



Fort Myers Beach Town Council

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

AMENDED Agenda

Monday, December 16, 2024

9:00 AM

ORDER OF BUSINESS

I. CALL TO ORDER

II. INVOCATION

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF FINAL AGENDA

V. PUBLIC COMMENT

VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

A. Donation

Accept a donation from Jay and Mary Highley for the purchase of poinsettias for the Town's annual poinsettia tree in Times Square.

VII. ADVISORY COMMITTEES ITEMS / REPORTS / APPOINTMENTS

A. Bay Oaks Recreational Campus Advisory Board

Appoint a new member to the FY2024-2025 Bay Oaks Recreational Campus Advisory Board (BORCAB)

B. Town Advisory Boards

Designation of a Council representative to the six Town advisory boards/committees.

C. Outside Committees

Designation of a Council representative and alternate to the seven outside committees.

VIII. APPROVAL OF MINUTES

IX. CONSENT AGENDA

A. Resolution 24-290, Town Disaster Advisory Council Appointment and Authorization

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPOINTING TWO TOWN STAFF MEMBERS TO THE DISASTER ADVISORY COUNCIL; AUTHORIZING THE TOWN MANAGER TO SELECT AND APPOINT TOWN STAFF MEMBERS TO

REPRESENT THE TOWN OF FORT MYERS BEACH AND TOWN OF FORT MYERS BEACH UTILITIES DEPARTMENT ON THE LEE COUNTY DISASTER ADVISORY COUNCIL AND FILL ALLOCATED SEATS ON THE COMMITTEE; PROVIDING AN EFFECTIVE DATE.

X. ITEMS REMOVED FROM CONSENT AGENDA

XI. PUBLIC HEARINGS

- A. Ordinance 24-34; DA20240170, Seagate/Home Rule Development Agreement (Red Coconut)

Second Reading and Final Public Hearing of proposed Ordinance 24-34 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING A HOME RULE DEVELOPMENT AGREEMENT FOR PROPERTY LOCATED AT 3001 ESTERO BOULEVARD, 2943 ESTERO BOULEVARD, 2932 ESTERO BOULEVARD, 211 DONORA BOULEVARD, FORT MYERS BEACH, FL, STRAP NOS. 29-46-24-W1-00145.1000, 29-46-24-W1-00145.5000, 30-46-24-W2-00001.0000, 29-46-24-W1-0120A.0010 AND OWNED BY SEAGATE FORT MYERS BEACH LLC, AS AUTHORIZED BY SECTION 2-100 OF THE TOWN'S LAND DEVELOPMENT CODE AND IN COMPLIANCE WITH THE PROCEDURES FOR APPLICATION AND APPROVAL OF DEVELOPMENT AGREEMENTS WITH DEVIATIONS SET FORTH IN RESOLUTION NUMBER 24-73 FOR THE PURPOSE OF REDEVELOPMENT OF THE PROPERTY PREVIOUSLY KNOWN AS THE RED COCONUT RV PARK; PROVIDING FOR TERMS AND CONDITIONS INCLUDING BUT NOT LIMITED TO THE IDENTIFICATION OF THE PROPOSED USE OF THE PROPERTY, A FINDING OF CONSISTENCY WITH THE TOWN OF FORT MYERS BEACH COMPREHENSIVE PLAN, COMMITMENTS AND DEVELOPMENT OBLIGATIONS, DEVIATIONS NEEDED FOR DEVELOPMENT; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

- B. Ordinance 24-36, DCI 20230213, Neptune Inn, 2310 & 2316/2320 Estero Blvd.

Second Reading and Final Public Hearing of an Ordinance Entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING THE COMMERCIAL PLANNED DEVELOPMENT (CPD) ZONING FOR THE PROPERTY LOCATED AT 2310 ESTERO BLVD AND 2316/2320 ESTERO BLVD. GENERALLY IDENTIFIED AS STRAP NUMBERS 19-46-24-W3-0430N.0001, 19-46-24-W3-04300.00CE AND 19-46-24-W3-0110A.0010 FORT MYERS BEACH COMMONLY KNOWN AS THE NEPTUNE RESORT, TO ALLOW 148 LODGING UNITS AND ACCESSORY RETAIL AND RECREATIONAL USES; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

- C. **AMENDED ITEM** Resolution 24-288; VAR20240100, 51 Pearl Street
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/APPROVING WITH CONDITIONS/ DENYING VARIANCE 20240100, REQUESTING VARIANCES FROM LDC TABLE 34-3 OF 1) 7.3 FEET FROM THE STREET SETBACK FOR A FRONT SETBACK OF 17.7 FEET, 2) A VARIANCE OF 3 FEET FROM THE WEST SIDE SETBACK FOR A SIDE SETBACK OF 4 FEET 6 INCHES FOR THE MECHANICAL EQUIPMENT AND 3)A VARIANCE OF 12.1% FROM THE BUILDING COVERAGE FOR A BUILDING COVERAGE OF 52.1% TO BUILD A NEW SINGLE FAMILY STRUCTURE IN THE RM ZONING DISTRICT, FOR THE PROPERTY LOCATED AT 51 PEARL STREET, FORT MYERS BEACH, FLORIDA; AND PROVIDING FOR AN EFFECTIVE DATE. **PROJECT NARRATIVE ATTACHED**

XII. ADMINISTRATIVE AGENDA

- A. Interlocal Agreement Between the Town and Lee County Property Appraiser
APPROVAL OF AN INTERLOCAL AGREEMENT BETWEEN THE TOWN OF FORT MYERS BEACH, FLORIDA, AND LEE COUNTY PROPERTY APPRAISER FOR THE COLLECTION OF NON-AD VALOREM ASSESSMENTS RELATED TO DEMOLITION COSTS OF UNSAFE BUILDINGS.
- B. **AMENDED ITEM** Resolution 24-296; Revocation of Temporary Use Permits
A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA ADOPTING A RESOLUTION TO REVOKE AND RECIND EMERGENCY TEMPORARY PLACEMENT PERMITS AS PROVIDED AND AUTHORIZED IN SECTION 2 OF ORDINANCE 24-4 OF THE TOWN OF FORT MYERS BEACH, WHICH CLARIFIED ORDINANCE 23-05 RELATED TO TEMPORARY PLACEMENT PERMITS, IN FURTHERANCE AND IN SATISFACTION OF DIRECTION CONTAINED IN A LETTER DATED NOVEMBER 21, 2024 FROM THE FEDERAL EMERGENCY MANAGEMENT AGENCY ("FEMA") MANDATING REMOVAL OF NONCOMPLIANT STRUCTURES THAT WERE INCORRECTLY PERMITTED IN THE SPECIAL FLOOD HAZARD AREA, IN ORDER TO COMPLY WITH MINIMUM FLOODPLAIN STANDARDS AND THE REQUIREMENTS OF THE NATIONAL FLOOD INSURANCE PROGRAM; AND PROVIDING FOR AN EFFECTIVE DATE. **RESOLUTION AND TITLE AMENDED**
- C. Resolution 24-284, Authorizing Budget Adjustment #3 and Revenue Replacement Grant
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA, APPROVING GRANT AGREEMENT NUMBER D2125 WITH THE STATE OF FLORIDA, DEPARTMENT OF EMERGENCY MANAGEMENT IN THE AMOUNT OF \$7,547,805 FOR REVENUE REPLACEMENT; APPROVING A RELATED

BUDGET ADJUSTMENT (#3); AUTHORIZING THE TOWN MANAGER TO SIGN ANY AND ALL NECESSARY DOCUMENTS TO ACQUIRE THE GRANT; AND PROVIDING FOR AN EFFECTIVE DATE.

- D. **AMENDED ITEM** Resolution 24-289, Authorizing Budget Adjustment #4 - Allocation of Remaining ARPA Funds
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AUTHORIZING THE USE OF \$932,573 OF REMAINING UNALLOCATED AMERICAN RESCUE PLAN ACT (ARPA) FUNDS, AND RELATED BUDGET ADJUSTMENT (#4); AND PROVIDING FOR AN EFFECTIVE DATE. RESOLUTION AMENDED
- E. Resolution 24-294, Federal Lobbyist Agreement
A RESOLUTION TO APPROVE AN ENGAGEMENT LETTER WITH GRAY ROBINSON, P.A. WITH ADDENDUM TO PROVIDE GOVERNMENT RELATIONS REPRESENTATION ON BEHALF OF THE TOWN ON FEDERAL ISSUES, INCLUDING BUT NOT LIMITED TO WORKING ON BEHALF OF THE TOWN TO RESOLVE OUTSTANDING ISSUES WITH THE FEDERAL EMERGENCY MANAGEMENT AGENCY ("FEMA") FOR \$7,500 PER MONTH FOR A MINIMUM OF 6 MONTHS; AUTHORIZING THE TOWN MANAGER TO SIGN ANY AND ALL NEEDED DOCUMENTS; AND PROVIDING AN EFFECTIVE DATE.
- F. Resolution 24-192, Authorizing \$656,232 Contract with GapVax, Inc for Combination Jet Vac
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING THE PURCHASE OF A COMBINATION JET/VAC FROM GAPVAX, INC. AND AUTHORIZING THE TOWN MANAGER TO EXECUTE A PURCHASE ORDER IN THE AMOUNT NOT TO EXCEED \$656,232; AND PROVIDING FOR AN EFFECTIVE DATE
- G. Resolution 24-291; Authorizing \$176,957 Contract with Sam Galloway Ford for 3 Trucks
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING THE PURCHASE OF THREE VEHICLES FROM SAM GALLOWAY FORD, INC. AND AUTHORIZING THE TOWN MANAGER TO EXECUTE PURCHASE ORDERS FOR THESE THREE VEHICLES FOR A NOT-TO-EXCEED AMOUNT OF \$176,957; AND PROVIDING FOR AN EFFECTIVE DATE.
- H. Resolution 24-295; Hurricane Helene Sand Screening
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA RATIFYING SPA-24-11-EN FOR ACTION OF THE TOWN TAKEN OCTOBER 3, 2024 REGARDING THE WAIVING OF THE TOWN'S COMPETITIVE PROCUREMENT POLICY AND CONTRACTING WITH ICS MATERIALS INC. TO SCREEN DEBRIS FROM SAND OVERWASHED BY HURRICANE HELENE TO PRODUCE BEACH COMPATIBLE SAND, PLACE AND GRADE BEACH COMPATIBLE SAND ONTO THE BEACH, REMOVE DEBRIS FROM THE BEACH, REMOVE

DEBRIS SAND FROM RIGHT OF WAY AND TOWN PROPERTY AND DELIVER TO DEBRIS MANAGEMENT SITE, AND DISPOSE OF DEBRIS AT AUTHORIZED WASTE MANAGEMENT SITE; AND APPROVING PAYMENT OF ICS MATERIALS INC. INVOICE NOS. 110624-29, 111524-29, AND 111824-29 IN THE AMOUNT \$427,870.00; AND PROVIDING FOR AN EFFECTIVE DATE.

I. Resolution 24-287; Hurricane Milton Beach Cleanup

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, RATIFYING SPA-24-12-EN FOR THE ACTION OF THE TOWN TAKEN OCTOBER 7, 2024, UNDER THE EMERGENCY PROCUREMENT POLICY TO CONTRACT WITH ICS MATERIALS INC. TO TAKE EMERGENCY PROTECTIVE MEASURES TO REMOVE HAZARDS TO PUBLIC HEALTH AND SAFETY FROM THE RIGHT OF WAY, TOWN PROPERTY, AND THE BEACH CAUSED BY HURRICANE MILTON; AND APPROVING PAYMENT OF ICS MATERIALS INC. INVOICE No. 101824-31 IN THE AMOUNT \$256,167.25; AND PROVIDING FOR AN EFFECTIVE DATE.

