordance with the provisions of such "underlying insurance" that results from "injury or damage" to which this insurance applies. Such exhaustion or reduction of limits is not a failure to maintain "underlying insurance".

Failure to maintain "underlying insurance" will not invalidate insurance provided under this Policy, but insurance provided under this Policy will apply as if the "underlying insurance" were in full effect.

The first Named Insured must notify us in writing, as soon as practicable, if any "underlying insurance" is cancelled, not renewed, replaced, otherwise terminated, or if the limits or scope of coverage of any "underlying insurance" is changed.

11. Other Insurance

- a. If other insurance that is not "underlying insurance" applies to any claim or "suit" that is also covered under this Policy, then this Policy shall apply in excess of and shall not contribute with such other insurance.
- b. When a person or organization that is an additional insured under all "underlying insurance" requires in a written contract with you that this insurance be non-contributory, then we shall not seek contribution from other insurers that provide coverage to the additional insured as a Named Insured for "ultimate net loss" sustained by such additional insured after all underlying limits have been exhausted. If an additional insured has coverage under any other policy[ies] as an additional insured, this Policy applies excess of all such insurance, and this Policy will not contribute to any "ultimate net loss". This provision does not apply to any policy in which the additional insured is a Named Insured on such other policy and where this Policy is required by written contract or written agreement to provide coverage to the additional insured on a primary and non-contributory basis.

The provisions of this Other Insurance condition will not apply if such other insurance is specifically written to be excess of this Policy. If no other insurer defends, we may undertake to do so in accordance with the defense provisions set forth elsewhere in this Policy, but we will be entitled to the insured's rights against all those other insurers.

12. Premium

The premium, as stated in the Declarations of this Policy, is a flat premium, unless there is a rate per an exposure base shown on this Policy, and an endorsement stating such is attached to this Policy. In that case, the premium is subject to adjustment in accordance with the terms of that endorsement.

The premium, as stated in the Declarations of this Policy, may be adjusted if an additional premium charge is made to the "underlying insurance" or if there is an increase in the risk assumed by us during the Policy Period of this Policy.

13. Transfer of Defense

a. Defense Transferred to Us

When the "retained limit" has been paid in full, we will cooperate in the transfer of control to us of any outstanding claims or "suits" seeking damages to which this insurance applies and which would have been covered by the "underlying insurance" had the applicable "retained limit" not been exhausted.

Where the settlement of any "suit" defended by any "underlying insurer" results, or will result, in the exhaustion of the "retained limit" and also will require the payment of a portion of the Limits of Insurance under this Policy in order to effectuate the settlement, we will have the right, but not the duty, to assume the transfer of the defense of the insured with respect to that "suit", but we will be under no obligation to have the defense transferred to us unless and until the "retained limit" has been paid in full.

Where the satisfaction of any judgment entered against the insured in a "suit" defended by any "underlying insurer" results, or will result, in the exhaustion of the "retained limit" and also will require the payment of a portion of the Limits of Insurance under this Policy in order to effectuate the satisfaction of that judgment, we will have the right, but not the duty, to defend the insured with respect to that "suit", but we will be under no obligation to have the defense transferred to us.

b. Defense Transferred by Us

When our limits of insurance have been exhausted, our duty to provide a defense will cease. We will cooperate in the transfer of control of defense to any insurer specifically written as excess over this Policy of any outstanding claims or "suits" seeking damages to which this insurance applies and which would have been covered had the applicable limit not been exhausted.

In the event that there is no insurance written as excess over this Policy, we will cooperate in the transfer of control to the insured and its designated representative.

14. Transfer of Rights of Recovery Against Others to Us

If you have rights to recover all or part of any payment we have made under this Policy, those rights are transferred to us. You must do nothing after loss to impair them. At our request, you will bring "suit" or transfer those rights to us and help us enforce them.

If you and any insurer providing "underlying insurance", prior to the time of an "event", waive in writing any right of recovery against a specific person or organization for any liability, we also will waive any rights we may have against such person or organization to the same extent waived by you and any insurer providing "underlying insurance".

The amount recovered shall be apportioned in the inverse order of payment of the "ultimate net loss" to the extent of the actual payment. The expenses of all such recovery proceedings shall be apportioned in the ratio of respective recoveries.

SECTION IV – DEFINITIONS

As used in this Policy:

1. **"Controlling underlying insurance"** means a policy of insurance listed in the Schedule of Underlying Insurance and identified as "controlling underlying insurance".
2. **"Event"** means an occurrence, offense, accident, act, or other event to which the applicable "controlling underlying insurance" applies.
3. **"Injury or damage"** means any injury or damage covered in the applicable "controlling underlying insurance" arising from an "event".
4. **"Pollutants"** mean any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned, or reclaimed.
5. **"Retained limit"** means the sum of all applicable "underlying insurance" shown in the Schedule of Underlying Insurance and any other insurance or self-insurance applicable to the claim or "suit", except insurance specifically written to apply in excess of this Policy.
6. **"Suit"** means a civil proceeding in which damages because of "injury or damage" to which this insurance applies are alleged. "Suit" includes:
 - a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
 - b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent or the "underlying insurer's" consent.
7. **"Ultimate net loss"** means the total sum, after reduction for recoveries or salvages collectible, that the insured becomes legally obligated to pay as damages by reason of:
 - a. Settlements, judgments, binding arbitration; or
 - b. Other binding alternate dispute resolution proceeding entered into with our consent.

"Ultimate net loss" includes defense expenses if the "controlling underlying insurance" specifies that limits are reduced by defense expenses.
8. **"Underlying insurance"** means the policy or policies (including any renewal or replacement of such policies) of insurance listed in the Schedule of Underlying Insurance including the "controlling underlying insurance" and any self-insured retentions.
9. **"Underlying insurer"** means any insurer that provides a policy of insurance listed in the Schedule of Underlying Insurance.

1. **Request:**

Meeting Date: August 7, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, ADOPTING POLICY PROTECTING INDIVIDUALS ENGAGED IN NONVIOLENT CIVIL RIGHTS DEMONSTRATIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

This is a required policy for CDBG-DR Federal funds.

What the action accomplishes:

Adopts a policy requested from Lee County regarding CDBG-DR grant funding.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Jason Freeman, Legislative
Liaison / Deputy Town Clerk

5. **Background:**

The Town has applied for multiple projects and programs through the Lee County CDBG-DR program and has been requested to provide proof of its excessive force policy; and the Town's failure to adopt or enforce the required policies under Title I may cause the Town to lose its grant or eligibility for future federal grants.

It is in the best interests of the Town and its residents to establish and maintain an excessive force policy in compliance with CDBG-DR funding.

Attachments:

1. Updated 24-135, Adopting CDBG-DR Excessive Force Policy 6-28-24 mr

Financial Impact:

N/A

6. **Alternative Action**

Do not approve and seek alternative with Lee County.

7. **Management Recommendations:**

Approve

8. **Recommended Approval:**

Jason Freeman, Legislative Liaison / Deputy Town Clerk
Frankie Kropacek, Operations & Compliance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 7/2/2024
Approved - 7/2/2024
Approved - 7/24/2024
Approved - 7/24/2024
Final Approval - 7/27/2024

RESOLUTION NUMBER 24-135

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, ADOPTING POLICY PROTECTING INDIVIDUALS ENGAGED IN NONVIOLENT CIVIL RIGHTS DEMONSTRATIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

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

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

WHEREAS, the Congress of the United States has passed Section 104(1) to the Title I of the Housing and Community Development Act, which states that no Community Development Block Grant ("CDBG") or Community Development Block Grant Disaster Recovery ("CDBG-DR") funds may be obligated or expended by any unit of general local government that fails to adopt and enforce a policy of prohibiting the use of excessive force by local law enforcement agencies within its jurisdiction against any individuals engaged in nonviolent civil rights demonstrations; or fails to adopt and enforce a policy of enforcing applicable state and local laws against physically barring entrance to or exit from a facility or location which is the subject of nonviolent civil rights demonstrations within its jurisdiction; and

WHEREAS, Lee County received a CDBG from the U.S. Department of Housing and Urban Development and had to comply with the requirements set forth in Section 104(1) of Title I of the Housing and Community Development Act by adopting and enforcing an excessive force policy to keep its CDBG award; and

WHEREAS, Lee County adopted an excessive force policy on or around January 5, 2024, by passing Resolution 23-12-07; and

WHEREAS, the Town has applied for multiple projects and programs through the Lee County CDBG-DR program and has been requested to provide proof of its excessive force policy; and

WHEREAS, the Town's failure to adopt or enforce the required policies under Title I may cause the Town to lose its grant or eligibility for future federal grants; and

WHEREAS, it is in the best interests of the Town and its residents to establish and maintain an excessive force policy in compliance with CDBG-DR funding.

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

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

Section 2. It is the policy of the Town that excessive force by local law enforcement agencies shall not be used against individuals engaged in lawful and nonviolent civil rights demonstrations within the Town's jurisdiction.

Section 3. It is the policy of the Town to enforce applicable state and local laws against the physical barring of an entrance to or exit from a facility or location which is the subject of nonviolent civil rights demonstrations within the Town's jurisdiction.

Section 4. The Town Council will notify Lee County Sheriff's Office and request compliance with this Resolution.

Section 5. This resolution shall take effect immediately upon its adoption by the Town Council of the Town of Fort Myers Beach.

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

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

ADOPTED this 5th day of August 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, Town Attorney

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

1. **Request:**

Meeting Date: August 7, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AUTHORIZING THE TOWN MANAGER TO EXECUTE THE 2025 PARTICIPATION REQUEST AND RENEWAL FORM FOR THE FLORIDA RECOVERY OBLIGATION CALCULATION (F-ROC) PROGRAM; AUTHORIZING THE TOWN MANAGER OR THEIR DESIGNEE TO EXECUTE AND SUBMIT RELATED DOCUMENTS NEEDED TO IMPLEMENT AND ADMINISTER THE PROGRAM INCLUDING THE DISASTER READINESS ASSESSMENT AND ABATEMENT ACTIVITIES; PROVIDING AN EFFECTIVE DATE.

Why the action is necessary:

The program requires the approval and maintenance of the program from the Highest Authority of the Town administration and can be delegated later on.

What the action accomplishes:

This item will allow the Town Manager and staff to complete the required documentation and assessments associated with the FDEM program.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Jason Freeman, Legislative
Liaison / Deputy Town Clerk

5. **Background:**

Florida Recovery Obligation Calculation (F-ROC) is a new initiative, sponsored by the Florida Division of Emergency Management (FDEM) that standardizes, streamlines, and simplifies the Public Assistance process.

The Town participated in the introductory first year of the program and is planning to opt-in for this next year as well to provide for the opportunity for increased preparedness and upfront funding in the event of an emergency situation.

For more information on the F-ROC Program, please click the following link:

<https://www.floridadisaster.org/froc/>

Attachments:

1. 24-136, 2025 F-ROC Participation
2. 2025 F-ROC Participation Request and Renewal Form

Financial Impact:

Provides the opportunity for faster funding of Category A (Debris Removal) and Category B (Emergency Protective Measures) projects.

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

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

Created/Initiated - 7/8/2024
Approved - 7/9/2024
Approved - 7/24/2024
Approved - 7/24/2024
Final Approval - 7/27/2024

RESOLUTION NUMBER 24-136

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AUTHORIZING THE TOWN MANAGER TO EXECUTE THE 2025 PARTICIPATION REQUEST AND RENEWAL FORM FOR THE FLORIDA RECOVERY OBLIGATION CALCULATION (F-ROC) PROGRAM; AUTHORIZING THE TOWN MANAGER OR THEIR DESIGNEE TO EXECUTE AND SUBMIT RELATED DOCUMENTS NEEDED TO IMPLEMENT AND ADMINISTER THE PROGRAM INCLUDING THE DISASTER READINESS ASSESSMENT AND ABATEMENT ACTIVITIES; PROVIDING AN EFFECTIVE DATE.

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

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

WHEREAS, the Town of Fort Myers Beach, Florida (the “Town”) had the opportunity to participate in the first year of the Florida Division of Emergency Management’s Florida Recovery Obligation Calculation (F-ROC) Program (the “Program”); and

WHEREAS, the Town desires to continue participation in the Program to provide the Town with assistance in identifying risk in our organization and develop a clear action plan that will abate those risks, while standardizing and streamlining the Public Assistance process; and

WHEREAS, as part of participation of the Program, the Town must submit a signed participation and renewal request; and

WHEREAS, the Town Council finds and determines that it is in the best interest of the Town and its citizens to authorize the participation of the Program for the 2025 season and the administration thereof of the Program; and

WHEREAS, the Town desires to authorize the Town Manager or the afore mentioned officer’s designees to submit the 2025 participation documentation and administer Program on behalf of the Town; and

WHEREAS, the Town Council desires to authorize the Town Manager or the aforementioned officer’s designees to execute and deliver all documents necessary to participate in the Program and carry out the administration of same.

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

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

Section 2. That the Town Council hereby authorizes and instructs the Town Manager to participate in the Program for the year 2025 from the Florida Division of Emergency Management and to administer the Program on behalf of the Town.

Section 3. That Town Manager Andrew Hyatt and their designees are each hereby authorized to execute and deliver any documents necessary to opt-in, participate, and administer the Program on behalf of the Town.

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

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

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

ADOPTED this 5th day of August 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

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

**2025 PARTICIPATION REQUEST AND RENEWAL FORM
FLORIDA RECOVERY OBLIGATION CALCULATION (F-ROC) PROGRAM**

_____ (hereinafter referred to as the “Applicant”), requests to opt-in/renew its participation in the Florida Recovery Obligation Calculation (“F-ROC”) program. The F-ROC program is an initiative, sponsored by the Florida Division of Emergency Management (“Division”), that assists Applicants in identifying risk in their organization and develops a clear action plan that will abate those risks, while standardizing and streamlining the Public Assistance process.

Applicant's name:	
Applicant's FEIN:	
Applicant's Address:	

(1) DEFINITIONS

1. Disaster Readiness Assessment (“DRA”): The DRA is a questionnaire completed prior to a disaster that evaluates the Applicant’s risk of de-obligations in the Public Assistance (“PA”) program.
2. Post Disaster Questionnaire (PDQ): The PDQ is completed after each federally declared event to gather Applicant specific information regarding training and utilization of forms.
3. Expedited Projects: Applicants may submit Expedited Projects to FEMA if they have an immediate need for funding to continue life-saving emergency protective measures. If approved, the Applicant will be awarded 50% of the federal portion of the FEMA-confirmed project cost based on initial documentation.
4. Obligated: FEMA obligates funding once a project meets the Stafford Act eligibility requirements.
5. De-obligated: FEMA de-obligates funding if previously obligated costs have been determined to be ineligible under the PA program.
6. Emergency Management Accreditation Program (EMAP): A voluntary “standards, assessment, and accreditation” process for disaster preparedness programs.

(2) CONTACT

Applicant Point of Contact:	
Telephone:	
Email:	

**2025 PARTICIPATION REQUEST AND RENEWAL FORM
FLORIDA RECOVERY OBLIGATION CALCULATION (F-ROC) PROGRAM**

Division Point of Contact:	Recovery Bureau
Telephone:	(850) 815-4400
Email:	F-ROC@em.myflorida.com

- a. In the event that different representatives or addresses are designated by either party after submittal of this Form, a notice of the name, telephone, and email of the new representative will be provided to the other party in writing via letter or electronic email.