NEW J. Resolution 24-297, Adopting Cybersecurity Standards

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, ADOPTING THE NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY'S CYBERSECURITY FRAMEWORK AS THE CYBERSECURITY STANDARD FOR THE TOWN OF FORT MYERS BEACH, FLORIDA; AND PROVIDING FOR AN EFFECTIVE DATE.

XIII. FINAL PUBLIC COMMENT

XIV. TOWN MANAGER'S ITEMS

XV. TOWN ATTORNEY'S ITEMS

A. Proposed Settlement of DiBiasi litigation

XVI. COUNCILMEMBERS ITEMS AND REPORTS

XVII. ADJOURNMENT

NOTE: THIS MEETING IS STREAMED LIVE ON 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.

1. **Request:**

Meeting Date: December 16, 2024

Accept a donation from Jay and Mary Highley for the purchase of poinsettias for the Town's annual poinsettia tree in Times Square.

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

LOCAL ACHIEVEMENTS AND
RECOGNITIONS

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

Jeff Hauge, Community
Services Director

5. **Background:**

Jay and Mary Highley have offered to donate the cost of the poinsettias for the holiday tree in Times Square for another year.

Attachments:

Financial Impact:

Accepts a donation of the total cost for poinsettias

6. **Alternative Action**

7. **Management Recommendations:**

Accept and approve the donation.

8. **Recommended Approval:**

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

Created/Initiated - 12/9/2024
Approved - 12/9/2024
Approved - 12/9/2024
Final Approval - 12/9/2024

1. **Request:**

Meeting Date: December 16, 2024

Appoint a new member to the FY2024-2025 Bay Oaks Recreational Campus Advisory Board (BORCAB)

Why the action is necessary:

What the action accomplishes:

Fills vacancy on Bay Oaks Recreational Campus Advisory Board

2. **Agenda:**

ADVISORY COMMITTEES ITEMS
/ REPORTS / APPOINTMENTS

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

Amy Baker, Town Clerk

5. **Background:**

The purpose of Bay Oaks Recreational Campus Advisory Board (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.

There is currently one vacancy on the Bay Oaks Recreational Campus Advisory Board. Two applications have been received by the Town Clerk requesting appointment to the committee; both from island residents.

Attachments:

1. Cherney, Michelle BORCAB
2. Richardson, Diane BORCAB

Financial Impact:

6. **Alternative Action**

Do not appoint a new member and readvertise the vacancy

7. **Management Recommendations:**

8. **Recommended Approval:**

Eva Spychalski, Administrative Resources Coordinator
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 11/26/2024
Approved - 12/3/2024
Approved - 12/5/2024
Final Approval - 12/5/2024



RECEIVED

By Amy Baker at 1:16 pm, Sep 10, 2024

Town of Fort Myers Beach
Advisory Boards and Committees Application

Complete one form for each application/committee appointment. Your application will be a public record subject to disclosure on request.

Please type or print clearly. Do not leave blanks.

Today's Date:

Name:
Last First Middle initial

Telephone Number:

Email Address:

Home Address:

Mailing Address

(if different from home address):

Are you currently serving on any of the Town's committees? Yes ☐ No ☒

If yes, which committee(s)?

If yes, when is your term expiration?

I am applying for appointment to: (Check one)

- ☐ Anchorage Advisory Committee
- ☐ Audit Committee **must attach resume*
- ☒ Bay Oaks Recreational Campus Advisory Board
- ☐ Cultural and Environmental Learning Center Advisory
- ☐ Board Historic Preservation Advisory Committee
- ☐ Local Planning Agency **must attach resume*
- ☐ Marine and Environmental Resources Task Force
- ☐ Nuisance Abatement Board
- ☐ Public Safety Committee

Have you been convicted of a felony, an offense involving moral turpitude while in office? Yes ☐ No ☒

Do you have unpaid fines or liens due the Town? Yes ☐ No ☒

Are you a registered voter within the Town's jurisdiction? Yes ☒ No ☐

Are you a resident within the Town's jurisdiction? Yes ☒ No ☐
Are you an owner of real property within the Town's jurisdiction? Yes ☒ No ☐
Are you currently serving on a board, authority, committee or commission for another governmental agency? Yes ☐ No ☒
If yes, what board, etc., and since when?

Why are you seeking appointment to this board or committee?

I have been using the BORC and truly enjoy it, the hurricane it this facility hard. Now its time to rebuild it even bigger and better. I have owned here since 2010, and I believe this facility is under utilized, many locals have never even used it. I would love to be part of the rebuilding, and working to get the community more involved in utilizing the BORC. I know most of the staff, I worked closely with Erin during the hurricane.

Community Involvement:

President of Fairview Isles Home Owner Association 178 resident homes
Breast Cancer Supporter - SW Florida formed a team involving our residents

Interests / Activities:

Pickleball
Golf
Gym
Fishing/Boating
Swimming/beach
Biking

You may attach a resume in addition to the above information.

Do you qualify for Special Exemptions per § 119.071(4)(d)3., F.S. Yes ☐ No ☒
If yes, fill out Public Records Exemption Request form and submit with the application.

I swear or affirm that all information on this form is true and accurate.

Signed 

Date

Please return this form to the Town Clerk's Office, Town of Fort Myers Beach, 2731 Oak Street, Fort Myers Beach, FL 33931 Amy@fmbgov.com

Office Use Only:

Appointed: Yes _____ No _____

DATE: _____

MICHELE M. CHERNEY

21 Fairview Blvd, Fort Myers Beach, FL 33931
920.621.5033 • mcherney20@outlook.com

PROFESSIONAL MANAGEMENT EXPERIENCE

DEBAUCHE COMMUNICATION SERVICES, LLC, Green Bay, Wisconsin 11/10 – 10/2023

Telecommunications & Business Consulting Services

Owner

- Develops long-term Marketing strategy & tactical initiatives, budgets, product potential
- Works closely with clients offering strategic contract engineering, staffing, consulting services
- Assists small to mid-size businesses; create business plan, identify new market, increase sales such as Marinette Marine
- All accounting functions including taxes, monthly financials, payroll
- Human Resources, hired, fired background checks, developed company HR Employee HR manual

TUFCO TECHNOLOGIES, INC., Green Bay, Wisconsin

1996 - 2011

Sr. Vice President of Sales / Marketing

- Honored with bi-annual “*Top Strategic Vendor Award*” for eight consistent years
- Led sales team increasing sales from *\$4M to \$68M* via capital investment and organic growth
- *Global management* for all sales acquiring and closing the *Business Area’s Top Fortune 500* customers to include Procter & Gamble, Kimberly-Clark and SC Johnson
- Developed and implemented annual and *five-year strategic business plans*
- International marketing responsibilities include advertising, product and pricing strategies
- Effectively negotiated multiple, long-term supply contracts with large consumer companies

Market Manager

- Strategically developed market segment of home care wipes resulting increased sales of \$45M,
- Successfully launched manufacturing concept of *Swiffer* for Procter & Gamble globally
- Created and implemented strong marketing tools with regards to pricing, products and strategies
- Developed ingenious marketing campaigns; graphics, print advertising, collateral, product videos
- Initiated and designed a product performance machine to display features and benefits for a new product launch, which resulted in becoming an *industry standard test method*
- Built strong relationships with trade journalists and editors for maximum exposure to industry

WAUSAU PAPERS, Harrodsburg, Kentucky

1988 - 1996

Area Sales Manager, Boca Raton, Florida

- Led market segment expansion with first year sales of \$4M, second year sales of \$7.5M
- Consistently exceeded company revenue goals and built reputable clientele every year
- Managed pricing, strategy and competitive market trends on a national level
- Trained and managed new field sales personnel working one-on-one ensuring performance

Customer Service Manager, Harrodsburg, Kentucky

- *Managed plant shut down* and entire customer service / marketing group of our Green Bay operations and *setup new plant operations* and hiring staff in Harrodsburg, KY
- Hired and trained staff of 25 (customer service reps, marketing and pricing managers, costs)

District Sales Manager, San Antonio, Texas

- Sales rep for the San Antonio/Austin, Texas market

Customer Service Representative, Green Bay, Wisconsin

- Internship for sales covering Midwest territory of the United States

EDUCATION

Accounting & Real Estate, NWTC – Green Bay, Wisconsin

AFFILIATIONS

Curative Connections Board Member

Green Bay Chamber of Commerce

Advanced Economic Development - Board Member / Advance Incubator - Board Member / Business Attraction Committee Board Member

INDA - Association of Nonwoven Fabrics, Board of Directors 2007 – 2011

TEC/EA Member since 2005 - 2016

FFTA - Member since 1998

From: [Diane Richardson](#)
To: [Amy Baker](#)
Cc: [Jason Freeman](#)
Subject: RE: FMB Town Committees
Date: Thursday, December 5, 2024 10:52:02 AM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)
[image007.png](#)

Hello Amy,

I would be interested in serving on the BORCAB committee. Please let me know what else, if anything, is required from me in order to be considered at the Jan 8 meeting. Is this something I should plan to attend?

Thank you,
Diane

From: Amy Baker <Amy@fmbgov.com>
Sent: Tuesday, December 3, 2024 4:02 PM
To: Diane Richardson <diane@snopro.com>
Cc: Jason Freeman <JasonF@fmbgov.com>
Subject: FW: FMB Town Committees

Good afternoon Ms. Richardson,

I have been informed that you may be interested in serving on one of the Town advisory committees that still have a vacancy. Currently we have a vacancy on both the Bay Oaks Recreational Campus Advisory Board (BORCAB) and on the Public Safety Committee.

You may view what each committee's objectives at the following link:
<https://www.fortmyersbeachfl.gov/64/Advisory-Boards-and-Committees>

If you are interested in either committee just let me know. I can attach your recent application and place you on the January 8, 2025 Council meeting for their consideration.

Thank you,

Amy Baker
Town Clerk



RECEIVED

By Amy Baker at 4:19 pm, Aug 20, 2024

Town of Fort Myers Beach
Advisory Boards and Committees Application

Complete one form for each application/committee appointment. Your application will be a public record subject to disclosure on request.

Please type or print clearly. Do not leave blanks.

Today's Date: 08/20/24

Name: Diane

Last

Richardson

First

L

Middle initial

Telephone Number: 612-810-7325

Email Address: diane@snopro.com

Home Address: 650 Matanzas Ct, Fort Myers Beach, FL 33931

Mailing Address 650 Matanzas Ct, Fort Myers Beach, FL 33931

(if different from home address):

Are you currently serving on any of the Town's committees? Yes ☐ No ☒

If yes, which committee(s)?

If yes, when is your term expiration?

I am applying for appointment to: (Check one)

- ☐ Anchorage Advisory Committee
- ☐ Audit Committee
- ☐ Bay Oaks Recreational Campus Advisory Board
- ☐ Cultural and Environmental Learning Center Advisory
- ☐ Board Historic Preservation Advisory Committee
- ☐ Local Planning Agency
- ☒ Marine and Environmental Resources Task Force ~~Nuisance~~
- ☐ Abatement Board
- ☐ Public Safety Committee

* Or another committee as needed

Have you been convicted of a felony, an offense involving moral turpitude while in office? Yes ☐ No ☒

Do you have unpaid fines or liens due the Town? Yes ☐ No ☒

Are you a registered voter within the Town's jurisdiction? Yes ☒ No ☐

Are you a resident within the Town's jurisdiction?

Yes ☒ No ☐

Are you an owner of real property within the Town's jurisdiction?

Yes ☒ No ☐

Are you currently serving on a board, authority, committee or commission for another governmental agency?

Yes ☒ No ☐

If yes, what board, etc., and since when? Treasurer, Cane Palm Beach Condo Assn.

Why are you seeking appointment to this board or committee?

I am currently retired and would like to support the town via a volunteer position as needed.