(3) TERMS AND CONDITIONS

Upon the Applicant submitting, via electronic mail to F-ROC@em.myflorida.com, this Form for the F-ROC program, completing the mandatory Opt-In training course, and submitting the mandatory Disaster Readiness Assessment, the Applicant will receive the minimum/baseline score of 10% for work completed projects and work to be completed projects.

- a. Pursuant to this Form, the opt-in/renewal will be for one (1) year and will only cover large, non-expedited, Category A (Debris Removal) and Category B (Emergency Protective Measures) projects. Annual renewal of this Form will begin in June of the year in which the Form is set to expire.
- b. To complete the participation process and receive the 10% baseline, the Applicant must:
 - i. Complete the Opt-In training course with a score of 100%;
 - ii. Submit the signed Participation Opt-in and Renewal Form; and
 - iii. Submit the 2025 DRA.
- c. If an Applicant wishes to increase their score, they can do so by completing the optional items listed below:
 - i. Complete the recommended abatement activities following submittal and review of the DRA.
 - ii. Complete the Post Disaster Questionnaire ("PDQ").
 - iii. Utilize the Division's standardized F-ROC forms.
 - iv. Training (excluding the Opt-in and Leadership courses).
- d. This Form will not apply to any Expedited Projects.
- e. The deadline to opt-in or renew participation in the 2025 term of the F-ROC program, is August 31, 2024.

**2025 PARTICIPATION REQUEST AND RENEWAL FORM
FLORIDA RECOVERY OBLIGATION CALCULATION (F-ROC) PROGRAM**

- f. The implementation of the F-ROC program does not guarantee funding for Applicants. Funding will remain contingent upon obligation by FEMA and the Applicant will be liable for repayment (See (7) REPAYMENTS) upon de-obligation by FEMA of any disbursed funds. Any de-obligation of funding is within FEMA's sole discretion and the Division shall not be liable for FEMA's exercise of its discretion.
- g. If the Applicant seeks to "opt-out" of F-ROC, the Applicant must make a request to that effect in writing to the Division, on their letter head and duly signed by an authorized representative of the Applicant.
- h. The deadline to complete the 2025 DRA, pursuant to this Form, is October 31, 2024.
- i. The deadline to complete any abatement activities shall be March 31st of the calendar year after this Form has been executed.
- j. The Applicant shall have sixty (60) days from the date their County is designated under the disaster declaration to complete the applicable PDQ. The PDQ must be completed in order to access additional points and increase the locked-in score. If the Applicant requests an extension on completing the PDQ, such an extension request must be made prior to the obligation of funds for it to impact the Applicant's score and therefore, reflect upon the obligation attaching thereto.
- k. The Applicant and the Division will identify the key Points of Contact (POC) respectively.
- l. The Division reserves the right to remove an Applicant from the program. Furthermore, if the Division has reason to believe that the Applicant is engaged in fraud, waste, abuse, or noncompliance of State and/or Federal laws, the Division may impose a one (1) year prohibition upon the Applicant from participation in the program.
- m. The Applicant's failure to complete the criteria set forth in this Form shall result in a default to the traditional method of disbursing obligated Public Assistance funds; Meaning, the Division will consider failure to complete the requirements as the Applicant voluntarily "opting-out" of the program.
- n. Opt-in/participation renewal duration shall be one (1) year with annual "opt-in" renewals.

(4) PERIOD OF PERFORMANCE

This Form survives and remains in effect after termination, for the herein referenced State and Federal audit requirements and the referenced required records retention periods. Work may only be performed during the timeframes established and approved by the State and/or FEMA for each Category of Work type.

**2025 PARTICIPATION REQUEST AND RENEWAL FORM
FLORIDA RECOVERY OBLIGATION CALCULATION (F-ROC) PROGRAM**

(5) FUNDING

- a. Participation in the F-ROC program does not guarantee funding and is dependent upon FEMA's obligation.
- b. By signing and returning this Form for F-ROC, Applicants have the potential to receive a score up to 80%. This score is made up of three components:
 - 1. 10% Baseline score for signing and returning this Form. Applicants will receive the baseline score upon submittal of the 2025 DRA.
 - 2. Up to a 50% score for completing the DRA and applicable abatement activities.
 - 3. Up to a 20% score for completing the PDQ.
- c. Applicants who have received EMAP accreditation will receive an additional 5%.
- d. Scores related to any activities completed as a result of this form shall be applied to any Presidentially declared events from July 1, 2025, through June 30, 2026 (this period shall be the relevant period for Disaster Readiness Assessment [DRA]).
- e. The Applicant may choose to receive a lesser score than the score earned through the completion of the above components on a one-time basis per disaster. The Applicant must make a request to that effect in writing to the Division, on their letter head and duly signed by an authorized representative of the Applicant. Such a request must be made prior to the obligation of funds for it to impact the Applicant's score and therefore, reflect upon the obligation attaching thereto.
- f. The Applicant's score directly corresponds to the percent of the eligible obligated amount that will be disbursed to the Applicant upon obligation of the Public Assistance project. After validation of all supporting documentation is complete, the Applicant will receive the remainder of the validated, obligated amount.
- g. If the Applicant has any open receivables with the Division, those receivables must be satisfied before any disbursements are made through the F-ROC program.

(6) PAYMENT

- a. The payment method used by the Division is either a Cost Reimbursement or an Advance Payment. Advance Payments are governed by Chapter 216, Florida Statutes. Documentation to support the F-ROC payment must be provided to the Division within 90 days of the disbursement of funds via a Request for Reimbursement in FloridaPA.org. The Division, in its sole discretion, may release funds during or after the term of this form, subject to the availability of funds.
- b. The Division's Grant Manager, as required by section 215.971(2)(c), Florida Statutes, shall reconcile and verify all funds received against all funds expended during the agreement period and

**2025 PARTICIPATION REQUEST AND RENEWAL FORM
FLORIDA RECOVERY OBLIGATION CALCULATION (F-ROC) PROGRAM**

produce a final reconciliation report. The final report must identify any funds paid in excess of the expenditures incurred by the Applicant.

(7) REPAYMENTS

- a. Refunds or repayments of obligated funds may be paid to the Division via offset with another obligated Public Assistance project, check, or a payment plan, as approved by the Department of Financial Services.
- b. All refund or repayments due to the Division under this Agreement are to be made payable to the order of "Florida Division of Emergency Management" and must include the invoice number and the applicable Disaster and Project number(s) that are the subject of the invoice, and be mailed directly to the following address:

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

For the purposes of execution and opt-in/renewal, this Form shall terminate upon the expiration date of June 30, 2025, unless the Applicant renews annually. The Division reserves the right to remove an Applicant from the program. The Division and Applicant agree that all records will be maintained until the conclusion of all applicable record retention periods.

IN WITNESS WHEREOF, the Applicant hereto has executed this Form.

Applicant: _____

By: _____ (Signature)

Name: _____

Title: _____

Date: _____

**2025 PARTICIPATION REQUEST AND RENEWAL FORM
FLORIDA RECOVERY OBLIGATION CALCULATION (F-ROC) PROGRAM**

ATTACHMENT A: APPLICANT POINTS OF CONTACT

F-ROC SMART GRANTS CONTACTS

	Name	Email Address
Authorized Agent*		
Alternate**		
Alternate		
Alternate		
Alternate		
Alternate		
Alternate		

**All Applicants must identify an Authorized Agent. The Authorized Agent is the only person who can submit the DRA.*

***An alternate can do all tasks within the system with the exception of submitting the DRA.*

F-ROC COMMUNICATIONS DISTRIBUTION LIST

Name	Email Address

This list will be for anyone you would like to receive F-ROC communications and updates.

1. **Request:**

Meeting Date: August 7, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AUTHORIZING THE MAYOR OR TOWN MANAGER TO EXECUTE A GRANT AGREEMENT WITH THE LEE COUNTY BOARD OF COUNTY COMMISSIONERS FOR RECEIPT OF TOURIST DEVELOPMENT TAX FUNDS IN THE AMOUNT \$1,262,550.00 FOR BEACH AND SHORELINE MAINTENANCE; AUTHORIZING THE MAYOR OR TOWN MANAGER TO EXECUTE ANY RELATED DOCUMENTS NEEDED FOR RECEIPT OF THE FUNDING; AND PROVIDING AN EFFECTIVE DATE.

Why the action is necessary:

Town Council approval is requested for grant agreement execution. The Town of Fort Myers Beach has historically matched the grant request by paying for some items that are not eligible for reimbursement, such as uniforms, cell phones, radios, parking signs, and insurance premiums. The Town also provides a match for items that are eligible for reimbursement, such as a small portion of in-house labor, equipment, vehicles, signage and janitorial supplies.

What the action accomplishes:

TDC funding allows the Town of Fort Myers Beach to receive funds to support the upkeep of 32 public beach accesses, including the landscape and public restrooms at Mound House and Newton Beach Park and Palm Avenue as well as three beach and shoreline properties: Newton Beach Park (Public Beach Access on the Gulf of Mexico), Mound House (Estero Bay) and 216 Connecticut Street (Mound House overflow parking lot)

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Jeff Hauge, Culture, Parks &
Recreation Director

5. **Background:**

Earlier this year, at the February 20, 2024 Town Council meeting, approval was given to apply for TDC grant funding for eligible maintenance and capital projects. TDC funding allows the Town of Fort Myers Beach to receive funds to support the upkeep of 32 public beach accesses as well as the landscape and public restrooms at Mound House and Newton Beach Park. A portion of BASE salaries and Public Works employees are funded through this grant.

Lee County Tourist and Development Council

In 1982, Lee County citizens voted by referendum to form a tourism organization that would promote Lee County's off-season vacation assets in the United States and abroad. A two-percent tax on short-term accommodations was approved to support the new Lee County Tourist Development Council (TDC) and its promotions. In 1988, an additional one percent tourist tax was levied to a total of three percent to support the Beach & Shoreline Capital Improvement Program.

The Tourist Development Council is a nine-member Council appointed as an advisory committee to the Lee County Board of County Commissioners (BOCC). TDC members oversee the entire tourist development tax fund, provide direction on programs and budget, and review the expenditures of the Lee County Visitor & Convention Bureau (VCB) quarterly.

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

Each year the TDC approves funding for the maintenance of Lee County beaches, for beach

renourishment projects, and for beach and shoreline capital projects such as piers, boardwalks, parks and re-vegetation.

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

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

This program provides direct benefits to visitors and residents alike, all with the goal of promoting tourism while preserving and enhancing our beaches and shoreline. Many of these projects have proven to have a major impact on visitor activity. For more information, visit <https://www.leevcb.com/funding-programs/beach-and-shoreline>.

The Town of Fort Myers Beach has been awarded the following projects for the 2024-2025 Lee County fiscal year 2024-25

401895	Beach and Shoreline Maintenance	\$1,262,550.00
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Attachments:

1. 24-147, TDC Interlocal for Beach & Shoreline Maintenance FY24-25 2NS REV
2. Exhibit A - Grant Agreement

Financial Impact:

The TDC has provided the Town of Fort Myers Beach with millions of dollars of funding over the years for Beach Renourishment, Beach Monitoring and the Maintenance of the Beach Accesses as well as Mound House and Newton Beach Park properties. For fiscal year 2024-2025, the Town has been approved for \$1,262,550 with a match of \$364,180.00.

6. Alternative Action

Do not approve

7. Management Recommendations:

Authorize the Mayor or Town Manager to execute the FY24-25 grant agreement and any related documents.

8. Recommended Approval:

Jason Freeman, Legislative Liaison / Deputy Town Clerk
Jeff Hauge, Culture, Parks & Recreation Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 7/30/2024
Approved - 7/30/2024
Approved - 7/30/2024
Approved - 7/31/2024
Final Approval - 7/31/2024

RESOLUTION NO. 24-147

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AUTHORIZING THE MAYOR OR TOWN MANAGER TO EXECUTE A GRANT AGREEMENT WITH THE LEE COUNTY BOARD OF COUNTY COMMISSIONERS FOR RECEIPT OF TOURIST DEVELOPMENT TAX FUNDS IN THE AMOUNT \$1,262,550.00 FOR BEACH AND SHORELINE MAINTENANCE; AUTHORIZING THE MAYOR OR TOWN MANAGER TO EXECUTE ANY RELATED DOCUMENTS NEEDED FOR RECEIPT OF THE FUNDING; 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 been selected to receive grant funding from Tourist Development Tax funds for beach and shoreline maintenance (the “Project”); and

WHEREAS, the Town will commit \$364,180 in funds to complete the match requirement, which funding will be requested in the 2024-2025 Fiscal Year Budget for the Project; and

WHEREAS, by this Resolution, the Town Council desires to designate the Mayor or Town Manager to serve as a “Liaison Agent” and to further authorize the Mayor or Town Manager to execute the Grant Agreement attached as Exhibit A, as well as any related documents needed for receipt of the grant funding; and

WHEREAS, approval of the Grant Agreement 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 Mayor or Town Manager to serve as the “Liaison Agent” and to authorizes the Mayor or Town Manager to execute the Grant Agreement for funding in the amount of \$ 1,262,550.00 to be used for beach and shoreline maintenance.

Section 3. The Town Council authorizes the budgeting of \$364,180.00 in matching funds for receipt of the grant funding.

Section 4. This Resolution shall take effect immediately upon its 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 Stafford, Council Member	_____
Karen Woodson, Council Member	_____

ADOPTED this 5th day of August 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 5th day of August 2024.

**TOURIST DEVELOPMENT TAX GRANT AGREEMENT
BETWEEN
LEE COUNTY BOARD OF COUNTY COMMISSIONERS
AND
THE TOWN OF FORT MYERS BEACH
FOR
BEACH AND SHORELINE MAINTENANCE (401895)**

THIS GRANT AGREEMENT is entered into by and between LEE COUNTY BOARD OF COUNTY COMMISSIONERS, a political subdivision and charter county of the State of Florida, hereinafter referred to as the “**COUNTY**” and the TOWN OF FORT MYERS BEACH hereinafter referred to as “**RECIPIENT**”, for funding provided pursuant to the **COUNTY’S** Tourist Development Plan and Florida Statutes Section 125.0104.

W I T N E S S E T H:

WHEREAS, pursuant to Florida Statutes §125.0104 and Lee County Ordinances No. 13-14 and 16-18, and as may be further amended from time to time, Lee County collects Tourist Development Tax; and

WHEREAS, the **COUNTY** has the authority to enter into this Agreement and distribute Tourist Development Tax funds in the amount and manner set forth in this Agreement; and

WHEREAS, the **COUNTY** and **RECIPIENT** acknowledge that the Tourist Development Tax may only be spent in accordance with state law, case law and the Tourist Development Plan adopted by Lee County; and

WHEREAS, the **COUNTY** approved the **RECIPIENT’S** request for funding under its Tourist Development Tax Plan for implementation of the following Project:

NAME: BEACH AND SHORELINE MAINTENANCE

NUMBER: 401895

NOW, THEREFORE, for and in consideration of the covenants and obligations set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties intending to be legally bound hereby agree to perform the duties described herein in this Agreement as follows:

1. SCOPE OF WORK

The **RECIPIENT** will perform the work necessary to complete the Project in accordance with the Beach and Shoreline Funding Program Guidelines and the Project Plan (*attached*). **RECIPIENT** may not make any major alterations, changes or substitutions to the Project without obtaining prior written approval from the **COUNTY**. The Director of the Visitor and Convention Bureau or Program Manager may approve minor changes, alterations and/or substitutions. **RECIPIENT** shall be solely responsible for managing and controlling the Project, including the hiring and supervising of any consultants or contractors it engages.