Community Involvement:

My husband and I completed a new home build on the north end of FMB just prior to hurricane Ian. We just recently completed our storm repairs and now spend most of our time in FMB however, we do travel during some times of the year. I love the area and am available to help as a volunteer if there is a suitable position for me.

Interests / Activities:

My husband and I love boating, fishing, pickle ball, walking on the beach, going to the Beach Bar to listen to music. I have 3 grandchildren with another one on the way.

We own 2 rental condos on the beach and I have served as the treasurer for that board for 6 years.

You may attach a resume in addition to the above information.

Do you qualify for Special Exemptions per § 119.071(4)(d)3., F.S.

Yes ☐ No ☒

If yes, fill out [Public Records Exemption Request](#) form and submit with the application.

I swear or affirm that all information on this form is true and accurate.

Signed 

Date

8-20-24

Please return this form to the Town Clerk's Office, Town of Fort Myers Beach, 2525 Estero Boulevard, Fort Myers Beach, FL 33931 Amy@fmbgov.com

Office Use Only:

Appointed: Yes _____ No _____

DATE: _____

1. **Request:**

Meeting Date: December 16, 2024

Designation of a Council representative to the six Town advisory boards/committees.

Why the action is necessary:

It is the policy of the Town Council to reorganize annually and designate a liaison to each of the Town's advisory boards or committees.

What the action accomplishes:

2. **Agenda:**

ADVISORY COMMITTEES ITEMS
/ REPORTS / APPOINTMENTS

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

Amy Baker, Town Clerk

5. **Background:**

In accordance with Town Council Policies and Procedures, Council reorganization takes place at the first meeting after the second Tuesday in November. The reorganization may include designating a liaison to the Town's advisory committees. Whenever Town Council is called upon to make committee determinations, the Council should confirm its desire to continue its current committee structure.

The scope of each committee is listed as follows:

Anchorage Advisory Committee. Current liaison: Vice Mayor Atterholt
Advises Town Council and staff on all issues pertaining to the Town's public mooring field.
Typically meets the fourth Monday of each month.

Audit Committee. Current liaison: Council Member Safford
To serve in an advisory capacity to the Town Council in the election of an auditor to conduct the Town's annual financial audit and for other purposes as directed by Town Council. Typically meets on the second Monday of each month.

Bay Oaks Recreational Campus Advisory Board. Current liaison: Council Member Woodson
To serve the Town as a community center and recreational facility, providing individuals with social and community activities and events for both residents and visitors. Typically meets on the third Wednesday of each month.

Cultural and Environmental Learning Center Advisory Board. Current liaison: Council Member Atterholt
Oversees the Mound House and Newton Park; the goals are to manage and promote the cultural, historical and environmental resources of Fort Myers Beach. Typically meets on the fourth Thursday of each month.

Marine & Environmental Resources Task Force. Current liaison: Council Member King
To promote stewardship of our marine resources, to stop further damage and to rehabilitate Estero Bay and its surrounding waters, wildlife, plant life and air/water quality. Typically meets on the second Wednesday of the month.

Public Safety Committee. Current liaison: Mayor Allers

To 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 citizens and visitors to the Town. Typically meets on the third Tuesday of the month.

Attachments:

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

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

Created/Initiated - 11/26/2024
Approved - 12/3/2024
Approved - 12/5/2024
Final Approval - 12/5/2024

1. **Request:**

Meeting Date: December 16, 2024

Designation of a Council representative and alternate to the seven outside committees.

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

ADVISORY COMMITTEES ITEMS
/ REPORTS / APPOINTMENTS

3. **Requirement/Purpose:**

4. **Submitter of Information:**

5. **Background:**

Reorganization of the Council includes selecting regular and alternate committee representatives for committees that are influential in decision making that affects the interests of the Town. The committees include:

Coastal and Heartland National Estuary Partnership - Policy Committee:

<https://www.chnep.org>

A partnership of citizens and elected officials, and resource managers working together to protect and restore water and wildlife habitat in Central and Southwest Florida. The Policy Committee establishes the general policy for the CHNEP, has authority over program administration, appoints members to other committees and approves the CHNEP's budget.

Meets January 23, 2025, May 22, 2025 and September 18, 2025. Current representation: Council Member King. Town Environmental Projects Manager Chadd Chustz, alternate (cannot vote)

Coastal Advisory Committee:

<http://www.leegov.com/naturalresources/marine/beachmgmnt/CAC>

A Lee County government committee that advises the BoCC, staff and various related advisory boards when proceeding with a project affecting beach and shoreline preservation regarding the proper methods of helping to conserve the beaches of Lee County. Meets periodically throughout the year, usually on the 4th Monday; current representation: Town Environmental Projects Manager Chadd Chustz, alternate **TBD**.

Fort Myers Beach Elementary School Youth Council:

Current representation: Mayor Allers

Horizon Council: <http://www.leecountybusiness.com/horizon-council>

A Lee County Economic Development Office committee that advises the BoCC on economic development issues; current representation: Council Member Allers (as of 11/18/2024).

Metropolitan Planning Organization: <http://leempo.com>

A Lee County BoCC committee that provides regional leadership addressing long term challenges and opportunities facing Southwest Florida. Meets monthly, 3rd Friday of the month; current representation: Council Member King, alternate Council Member **TBD**

***As a reminder, the Town has not had representation on the MPO's Citizen Advisory Committee since 2021. Citizens Advisory Committee:** MPO board members

appoint local citizens to the CAC. Bringing the public’s perspective to the decision-making process, the CAC’s members make recommendations to the MPO board about project priorities for state and federal funding in FDOT’s five year work program, proposed long-range transportation plans, project plans, program plans, and other transportation issues. The CAC usually meets on the first Thursday of the month at 3:00 p.m. in the Green Room of the Cape Coral Public Works Building, 815 Nicholas Parkway East, Cape Coral, FL.

Southwest Florida Regional Planning Council: <http://www.swfrpc.org>

A self-governed committee that provides regional leadership addressing long term challenges and opportunities facing Southwest Florida. Meets 3rd Thursday of the month; current representation: Senior Planner/Project Manager Sarah Propst.

Southwest Florida Resiliency Coalition: <https://www.fgcu.edu/swflresiliencycoalition/>

The Coalition unites county and municipal governments (within the counties of Charlotte, Lee, and Collier) with natural and cultural resource managers to analyze the region's vulnerability to the effects of climate change (e.g., sea-level rise, storminess, warming, extremes in precipitation), and to adaptively plan for or mitigate its consequences through the identification and implementation of best practices. The Coalition is further committed to engaging the public through education and participation in the decision-making process. Current representation: Director of Community Services Jeff Hauge.

Tourist Development Council: <https://www.leevcb.com/tourist-development-council>

Membership on the Tourist Development Council includes one seat which rotates every two years between the City of Sanibel and the Town of Fort Myers Beach. Currently, the Town holds that seat, which will expire June 30, 2024. The TDC typically meets on the second Tuesday of each month. The Town Council shall appoint one elected official to serve as the Town's representative: Current representation: Mayor Allers, alternate **TBD**.

Attachments:

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

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

Created/Initiated - 12/5/2024
Approved - 12/6/2024
Approved - 12/6/2024
Final Approval - 12/6/2024

1. **Request:**

Meeting Date: December 16, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPOINTING TWO TOWN STAFF MEMBERS TO THE DISASTER ADVISORY COUNCIL; AUTHORIZING THE TOWN MANAGER TO SELECT AND APPOINT TOWN STAFF MEMBERS TO REPRESENT THE TOWN OF FORT MYERS BEACH AND TOWN OF FORT MYERS BEACH UTILITIES DEPARTMENT ON THE LEE COUNTY DISASTER ADVISORY COUNCIL AND FILL ALLOCATED SEATS ON THE COMMITTEE; PROVIDING AN EFFECTIVE DATE.

Why the action is necessary:

Formally appoints Town staff members to the DAC and authorizes the Town Manager to select and appoint Town staff members to the Disaster Advisory Council.

What the action accomplishes:

Fills the two seats and authorizes the Town Manager to appoint Town staff members to represent the Town on the Disaster Advisory Council.

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Andy Hyatt, Town Manager

5. **Background:**

Lee County contacted the Town and requested two nominations for applicants for committee membership to the Disaster Advisory Council. The Town is able to have a general Town representative, as well as an additional representative for the Fort Myers Beach Utilities Department.

Attachments:

1. NS 24-290, Authorize Town Staff to Serve on the DAC (1)

Financial Impact:

None.

6. **Alternative Action**

Do not authorize the filling of seats on the Disaster Advisory Council.

7. **Management Recommendations:**

Authorize the Town Manager to select and appoint staff members to to serve on the committee.

8. **Recommended Approval:**

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

Created/Initiated - 12/3/2024
Approved - 12/4/2024
Approved - 12/5/2024
Final Approval - 12/5/2024

RESOLUTION NUMBER 24-290

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPOINTING MARK ASHTON AND JASON FREEMAN TO THE DISASTER ADVISORY COUNCIL; AUTHORIZING THE TOWN MANAGER TO SELECT AND APPOINT OTHER TOWN STAFF MEMBERS TO REPRESENT THE TOWN IN THE EVENT THE INITIAL APPOINTED TOWN STAFF MEMBERS ARE UNAVAILABLE TO PARTICIPATE OR IF THE NUMBER OF TOWN REPRESENTATIVES ON THE COMMITTEE INCREASES IN THE FUTURE; 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 empowers the Town to adopt, amend, or repeal such ordinances and resolution as may be required for the proper governing of the Town; and

WHEREAS, the Town of Fort Myers Beach, Florida (the “Town”) has the opportunity to select two Town staff members to serve on the Lee County Disaster Advisory Council “DAC” (the “Committee”) to represent the Town and the Town of Fort Myers Beach Utilities Department; and

WHEREAS, the Town Manager is seeking authorization to select and appoint Mark Ashton and Jason Freeman to the Committee and make future appointments as necessary due to the inability of either individual to participate or an increase in the number of individuals representing the Town on the Committee; and

WHEREAS, the Town Council finds and determines that it is in the best interest of the Town and its citizens to approve this Resolution.

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 appoints Jason Freeman and Mark Ashton, to serve on the Lee County Disaster Advisory Council.

Section 3. That the Town Manager is hereby authorized to select and appoint other town staff as needed to fill any vacancies or expanded representation of the Town on the Committee.

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 16th day of December 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 December 2024.

1. **Request:**

Meeting Date: December 16, 2024

Second Reading and Final Public Hearing of proposed Ordinance 24-34 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING A HOME RULE DEVELOPMENT AGREEMENT FOR PROPERTY LOCATED AT 3001 ESTERO BOULEVARD, 2943 ESTERO BOULEVARD, 2932 ESTERO BOULEVARD, 211 DONORA BOULEVARD, FORT MYERS BEACH, FL, STRAP NOS. 29-46-24-W1-00145.1000, 29-46-24-W1-00145.5000, 30-46-24-W2-00001.0000, 29-46-24-W1-0120A.0010 AND OWNED BY SEAGATE FORT MYERS BEACH LLC, AS AUTHORIZED BY SECTION 2-100 OF THE TOWN'S LAND DEVELOPMENT CODE AND IN COMPLIANCE WITH THE PROCEDURES FOR APPLICATION AND APPROVAL OF DEVELOPMENT AGREEMENTS WITH DEVIATIONS SET FORTH IN RESOLUTION NUMBER 24-73 FOR THE PURPOSE OF REDEVELOPMENT OF THE PROPERTY PREVIOUSLY KNOWN AS THE RED COCONUT RV PARK; PROVIDING FOR TERMS AND CONDITIONS INCLUDING BUT NOT LIMITED TO THE IDENTIFICATION OF THE PROPOSED USE OF THE PROPERTY, A FINDING OF CONSISTENCY WITH THE TOWN OF FORT MYERS BEACH COMPREHENSIVE PLAN, COMMITMENTS AND DEVELOPMENT OBLIGATIONS, DEVIATIONS NEEDED FOR DEVELOPMENT; 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 decides approval or denial of development agreement requests.