- 1.1 The parties agree that time is of the essence in the performance of each obligation under this Agreement.
- 1.2 The parties acknowledge that the Project is for *maintenance of the publicly accessible portions of the beach and shoreline on Fort Myers Beach*.

2. CONTRACT PERIOD

Maintenance Awards: This Agreement is effective as of October 1, 2024 (the "Effective Date") and shall continue until the earlier occurs (a) September 30, 2025 (the "Expiration Date") or (b) the date on which either Party terminates this Agreement (the "Termination Date"). The **RECIPIENT** shall not be eligible for reimbursement for any work that is commenced, or costs that are incurred, prior to the effective date or subsequent to the expiration date of this Agreement. Maintenance awards are not eligible for carryovers, but unspent funds may be requested during the next grant application process.

3. FUNDING

This Agreement is a cost reimbursement Agreement. The parties agree that the total cost of the Project will be One Million Two Hundred Sixty Two Thousand Five Hundred Fifty Dollars and no cents (\$1,262,550.00). The **COUNTY** will reimburse the **RECIPIENT** for an amount not to exceed One Million Two Hundred Sixty Two Thousand Five Hundred Fifty Dollars and no cents (\$1,262,550.00) for charges incurred during the contract period.

- 3.1 The **RECIPIENT** shall pay Project costs prior to requesting reimbursement from the **COUNTY**. The **COUNTY** shall reimburse the **RECIPIENT** allowable Project costs in accordance with the Project Budget set forth in the Project Plan.
- 3.2 To receive payment, the **RECIPIENT** shall submit request for reimbursement and supporting documentation to the **COUNTY** MONTHLY, with the final month no later than thirty (30) days after the contract period. The invoices must describe the services performed, show proof of payment, and all supporting documentation related to the expenses. The invoice packets must be a PDF format and transmitted digitally. The County may modify administrative guidelines from time to time. The **COUNTY** will forward the documentation to the Clerk of Courts Office for payment. Any other additional documentation requested by the **COUNTY** or the Clerk shall be provided. Sufficient supporting invoices and documentation to support pre-audit and post-audit review must accompany invoices. At no point in time will the **COUNTY'S** reimbursement amount under this Agreement exceed One Million Two Hundred Sixty Two Thousand Five Hundred Fifty Dollars and no cents (\$1,262,550.00).
- 3.3 The **RECIPIENT** may contract with consultant(s), contractor(s) or both to accomplish the Project without approval of the **COUNTY**.
- 3.4 The parties acknowledge that the Project was approved for funding by the **COUNTY** based upon the benefits expected to be achieved by the Project. The parties also acknowledge that the **RECIPIENT** is solely responsible for implementing the Project in such a manner that the expected benefits are achieved. If at any point during the progression of the Project, the **COUNTY** determines that it is likely that the Project will not be completed, the **COUNTY** shall provide the **RECIPIENT** with fifteen (15) days advance written notice that the **COUNTY** shall withhold payments to the **RECIPIENT** until such time as the **RECIPIENT** demonstrates that the Project shall reach completion, to provide the **RECIPIENT** with an opportunity to cure the deficiencies.
- 3.5 **RECIPIENT** agrees to comply with the following Special Conditions for funding of this project: Signage: regulatory and parking fee related signage are ineligible funding.

- 3.6 **RECIPIENT** shall provide the **COUNTY** evidence of substantial activity within six (6) months of the beginning of the fiscal year the grant funding is awarded.
- 3.7 Unspent or unencumbered funds remaining at the end of the fiscal year may not be carried over into the next fiscal year for maintenance grants. Capital grants may be carried over, with appropriate approval.
- 3.8 In the event any dispute or disagreement arises during the course of the Project, including whether expenses are reimbursable according to the Project Request, the **RECIPIENT** is under a duty to seek clarification and resolution of any issue, discrepancy, or dispute by providing the details and basis of the dispute to the Director, Visitor and Convention Bureau, no later than ten (10) days after the precipitating event. If not resolved by the Director, Visitor and Convention Bureau, within ten (10) days of receipt of notice the dispute will be forwarded to the Assistant County Manager assigned to the Visitor and Convention Bureau. The Assistant County Manager in consultation with the County Attorney's Office will issue the **COUNTY'S** final determination. The **RECIPIENT'S** continuation of the Project work as required under this subparagraph shall not constitute a waiver of any legal remedy available to the **RECIPIENT** concerning the dispute.

4. COMPLETION DATES

The **RECIPIENT** shall commence and complete the Project and meet the deadlines in accordance with the Project Schedule set forth in the Project Plan. In the event of hurricanes, tornado, floods, acts of God, acts of war, or other such catastrophes, or other man-made emergencies such as labor strikes or riots, which are beyond the control of the **RECIPIENT**, the **RECIPIENT'S** obligation to meet the time frames provided in this Agreement shall be suspended for the period of time the condition continues to exist. During such suspension, this Agreement shall remain in effect. When the **RECIPIENT** can resume performance of its obligations under this Agreement, in whole or in part, it shall immediately give the **COUNTY** written notice to that effect and shall resume performance no later than two (2) working days after the notice is delivered. The suspension of the **RECIPIENT'S** obligations provided for in this paragraph shall be the **RECIPIENT'S** sole remedy for the delays set forth herein.

5. REPAYMENT

- 5.1 Notwithstanding anything in this Agreement to the contrary, **COUNTY** has an absolute right to recoup Grant Funds. **COUNTY** may refuse to reimburse **RECIPIENT** for any cost if **COUNTY** determines, in its sole discretion, that such cost was not incurred in compliance with the terms of this Agreement. **COUNTY** may demand return of the Grant Funds if **COUNTY** terminates this Agreement.
- 5.2 In the event the **RECIPIENT** is obligated to repay the **COUNTY** under any paragraph of this Agreement, the **RECIPIENT** shall repay the **COUNTY** within a reasonable time, as determined by the **COUNTY** in its sole discretion.
- 5.3 Capital equipment purchased with grant proceeds may not be disposed of without approval from the **COUNTY**. Sale proceeds may be required to be repaid to the **COUNTY**'s Beach and Shoreline Program.
- 5.4 The **RECIPIENT** shall pay attorney's fees and costs incurred by the **COUNTY**, including appeals, as a result of the **RECIPIENT'S** failure to repay the **COUNTY** as required by this Agreement.
- 5.5 This Repayment Paragraph, including all subparagraphs, shall survive the expiration or termination of this Agreement.

6. PROJECT RECORDS

The **RECIPIENT** shall maintain accurate records of all expenditures, and **RECIPIENT** shall make records related to this Agreement available at all reasonable times for inspection, review or audit by the **COUNTY**. Records shall be kept for a period of at least three (3) years following the end of the funding period. Each party shall comply with Chapter 119, F.S., the Public Records Act, including allowing public access to the Project documents and materials made or received by either party. Should either party assert any exemption to the requirements of Chapter 119, F.S., the burden of establishing such exemption, by way of injunctive or other relief as provided by law, shall be upon the asserting party. This paragraph shall survive the expiration or termination of this Agreement.

7. REPORTS

- 7.1 **RECIPIENT** shall provide quarterly status updates to the **COUNTY** describing the progress of the Project, adherence to the Project Schedule and any developments affecting the Project. The **RECIPIENT** shall promptly advise the **COUNTY** of issues that arise that may impact the successful and timely completion of the

Project. Quarterly reports shall be submitted to the **COUNTY'S** Program Manager, Visitor and Convention Bureau no later than forty-five (45) days following the completion of the quarterly reporting period.

7.2 Status reports must be current to receive reimbursement.

7.3 The **RECIPIENT** shall provide the reports and documents referenced in this paragraph at no cost to the **COUNTY**.

8. LIABILITY AND INDEMNIFICATION

8.1 To the extent permitted by Florida law, the **RECIPIENT** assumes all risks relating to the Project and agrees to be solely liable for, and to indemnify and hold the **COUNTY** harmless from all claims, loss, damage and other expenses, including attorney's fees and costs and attorneys' fees and cost on appeal, arising from the Project.

8.2 The **COUNTY** shall not be liable to any person, firm or corporation that contracts with the **RECIPIENT** to provide goods and services associated with the Project conducted with the funding. Nor shall the **COUNTY** be liable to any person, firm or corporation for claims against the **RECIPIENT** or debts incurred by the **RECIPIENT**.

8.3 This Liability and Indemnification paragraph, including all subparagraphs, shall not be construed as a waiver of the **RECIPIENT'S** sovereign immunity or an extension of the **RECIPIENT'S** liability beyond the limits established in Section 768.28, F.S., nor be construed as consent by the **RECIPIENT** to be sued by third parties in any manner arising out of this Agreement.

8.4 Nothing in this Agreement shall be interpreted as a waiver of the **COUNTY'S** sovereign immunity or an extension of its liability beyond the limits established in Section 768.28, F.S., nor be construed as consent by the **COUNTY** to be sued by third parties in any manner arising out of this Agreement. This Liability and Indemnification paragraph, including all subparagraphs, shall survive the expiration or termination of this Agreement.

9. TERMINATION

9.1 The **COUNTY**, by written notice to **RECIPIENT** may terminate this Agreement immediately and cancel any unpaid disbursement if the **COUNTY** determines, in its sole discretion, that:

- a) **RECIPIENT** used any portion of the grant funds for purposes not included in the terms of this Agreement.

- b) **RECIPIENT** is not making satisfactory progress toward the completion of the Project or has violated the terms of this Agreement.

Upon receipt of the written notice, **RECIPIENT** shall not provide any further deliverables after receiving the notice of termination. Within 30 days after receiving written notice from the **COUNTY** of such termination, the **RECIPIENT** shall return the funds reimbursed. The **COUNTY** will have no liability to pay the **RECIPIENT** any further sums in relation to this Agreement.

- 9.2 **RECIPIENT** may terminate this Agreement for inability to obtain all permits and local government approvals necessary to complete the Project or inability to complete the Project. To effect termination, **RECIPIENT** shall provide **COUNTY** with written "Notice of Termination". **RECIPIENT** shall refund all grant funds provided under this Agreement to the **COUNTY** for the Project within 30 days of termination.

- 9.3 This Funding Agreement terminates three (3) years after approval by the Board of County Commissioners.

10. LAW COMPLIANCE

The **RECIPIENT** shall comply with all applicable federal, state and local laws, rules, regulations and guidelines related to performance under this Agreement.

11. ASSIGNMENT

Except as otherwise provided in this Agreement, no party may assign any of its rights or delegate any of its obligations under this Agreement, including any operation or maintenance duties related to the Project, without the prior written consent of the other party. Any attempted assignment in violation of this paragraph is void. This paragraph shall survive the expiration or termination of this Agreement.

12. GOVERNING LAW

The laws of the State of Florida shall govern the construction, enforcement, and interpretation of this Agreement, regardless of and without reference to whether any applicable conflicts of laws principles may point to the application of the laws of another jurisdiction. The Parties expressly consent to exclusive jurisdiction and venue in any state court located in Lee County, Florida, and waive any defense of forum non conveniens, lack of personal jurisdiction, or like defense.

13. SEVERABILITY

If any paragraph or paragraphs of this Agreement shall be held to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining paragraphs shall not in any way be affected or impaired thereby. Notwithstanding the above, if a paragraph or paragraphs of this Agreement setting forth the requirements or expectations of the benefit of promoting tourism resulting from the Project is held to be invalid, illegal or unenforceable during the term of this Agreement, this Agreement shall terminate in accordance with the Repayment paragraph. This paragraph shall survive the expiration or termination of this Agreement.

14. COUNTERPARTS

The parties may execute this Agreement, and any amendments related to this Agreement, each of which constitutes an original, and all of which, collectively, constitute only one Agreement. The signatures of all the parties need not appear on the same counterpart.

15. MISCELLANEOUS

- 15.1 The **RECIPIENT** covenants to the **COUNTY** that it has lawful authority to enter into this Agreement and has authorized the execution of this agreement by its authorized representative.
- 15.2 This Agreement embodies the entire agreement of the Parties with respect to the subject matter hereof. There are no provisions, terms, conditions, or obligations other than those contained in this Agreement; and this Agreement supersedes all previous communications, representations, or agreements, either verbal or written, between the Parties. If a court of competent jurisdiction voids or holds unenforceable any provision of this Agreement, then that provision shall be enforced only to the extent that it is not in violation of law or is not otherwise unenforceable, and all other provisions shall remain in full force and effect.
- 15.3 This Agreement may not be modified, amended or extended orally. This Agreement may only be amended by written agreement executed by the governing bodies of both parties.

16. CONTACT INFORMATION

COUNTY

Lee County Board of County Commissioners
Director, Visitor and Convention Bureau
2201 Second Street, Suite 600
Fort Myers, FL 33901

RECIPIENT

TOWN OF FORT MYERS BEACH, Town Manager
2525 Estero Blvd
Fort Myers Beach, FL 33931

The Parties' respective contact and notice information is set forth in the immediately preceding paragraph and may be subject to change at the Parties' discretion. If the contact information changes, the Party making such change will notify the other Party in writing. When the term "written notice" is used to specify a notice requirement herein, said notice shall be deemed to have been given (i) when personally delivered; (ii) when transmitted by email, if the sender on the same day sends a confirming copy of such notice by certified or registered mail; (iii) the next business day following the day on which the same has been delivered prepaid to a recognized overnight delivery service; or (iv) the third business day following the day on which the same is sent by certified or registered mail, postage prepaid, with return receipt.

IN WITNESS WHEREOF, and in consideration of the mutual covenants set forth above,
the Parties, through their duly-authorized representatives, sign this Agreement and
represent and warrant that they understand the Agreement as of this _____ day of
_____, 20_____.

ATTEST:
KEVIN KARNES, CLERK

BOARD OF COUNTY COMMISSIONERS
LEE COUNTY, FLORIDA

BY: _____
DEPUTY CLERK

BY: _____

APPROVED AS TO FORM FOR THE
RELIANCE OF LEE COUNTY ONLY

BY: _____
OFFICE OF THE COUNTY ATTORNEY

ATTEST:
TOWN CLERK

TOWN OF FORT MYERS BEACH, FLORIDA

BY: _____

BY: _____

APPROVED AS TO FORM

BY: _____
TOWN ATTORNEY'S OFFICE

1. **Request:**

Meeting Date: August 7, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AUTHORIZING THE TOWN MANAGER TO EXECUTE AMENDMENTS TO FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION HURRICANE RESTORATION REIMBURSEMENT GRANT TO FUND THE ESTERO ISLAND BEACH RENOURISHMENT AND HURRICANE RECOVERY PROJECT; AND PROVIDING AN EFFECTIVE DATE.

Why the action is necessary:

The Hurricane Restoration Reimbursement Grant Program will distribute financial assistance to qualifying local governments and municipalities to help remedy the damages from coastal erosion incurred after Hurricane Ian or Hurricane Nicole.

Town Council approved Resolution 24-99 for Ahtna Marine and Construction Company to Construct the Estero Island Beach Nourishment and Hurricane Restoration Project. Town Council approved Resolution 24-70 for Coastal Engineering Consultants Supplemental Task Agreement #10 to provide construction phase services for the Estero Island Beach Nourishment and Hurricane Restoration Project. Town Council approved Resolution 24-71a for Turtle Time, Inc. to provide marine turtle monitoring services for the Estero Island Beach Nourishment and Hurricane Restoration Project.