What the action accomplishes:

The Town Council can deny or approve the adoption of development agreements.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Development Agreement

4. **Submitter of Information:**

Sarah Propst, Community
Development, Planning
Manager

5. **Background:**

Seagate Fort Myers Beach, LLC, is requesting approval of a home rule development agreement (DA) for the redevelopment of property previously known as the Red Coconut RV Park. This property is approximately 10.73 acres in size and 9.43 acres of land is zoned Village and 1.3 acres of the land is zoned EC. Only the 9.43 acres are subject to the proposed home rule development agreement. The Red Coconut RV Park was previously developed with a density of 27 RVs or mobile homes per acre and included residential units, transient guest spaces, recreational amenities, and commercial uses, including restaurants and a nail salon, most recently.

A first reading of the ordinance was held on October 28, 2024 with notice of a second reading on November 4, 2024. However, due to statutory advertising deadlines, publication of the required advertising was not possible. Consequently, an advertisement was published for second reading of the ordinance on the 5th day of November 2024, in excess of 10 days before the final public hearing on November 18, 2024.

Attachments:

1. Ord. 24-34 Red Coconut/Seagate 2nd Hearing
2. Development Agreement with Exhibits 12.6.24

3. Exhibit A to Staff Report
4. Exhibit B to Staff Report - Resolution 24-73, Development Agreement with Deviations Procedures
5. Amended Development Agreement Language
6. Applicant's Report
7. Project Narrative
8. Schedule of Deviations
9. Development Agreement - ALL STRIKETHRU 12.6.24
10. Completed Application
11. Business Impact Estimate 10-22-24 mr
12. Notice of Public Hearing Seagate Development Agreement Ordinance 10-20-2024 NS
13. Affidavit of Publication Seagate
14. Staff Report 2nd TC rev NS

Financial Impact:

Unknown

6. Alternative Action

7. Management Recommendations:

Ask questions of the applicant and approve or not approve the development agreement.

8. Recommended Approval:

Sarah Propst, Community Development, Planning Manager
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 12/5/2024
Approved - 12/8/2024
Approved - 12/9/2024
Final Approval - 12/9/2024

ORDINANCE NO. 24-34

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING A HOME RULE DEVELOPMENT AGREEMENT FOR PROPERTY LOCATED AT 3001 ESTERO BOULEVARD, 2943 ESTERO BOULEVARD, 2932 ESTERO BOULEVARD, 211 DONORA BOULEVARD, FORT MYERS BEACH, FL, STRAP NOS. 29-46-24-W1-00145.1000, 29-46-24-W1-00145.5000, 30-46-24-W2-00001.0000, 29-46-24-W1-0120A.0010 AND OWNED BY SEAGATE FORT MYERS BEACH LLC, AS AUTHORIZED BY SECTION 2-100 OF THE TOWN'S LAND DEVELOPMENT CODE AND IN COMPLIANCE WITH THE PROCEDURES FOR APPLICATION AND APPROVAL OF DEVELOPMENT AGREEMENTS WITH DEVIATIONS SET FORTH IN RESOLUTION NUMBER 24-73 FOR THE PURPOSE OF REDEVELOPMENT OF THE PROPERTY PREVIOUSLY KNOWN AS THE RED COCONUT RV PARK; PROVIDING FOR TERMS AND CONDITIONS INCLUDING BUT NOT LIMITED TO THE IDENTIFICATION OF THE PROPOSED USE OF THE PROPERTY, A FINDING OF CONSISTENCY WITH THE TOWN OF FORT MYERS BEACH COMPREHENSIVE PLAN, COMMITMENTS AND DEVELOPMENT OBLIGATIONS, DEVIATIONS NEEDED FOR DEVELOPMENT; 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, Seagate Fort Myers Beach, LLC (the "Developer") wishes to develop certain parcels of land in the Town of Fort Myers Beach, as more explicitly described in the Home Rule Development Agreement, attached hereto as Exhibit "A" (the "Development Agreement"); and

WHEREAS, the Developer presented the Development Agreement to the Town's Local Planning Agency ("LPA") at the October 22, 2024 meeting and the LPA voted to recommend denial of the Development Agreement; and

WHEREAS, the Town Council held its first reading and public hearing on the Development Agreement at its October 28, 2024 Town Council meeting, during which the Town Council determined that the Development Agreement and the accompanying application **satisfied** the guidelines and criteria set forth in Sections 2-100 and 2-96 of the Town's Code of Ordinances and the procedures for approval of development agreements in Exhibit A to Resolution Number 24-73; and

WHEREAS, on December 16, 2024, the Town Council held the second and final reading and public hearing on the Development Agreement; and

WHEREAS, a Business Impact Estimate was prepared and posted on the Town’s website on the 30th day of October, 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 News-Press on the 22nd day of November, 2024, which is 10 days prior to the final reading of the proposed Ordinance as required by Section 166.041, Florida Statutes; and

WHEREAS, the Town Council determined that adoption of the ordinance as provided herein is in the best interests of the health, safety, welfare, and morals 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 are hereby incorporated herein by reference and adopted as the legislative and administrative findings of the Town Council.

Section 2. The Town Council hereby formally approves the Development Agreement attached hereto as Exhibit “A” and authorizes the Developer to proceed with the development as further outlined therein.

Section 3. The Town Clerk is directed to record a copy of the Development Agreement in the Official Records of Lee County, Florida.

Section 4. 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 Safford, 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.

HOME RULE DEVELOPMENT AGREEMENT (Draft 12-16-24)

THIS DEVELOPMENT AGREEMENT (hereinafter, "Agreement" or "Development Agreement") is entered into this ____ day of _____ 20____, by and between **THE TOWN OF FORT MYERS BEACH, FLORIDA**, a municipality of the State of Florida (hereinafter "Town"), having its principal office at 2731 Oak Street, Fort Myers Beach, FL, and **SEAGATE FORT MYERS BEACH, LLC**, a Florida limited liability company (hereinafter "Developer"), whose address is 9921 Interstate Commerce Drive, Fort Myers, FL.

WHEREAS, Section 2-100 of the Town's Land Development Code, authorizes it to enter into a home rule development agreement pursuant to article VIII, § 1(f), of the Constitution of the State of Florida and F.S. chs. 163, 166 and 380, and specifically recognized by the State Legislature in F.S. § 163.3220(5); and

WHEREAS, the Developer has requested approval of this Development Agreement pursuant to Section 2-96 of the Town's Land Development Code and Resolution 24-73; and

WHEREAS, Seagate owns approximately 10.72 +/- acres of land located within the Town, said property, of which 9.43 acres are located landward of the 1978 Coastal Construction Control Line (hereinafter "CCCL"), being legally described in Exhibit "A" attached hereto (hereinafter, "the Property"); and

WHEREAS, the Town and the Developer desire to enter into this Agreement to provide for the approval and a comprehensive understanding of the development parameters consistent with the Town's Land Development Code and Comprehensive Plan as set forth herein; and

WHEREAS, a public hearing was held before the Town of Fort Myers Beach Local Planning Agency("LPA") on the 22nd day of October, 2024, and the LPA reviewed the request and by a vote of 4 to 2 recommended denial_ to the Town Council; and

WHEREAS, the Town conducted three public hearings on the 28th day of October, 2024, the 2nd day of December and the 16th day of December, 2024, prior to entering into this Agreement, both of which were properly noticed on the Town's website and by mailing to affected property owners within a 500 foot radius of the boundaries of the real property at the addresses of such property owners found on the Lee County Property Appraiser's website prior to the first public hearings; and

WHEREAS, the Town Council has determined after consideration of the recommendation of the LPA, Town staff, and following two public hearings, which provided an opportunity for comment, testimony and evidence from the Developer, Town staff, and the public, the Town Council has determined that the Development Agreement is reasonable and not arbitrary and in the best interest of the Town and the residents of the Town Fort Myers Beach.

NOW, THEREFORE, in consideration of the covenants and conditions contained herein, for the purposes set forth in Section 2-100 and 2-96 of the Town's Land Development Code, the benefits to accrue to each party, and for other good and valuable consideration, the receipt of which the parties hereby acknowledge, the Town and the Developer agree as follows:

1. Recitals. The foregoing recitations are true and correct and are incorporated herein by reference. All exhibits to this Agreement are deemed a part hereof.

2. Property Subject to this Agreement. The real property described in Exhibit "A" is subject to the terms and conditions of this Agreement ("Property").

3. Ownership. Developer represents that it is the legal and equitable owner, having an interest in the Property pursuant to Instrument No.: 2023000309279 recorded as Doc Type D, Pages 7 on September 20, 2023 in the Official Records of Lee County, Florida, and as such may lawfully enter into this Agreement. The Town is in receipt of a title opinion from a Florida attorney upon which it can rely for the purpose of confirmation of the Developer's ownership representation.

4. Proposed Development and Use of the Property. The proposed Uses and development of the Property will be consistent with the following:

A. Residential Density. A maximum of 141 residential units to be developed as 4 single and 137 multi-family units on the North side of Estero Blvd., as shown on Page 2 of the Conceptual Plans and Renderings, dated the 5th day of December, 2024 and attached as Exhibit B. Density from other properties owned by the Developer within the Town may be transferred for 8 additional single family units (to be located north of proposed Seahorse Street) and up to a maximum of 149 units.

B. Vehicular Access. The residential multi-family units will be accessible through a maximum of 2 ingress/egress points from Donora Boulevard and 1 ingress/egress from Estero Boulevard. Additional separate delivery, service, and solid waste pick up access points will be collocated on Donora Boulevard within the building footprint. 4 single family residential units will be accessed through a new, non-gated, east/west local street extending from Donora Boulevard.

The Developer will work with Lee County to implement turn lanes if possible on Estero Boulevard to access the proposed development and Donora Boulevard.

C. Rental Restrictions. Rental of any permitted dwelling unit will be limited to a minimum stay of thirty days and a total of three rental

periods per calendar year.

- D. Parking. Parking for the residential uses and commercial restaurant will be provided consistent with the regulations at the time of building permit. An additional 75 membership spaces will be provided to support the beach club.
- E. Commercial Area. Up to 10,000 square feet of commercial uses as identified in the Village Zoning Category. The commercial uses will be open to the public, including but not limited to commercial personal services, such as hair and nail salons, a laundry service, daycares, a small-scale convenience retail, restaurants, coffee shops and other uses as permitted in the underlying zoning district.
- F. Beach Club. A beach club not to exceed 29,000 square feet of enclosed air conditioned space with private recreational amenities and a private membership organization. At least 25% of the memberships in the beach club will be available to non-residents of the Property. The beach club will provide the following uses and amenities: pool and pool deck, event space for members and their guests only (including conference center, wedding venue, and meeting space and similar uses), umbrellas, chairs, cabanas, and a restaurant with consumption on premises (indoor and outdoor) and terrace.
- G. Parks and Access Areas. All parks and access areas will be maintained by the Developer or an association of property owners. A minimum of three (3) parks and access areas upon which the Town will be provided an easement for public use and located as follows (and substantially as shown in Exhibit C):
 - (1) Matanzas Pass Preserve Park. To provide public recreation and access to Matanzas Pass Preserve to be coordinated with Lee County and the Town; and
 - (2) a linear park providing pedestrian and cyclist access from Donora Blvd. to Estero Blvd. through the property a minimum of 20ft wide at all points with a minimum of 8ft wide multi-use path. The Developer will coordinate with the Town regarding directional and safety signage; and
 - (3) The area west of the private beach club and not utilized for public and private vehicular access will be improved to include park like features; such as, bike racks, picnic tables, shade structures and/or landscaping, subject to permitting requirements by the Town and the Florida Department of Environmental Protection. An enhanced beach access to include: a 10ft wide pedestrian-only beach access between Estero Blvd., and the beach.