The costs of construction, engineering, and monitoring services for the Estero Island Beach Nourishment and Hurricane Restoration Project incurred after July 1, 2024 and before July 1, 2025 qualify as eligible expenses that are reimbursable by the Hurricane Restoration Reimbursement Grant. The Hurricane Restoration Reimbursement Grant agreement 23LE4 may be amended for reimbursement of eligible expenses incurred from the Estero Island Renourishment and Hurricane Restoration Project.

Up to 100 percent of requested costs are eligible for grant award. Awards are given on a first come, first serve basis until the grant funds are exhausted. Authorization of the Town Manager to execute Grant Agreement 23LE4 amendments and administer Grant Agreement 23LE4 will make reimbursement requests more timely to improve the Town's cash flow and take advantage of the Hurricane Restoration Reimbursement Grant Program funding while funding is available.

What the action accomplishes:

This resolution authorizes the Town of Fort Myers Beach to fund construction, engineering, and monitoring services for the Estero Island Renourishment and Hurricane Restoration Project with the Florida Department of Environmental Protection Hurricane Restoration Reimbursement Grant by authorizing the Town Manager to execute ongoing amendments to Grant Agreement 23LE4 for reimbursement of eligible expenses of the project.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Chadd Chustz, Environmental
Projects Manager

5. **Background:**

In Section 72, Chapter 2024-228, Laws of Florida, the Florida legislature revised the Hurricane Restoration Reimbursement Grant Program to extend the grant program through July 1, 2025,

increase financial assistance and include reimbursement for large-scale sand placement projects by local governments and municipalities.

The Hurricane Restoration Reimbursement Grant Program will distribute financial assistance to qualifying local governments and municipalities to help remedy the damages from coastal erosion incurred after Hurricane Ian or Hurricane Nicole

Beginning July 1, 2024, local governments and municipalities in Brevard, Broward, Charlotte, Collier, Duval, Flagler, Indian River, Lee, Manatee, Martin, Nassau, Palm Beach, St. Johns, St. Lucie, Sarasota, or Volusia County may apply for program funds to implement large scale sand placement projects along the beach.

The Hurricane Restoration Reimbursement Grant Program awards will be cost-reimbursement for eligible expenditures required to implement large scale sand placement projects that are incurred between July 1, 2024, and July 1, 2025.

Attachments:

1. 24-148, FDEP Hurricane Restoration Nourishment Grant 23LE4
2. Beach Project Construction Budget
3. Overview - HRRGP DEP-62ER24-2
4. 62ER24-2
5. 23LE4_A1 Town of Ft. Myers Beach 2022 Hurricane Ian and Nicole Recovery Project

Financial Impact:

The Estero Island Renourishment and Hurricane Restoration Project is currently funded by Florida Department of Environmental Protection Grant Agreement 23LE1, FEMA Category G Public Assistance, Lee County Tourism Development Council Beach Trust Fund, and the Town of Fort Myers Beach.

Grant Agreement 23LE1 funds up to 43 percent of the design task, 41.7 percent of the construction task between R175-400' – R198 (North and Central Segments), 100 percent of the construction task between R203 – R207 (Southern Segment), and 43 percent of the monitoring task of the Estero Island Renourishment and Hurricane Restoration Project. The local cost share is funded by the Lee County Tourism Development Council Beach Trust Fund Interlocal Agreement and the Town.

There is no local cost share for eligible expenses in Grant Agreement 23LE4. Therefore, by taking advantage of the new funding offered by the Hurricane Restoration Reimbursement Grant Program, the Town can greatly reduce both the County's and the Town's local cost share for the project.

6. Alternative Action

Do not authorize the Town Manager to execute amendments to the Florida Department of Environmental Protection Hurricane Restoration Reimbursement Grant Agreement 23LE4 to fund eligible construction, engineering, and monitoring expenses for the Estero Island Renourishment and Hurricane Restoration Project.

7. Management Recommendations:

Authorize the Town Manager to execute amendments to the Florida Department of Environmental Protection Hurricane Restoration Reimbursement Grant Agreement 23LE4 to fund eligible construction, engineering, and monitoring expenses for the Estero Island Renourishment and Hurricane Restoration Project.

8. **Recommended Approval:**

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

Created/Initiated - 7/22/2024
Approved - 7/22/2024
Approved - 7/24/2024
Approved - 7/24/2024
Final Approval - 7/27/2024

RESOLUTION NO. 24-148

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AUTHORIZING THE TOWN MANAGER TO EXECUTE AMENDMENTS TO FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION HURRICANE RESTORATION REIMBURSEMENT GRANT TO FUND THE ESTERO ISLAND BEACH NOURISHMENT AND HURRICANE RECOVERY PROJECT; 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, in Section 72, Chapter 2024-228, Laws of Florida, the Florida legislature revised the Hurricane Restoration Reimbursement Grant Program to extend the grant program through July 1, 2025, increase financial assistance and include reimbursement for large-scale sand placement projects by local governments and municipalities; and

WHEREAS, the Hurricane Restoration Reimbursement Grant Program will distribute financial assistance to qualifying local governments and municipalities to help remedy the damages from coastal erosion incurred after Hurricane Ian or Hurricane Nicole; and

WHEREAS, beginning July 1, 2024, local governments and municipalities in Brevard, Broward, Charlotte, Collier, Duval, Flagler, Indian River, Lee, Manatee, Martin, Nassau, Palm Beach, St. Johns, St. Lucie, Sarasota, or Volusia County may apply for program funds to implement large scale sand placement projects along the beach; and

WHEREAS, the Hurricane Restoration Reimbursement Grant Program awards will be cost-reimbursement for eligible expenditures required to implement large scale sand placement projects that are incurred between July 1, 2024, and July 1, 2025; and

WHEREAS, the Town Council approved Resolution 24-99 for Ahtna Marine and Construction Company to Construct the Estero Island Beach Nourishment and Hurricane Restoration Project; and

WHEREAS, the Town Council approved Resolution 24-70 for Coastal Engineering Consultants Supplemental Task Agreement #10 to provide construction phase services for the Estero Island Beach Nourishment and Hurricane Restoration Project; and

WHEREAS, the Town Council approved Resolution 24-71a for Turtle Time, Inc. to provide marine turtle monitoring services for the Estero Island Beach Nourishment and Hurricane Restoration Project; and

WHEREAS, the costs of construction, engineering, and monitoring services for the Estero Island Beach Nourishment and Hurricane Restoration Project incurred after July 1, 2024 and before July 1, 2025 qualify as eligible expenses that are reimbursable by the Hurricane Restoration Reimbursement Grant; and

WHEREAS, up to 100 percent of requested construction, engineering, and monitoring services costs are eligible for Hurricane Restoration Reimbursement Grant Award; and

WHEREAS, the Hurricane Restoration Reimbursement Grant agreement 23LE4 may be amended for reimbursement of eligible expenses incurred from the Estero Island Beach Nourishment and Hurricane Restoration Project after July 1, 2024 and before July 1, 2025; and

WHEREAS, the Town finds that it is in the best interests of the health, safety, and welfare of the Town's residents and visitors to authorize the Town Manager to execute amendments to the Florida Department of Environmental Protection Hurricane Restoration Reimbursement Grant Agreement 23LE4.

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

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

Section 2. The Town Council authorizes the Town Manager to execute the amendments to the Hurricane Restoration Reimbursement Grant Agreement for eligible expenses incurred from the Estero Island Beach Nourishment and Hurricane Restoration Project and authorizes the Town Manager to administer the Grant Agreement.

Section 3. If any section or portion of a section of this Resolution proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other section or part of this Resolution.

Section 4. This resolution shall take effect immediately upon its 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 5th day of August 2024, by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

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

			ENTITY	FEMA (90% CAT G)	FDEM (10% CAT G)	FDEM (GRANT)	FDEP	COUNTY (TDC)	TOWN	CHECK		LOCAL SHARE
NORTH FEMA TOTAL		PERCENT	PERCENT	90.00%	10.00%	0.00%	0.00%	0.00%	0.00%			TOTAL
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		\$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	\$2,164,500.31	\$756,552.74	\$0.00		\$2,921,053.05
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	\$2,164,500.31	\$756,552.74	\$0.00		\$2,921,053.05
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	\$3,296,943.09	\$1,152,372.82	\$0.00		\$4,449,315.91
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		\$0.00
COST / CY	\$24.77											
CHECK	\$21,722,385.09		TOTAL	\$1,128,452.72	\$125,383.64	\$0.00	\$13,098,179.77	\$5,461,443.40	\$1,908,925.56	\$0.00		\$7,370,368.96
VOLUME (CY)	0			FEMA (90% CAT G)	FDEM (10% CAT G)	FDEM (GRANT)	FDEP	COUNTY (TDC)	TOWN			
COST (\$)	\$0.00											



HURRICANE RESTORATION REIMBURSEMENT GRANT PROGRAM

Office of Resilience and Coastal Protection
Florida Department of Environmental Protection



HURRICANE RESTORATION REIMBURSEMENT (HRR) GRANT PROGRAM

HRR Grant Program Overview

- Ch. 2024-228, Laws of Florida.
- Emergency Rule 62ER24-2.
- Two separate programs:
 - Residential Property Grants.
 - Local Government Grants.





HRR GRANT PROGRAM

- Passed by the Florida Legislature and signed by Governor DeSantis.
- Establishes the Hurricane Restoration Reimbursement Grant Program.
- Required DEP to establish emergency rules related to grant program, were initially published on Jan. 31, 2023, and revised on July 1, 2024.
- Program expires July 1, 2025.
- Allows for application submittal under the new rule beginning July 1, 2024.
 - Grants awarded on first-come, first-served basis, based on eligibility and submittal of a **complete** application.
 - For residential property owners, priority given by calendar day to low-income and moderate-income applicants.
 - Grants given until funds run out or the program expires (July 1, 2025), whichever comes first.



RESIDENTIAL PROPERTY GRANT DEFINITIONS

“Eligible Applicant” means the individual, corporation, trust or other legal entity eligible to be a grantee. An agent may make application upon behalf of an applicant, but such agent is not the applicant, grantee or otherwise eligible for reimbursement.

“Grantee” means an eligible applicant that is the recorded deeded landowner for the eligible residential property who has complied with all documentation requirements and received a grant from the department.

“Eligible residential property” means a parcel that is a coastal property on the beach located in Brevard, Broward, Charlotte, Collier, Duval, Flagler, Indian River, Lee, Manatee, Martin, Nassau, Palm Beach, Saint Johns, Saint Lucie, Sarasota or Volusia County that is either:

1. A single-family, site-built, residential property where the homeowner has been granted a homestead exemption on the home under Chapter 196, Florida Statutes (F.S.);
2. A residential condominium, as defined in Chapter 718, F.S.; or
3. A cooperative, as defined in Chapter 719, F.S.



HRR GRANT PROGRAM

- Eligible counties include Brevard, Broward, Charlotte, Collier, Duval, Flagler, Indian River, Lee, Manatee, Martin, Nassau, Palm Beach, St. Johns, St. Lucie, Sarasota and Volusia.
- To be eligible for reimbursement, activities must have been made in preparation for or to remedy coastal beach erosion or damage sustained from Hurricane Ian or Hurricane Nicole.
- You must meet all eligibility requirements and provide necessary documentation:
 - Eligible Applicant/Grantee.
 - Eligible Property.
 - Eligible Project.
 - Eligible Costs.



RESIDENTIAL PROPERTY GRANT DEFINITIONS

“Eligible project” means construction activities that occurred after Sept. 23, 2022, related to sand placement, temporary coastal armoring or permanent coastal armoring construction projects intended to prepare for or remedy coastal beach erosion or damage sustained from Hurricane Ian or Hurricane Nicole.

- Project must be at eligible residential property.
- Projects must be permitted or authorized under Chapter 161, F.S., prior to the commencement of authorized work, exempt from permitting requirements, or otherwise authorized by law.
- The address on any issued permit under chapter 161, F.S., must match the address on the eligible residential property.





RESIDENTIAL PROPERTY GRANT DEFINITIONS

“Eligible costs” construction costs associated with execution of an eligible project that have been incurred and for which the grantee has evidence of payment. Construction costs may include design, engineering, construction-related monitoring required by permit or contract, surveys, materials, labor, contractors, and construction oversight. Eligible costs do not include permit fees or repair of residential structures. Reimbursement of eligible costs may be no greater than \$300,000 per parcel for armoring projects on eligible single family or multi-family residential property as defined in (f)1. and \$600,000 for armoring projects on eligible residential condominium or cooperative properties as defined in (f)2. and 3. Reimbursement of eligible costs for armoring projects shall be no greater than 50 percent of the total cost incurred for the construction. Costs for sand placement projects shall be reimbursed at 100 percent of the total construction cost.





RESIDENTIAL PROPERTY GRANT REQUIRED DOCUMENTATION

- a. The parcel identification number for the applicable county;
- b. A valid social security number or tax identification number;
- c. Proof the eligible applicant resides at the address to which a check is asked to be mailed, if different than the eligible residential property address;
- d. A copy of the permit issued under Chapter 161, F.S., prior to the commencement of work for which a grant is sought, or applicable statutory exemption or other authorization;
- e. Documentation of eligible project expenses (e.g., for a completed project, photos of the completed project; for projects not yet fully complete, a copy of the design and engineering plans or similar evidence of work);
- f. Paid invoices and associated documentation showing work conducted for the eligible project, dates of work and proof of payment;
- g. If applicable, Form 3, DEP-62ER23-2, Attestation of Low-Income or Moderate-Income;
- h. Any other information required by the application or rule.



RESIDENTIAL PROPERTY GRANT: LOW- AND MODERATE-INCOME ATTESTATION – FORM 3

Income is based **on household income**. That is, the adjusted gross income (as reported to the Internal Revenue Service) of all persons in a housing unit, excluding boarders or renters therein.

Is your household income less than \$95,160? If so, your household qualifies as a low- or moderate-income household.

If not, is your household income less than the figure to the right for your county? If so, your household qualifies as a low- or moderate-income household. If not, you do not qualify as a low- or moderate-income household.

County	Threshold
Lee	\$99,840
Flagler	\$89,520
Volusia	\$87,960
Duval	\$103,800
Nassau	\$103,800
St. Johns	\$103,800
Broward	\$98,520
Palm Beach	\$108,360
Collier	\$118,320
Manatee	\$108,480
Sarasota	\$108,480
Brevard	\$98,760
Martin	\$101,400
St. Lucie	\$101,400
Charlotte	\$91,200
Indian River	\$95,880



RESIDENTIAL PROPERTY GRANT APPLICATION ADDITIONAL REQUIREMENTS

- By making application, the applicant agrees to enter into a grant agreement with the department and agrees to FORM 2 DEP-62ER24-2, Grant Terms and Conditions.
- The department will enter into a cost-share agreement with eligible applicants until funding is exhausted or the program expires.
- The online portal will automatically validate completion of many of the answers in sections 1, 2 and 3. However, DEP will also need to verify eligibility prior to grant award.
- DEP will review required submittals in section 4, and if not sufficient, will contact the applicant and provide seven calendar days to provide the necessary supplemental information. Failure to cure within that time may result in the application being declined.



RESIDENTIAL PROPERTY GRANT PAPER APPLICATION – CERTIFIED MAIL

- Applicants can also apply via **certified mail** to the department.

Mailing address:

Department of Environmental Protection

2600 Blair Stone Road, MS 3522

Tallahassee, Florida 32399-2400

- The application is available at <https://floridadep.gov/hrrgp>, entitled Form 1 DEP-62ER24-2, Hurricane Restoration Reimbursement Grant Program Residential Property Application
- The application will be date and time stamped when received by the department.



RESIDENTIAL PROPERTY GRANT APPLICATION STEPS

- The application is divided into four steps. These steps are designed to help you understand your eligibility, as well as ensure completeness of the application to expedite processing.
- Failure to accurately complete this information can result in your grant application being found incomplete.

Section	Information Needed
Step 1	Answer home ownership questions to determine if applicant and property are eligible
Step 2	Answer project questions to determine if project is eligible
Step 3	Answer costs questions to determine if you have incurred eligible costs for reimbursement
Step 4	Upload submittal requirements (documents needed for reimbursement)

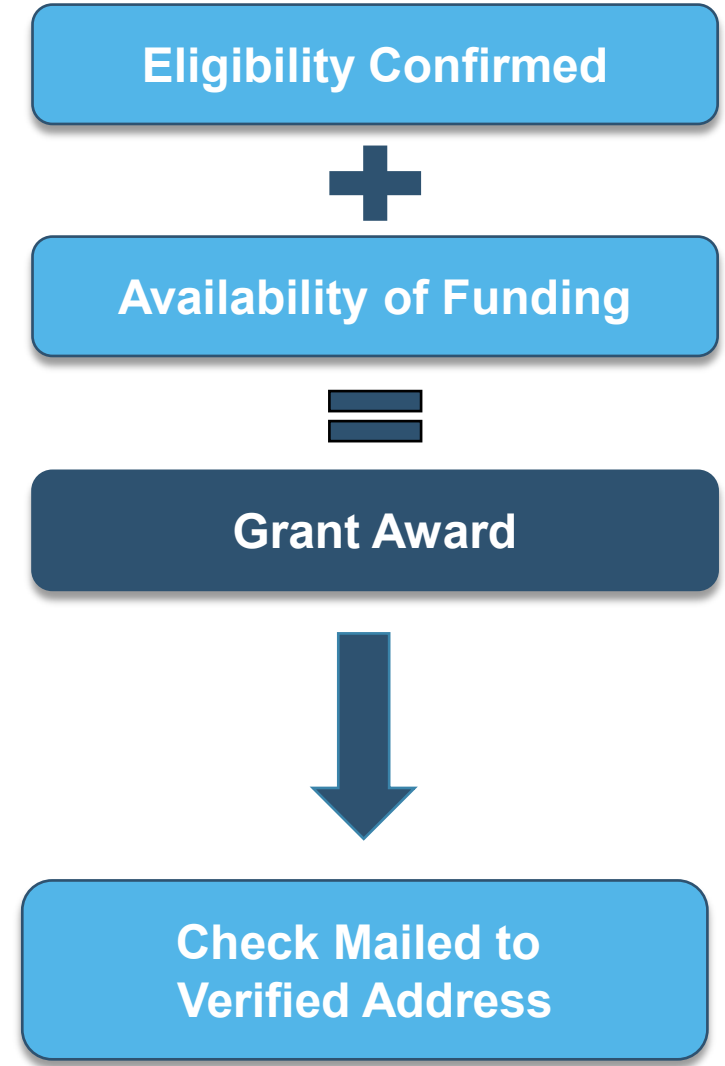


RESIDENTIAL PROPERTY GRANT PROGRAM SUMMARY



Required Submittals:

- Parcel ID.
- Social Security Number or Tax ID.
- Proof of address where check will be mailed.
 - Permit or similar.
 - Project documentation (photos, plans).
- Invoices and documentation of payment.
- If applicable – Low/moderate income form.
- Other documentation as may be necessary.





LOCAL GOVERNMENT GRANT DEFINITIONS

“Eligible Applicant” local governments and municipalities in Brevard, Broward, Charlotte, Collier, Duval, Flagler, Indian River, Lee, Manatee, Martin, Nassau, Palm Beach, St. Johns, St. Lucie, Sarasota, or Volusia County

“Eligible project” large scale sand placement projects along the beach. For purposes of this subsection, “large scale sand placement projects” means any sand project conducted by local governments that is intended to protect multiple upland owners.

“Eligible costs” include any costs required to implement large scale sand placement projects that are incurred between July 1, 2024, and July 1, 2025.



LOCAL GOVERNMENT GRANT REQUIRED DOCUMENTATION

- a. The county name and project location (R-Monument range);
- b. Cubic yards and source of sand to be placed as part of the project;
- c. Number of upland structures and associated benefits with the project;
- d. A copy of the permit which was issued prior to the commencement of work for which a grant is sought, or applicable statutory exemption or other authorization;
- e. Construction start and end dates;
- f. Documentation of eligible project expenses (e.g., for a completed project, photos of the completed project; for projects not yet fully complete, a copy of the design and engineering plans or similar evidence of work);
- g. Paid invoices and associated documentation showing work conducted for the eligible project, dates of work and proof of payment; these items should be submitted as payments are made rather than after the entire project is complete;
- h. Any other information required by the application or rule.



LOCAL GOVERNMENT GRANT APPLICATION ADDITIONAL REQUIREMENTS

- By making application, the applicant agrees to enter into a grant agreement with the department to receive any approved funding.
- The department will enter into a cost-share agreement with eligible applicants until funding is exhausted or the program expires.
- The online portal will automatically validate completion of many of the answers in the application; however, DEP will also need to verify eligibility and documentation prior to grant award.
- DEP will review required submittals, and if not sufficient, will contact the applicant and provide seven calendar days to provide the necessary supplemental information. Failure to cure within that time may result in the application being declined.



LOCAL GOVERNMENT GRANT APPLICATION STEPS

- The local government application is divided into two phases. Completion of phase 1 is to confirm eligibility of applicant and project but **does not** constitute a grant award. These steps are designed to help you understand your eligibility, as well as ensure completeness of the application to expedite processing.
- Completion of phase 2 constitutes an application for reimbursement and may only be made once the large scale sand placement construction project has begun, and the applicant has evidence of payment. Phase 2 invoices **do not** have to be held until the entire project is complete and can be submitted as proof of payments for eligible project costs become available.
- Available funds shall be distributed on a first-come, first-served basis, based on receipt of phase 2 documentation.
- Failure to accurately complete this information can result in your grant application being found incomplete.



LOCAL GOVERNMENT GRANT APPLICATION STEPS

Phase 1 Eligibility Determination	
Step 1	Answer applicant questions to determine eligibility
Step 2	Answer project questions to determine eligibility
Step 3	Upload submittal requirements (documents needed for eligibility determination)

Phase 2 Reimbursement Request	
Step 1	Select application that has been determined eligible in Phase 1
Step 2	Enter the disbursement amount being requested
Step 3	Upload submittal requirements (documents needed for reimbursement)



LOCAL GOVERNMENT GRANT SUMMARY

Eligible Applicant



Eligible Location



Eligible Project



Eligible Costs



Required Documentation

Required Submittals:

- Documentation of construction project plan.
 - Permits or similar.
 - Project documentation (photos, plans).
- Invoices and documentation of payment.
- Other documentation as may be necessary.

Eligibility Confirmed



Availability of Funding



Invoice & Proof of Payment



Grant award made through amending an existing grant or award of a new grant



ONLINE SUBMISSION – HRR PORTAL

- Applications under the new rule can be submitted beginning July 1, 2024, at 9 a.m. via the grant portal

<https://floridadep.gov/hrrgp>

- Applicants must sign up for a user account at the portal to submit an application (instructions online).
- If an applicant is not eligible, they will not be able to submit the grant application.



THANK YOU

Office of Resilience and Coastal Protection
Florida Department of Environmental Protection

Contact Information:
850-245-8558
HRRGP@FloridaDEP.gov

Notice of Emergency Rule

DEPARTMENT OF ENVIRONMENTAL PROTECTION

RULE NO.: RULE TITLE:

62ER24-2 Hurricane Restoration Reimbursement Grant Program

SPECIFIC REASONS FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY OR WELFARE: Section 10, Chapter 2022-272, Laws of Florida (L.O.F.), “[a]n act relating to disaster relief” establishes the Hurricane Restoration Reimbursement Grant Program for the purpose of providing financial assistance to mitigate coastal beach erosion for coastal homeowners whose property was significantly impacted by Hurricane Ian or Hurricane Nicole in 2022. The legislation includes legislative findings that 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. Section 10, Chapter 2022-272, L.O.F., requires the Department of Environmental Protection to adopt emergency rules pursuant to subsections 120.54(1) and 120.54(4), Florida Statutes, for the purpose of implementing the grant program. The department adopted rule 62ER23-2, F.A.C., on January 30, 2023. The Legislature revised the grant program in Section 61, Chapter 2023-240, L.O.F., requiring the promulgation of a new emergency rule. The Department adopted rule 62ER23-3, F.A.C., on June 30, 2023. The Department adopted rule 62ER24-1 to replace rule 62ER23-3 in order for the grant program to remain open through July 1, 2024. The date of adoption for rule 62ER24-1 was January 1, 2024, and the date of expiration is July 1, 2024. In Section 72, Chapter 2024-228, L.O.F., the Legislature revised the grant program to increase financial assistance and include reimbursement for large-scale sand placement projects by local governments. The Legislature also extended the grant program through July 1, 2025, requiring promulgation of a new emergency rule. Given the application period set out in the law, an emergency rule is the most appropriate and expedient means to provide eligible property owners and local governments with the grant program’s requirements and grant application.

REASON FOR CONCLUDING THAT THE PROCEDURE IS FAIR UNDER THE CIRCUMSTANCES: The Legislature expressly authorized and required in Section 10, Chapter 2022-272, L.O.F., the promulgation of an emergency rule by the Department to implement the Hurricane Restoration Reimbursement Grant Program for the purpose of providing financial assistance to mitigate coastal beach erosion for coastal homeowners whose property was significantly impacted by Hurricane Ian or Hurricane Nicole in 2022. The Legislature revised the program in Section 61, Chapter 2023-240, L.O.F., resulting in the promulgation of a new emergency rule. In Section 72, Chapter 2024-228, L.O.F., the Legislature revised the grant program to increase financial assistance, provide financial assistance to local governments and municipalities to implement large scale sand placement projects, and extend the program through July 1, 2025, requiring the promulgation of a new emergency rule. The promulgation of this emergency rule, incorporating by reference the forms used to apply for financial assistance, ensures that the public is notified by the most appropriate and expedient means regarding the process to apply for a grant.

SUMMARY: The rule provides the procedures, administration, and eligibility criteria for the Hurricane Restoration Reimbursement Grant Program, which will distribute financial assistance to qualifying coastal homeowners and local governments and municipalities to help remedy the damages from coastal erosion incurred after Hurricane Ian or Hurricane Nicole. The grant program allows persons living in Brevard, Broward, Charlotte, Collier, Duval, Flagler, Indian River, Lee, Manatee, Martin, Nassau, Palm Beach, Saint Johns, Saint Lucie, Sarasota, and Volusia Counties whose property was significantly impacted by Hurricane Ian or Hurricane Nicole in 2022, and who meet eligibility requirements, to seek reimbursement to remedy coastal beach erosion and reimburse eligible construction costs. The grant program applies to single- or multi-family homes, residential condominiums, and cooperatives. The emergency rule also allows local governments and municipalities to apply for program funds to implement large scale sand placement projects. The emergency rule incorporates, by reference, Form 1 DEP-62ER24-2, the Hurricane Restoration Reimbursement Grant Program Application, and Form 4, DEP-62ER24-2, the Hurricane Restoration Reimbursement Grant Program Local Government Application, effective as of the effective date of Chapter 62ER24-2, F.A.C.

THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS: Lainie Edwards, Deputy Director, Office of Resilience and Coastal Protection, Florida Department of Environmental Protection, 2600 Blair

Stone Road, MS 235 Tallahassee, FL 32399, or Crystal Anderson, Assistant General Counsel, Florida Department of Environmental Protection, 3900 Commonwealth Blvd., MS-35 Tallahassee, FL 32399.

THE FULL TEXT OF THE EMERGENCY RULE IS:

62ER24-2 Hurricane Restoration Reimbursement Grant Program

(1) This chapter implements the Hurricane Restoration Reimbursement Grant Program, to provide financial assistance to coastal homeowners for eligible costs related to sand placement, temporary coastal armoring, or permanent coastal armoring construction projects to remedy coastal beach erosion incurred as a result of preparation for or damage sustained from Hurricane Ian or Hurricane Nicole in 2022. The grant program also provides financial assistance to local governments and municipalities to implement large scale sand placement projects.

(2) For purposes of this rule, the term:

(a) “Eligible applicant” means the individual, corporation, trust, or other legal entity eligible to be a grantee. An agent may make application upon behalf of an applicant, but such agent is not the applicant, grantee, or otherwise eligible for reimbursement.

(b) “Department” means the Department of Environmental Protection.

(c) “Grantee” means an eligible applicant that is the recorded deeded landowner for the eligible residential property who has complied with all documentation requirements in paragraph (6)(b) of this rule and received a grant from the Department. For a residential condominium or cooperative that is not the recorded deeded landowner for the eligible residential property, such entity may only be a grantee if alternative evidence is submitted proving legal control over the eligible residential property as related to the eligible project. For properties sold after September 23, 2022, the grantee may be the individual, corporation, trust, or other legal entity that incurred eligible costs during the period in which that grantee owned the property.

(d) “Eligible costs” means construction costs associated with execution of an eligible project that have been incurred and for which the grantee has evidence of payment. Construction costs may include design, engineering, construction-related monitoring required by permit or contract, surveys, materials, labor, contractors, and construction oversight. Eligible costs do not include permit fees or repair of residential structures. Reimbursement of eligible costs may be no greater than \$300,000 per parcel for armoring projects on eligible single family or multi-family residential property as defined in (f)1. and \$600,000 for armoring projects on eligible residential condominium or cooperative properties as defined in (f)2. and 3. Reimbursement of eligible costs for armoring projects shall be no greater than 50 percent of the total cost incurred for the construction. Costs for sand placement projects shall be reimbursed at 100 percent of the total construction cost.

(e) “Eligible project” means construction activities that occurred after September 23, 2022, related to sand placement, temporary coastal armoring, or permanent coastal armoring construction projects intended to prepare for or remedy coastal beach erosion or damage sustained from Hurricane Ian or Hurricane Nicole, on an eligible residential property. To be eligible, projects must be permitted or authorized under chapter 161, F.S., prior to the commencement of authorized work, exempt from permitting requirements, or otherwise authorized by law. The project address on any issued permit under chapter 161, F.S., must match the address of the eligible residential property.

(f) “Eligible residential property” means a parcel that is a coastal property on the beach located in Brevard, Broward, Charlotte, Collier, Duval, Flagler, Indian River, Lee, Manatee, Martin, Nassau, Palm Beach, St. Johns, St. Lucie, Sarasota, or Volusia County that is either:

1. A single-family, site-built, residential property or a multi-family, site-built, residential property, not to exceed four units, where the homeowner has been granted a homestead exemption on the home under chapter 196, F.S.;
2. A residential condominium, as defined in chapter 718, F.S.; or
3. A cooperative, as defined in chapter 719, F.S.