The public beach access may not be located with the existing private platted beach access.

The Developer will limit the paved access to the minimum access and/or turn around required by Lee County and the Town of Fort Myers Beach Fire Department.

The Developer will provide ~~temporary~~ public bathrooms accessible from the area west of the private beach club and public water fountain (to include pet hydration) subject to permitting requirements by the Town of Fort Myers Beach, Federal Emergency Management Agency, and Florida Department of Environmental Protection; and

(4) 2943 Estero Blvd. to provide a public recreation park.

The dedication of the parks and access areas will be by easement acceptable to the Town Attorney, together with evidence of title in a form acceptable to the Town Attorney prepared by an attorney who is a member of the Florida Bar, or a title company licensed in Florida, all depicting who is the owner in fee simple of the land subject to the conveyance or dedication, and the holders of any other interest or liens affecting said land.

- H. Height. The maximum height of the tallest residential multi-family tower will not exceed a total of 15 stories over 2 stories of structured parking and 235 feet above base flood elevation. Additional height limitations range from 9 to 14 stories over 2 stories of structured parking and must be in substantial compliance with Page 2 of the Conceptual Plans and Renderings, dated the 5th day of December, 2024 and attached as Exhibit B.
- I. Area. The combined square footage of all the structures within this development, other than the detached single-family residences and the covered motor vehicle parking structures, will not exceed 616,156.2 sf which is the equivalent of a FAR of 1.5.
- J. Mixed Use Structure Setbacks. 10 ft setbacks from all street right-of-ways and 10ft rear setbacks along the proposed Linear Park. The beach-facing property line for the beach club may be built to the 1978 CCCL.
- K. Single Family Lot Setbacks. 10 ft setbacks from the street right-of-way, 20 ft rear setback along the Matanzas Pass Preserve property line for the principal structure and 5 ft rear setback for accessory structures and 5 ft side setbacks.
- L. Other Permitted Uses. Other permitted uses of the land will be those allowed in the underlying zoning district unless otherwise specifically provided herein.

- M. Internal Traffic Circulation. Pedestrian travel is identified in the conceptual plan, a copy of which is attached as Exhibit B on Sheet 3 of the Conceptual Plans and Renderings dated the 5th of December 2024, which shows the proposed layout, streets, lots, green areas, bikeways, parks, public facilities, and other such amenities.
- N. Environmentally Sensitive Land. There are no environmentally sensitive lands on-site.
- O. Threatened and Endangered Species. There are no threatened or endangered species on-site.
- P. Conflicts. Any conflict between the matters set forth in this paragraph and paragraph 9 and other paragraphs in this Agreement will be resolved in favor of the terms and conditions in this Paragraph and paragraph 9. Moreover, this Agreement identifies known instances in which the proposed redevelopment conflicts with the Town's existing Land Development Code. Any ambiguity with respect to whether this Development Agreement or an ordinance is to control will be interpreted to favor the ordinance. Failure of this Development Agreement to address a particular permit condition, term or restriction will not relieve the owner or developer of the necessity of complying with the laws governing said permitting requirements, conditions, terms or restriction. Any matter or action required under existing ordinances of the town will not be otherwise amended, modified or waived, unless such modification, amendment or waiver is expressly provided for in the Development Agreement with specific reference to the Code provision so waived, modified or amended ("Deviations").

5. Public Facilities. The following public facilities will serve the Proposed Development on the Property:

A. Potable Water:

Potable water will be supplied by Town of Fort Myers Beach and is presently adequate to serve the Proposed Development. Notwithstanding the foregoing, nothing in this Agreement will be interpreted nor is it the intent of the parties to create a reservation of capacity. Capacity for the project will be based on its availability at the time of submission of a Development Order. The Developer is responsible for improvements to the utility system required to service the proposed development.

B. Sanitary Sewer:

Wastewater services will be provided solely by Lee County, which are presently adequate to serve the Proposed Development. Notwithstanding the foregoing, nothing in this Agreement will be interpreted nor is it the intent of the parties to create a reservation of capacity. Capacity for the project will be based on availability at the time of submission of a Development Order. The Developer is responsible for improvements to the utility system required to service the proposed development.

C. Solid Waste:

Developer will coordinate solid waste services with Lee County, the Town, or a third party service provider, adequate to serve the Proposed Development, prior to issuance of the development order. Notwithstanding the foregoing, this does not create a reservation of capacity. Capacity for the project will be based on availability at the time of submission of a building permit.

D. Drainage:

Drainage will be in accordance with the applicable environmental resource permit ("ERP") to be issued by the South Florida Water Management District ("SFWMD") for the Property. Prior to issuance of the development order, if applicable, Developer will provide plans related to storm water run-off into the Town's system to the Town. The Developer is responsible for improvements to the drainage system required to service the proposed development.

E. Fire and Rescue

Fire control and rescue services will be provided by the Fort Myers Beach Fire Control District, and Emergency Medical Services will be provided by Lee County Emergency Medical Services. It is the responsibility of the developer to verify the adequacy of service available from the designated entities at the time of development order approval.

F. Transportation

Developer agrees to assist with installation

and maintenance of a transit shelter and will coordinate the availability of bus service and associated infrastructure with Lee Tran and Lee County School District prior to issuance of development order.

G. Public Schools.

Developer will provide a letter of capacity from Lee County School District prior to issuance of development order. Impact fees may be required.

H. Recreation

Developer will record an easement acceptable to the Town Attorney dedicating access to the parks for public usage.

In the event new or additional facilities are needed to serve the project, the Developer will bear the burden of the cost of such facilities to be constructed and provide a schedule to the Town to assure that the public facilities and services will be available concurrent with the impact of the development project.

6. Impact Fees. Impact fees, when adopted by Town Ordinance for all new development and change in use, will be calculated at time of issuance of a development order and payment will be required prior to building permit approval. Offsite impacts will be evaluated by the Town at the time of development order application.

7. Development Permits Needed for Proposed Development. A list of all known governmental permits needed for the Proposed Development is set forth below:

Town of Fort Myers Beach Development Order
Town of Fort Myers Beach Building Permit
South Florida Water Management District Environmental Resource Permit
South Florida Water Management District Water Use Permit (dewatering)
South Florida Water Management District Water Use Permit (irrigation)
FDEP Wastewater Permit
LCDOH Potable Water Permit

The failure of this Agreement to address a particular permit, condition, term or restriction will not relieve the Developer of the necessity of complying with the law governing said permitting requirements, conditions, terms, or restrictions. The Developer will be responsible at its sole cost for obtaining any required approval and will not in any manner obligate the Town or any other governmental agency to grant other required permit approvals. Any reliance on this Agreement or expenditures in pursuance of its terms or any rights accruing to the Developer will not vest any development right in the Developer or the project to a continuation of this Agreement.

8. Developer Commitments and Obligations. For and in consideration of

the benefits received pursuant to this Agreement, the Developer agrees to the following commitments, obligations and associated public benefits; which are deemed to be in the public interest:

- a. The Developer will not utilize the post disaster build-back provisions for 27 dwelling units an acre;
- b. Project density will be limited to 15 dwelling units per acre for a total density of 141 dwelling units consistent with the Village zoning district;
- c. All permitted density of the gulf side parcels (at least 21 units) (south of Estero Boulevard) will be transferred to the bay side parcels (north of Estero Boulevard) (these units are already included in the 141 units identified in paragraph 4(A));
- d. Development of the bay side parcels (north of Estero Boulevard) will be limited to single family and multi-family residential, approved commercial uses and public parks;
- e. Development of the gulf side parcels (south of Estero Boulevard) will be limited to a beach club that provides a private recreational facility and private membership organization significantly reducing the intensity of the previous development and potential disruption to the surrounding neighborhood than the permitted uses of the Village zoning district;
- f. Increase the view corridor to the Gulf from the required 50 feet to 240 feet;
- g. Provide a minimum 120 foot wide view corridor to Matanzas Pass Preserve;
- h. Establish an enhanced beach access with 10 foot pedestrian beach access point, consistent with Exhibit Cat no cost to the Town and record a perpetual public access easement;
- i. A private elevated pedestrian crossover above Estero Boulevard will be provided for future residents and guests to eliminate negative impacts to traffic flow;
- j. Establish a public park adjacent to Matanzas Pass Preserve, consistent with Exhibit C at no cost to the Town and record a perpetual public access easement. The Developer will work with Town Staff to establish appropriate programming, infrastructure, and a maximum of 2 public parking spaces for this park;

- k. Establish a public park adjacent to the western property boundary and Estero Boulevard that incorporates the origination point for the linear park with multi-use path, consistent with Exhibit C at no cost to the Town and record a perpetual public access easement. The Developer will work with Town Staff to establish appropriate programming and infrastructure for this park;
- l. Implement the Hidden Paths infrastructure within the bay side property through:
 - a. A linear park interconnecting Estero Boulevard and Donora Boulevard;
 - b. An east/west pedestrian and bicycle access connecting Donora Boulevard to the western property boundary;
 - c. Portions of the linear park and pedestrian/bicycle access may occur within the same easement;
 - d. Pedestrian connectivity to Matanzas Pass Preserve through the proposed park;
 - e. Pedestrian connectivity to the Gulf through the proposed park;
 - f. Site specific wayfinding signage along Estero and Donora Boulevards adjacent to the project limits for the linear park, beach access and Matanzas Pass access areas;
 - g. 4 informational and education panels regarding Matanzas Pass resources will be designed with Town Staff and erected prior to Temporary Certificate of Occupancy.
- m. Maintain a sidewalk along the north side of Estero Boulevard and provide a sidewalk along the south side of Estero Boulevard;
- n. Provide a sidewalk along Donora Boulevard;
- o. Along Estero and Donora Boulevards enhanced streetscaping with shade trees will be provided to improve the visual aesthetic for vehicular and pedestrian traffic;
- p. Required landscaping for the development will incorporate Florida Friendly plantings that do not require irrigation;
- q. Vehicular access to the property from Estero Boulevard will be limited to a single access for the north side and a single access for the south side to maintain traffic flow on Estero Boulevard;
- r. The residential multi-family units will be accessible through a maximum of 2 ingress/egress points from Donora Boulevard and 1 ingress/egress from Estero Boulevard. Additional separate delivery,

service, and solid waste pick up access points will be collocated on Donora Boulevard within the building footprint. 4 single family residential units will be accessed through a new east/west local street extending from Donora Boulevard;

- s. One Public Art installation (i.e. sculpture; mural) viewable from Donora Boulevard and location identified during the Development Order process will be installed prior to Certificate of Occupancy.

9. Deviations. The following deviations are granted pursuant to this Agreement, in compliance with the Comprehensive Plan, and found to achieve the objectives of the proposed development, benefit the public interest, and preserve and promote the public health, safety and welfare:

- a. Deviation from LDC Section 34-693(h): Allowable height for the multi-family residential towers of the mixed use structure is increased to 15 stories over 2 stories of structured parking and 235 feet above base flood elevation on the North side of Estero Boulevard; and
- b. Deviation from LDC Section 34-693(e), (f), (g): Project buildings will not be subject to the “build to line” and “building frontage” along Estero and Donora Boulevards, providing a minimum 10 foot front setback and the rear setback will be reduced to 10 for the multi-family structure and 5 feet for accessory structures associated with the single family structures; and
- c. Deviation from LDC Section 34-693(m): The Developer is granted a deviation from the Commercial Design Standards and approval is granted for the architectural design depicted in the Conceptual Plans and Renderings attached hereto as “Exhibit B” And Pattern Book attached hereto as “Exhibit D”; and
- d. Deviation from LDC Section 34-693(c)(1) and (2): The Developer is granted a deviation from the street layout and approval is granted for the limited curb cuts and internal street layout depicted in the Master Conceptual Plans and Renderings attached hereto as “Exhibit B”; and
- e. Deviation from LDC Section 34-692(3)a.1.: The Developer is granted a deviation from the elements of Traditional Neighborhood Design that require interconnected streets, porches or balconies at the front of dwellings, primary entrance visibility from the street and car access from the rear to allow single family units, a mixed use building of multi-family and commercial restaurant and a beach club consistent with the Conceptual Plans and Renderings attached hereto as “Exhibit B”; and

- f. Deviation from LDC Section 34-693(i): Eliminate covered parking and parking decks from the calculation of Floor Area Ratio and increasing the maximum FAR to 1.5 which is equal to 616,156.2 square feet; and
- g. Deviation from LDC Section 34-693(l): Eliminate required commercial space to separate parking under a building and vehicular connection to a secondary street; and
- h. Deviation from LDC Section 34-631(b)(3): Eliminate the square footage and screening requirements of mechanical structure appurtenances located above 11 stories.