(g) “Low-income or moderate-income applicants” are those applicants that are low-income or moderate-income person(s) as defined in section 420.0004, F.S., who provide an attestation of income on Form 3 DEP-62ER24-2, Attestation of Low-Income or Moderate-Income (effective date July 1, 2024), which is hereby adopted by reference into this rule and available at <https://floridadep.gov/HRRGP>.

(h) “Required documentation” means documents and evidence required to be submitted as part of the application.

(3) To apply for a grant, an eligible applicant shall submit to the department online or by paper copy a complete application, Form 1 DEP-62ER24-2, Hurricane Restoration Reimbursement Grant Program Application (effective date July 1, 2024), which is hereby adopted by reference into this rule and available at <https://floridadep.gov/HRRGP>, as well as all required documentation, as follows:

(a) Applications can be submitted through the department’s electronic portal available online beginning February 1, 2023, at 9:00 a.m. EST at: <https://floridadep.gov/HRRGP>. Applications will be date and time-stamped upon submission. Applicants must sign up for a user account prior to making application.

(b) Alternatively, application materials can be submitted in paper form beginning February 1, 2023, at 9:00 a.m. EST by certified mail to the Department of Environmental Protection, 2600 Blair Stone Road, MS 3522, Tallahassee, Florida 32399-2400, which will be date and time-stamped upon entry into the grants database.

(4) The department will review all applications to determine whether the project is eligible for inclusion in the Hurricane Restoration Reimbursement Grant Program. Eligibility requirements include:

(a) An eligible applicant properly submitted a complete application, Form 1 DEP-62ER24-2, including all required documentation;

(b) The property is an eligible residential property;

(c) There are documented eligible costs for an eligible project;

(d) The applicant has applied for no greater than \$300,000 in reimbursement for armoring projects on eligible single and multifamily residential properties as defined in (f)1., and no greater than \$600,000 in reimbursement for armoring projects on eligible residential condominium or cooperative properties as defined in (f)2. and 3., and provided all documentation for reimbursement, inclusive of cost share requirements.

(5) If corrections are needed to the application, the Department will review the materials and, if not sufficient, will contact the applicant and provide 7 calendar days to meet requirements. If the requested materials are received within 7 days, the date-time stamp of the initial submittal will be used for the application processing. However, if the information is not provided in that timeframe, a new or amended application must be made by the applicant if corrections are able to be made.

(6) By making application, the applicant agrees to enter into a grant agreement with the department and agrees to Form 2 DEP-62ER24-2, Grant Terms and Conditions (effective date July 1, 2024), which is hereby adopted by reference into this rule and available at <https://floridadep.gov/HRRGP>.

(a) The department will award grants to applicants meeting all eligibility requirements on a first-come, first-served basis, with priority given by calendar day to low-income and moderate-income applicants until funds are exhausted or upon the expiration of this rule, whichever comes first.

(b) The department will disburse grant funds on a cost-reimbursement basis to the grantee(s).

1. To receive reimbursement, the grantee(s) must submit:

a. The parcel identification number for the applicable county.

b. A valid social security number or tax identification number.

c. Proof the eligible applicant resides at the address to which a check is asked to be mailed, if different than the eligible residential property address, as identified in sub-sub-paragraphs 2. – 4., below.

d. A copy of the permit issued under chapter 161, F.S., prior to the commencement of work for which a grant is sought, or applicable statutory exemption or other authorization.

e. Documentation of eligible project expenses (e.g., for a completed project, photos of the completed project; for projects not yet fully complete, a copy of the design and engineering plans or similar evidence of work);

f. Paid invoices and associated documentation showing work conducted for the eligible project, dates of work, and proof of payment;

g. If applicable, Form 3, DEP-62ER24-2, Attestation of Low-Income or Moderate-Income;

h. Any other information required by the application or this rule.

2. For individuals listed on the recorded deed for the eligible residential property, checks will be issued in the name of all individuals on the deed. If the mailing address for payment is different than the eligible residential property, the applicant must provide the driver’s license or other documented address for at least one person on the recorded deed.

3. For trusts listed on the recorded deed for the eligible residential property, checks will be issued in the name of the trustee for the trust. The applicant must provide documentation identifying the trustee of the trust and, if the mailing address for payment is different than the eligible residential property, the applicant must additionally provide the driver's license or other documented address for the trustee.

4. For corporations listed on the recorded deed for the eligible residential property, checks will be issued in the name of the corporation at the mailing address as registered with the Department of State.

5. The applicant must provide any other documentation required by state law to identify proof of completion of the eligible project and proof reimbursement is allowable under this rule and the grant agreement.

(c) No checks will be mailed to a post office box.

(d) If a grantee is unable to comply with subparagraphs 2. – 4., the grantee may request the Department to accept alternative forms of proof of identity and valid address. The Department shall accept such alternative forms of proof if such alternative provides clear evidence that the person seeking disbursement is the grantee.

(e) As necessary for the Department to verify eligibility under this rule or information associated with reimbursement, the Department shall seek additional information necessary from the Applicant.

(7) Beginning July 1, 2024, local governments and municipalities in Brevard, Broward, Charlotte, Collier, Duval, Flagler, Indian River, Lee, Manatee, Martin, Nassau, Palm Beach, St. Johns, St. Lucie, Sarasota, or Volusia County may apply for program funds to implement large scale sand placement projects along the beach. For purposes of this subsection, "large scale sand placement projects" means any sand project conducted by local governments that is intended to protect multiple upland owners.

(a) Up to 50 percent of the funds remaining in the Hurricane Restoration Reimbursement Grant Program as of July 1, 2024, can be utilized for projects occurring under this subsection. Up to 100 percent of requested costs are eligible for grant award. Funds remaining do not include any eligible projects submitted into the grant portal system prior to July 1, 2024.

(b) Applications may be submitted for review of eligibility, which shall not constitute a grant award, prior to initiation of construction. Applications for reimbursement may be made once the large scale sand placement construction project has begun and the applicant has evidence of payment. Available funds shall be distributed on a first-come, first-served basis.

(c) Project applicants must demonstrate that the project will provide protection to upland structures against erosion, benefit property owners at large, and is able to be completed by July 1, 2025.

(d) Project applications shall include the amount of funding being requested, the limits of the beach project, the amount and source of sand to be placed, and the timeline of placement and project completion.

(e) Applicants shall submit a complete application to the department through the Hurricane Restoration Reimbursement Grant Program portal with required attachments. The application is hereby adopted by reference into this rule as Form 4 DEP-62ER24-2, Hurricane Restoration Reimbursement Grant Program Local Government Application (effective date July 1, 2024), available at <https://floridadep.gov/HRRGP>.

(f) Awards will be cost-reimbursement and eligible expenditures must be completed prior to July 1, 2025. Eligible expenditures include any costs required to implement large scale sand placement projects that are incurred between July 1, 2024, and July 1, 2025.

(8) This rule expires on July 1, 2025.

Rulemaking Authority ss. 10 and 12 of Chapter 2022-272, L.O.F., Law Implemented ss. 10 and 12, Ch. 2022-272, L.O.F., s. 61, Ch. 2023-240, L.O.F., s. 72, Ch. 2024-228, L.O.F., History- Rule 62ER23-2, 62ER23-3, 62ER24-1, New 7-1-24.

THIS RULE TAKES EFFECT UPON BEING FILED WITH THE DEPARTMENT OF STATE UNLESS A LATER TIME AND DATE IS SPECIFIED IN THE RULE.

EFFECTIVE DATE: July 1, 2024

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

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

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

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

NOW THEREFORE, the parties agree as follows:

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

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

Town of Ft. Myers Beach

By: 
Title: Environmental Project Manager

Date: 21 SEPT 2023

**Florida Department of
Environmental Protection**

By: _____
Secretary or Designee

Date: _____

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

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

Attachment 3-A
Attachment 5, Exhibit 1-A

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

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

ATTACHMENT 1-A

1. Entire Agreement.

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

2. Grant Administration.

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

3. Agreement Duration.

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

4. Deliverables.

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

5. Performance Measures.

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

6. Acceptance of Deliverables.

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

7. Financial Consequences for Nonperformance.

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

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

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

8. Payment.

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

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

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

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

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

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

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

10. Status Reports.

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

11. Retainage.

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

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

12. Insurance.

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

13. Termination.

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

14. Notice of Default.

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

15. Events of Default.

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

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

16. Suspension of Work.

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

17. Force Majeure.

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

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

18. Indemnification.

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

19. Limitation of Liability.

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

20. Remedies.

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

21. Waiver.

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

22. Statutory Notices Relating to Unauthorized Employment and Subcontracts.

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

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

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

23. Compliance with Federal, State and Local Laws.

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

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

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

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

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

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

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

25. Investing in America

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

- a. Signage Requirements

- a. Investing in America Emblem: The recipient will ensure that a sign is placed at construction sites supported in whole or in part by this award displaying the official Investing in America emblem and must identify the project as a “project funded by President Biden’s Bipartisan Infrastructure Law” or “project funded by President Biden’s Inflation Reduction Act” as applicable. The sign must be placed at construction sites in an easily visible location that can be directly linked to the work taking place and must be maintained in good condition throughout the construction period.

- The recipient will ensure compliance with the guidelines and design specifications provided by EPA for using the official Investing in America emblem available at:

- <https://www.epa.gov/invest/investing-america-signage>.

- b. Procuring Signs: Consistent with section 6002 of RCRA, 42 U.S.C. 6962, and 2 CFR 200.323, recipients are encouraged to use recycled or recovered materials when procuring signs. Signage costs are considered an allowable cost under this assistance agreement provided that the costs associated with signage are reasonable. Additionally, to increase public awareness of projects serving communities where English is not the predominant language, recipients are encouraged to translate the language on signs (excluding the official Investing in America emblem or EPA logo or seal) into the appropriate non-English language(s). The costs of such translation are allowable, provided the costs are reasonable.

26. Scrutinized Companies.

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

27. Lobbying and Integrity.

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

28. Record Keeping.

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

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

29. Audits.

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

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

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

30. Conflict of Interest.

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

31. Independent Contractor.

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

32. Subcontracting.

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

33. Guarantee of Parent Company.

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

34. Survival.

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

35. Third Parties.

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

36. Severability.

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

37. Grantee's Employees, Subcontractors and Agents.

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

38. Assignment.

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

39. Compensation Report.

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

40. Execution in Counterparts and Authority to Sign.

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

ATTACHMENT 3-A REVISED GRANT WORK PLAN

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

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

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

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

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

Duplication of federal funds are not permitted under this agreement.

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

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

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

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

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

Acronyms:

DEP – Florida Department of Environmental Protection

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

TASKS and DELIVERABLES:

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

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

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

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

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

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

Estimated Eligible Project Cost

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

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

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

EXHIBIT – 1-A

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

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

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

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

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

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

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

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

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

Total Award	\$1,891,335.00	
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Note: List applicable compliance requirement in the same manner as illustrated above for federal resources. For matching resources provided by the Department for DEP for federal programs, the requirements might be similar to the requirements for the applicable federal programs. Also, to the extent that different requirements pertain to different amount for the non-federal resources, there may be more than one grouping (i.e. 1, 2, 3, etc.) listed under this category.

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

¹ Subject to change by Change Order.

² Subject to change by Change Order.

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

1. **Request:**

Meeting Date: August 7, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA, APPROVING BUDGET AMENDMENT #3 TO THE TOWN GENERAL FUND AND EMERGENCY FUND; PROVIDING AUTHORITY; EFFECTIVE DATE.

Why the action is necessary:

It is in the best interest of the Town to ensure the General Fund reserves are at least as much as GFOA recommends, and that there are funds in the Emergency Fund available for a future emergency.

What the action accomplishes:

The action increases the General Fund reserves to the GFOA recommended level of 20% of the General Fund Balance, while also transferring \$2,000,000 to the Emergency Fund for future emergencies.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Joe Onzick, Finance Director

5. **Background:**

The audited financial statements indicate an **unassigned fund balance** in the General Fund of **\$2,989,283** at the end of Fiscal Year 2023 resulting from less than budgeted expenditures and greater than budgeted interest revenue earned during Fiscal Year 2023.

The Government Finance Officers Association (GFOA) recommends that the General Fund have a reserve equivalent to 20% of its budget. 20% of the proposed FY2025 budget is \$2,550,000.

It has been established practice for the town to split the General Fund reserve into two components: the General Fund Operating Reserve, and the General Fund Emergency Reserve, which means each should have a balance of \$1,275,000. However, the General Fund Emergency Reserve currently has a balance of only \$1,215,000 and the General Fund Operating Reserve currently has a balance of only \$695,000. If we were to **add \$60,000 from the unassigned balance to the Emergency Reserve** and **\$580,000 from the unassigned balance to the Operating Reserve**, the total reserve balance would meet the GFOA recommended target of \$2,550,000.

The current balance of the Emergency Fund is \$1,259,624. However, it consists of insurance proceeds that are earmarked for specific recovery projects, which means that there is nothing currently available in the Emergency Fund for a new emergency. Therefore, it is in the best interest of the Town to **allocate \$2,000,000 of the General Fund unassigned fund balance to the Emergency Fund** for future emergencies.

As a result of these actions, there will be a **total of \$4,550,000 available for emergency response**.

Attachments:

1. 24-149, Budget Amendment #3 - Allocation of FY23 Savings to Emergency Reserves
2. Proposed Allocation of FY23 Savings

Financial Impact:

Increases General Fund reserves by \$640,000 and the Emergency Fund balance by \$2,000,000 by deducting these amounts from the General Fund unassigned fund balance.

6. **Alternative Action**

Leave unassigned balance in General Fund.

7. **Management Recommendations:**

Sfaff recommends that this resolution be approved.

8. **Recommended Approval:**

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

Created/Initiated - 7/24/2024
Approved - 7/24/2024
Approved - 7/29/2024
Approved - 7/30/2024
Final Approval - 7/30/2024

RESOLUTION NUMBER 24-149

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA, APPROVING BUDGET AMENDMENT #3 TO THE TOWN GENERAL FUND AND EMERGENCY FUND; PROVIDING AUTHORITY; EFFECTIVE DATE.

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

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

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

WHEREAS, Section 11.05(d) of Article XI of the Town Charter further provides that the Council upon written request by the town manager, may by resolution transfer between funds any unencumbered appropriations; and

WHEREAS, the audited financial statements indicate an unassigned fund balance in the General Fund of \$2,989,283 at the end of Fiscal Year 2023 resulting from less than budgeted expenditures and greater than budgeted interest revenue earned during Fiscal Year 2023; and

WHEREAS, it is in the best interest of the Town to have a total General Fund reserve of 20% of next year's budget as recommended by the Government Finance Officers Association (GFOA); and

WHEREAS, 20% of next year's budget equates to \$2,552,000, which when split evenly between the two General Fund reserves (Operating Reserve and Emergency Reserve) would result in \$1,275,000 being allocated to each reserve; and

WHEREAS, the current General Fund Emergency Reserve balance is only \$1,215,000 and the current General Fund Operating Reserve is only \$695,000; meaning \$60,000 should be added to the Emergency Reserve and \$580,000 should be added to the Operating Reserve in order to meet the GFOA recommended General Fund reserve; and

WHEREAS, it is in the best interest of the Town to allocate \$2,000,000 of the unassigned balance to the Emergency Fund to be available for use in future emergencies, which in combination with the General Fund reserves, equates to a total of \$4,550,000 that will be available for emergency use.

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

Section 1. The above recitals as set forth in the various “Whereas” clauses are hereby adopted by reference and incorporated into the body of this Resolution.