10. Consistency with the Comprehensive Plan. The Proposed Development outlined in this Agreement is consistent with the Town of Fort Myers Beach Comprehensive Plan and Land Development Code. The deviations approved as part of this Agreement are necessary for the zoning district or land use plan designations on the Property that is the subject of this Agreement. The Town's Comprehensive Plan allows the proposed project to be more than 2 stories above flood elevation in height as a matter of right. The Town's Comprehensive Plan also allows the height to be increased as provided in Policy 4-C-4 in redevelopment zoning districts (i.e Village zoning district) and in the event the increase is approved as part of a planned development rezoning. This Agreement has been reviewed and approved by the Town in a manner consistent with the procedures required of a planned development rezoning and this approval and procedure is deemed tantamount to and commensurate to a planned development for purposes of determining consistency with the Comprehensive Plan as outlined in Resolution 24-73. Notwithstanding the foregoing, the deviations identified in paragraph 10 are approved.

11. Existing Ordinances. Any matter or thing required to be performed under existing ordinances of the Town will not be otherwise amended, modified or waived, except as such modification, amendment or waiver is expressly provided for in herein.

12. Post Development Agreement Requirements. Prior to the issuance of any building permits being issued for the development the following must occur:

- a. All existing and proposed utilities and the manner in which existing utilities will be extended to the site and/or expanded for the use of the development including water, sewer, gas, electricity, cable television, and other utilities will have been approved by the Town; and
- b. The proposed drainage plan for the proposed project will have been approved by the South Florida Water Management District. If an interconnection is required to the Town's stormwater management system, approval by the Town will be necessary; and

- c. The proposed grading plan and elevation requirements of the town, including, but not limited to those related to the National Flood Insurance Program as applicable to the town will have been approved by the town; and
- d. The traffic impact and parking plans for the proposed project will have been approved by the town; and
- e. All other town requirements necessary for the initial building permits to build the proposed project on the Land.
- f. The Town will not have any liability whatsoever for any expenses or other damages that may be incurred as a result of denial of the Development Agreement or for denial of building permits due to the failure to meet the Town's requirements as to any Post-Development Agreement requirements..

13. Amendment and Termination.

- A. This Agreement may be amended or terminated with the Parties' mutual consent, in writing signed by both Parties.
- B. This Agreement may be amended administratively by Town staff and the Developer without the need for approval by Town Council to provide for changes to the site plan and/or the Conceptual Plans provided such changes do not include increased building intensity, density, increased height, reduction in open space, reduction in public benefits. Substantial Deviations from the approved Conceptual Plans will require approval by Town Council. Substantial Deviations include but are not limited to, moving the residential towers to an alternative location on-site.
- C. At Developer's option, Developer may terminate this Agreement at any time prior to the issuance by the Town of a building permit for any portion of the Proposed Development of the Property. Notwithstanding the foregoing, in the event of termination, Developer will not leave any improvements in an unsafe condition.

14. Notices. All notices required or permitted under this Agreement will be in writing and will be mailed by certified mail, return receipt requested to the following addresses, or to such other person or address as any Party may designate from time to time in writing:

If to the Developer: Matt Price
 Seagate Fort Myers Beach, LLC
 9221 Interstate Commerce Drive
 Fort Myers, FL 33913

with a copy to: Tim Byal
Seagate Fort Myers Beach, LLC
9221 Interstate Commerce Drive
Fort Myers, FL 33913

If to the Town: Town Manager

with a copy to: Town Attorney

15. Remedies. Any material breach of this Agreement may be enforced by either party as against the other by appropriate action in law or equity filed in a court of competent jurisdiction; provided, however, no such action may be brought until the defaulting party has been given notice and ninety (90) days in which to cure the default. If the default cannot reasonably be cured within the ninety (90) day period, such period will be extended if the cure is commenced within such ninety (90) days and the defaulting party is proceeding with due diligence for such period of time reasonably required to complete such cure.

16. Governing Law. This Agreement will be construed and interpreted according to the laws of the State of Florida, and venue with respect to any litigation between the Parties related to this Agreement will be exclusively in Lee County, Florida.

17. Enforcement. In the event the Developer, upon approval of the Development Agreement, fails to comply with the terms of this Agreement, the Town may bring an action in a court of law with competent jurisdiction to protect its rights and interests as provided herein. All associated reasonable costs and attorney's fees will be reimbursed to the Town if an action at law is necessary regardless of whether the Town is the prevailing party thereunder. In no event will the Town be liable for payment of the Developer's attorney fees.

18. Post Development Agreement Liability. The parties acknowledge that the Town will not have any liability for any expenses or other damages that may be incurred as a result of denial of building permits due to the failure of the proposed development to meet the Town's requirements as to any Post-Development Agreement requirements.

19. Severability. If any part, term, or provision of this Agreement is held to be illegal, void, or unenforceable, the remaining portions or provisions of this Agreement will not be affected or impaired, each remaining provision will remain in full force and effect, and the rights and obligations of the Parties will be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

20. Entire Agreement; Termination of Prior Agreements. This Agreement embodies the whole agreement of the Parties. There are no promises, terms,

conditions, or obligations other than those contained herein; and this Agreement will supersede all previous communications, representations, or agreements, either verbal or written, regarding the Proposed Development of the Property between the Parties.

21. Covenants Running with the Land and Successors and Assigns. The obligations imposed and entitlements created pursuant to this Agreement will run with the property and bind Seagate's successors and assigns to the covenants as set forth in this Agreement and will be enforceable by and against the Parties hereto, their personal representatives, heirs, successors, grantees, and assigns. The obligations of the Developer may be assigned to one or more successor developers or, property owners associations, and the Developer will thereafter be relieved of all obligations hereunder.

22. Effective Date and Duration. This Agreement will become effective upon full execution by both Parties and recording of the Agreement in the Public Records of Lee County pursuant to paragraph 23 below. The Developer must apply for a development order for at least a portion of the development contemplated herein within five (5) years of the effective date. In the event no building permits are applied for by the Developer within five (5) years of the effective date, the Agreement will terminate. If requested by the Developer, the term of the Agreement may be extended at the sole discretion of the Town Council and a finding that the Developer is unable to fulfill its obligations due to circumstances beyond its control. The development of the project may proceed in phases in any sequence. Notwithstanding the provisions of this paragraph, unless terminated as provided herein, or pursuant to paragraph 13 above, the obligations imposed and entitlements created pursuant to this Agreement will run with the property will be enforceable by and against the Parties hereto, their personal representatives, heirs, successors, grantees, and assigns.

23. Recording of Agreement. This Agreement will be recorded by the Town in the Public Records of Lee County within fourteen (14) days of approval by the Town. The costs of recording this Agreement will be paid by the Developer.

24. Representation and Warranties. The parties make the following representations to each other as stated herein:

- A. The execution, delivery and performance of this Agreement by the Developer and a third party will not violate any law, or the terms of any agreement by which they are bound.
- B. The Town and Seagate have the power and authority to enter into this Agreement, and to perform the development as set forth herein, and all the documents have been duly authorized, executed, and delivered and the transactions contemplated herein have been duly authorized.
- C. This Agreement constitutes a valid and legally binding obligation of the Developer and the Town after independent investigation by both of the information contained herein and is enforceable in accordance with its terms.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year written below.

WITNESSES:

SEAGATE FORT MYERS BEACH, LLC, a
Florida limited liability company

Print Name: _____

Print Name _____

By: _____

Name: _____

Title: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2024, by _____, as _____ of Seagate Fort Myers, LLC, a Florida limited liability company, who is personally known to me or who produced _____ as identification.

Notary Public Signature

My Commission Expires:

Type/Print Notary Public Name

Commission No.: _____

**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

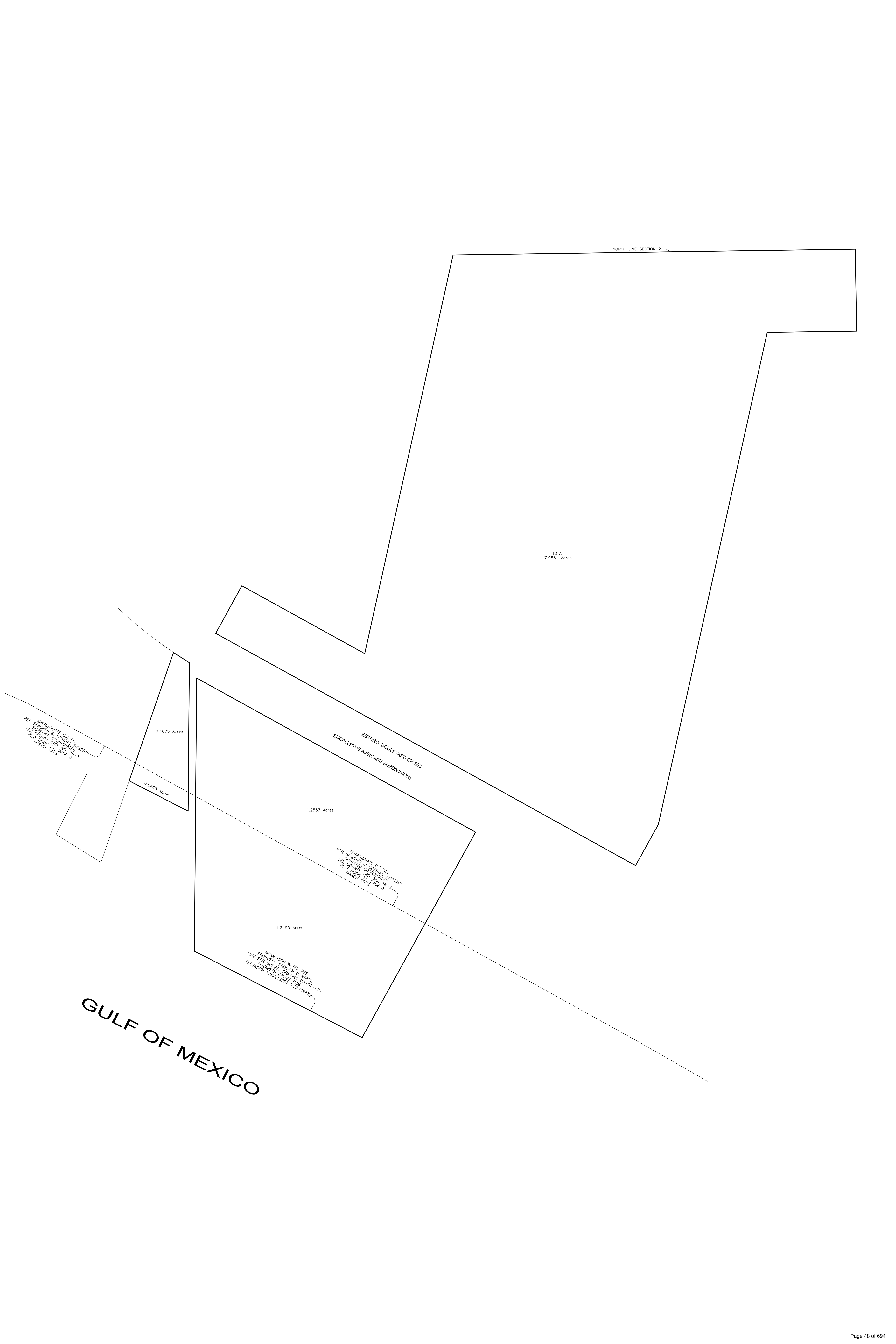
Exhibits:

- A. Legal Description and Sketch of the Property
- B. Conceptual Plans and Renderings dated the 4th day of September and 5th day of December, 2024 (16_Pages)
- C. Public Easement Overlay dated the 16th day of September, 2024 (1 Page)
- D. Pattern Book dated the 4th day of September, 2024 (6 Pages)

Exhibit A

Legal Description and Sketch of the Property:

DRAFT



NORTH LINE SECTION 29

TOTAL
7.9861 Acres

0.1875 Acres

0.0465 Acres

1.2557 Acres

1.2490 Acres

ESTERO BOULEVARD CR-685
EUCALPTUS AVE (CASE SUBDIVISION)

APPROXIMATE C.C.S.L.
BEACHES & COASTAL SYSTEMS
LET COUNTY COORDINATES
PLAY BOOK ORD. NO. 76-3
MARCH 1976 PAGE 3

MEAN HIGH WATER PER
PROPOSED EROSION CONTROL
LINE PER SURVEY DRAWING 02-021-01
ELIZABETH WINES
ELEVATION 1.50 (1929) 0.32 (1988)

GULF OF MEXICO

APPROXIMATE C.C.S.L.
BEACHES & COASTAL SYSTEMS
LET COUNTY COORDINATES
PLAY BOOK ORD. NO. 76-3
MARCH 1976 PAGE 3

Exhibit B

**Conceptual Plans and Renderings
September 4, 2024 and December 4, 2024**

DRAFT



SOLOMON CORDWELL BUENZ

3001 Estero Blvd, Fort Myers Beach, FL

STEARNS WEAVER MILLER





USE LEGEND & SUMMARY

- 1 North Building A**
 - 15 Story Residential Bldg
 - On 2 Story Parking Podium and Mech. Penthouse
 - 69 Units
- 2 South Building B**
 - 15 Story Residential Bldg
 - On 2 Story Parking Podium and Mech. Penthouse
 - 68 Units

Amenities included in both building

 - Lobby, Fitness & Spa Facilities, Conference Room, Social Lounges, Outdoor Pools, Spas and Cabanas, Pet Facilities, Resident Storage.
 - No consumption on premises
- 3 Bay Homes**
 - 4 Units
 - Single Family Homes
- 4 Private Beach Club**
 - 29,000 SF
 - Access from Estero Blvd & Private Overpass
 - Consumption on premises
 - 2 Stories over Parking Spaces and Valet Operation
 - Additional Parking Provided in Bldg A Parking Podium
- 5 Sunset Restaurant & Terrace (Public)**
 - 7,500 SF Restaurant / 2,500 SF Dining Terrace
 - Consumption on Premises
 - 1 Story over 1st Parking Podium Level
 - Required Parking within Bldg A Parking Podium
- 6 Pedestrian Overpass (Private)**
 - Estero Blvd. Feature Portal
 - Allows safe private access over Estero Blvd.
- 7 Linear Park & Feature Fountain**
 - Terraced landscaping to buffer podium height
 - Improves public experience and safety
- 8 Public Beach Park**
 - 90' to 120' View Corridors
 - Built & maintained by developer
 - Public beach access
- 9 Public Parks**
 - South outparcel location
 - Linkage to Kayak Path / Water Taxi
 - Walking / Bicycling / Dog Park



ACCESS LEGEND

-  Pedestrian Access Point
-  Public Pedestrian Circulation

USE LEGEND

- 1 Public Beach Park**
 - 90' to 120' View Corridors
 - Built & maintained by developer
 - Public beach access
- 2 Public Parks and Trails**
 - South outparcel location
 - Linkage to Kayak Path / Water Taxi
 - Walking / Bicycling / Dog Park
- 3 Linear Park and Feature Fountain**
 - Terraced landscaping to buffer podium height
 - Improves public experience and safety
- 4 Public Restaurant and Sunset Terrace**
 - 7,500 SF Restaurant / 2,500 SF Dining Terrace
 - Consumption on Premises
 - 1 Story over 1st Parking Podium Level
 - Required Parking within Bldg A Parking Podium
- 5 New Sidewalk and Landscaping**
 - Improved Landscaping along Donora Blvd
 - Linkage to Public Parks/Trails
 - Walking / Bicycling / Dog Park
- 6 School Bus Stop**
 - New School Bus Stop on Estero







NEW BEACH CLUB AND PUBLIC BEACH PARK FRAME THE OPEN VIEW TOWARD THE GULF

VIEW 1



WALKING ALONG ESTERO BLVD IS FRAMED BY THE TRADITIONAL ARCHITECTURE AND LANDSCAPING OF THE BEACH CLUB TO THE WEST AND THE NEW PUBLIC PARK AND FEATURE FOUNTAINS TO THE EAST

VIEW 2



THE NEW PUBLIC PARK EAST OF ESTERO PROVIDE PEDESTRIAN AND BICYCLE ACCESS TO THE MANTANZAS PARK PRESERVE

VIEW 3



AERIAL VIEW LOOKING NORTHWEST ALONG ESTERO BLVD

VIEW 4



THE ENTRY TO THE SUNSET RESTAURANT ALONG WITH THE TERRACED PARK AND WATER FEATURES CREATE AN ACTIVE URBAN STREETScape ALONG ESTERO BLVD

VIEW 5



**SUNSET VIEW FROM THE RESTAURANT LOOKING ACROSS THE LANDSCAPED TERRACES
STEPPING DOWN TO ESTERO BLVD**

VIEW 7



THE SCULPTURAL PEDESTRIAN BRIDGE ALLOWS SAFE ACCESS OVER ESTERO BLVD FOR RESIDENTS TO THE BEACH CLUB

VIEW 8



THE SCULPTED BEACH CLUB POOL WITH A VISTA OVERLOOKING THE GULF

VIEW 9



THE SUNSET TERRACE AT THE BEACH CLUB WITH ACCESS DOWN TO THE BEACH AND VIEWS OF THE GULF.

VIEW 10



THE WALK ALONG DONORA BLVD IS FRAMED BY THE TRADITIONAL ARCHITECTURE AND LANDSCAPING TO THE WEST, CONTINUING NORTH TOWARDS THE MATANZAS PARK PRESERVE

VIEW 11



THE NEW PUBLIC PARK EAST OF ESTERO PROVIDE PEDESTRIAN AND BICYCLE ACCESS TO ESTERO BLVD

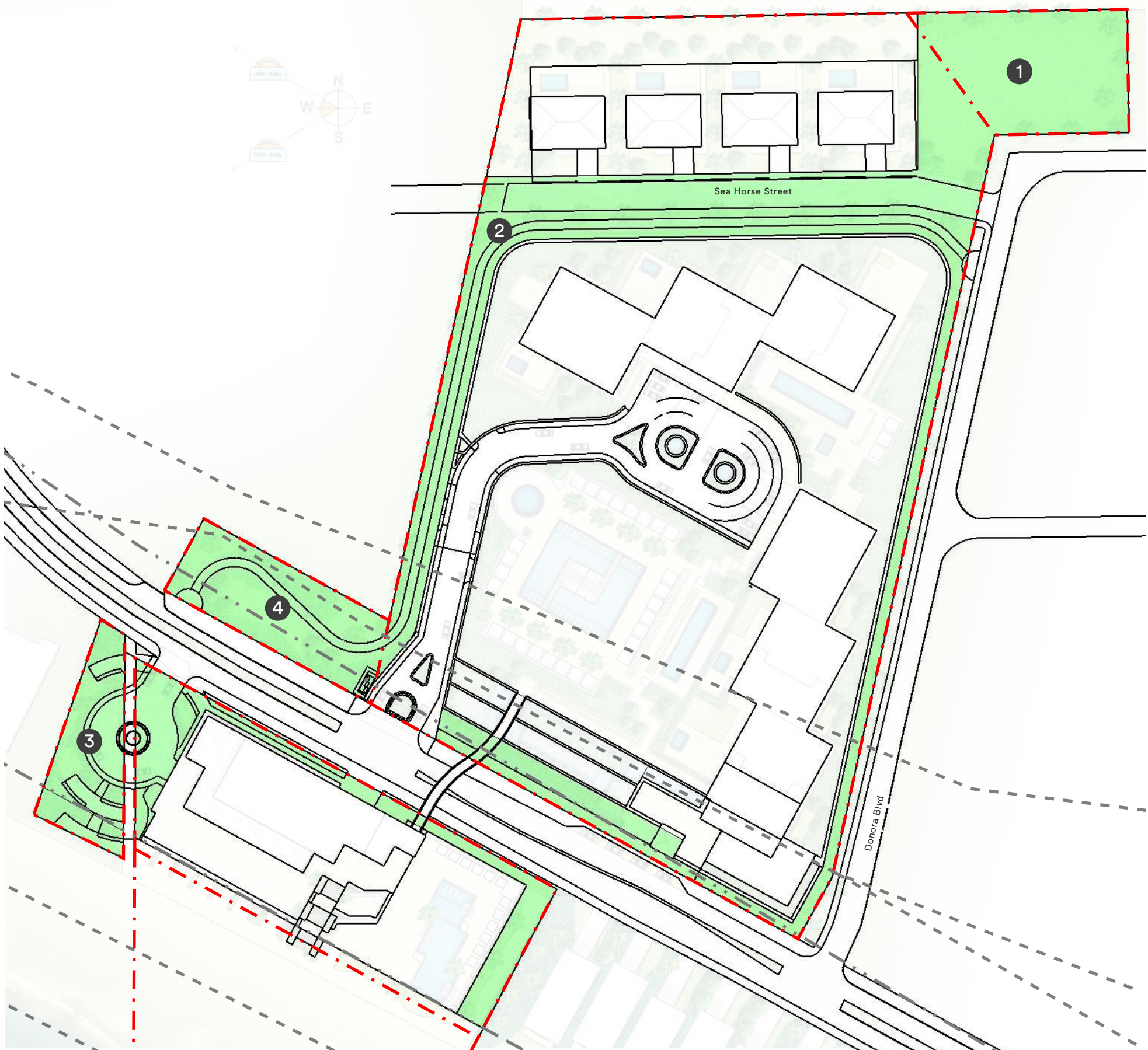
VIEW 12

Exhibit C

**Public Easement Overlay
September 16, 2024**

DRAFT

Exhibit C



Public Easement Area

Green shaded area represents the approximate area that will be included in the dedicated easement to the Town of Fort Myers Beach for public access and the following parks:

- 1 211 Donora Blvd. to provide public recreation and access to Matanzas Pass Preserve to be coordinated with Lee County
- 2 A linear park providing pedestrian and cyclist access from Donora Blvd. to Estero Blvd. through the property a minimum of 20ft wide at all points with a minimum of 8ft wide multi-use path.
- 3 A Beach Park to include a 10ft wide pedestrian-only beach access between Estero Blvd and the beach.
- 4 2943 Estero Blvd. to provide a public recreation park.