Section 2. The Town Council hereby approves, adopts and accepts Budget Amendment #3 as specified below as a formal amendment to the 2023-24 Town Budgets. The Town Council further finds that Budget Amendment #3 is consistent with the requirements of Section 11.05 (a), and (d) of Article XI of the Town Charter.

Budget Amendment #3 Specifics (“Quasi-Amendment – Accounting Entry Only”)

10.28000	General Fund: Unassigned Fund Balance	(\$580,000)
10.28206	General Fund: Operating Reserve	\$580,000
10.28000	General Fund: Unassigned Fund Balance	(\$ 60,000)
10.28301	General Fund: Operating Reserve	\$ 60,000

Budget Amendment #3 Specifics

10.19.519.59106	General Fund: Transfer to Emergency Fund	\$2,000,000
10.19.519.38100	General Fund: Prior Year Carryover	\$2,000,000
13.90.519.38111	Emergency Fund: Transfer in from General Fund	\$2,000,000
13.90.519.80000	Emergency Fund: Add to Reserve	\$2,000,000

Section 3. This resolution is effective immediately upon adoption.

The foregoing Resolution was adopted by the Town Council upon a motion by _____ and seconded by _____, and upon being put to a 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 5th day of August 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

APPROVED AS TO FORM:

Vose Law Firm, Town Attorneys

This Resolution was filed in the Office of the Town Clerk on this 5th day of August 2024.

Town of Fort Myers Beach, Florida
Proposed Allocation of FY23 Savings to Emergency Reserves

	Proposed Allocation of FY23 Savings			FY24 Activity	
	Audited Balance as of 9/30/23	Proposed Allocation of FY23 General Fund Savings	Balance After Proposed Allocation	FY24 Additional Savings or Reimburse- ment through 6/30/24	Balance as of 6/30/24
Emergency Reserves					
General Fund - Emergency Reserve	1,215,000	60,000	1,275,000	-	1,275,000
General Fund - Operating Reserve	695,000	580,000	1,275,000	-	1,275,000
Emergency Fund - Future	-	2,000,000	2,000,000	-	2,000,000
Total Emergency Reserves	1,910,000	2,640,000	4,550,000	-	4,550,000
Emergency Fund - Current Recovery	560,030	-	560,030	699,591	1,259,621
General Fund - Unassigned	2,989,283	(2,640,000)	349,283	2,129,707	2,478,990

1. **Request:**

Meeting Date: August 7, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA, APPROVING TEMPORARY INTERFUND LOAN TO PURCHASE PROPERTY FOR NEW TOWN HALL; PROVIDING AUTHORITY; EFFECTIVE DATE.

Why the action is necessary:

To seek approval from Town Council regarding the proposed internal, temporary financing solution of an interfund loan, while providing full transparency and accountability.

What the action accomplishes:

To enable the Town to purchase the building without further delay.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Joe Onzick, Finance Director

5. **Background:**

A grant of \$8,000,000 was included in the State of Florida budget for fiscal year 2024-2025 for the Town of Fort Myers Beach for its town hall replacement project. The Town will use this funding to purchase the building at 6231 Estero Blvd and the adjacent lot at 6221 Estero Blvd.

However, this is a reimbursement grant, meaning the Town must first expend \$8 million of cash, submit a reimbursement request, and then receive the reimbursement at least 30 days later. In order to bridge the gap between expenditure and reimbursement, the Town must borrow unrestricted cash from its own funds in order to temporarily finance these purchases.

Several specific sources of funding have been identified for this purpose and are listed below:

\$2,000,000 – from Emergency Fund
\$ 937,500 – from General Fund Emergency Reserve
\$ 937,500 – from General Fund Operating Reserve
\$ 155,000 – from General Fund Workforce Development
\$2,000,000 – from General Fund FY24 savings (unassigned fund balance)
\$1,970,000 – from Capital Fund department budgets

\$8,000,000 – Total Loan to Purchase Property

The loan will be repaid immediately upon receipt of the reimbursement from the Florida Department of Commerce.

Attachments:

1. 24-150, Temporary \$8 Million Interfund Loan to Purchase Building
2. Proposed Interfund Loan to Purchase Building
3. Impact on Emergency Reserve of Interfund Loan
4. FY25 Gen Fund Cash Flow Forecast

Financial Impact:

The \$8,000,000 interfund loan will certainly tie up cash from the following sources, but there should not be an adverse financial impact:

\$2,000,000 – from Emergency Fund

\$ 937,500 – from General Fund Emergency Reserve
\$ 937,500 – from General Fund Operating Reserve
\$ 155,000 – from General Fund Workforce Development
\$2,000,000 – from General Fund FY24 savings (unassigned fund balance)
\$1,970,000 – from Capital Fund department budgets

Emergency Fund, General Fund Operating Reserve and General Fund Emergency Reserve:
Although these balances will temporarily be \$3,875,000 below the targeted balance of \$4,550,000, there still will be \$3,950,000 of unspent Bridge Loan proceeds remaining that can be drawn upon for Emergency Response.

General Fund Workforce Development: This is what has accumulated from Short Term Rental Fee revenue, and there is no planned use at this time.

General Fund FY24 savings: These are the savings that have accumulated YTD in the General Fund during the current fiscal year which are unencumbered at this point.

Capital Fund: There are no plans to expend capital budget funds during the duration of the loan, and we have control over the expenditure of those funds.

The cash flow forecast for the General Fund (attached) indicates that there will be a sufficient cash balance for normal operations.

6. **Alternative Action**

The town council may reject the proposed use of this internal financing plan and seek approval from the Florida Department of Commerce to receive advance funding. But this would delay the purchase of the building for several weeks, which may not be in the best interest of the Town.

7. **Management Recommendations:**

Staff recommends acceptance of this interfund loan financing plan so that we can proceed with the purchase of the property as planned.

8. **Recommended Approval:**

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

Created/Initiated - 7/24/2024
Approved - 7/24/2024
Approved - 7/29/2024
Approved - 7/30/2024
Final Approval - 7/30/2024

RESOLUTION NUMBER 24-150

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS
BEACH, LEE COUNTY, FLORIDA, APPROVING TEMPORARY INTERFUND
LOAN TO PURCHASE PROPERTY FOR NEW TOWN HALL; PROVIDING
AUTHORITY; EFFECTIVE DATE.**

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

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

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

WHEREAS, Section 11.05(d) of Article XI of the Town Charter further provides that the Council upon written request by the town manager, may by resolution transfer between funds any unencumbered appropriations; and

WHEREAS, the Town of Fort Myers Beach, Florida has been awarded grant funds in the amount of \$8,000,000 under line 2347A of the 2024-2025 General Appropriations Act (GAA) for the Town Hall Replacement Project; and

WHEREAS, the Town must first expend the \$8,000,000 before it can be reimbursed, and then must wait at least 30 days for reimbursement; and

WHEREAS, the Finance Director has identified various internal, unrestricted sources of cash the Town may draw upon to temporarily finance the \$8,000,000 expenditure while waiting to be reimbursed; and

WHEREAS, it is in the best interest of the Town for purposes of transparency and accountability to obtain formal permission from the Town Council to draw upon these unrestricted sources of cash to finance the purchase of the property while awaiting reimbursement.

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

Section 1. The above recitals as set forth in the various “Whereas” clauses are hereby adopted by reference and incorporated into the body of this Resolution.

Section 2. The Town Council hereby approves, adopts and accepts the \$8,000,000 temporary Interfund Loan as specified below to finance the purchase of property while awaiting reimbursement by the Department of Commerce from the \$8,000,000 grant awarded under line 2347A of the 2024-2025 General Appropriations Act (GAA) for the Town Hall Replacement Project. The Town Council further finds that this use of funds is consistent with the requirements of Section 11.05 (a), and (d) of Article XI of the Town Charter. The interfund loan is to be repaid immediately upon receipt of reimbursement from the Florida Department of Commerce.

Interfund Loan

\$2,000,000 – from Emergency Fund

\$ 937,500 – from General Fund Operating Reserve

\$ 937,500 – from General Fund Emergency Reserve

\$ 155,000 – from General Fund Workforce Development

\$2,000,000 – from General Fund FY24 savings (unassigned fund balance)

\$1,970,000 – from Capital Fund Department Budgets

\$8,000,000 – Total Loan to Purchase Property

Section 3. This resolution is effective immediately upon adoption.

The foregoing Resolution was adopted by the Town Council upon a motion by _____ and seconded by _____, and upon being put to a 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 5th day of August 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

APPROVED AS TO FORM:

Vose Law Firm, Town Attorneys

This Resolution was filed in the Office of the Town Clerk on this 5th day of August 2024.

Town of Fort Myers Beach, Florida

Proposed Interfund Loan to Fund Purchase of Building After Allocation of FY23 Savings to Emergency Reserves

	Proposed Allocation of FY23 Savings			FY24 Activity		Proposed Interfund Loan	
	Audited Balance as of 9/30/23	Proposed Allocation of FY23 General Fund Savings	Balance After Proposed Allocation	FY24 Activity through 6/30/24	Balance Before Loan as of 6/30/24	Proposed Interfund 3- Month Loan to Purchase Building	Balance Until Loan Repaid in October
Interfund Loan Sources for Building Purchase							
General Fund - Emergency Reserve	1,215,000	60,000	1,275,000	-	1,275,000	(937,500)	337,500
General Fund - Operating Reserve	695,000	580,000	1,275,000	-	1,275,000	(937,500)	337,500
Emergency Fund - Future	-	2,000,000	2,000,000	-	2,000,000	(2,000,000)	-
Emergency Reserves Subtotal	1,910,000	2,640,000	4,550,000	-	4,550,000	(3,875,000)	675,000
Emergency Fund - Current Recovery	560,030		560,030	699,591	1,259,621	-	1,259,621
Capital Fund Department Budgets	3,407,601		3,407,601	(1,403,745)	2,003,856	(1,970,000)	33,856
ARPA - Ballfield	1,000,000		1,000,000	-	1,000,000	-	1,000,000
ARPA - Unspent	875,000		875,000	-	875,000	-	875,000
General Fund - Workforce Development	159,950		159,950	-	159,950	(155,000)	4,950
General Fund - Unassigned	2,989,283	(2,640,000)	349,283	2,129,707	2,478,990	(2,000,000)	478,990
Total of Funding Sources	10,901,864	-	10,901,864	1,425,553	12,327,417	(8,000,000)	4,327,417

Town of Fort Myers Beach, Florida
Impact on Emergency Reserves of Interfund Loan to Fund Purchase of Building

	Proposed Allocation of FY23 Savings			FY24 Activity		Proposed Interfund Loan	
	Audited Emergency Reserves as of 9/30/2023	Proposed Allocation of FY23 General Fund Savings	Emergency Reserves After Proposed Allocation of FY23 General Fund Savings	FY24 Additional Savings or Reimburse- ment through 6/30/24	Balance Before Loan as of 6/30/24	Temporary Loan from Emergency Reserves	Emergency Reserves After Temporary Loan
Emergency Reserves							
General Fund: Emergency Reserve	1,215,000	60,000	1,275,000		1,275,000	(937,500)	337,500
General Fund: Operating Reserv	695,000	580,000	1,275,000		1,275,000	(937,500)	337,500
Emergency Fund - Future	-	2,000,000	2,000,000	-	2,000,000	(2,000,000)	-
Total	1,910,000	2,640,000	4,550,000	-	4,550,000	(3,875,000)	675,000
Remaining Balance of Bridge Loan (Allowed to be Used in an Emergency)							3,950,000
Total Available for Emergency Response							<u>4,625,000</u>

Town of Fort Myers Beach, Florida
General Fund Cash Flow Forecast
For Period July 1, 2024 through September 30, 2025

	Jul-24 General	Aug-24 General	Sep-24 General	Oct-24 General	Nov-24 General	Dec-24 General	Jan-25 General	Feb-25 General	Mar-25 General	Apr-25 General	May-25 General	Jun-25 General	Jul-25 General	Aug-25 General	Sep-25 General
Cash Flows from Operating Activities															
Ad Valorem Tax Receipts	-	-	-	-	1,274,333	1,967,262	264,369	48,454	124,290	29,397	28,033	44,875	-	-	-
Parking Receipts	166,030	110,010	80,505	82,617	68,165	86,089	102,253	148,352	205,291	172,578	152,321	125,788	166,030	110,010	80,505
Other Receipts from customers and users	302,433	371,325	475,099	117,470	139,932	417,295	190,687	300,464	307,450	384,447	328,936	241,962	302,433	371,325	475,099
Payroll	(402,856)	(604,284)	(402,856)	(502,856)	(402,856)	(402,856)	(604,284)	(402,856)	(402,856)	(402,856)	(402,856)	(402,856)	(604,284)	(402,856)	(402,856)
Benefits	(78,444)	(78,444)	(78,444)	(78,444)	(78,444)	(78,444)	(78,444)	(78,444)	(78,444)	(78,444)	(78,444)	(78,444)	(78,444)	(78,444)	(78,444)
Payments to suppliers	(295,139)	(404,236)	(13,811)	(328,559)	(414,015)	(213,097)	(612,722)	(458,712)	(724,737)	(311,611)	(363,731)	(339,718)	(295,139)	(404,236)	(13,811)
Planned Use of Reserves (Estero Blvd Landscaping)				(65,217)	(65,217)	(65,217)	(65,217)	(65,217)	(65,217)	(65,217)	(65,217)	(65,217)	(65,217)	(65,217)	(65,217)
Planned Use of Reserves (Vehicle Budget Carryover)	(55,000)			(55,000)											
Transfer to Emergency Reserve				(36,250)	(36,250)	(36,250)	(36,250)	(36,250)	(36,250)	(36,250)	(36,250)	(36,250)	(36,250)	(36,250)	(36,250)
Transfer to Debt Service	(48,448)	(48,448)	(48,448)	(48,448)	(48,448)	(48,448)	(48,448)	(48,448)	(48,448)	(48,448)	(48,448)	(48,448)	(48,448)	(48,448)	(48,448)
Total Cash Flows from Operating Activities	(411,424)	(654,077)	12,045	(914,687)	437,200	1,626,334	(888,056)	(592,657)	(718,921)	(356,404)	(485,656)	(558,308)	(659,319)	(554,116)	(89,422)
Adjusted Cash Balance as of 6/30/24	5,236,423	4,993,770	2,567,392	1,652,705	5,159,592	7,723,426	6,835,370	7,130,769	7,004,505	7,169,113	6,683,457	6,125,149	5,465,830	4,911,714	4,822,292
Draw Down from Bridge Loan	411,424	654,077	-	914,687	-	-	888,056	592,657	521,012						
Loan to Capital Fund to Purchase Building		(3,092,500)		2,155,000	937,500										
Cash Balance After Financing Activities	5,647,847	2,555,347	2,567,392	4,722,392	6,097,092	7,723,426	7,723,426	7,723,426	7,525,517	7,169,113	6,683,457	6,125,149	5,465,830	4,911,714	4,822,292



Cash Balance During Period of Loan

1. **Request:**

Meeting Date: August 7, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AUTHORIZING 1) THE USE OF \$104,929 OF AMERICAN RESCUE PLAN ACT ("ARPA") FUNDS TO REIMBURSE THE STORMWATER FUND FOR EMERGENCY EXPENDITURES INELIGIBLE FOR REIMBURSEMENT BY FEMA; AND 2) AMENDMENTS TO THE FISCAL YEAR 2024 BUDGET RELATED TO THIS REIMBURSEMENT; AND PROVIDING FOR AN EFFECTIVE DATE

Why the action is necessary:

To provide a source of funding for an emergency repair that does not meet the criteria for FEMA reimbursement.

What the action accomplishes:

Provides a source of funding for an emergency repair that does not meet the criteria for FEMA reimbursement.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Joe Onzick, Finance Director

5. **Background:**

Andrew Sitework provided \$104,928.94 of emergency outfall duckbill repairs to the Town in the aftermath of Hurricane Ian that were subsequently ratified by the Town Council via Resolution 24-100 on June 3, 2024. However, the emergency expenditure did not meet the reimbursement criteria for FEMA, therefore payment was made from existing funds in the Stormwater Fund. Since ARPA funds may be used for emergency response, this resolution seeks to use ARPA funds for this emergency repair related to the damage caused by Hurricane Ian.

Attachments:

1. 24-151, Budget Amendment #4 - Authorizing ARPA Funds for Emergency Outfall Repairs

Financial Impact:

Utilizes \$104,929 of ARPA Funds to fund an emergency repair otherwise charged to the Stormwater Fund.

6. **Alternative Action**

The expense may be allowed to be absorbed by the Stormwater Fund. However, we are required to use all of the ARPA Funds, or at least have them fully obligated, by December 31, 2024. This would be a legitimate use of those funds.

7. **Management Recommendations:**

Staff recommends approval of the use of ARPA funds for this emergency repair.

8. **Recommended Approval:**

Joe Onzick, Finance Director
Joe Onzick, Finance Director
nancy stuparich, Town Attorney

Created/Initiated - 7/24/2024
Approved - 7/24/2024
Approved - 7/29/2024

Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Approved - 7/30/2024
Final Approval - 7/30/2024

RESOLUTION NUMBER 24-151

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AUTHORIZING 1) THE USE OF \$104,929 OF AMERICAN RESCUE PLAN ACT (“ARPA”) FUNDS TO REIMBURSE THE STORMWATER FUND FOR EMERGENCY EXPENDITURES INELIGIBLE FOR REIMBURSEMENT BY FEMA; AND 2) AMENDMENTS TO THE FISCAL YEAR 2024 BUDGET RELATED TO THIS REIMBURSEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

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

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

WHEREAS, Congress adopted the American Rescue Plan Act in March of 2021 (“ARPA”), which included \$65 billion in recovery funds for cities across the country; and

WHEREAS, ARPA funds were initially intended to only provide support to state, local and tribal governments in responding to the impact of COVID-19; and

WHEREAS, the authorized use of ARPA funds was later expanded in the “2022 Final Rule” to allow it to be used to replace lost revenue, and to allow a recipient to elect a “standard allowance” of the lesser of \$10 million or its total allocation amount to spend on government services; and

WHEREAS, “government services” was later defined in the “2023 Interim Final Rule” to include emergency relief from natural disasters; and

WHEREAS, the Town of Fort Myers Beach has received a total of \$3,553,05, in ARPA funding and there is currently \$1,229,019 of ARPA Funds available; and

WHEREAS, the Town of Fort Myers Beach experienced a natural disaster in September 2022 of epic proportion when Hurricane Ian devastated Estero Island; and

WHEREAS, Andrew Sitework provided \$104,928.94 of emergency outfall duckbill repairs to the Town in the aftermath of Hurricane Ian that were subsequently ratified by the Town Council via Resolution 24-100 on June 3, 2024; and

WHEREAS, the emergency expenditure did not meet the reimbursement criteria for FEMA, therefore payment was made from existing funds in the Stormwater Fund; and

WHEREAS, the authorized use of ARPA funds to replenish the Stormwater Fund for payment of expenses for emergency relief is in the best interest of the Town and its residents.

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

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

Section 2. That the Town Council authorizes the appropriation of \$104,929 from the ARPA Fund to reimburse the Stormwater Fund for emergency outfall duckbill repairs performed by and paid to Andrew Sitework, that were subsequently determined to be ineligible for FEMA reimbursement.

Section 3. That the following Budget Amendment #4 to the Fiscal Year 2024 budget is hereby authorized:

60.19.519.38191	ARPA Fund: Prior Year Carryover	\$104,929
60.19.519.59113	ARPA Fund: Transfer out to Stormwater Fund	\$104,929
21.80.538.38123	Stormwater Fund: Transfer from ARPA	\$104,929
21.80.538.63400	Stormwater Fund: Storm Drain System	\$104,929

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

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

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

ADOPTED this 5th day of August 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, Town Attorneys

This Resolution was filed in the Office of the Town Clerk on this 5th day August 2024.

1. **Request:**

Meeting Date: August 7, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA, APPROVING BUDGET AMENDMENT #5 TO THE TOWN GENERAL FUND AND OTHER TOWN FUNDS; PROVIDING AUTHORITY; EFFECTIVE DATE.

Why the action is necessary:

This action is necessary since the return of cash to the originating funds involves transfers between funds, and transfers require the approval by Town Council.

What the action accomplishes:

This action returns the balance in the Community Enhancement Fund to the funds from which they originally came.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Andy Hyatt, Town Manager

5. **Background:**

The Community Enhancement Fund was used to charge expenses to related to the \$10 million Capital Improvement Loan the Town had for improvements to Bay Oaks Recreation Center, Bayside Park and Time Square. However the loan could only be drawn down on a reimbursement basis. Periodically reimbursement requests were submitted to the bank in order to draw down funding from the loan as reimbursements to expenses incurred. However, some expenditures for which reimbursements were received and deposited into this fund were actually charged by mistake to other funds. This resulted in reimbursements accumulating in the Community Enhancement Fund for expenses that were incurred in other funds, namely the Water Fund, Storm Water Fund and the General Fund. In addition, the Community Enhancement Fund was initially funded with cash that would normally be deposited into the General Fund, which now needs to be returned to the General Fund.

Now that the \$10 million Capital Improvement Loan has expired and all eligible expenditures have been reimbursed, the balance of the fund should be zero. However, the balance is \$759,839.17. Therefore, this resolution seeks approval to move this remaining balance of \$759,839.17 back to the funds where the expenditures or cash originated as follows:

\$5,747.14 - return to Storm Water Fund

\$5,490.00 - return to Water Fund

\$748,602.03 - return to General Fund

Attachments:

1. 24-152, Budget Amendment #5 - Allocation of Community Enhancement Fund Balance

Financial Impact:

This resolution will allocate the remaining balance of 759,839.17 in the Community Enhancement Fund back to the funds in which the expenditures originated. Therefore, \$5,747.14 will be returned to the Storm Water Fund, \$5,490.00 will be returned to the Water Fund, and \$748,602.03 will be returned to General Fund.

6. **Alternative Action**

The Town Council could propose a different allocation of the remaining balance.

7. **Management Recommendations:**

Staff recommends that this resolution be approved.

8. **Recommended Approval:**

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

Created/Initiated - 7/24/2024
Approved - 7/24/2024
Approved - 7/29/2024
Approved - 7/30/2024
Final Approval - 7/30/2024

RESOLUTION NUMBER 24-152

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA, APPROVING BUDGET AMENDMENT #5 TO THE TOWN GENERAL FUND AND OTHER TOWN FUNDS; PROVIDING AUTHORITY; EFFECTIVE DATE.

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

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

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

WHEREAS, Section 11.05(d) of Article XI of the Town Charter further provides that the Council upon written request by the town manager, may by resolution transfer between funds any unencumbered appropriations; and

WHEREAS, the Finance Director has identified an accumulation of unencumbered cash in the Community Enhancement Fund (Fund 41) related to draws from the Capital Improvement Loan to reimburse expenditures made in other funds, and is also related to funding intended to be used for repayment of the loan; and

WHEREAS, the balance should be zero since the Capital Improvement Loan has expired and no further draws can be made against the loan, and repayment is budgeted through the General Fund; and

WHEREAS, the accumulation of reimbursements should be transferred to the funds in which the expenditures were originally made, and any remaining funds should be transferred to the General Fund from which the repayment of the Capital Improvement Loan will be budgeted.

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

Section 1. The above recitals as set forth in the various “Whereas” clauses are hereby adopted by reference and incorporated into the body of this Resolution.

Section 2. The Town Council hereby approves, adopts and accepts Budget Amendment #5 as specified below as a formal amendment to the 2023-24 Town Budgets. The Town Council further finds that Budget Amendment #5 is consistent with the requirements of Section 11.05 (a), and (d) of Article XI of the Town Charter.

Budget Amendment #5 Specifics

41.80.538.38100	Prior Year Carryover	\$ 5,747.14
41.80.538.59113	Transfer to Storm Water	\$ 5,747.14
21.80.538.38125	Transfer from Comm Enhance	\$ 5,747.14
21.80.538.80000	Add to Reserve	\$ 5,747.14
41.40.533.38100	Prior Year Carryover	\$ 5,490.00
41.40.533.59104	Transfer to Water	\$ 5,490.00
50.40.533.38125	Transfer from Comm Enhance	\$ 5,490.00
50.40.533.80000	Add to Reserve	\$ 5,490.00
41.19.519.38100	Prior Year Carryover	\$748,602.03
41.19.519.59101	Transfer to General Fund	\$748,602.03
10.19.519.38125	Transfer from Comm Enhance	\$748,602.03
10.19.519.80000	Add to Reserve	\$748,602.03

Section 3. This resolution is effective immediately upon adoption.

The foregoing Resolution was adopted by the Town Council upon a motion by _____ and seconded by _____, and upon being put to a 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 5th day of August 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

APPROVED AS TO FORM:

Vose Law Firm, Town Attorneys

This Resolution was filed in the Office of the Town Clerk on this 5th day of August 2024.

1. **Request:**

Meeting Date: August 7, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA, APPROVING ACCEPTANCE OF FLORIDA DEPARTMENT OF COMMERCE GRANT FOR NEW TOWN HALL AND RELATED BUDGET ADJUSTMENT (#6); PROVIDING AUTHORITY; EFFECTIVE DATE.

Why the action is necessary:

The Town Council must approve acceptance of all grants and authorize all related expenditures of this magnitude.

What the action accomplishes:

The action authorizes the Town Manager to execute the grant agreement and authorizes the use of insurance proceeds to supplement the difference between the grant award and the purchase price of the properties.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Andy Hyatt, Town Manager,
Frankie Kropacek, Operations &
Compliance Director

5. **Background:**

The Town is intending to purchase the building located at 6231 Estero Blvd for approximately \$7,000,000 to become the new town hall and to purchase the adjacent property located at 6221 Estero Blvd for approximately \$1,700,000 to provide parking for the new town hall. The Town has been awarded a grant in the amount of \$8,000,000 under line 2347A of the 2024-2025 General Appropriations Act (GAA) for the Town Hall Replacement Project which can be used for these purchases. The Town also has insurance proceeds available from the destruction of the previous town hall that can be used to supplement the difference between the purchase price of the two properties and the grant.

This resolution authorizes the acceptance of the grant award, and the use of the insurance proceeds for the intended purchases of the building and adjacent property, along with the related budget adjustment.

Since this grant is structured as a reimbursement, the Town must first expend the funds and then be reimbursed. Therefore, please note that there is a separate resolution authorizing a temporary interfund loan to finance the purchase of these properties that is also being submitted for your consideration.

Attachments:

1. 24-153, Budget Amendment #6 - Purchase of New Town Hall and Acceptance of Grant

Financial Impact:

Approval of the grant will provide \$8,000,000 for the purchase of the new town hall. And approval of the use of insurance proceeds will provide funding for the purchase of the adjacent property to be used as parking.

6. **Alternative Action**

To not authorize approval of the grant award, and/or use of insurance proceeds to fund the intended purchase of the properties to be used as the replacement town hall.

7. **Management Recommendations:**

Staff recommends Town Council to authorize acceptance of the grant award and execution of the grant agreement the use of insurance proceeds to fund the difference between the grant and the purchase price of the property, and to approve the related budget adjustment.

8. **Recommended Approval:**

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

Created/Initiated - 7/24/2024
Approved - 7/24/2024
Approved - 7/29/2024
Approved - 7/30/2024
Final Approval - 7/30/2024

RESOLUTION NUMBER 24-153

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA, APPROVING ACCEPTANCE OF FLORIDA DEPARTMENT OF COMMERCE GRANT FOR NEW TOWN HALL AND RELATED BUDGET ADJUSTMENT (#6); PROVIDING AUTHORITY; 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 intends to purchase the building located at 6231 Estero Blvd for approximately \$7,000,000 to become the new town hall and to purchase the adjacent property located at 6221 Estero Blvd for approximately \$1,700,000 to provide parking for the new town hall; and

WHEREAS, the Town of Fort Myers Beach, Florida has been awarded a grant in the amount of \$8,000,000 under line 2347A of the 2024-2025 General Appropriations Act (GAA) for the Town Hall Replacement Project, and

WHEREAS, the Town finds that it is in its best interest to accept this grant award; and

WHEREAS, there are insurance proceeds related to the destruction of the previous town hall by Hurricane Ian that are available to supplement the difference between the grant award and the cost of the Town Hall Replacement Project; and

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

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

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

WHEREAS, Section 11.05(a) of Article XI of the Town Charter further provides that if, during the fiscal year, the town manager certifies that there are available for appropriation revenues in excess of those estimated in the budget, the council, by resolution, may make supplemental appropriations for the year up to the amount of such excess, so long as a fiscally responsible reserve is maintained.

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

Section 1. The above recitals as set forth in the various “Whereas” clauses are hereby adopted by reference and incorporated into the body of this Resolution.

Section 2. The Town Council hereby approve and accept the \$8,000,000 grant awarded under line 2347A of the 2024-2025 General Appropriations Act (GAA) for the Town Hall Replacement Project administered through the Florida Department of Commerce, and hereby authorizes the Town Manager to execute the associated grant agreement.

Section 3. The Town Council hereby approves the intended purchase of 6231 Estero Blvd for approximately \$7,000,000 to become the new town hall and the intended purchase of the adjacent property located at 6221 Estero Blvd for approximately \$1,700,000 to provide parking and authorizes the Town Manager and Finance Director to execute all related documents.

Section 4. The Town Council hereby approves the use of insurance proceeds to supplement the \$1,725,000 difference in cost between the grant award of \$8,000,000 and the purchase cost of \$8,700,000 plus closing costs approximated at \$25,000; and

Section 5. The Town Council further finds that the related supplemental appropriation of funds is consistent with the requirements of Section 11.05 (a), and (a) of Article XI of the Town Charter, and hereby approves, adopts and accepts the following budget amendment:

Budget Adjustment #6

40.29.519.33447	Capital Fund: State LAP Grant	\$8,000,000
40.29.519.16199	Capital Fund: Land (Parking Lot)	\$1,000,000
40.29.519.16299	Capital Fund: Building	\$7,000,000
13.29.519.38100	Emergency Fund: Prior Year Carry Over	\$ 725,000
13.29.519.16199	Emergency Fund: Land (Parking Lot)	\$ 700,000
13.29.519.53101	Emergency Fund: Legal Fees (Closing Costs)	\$ 25,000

Section 6. This resolution is effective immediately upon adoption.

The foregoing Resolution was adopted by the Town Council upon a motion by _____ and seconded by _____, and upon being put to a 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 5th day of August 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

APPROVED AS TO FORM:

Vose Law Firm, Town Attorneys

This Resolution was filed in the Office of the Town Clerk on this 5th day of August 2024.