Exhibit D

**Pattern Book
September 4, 2024**

DRAFT



SOLOMON CORDWELL BUENZ

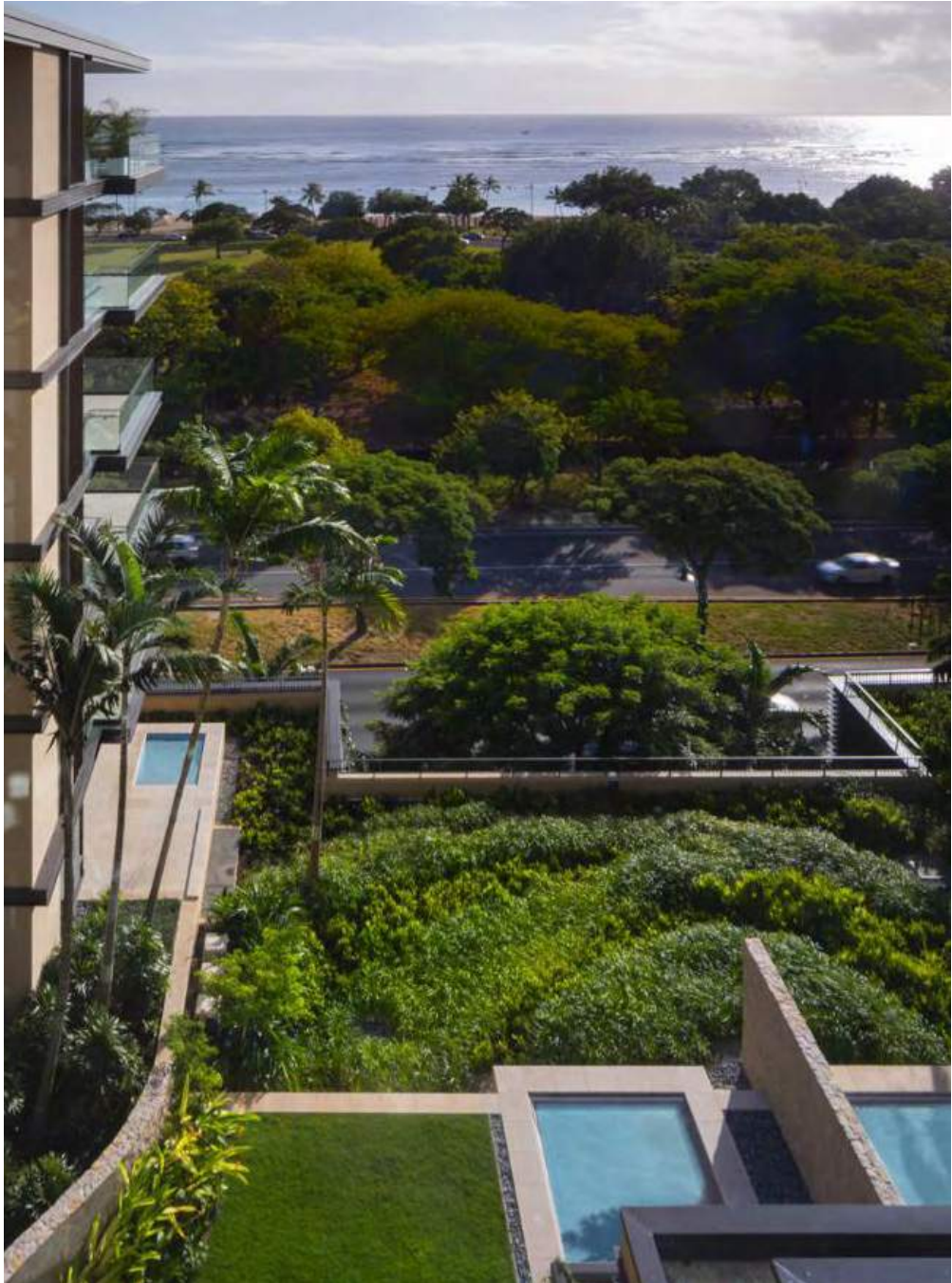
3001 Estero Blvd, Fort Myers Beach, FL

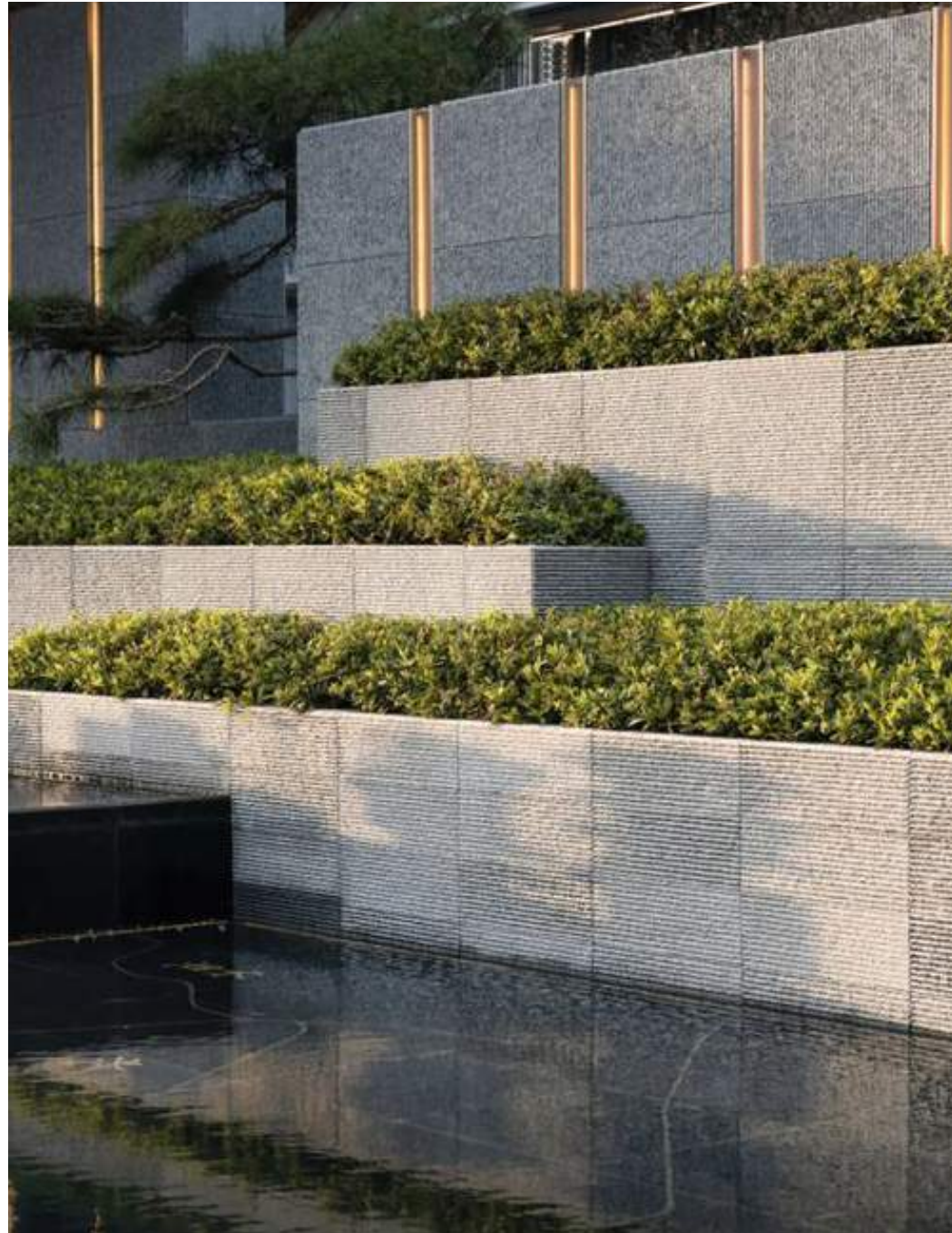
STEARNS WEAVER MILLER













Comprehensive Plan Objectives and Policies pertaining to Red Coconut

POLICY 3-A-5 Provide in the new Land Development Code a pre-approved option for the future redevelopment of the Red Coconut/Gulfview Colony properties consistent with the town’s vision of traditional neighborhoods — neighborhoods that recreate a small-town feel; which are pedestrian and bicycle friendly with an internal circulation system that makes it possible to walk or bicycle to schools and services without always using Estero Boulevard; which retain the psychological connection and views to both the Bay and the beach; and which offer a variety of housing types and opportunity for mixed uses.

POLICY 3-A-6 In accordance with Policies 4-E-1 and 4-F-2 of the Future Land Use Element, evaluate any alternative redevelopment concepts for any portion of the Gulfview Colony/ Red Coconut properties as to the following design principles:

- i. retains and/or creates water views through street layout, site design, and architectural design;
- ii. provides a variety of housing types rather than uniformity;
- iii. locates the more durable housing types and mix of uses along the Bay side of Estero Boulevard;
- iv. new streets create a highly connected network which includes mid-block paths or alleys;
- v. streets have sidewalks and street trees;
- vi. local streets are interconnected from Donora and Shell Mound through to the north.

POLICY 4-C-4 **BUILDING HEIGHTS:** The Land Development Code shall limit the height of new buildings under most conditions to two stories above flood elevation (exceptions may include the buildback situations (see Policies 4-D-1 and 4-E-1), and different heights may be applied to officially designated redevelopment areas such as Times Square, Red Coconut/Gulf View Colony, and Villa Santini Plaza). In those few cases where individual parcels of land are so surrounded by tall buildings on lots that are contiguous (or directly across a street) that this two-story height limit would be unreasonable, landowners may seek relief through the planned development rezoning process, which requires a public hearing and notification of adjacent property owners. The town will approve, modify, or deny such requests after evaluating the level of unfairness that would result from the specific circumstances and the degree the specific proposal conforms with all aspects of this comprehensive plan, including its land-use and design policies, pedestrian orientation, and natural resource criteria. Particular attention would be paid to any permanent view corridors to Gulf or Bay waters that could be provided in exchange for allowing a building to be taller than two stories. In each case, the town shall balance the public benefits of the height limit against other public benefits that would result from the specific proposal.

OBJECTIVE 4-F REDEVELOPMENT — Take positive steps to redevelop areas that are reaching obsolescence or beginning to show blight by designing and implementing public improvements near Times Square to spur private redevelopment there, by supporting the conversion of the Villa Santini Plaza into a pedestrian precinct, by providing an opportunity for landowners to

Exhibit A – Comp Plan and LDC discussion of Red Coconut

replace vulnerable mobile homes and recreational vehicles with permanent structures in the Gulfview Colony/Red Coconut area, and by providing building code relief for historic buildings.

POLICY 4-F-2 SPECIFIC REDEVELOPMENT PLANS: This comprehensive plan anticipates substantial redevelopment over the coming years. Specific concepts have been developed for three specific areas:

iii. Gulfview Colony/Red Coconut – This area is shown as “Mixed Residential” and “Boulevard” on the Future Land Use Map. If landowners wish to redevelop part or all of this property, the following concepts are encouraged, and shall form the basis for a preapproved redevelopment option in the Land Development Code:

- a. traditional neighborhood design emphasizing porches on the front; primary entrances visible from the street; and cars to the rear (except for on-street parking);
- b. detached houses or cottages (with optional accessory apartments) abutting existing single-family homes;
- c. low-rise townhouses or apartments allowed toward the center;
- d. walkable narrow streets with shade trees that double as view corridor to the Preserve and Gulf;
- e. substantial open space with views to be maintained from Estero Boulevard to the Gulf;
- f. mixed commercial and residential uses along the Bay side of Estero Boulevard;
- g. quiet internal street connections to the north and south;
- h. significantly reduced density from the existing level of 27 RV/mobile homes per acre at the Red Coconut to a maximum level of 15 dwelling units per acre;
- i. provision for a publicly acquired access point to the Matanzas Pass Preserve. This redevelopment plan is described in Community Design Policies 3-A-5 and 3-A-6.

Different redevelopment concepts that are consistent with this comprehensive plan may also be proposed for any of these areas through the planned development rezoning process.

Land Development Code Sections referring to Red Coconut redevelopment

Sec. 34-691. - Purpose.

The purpose of the Village district is to provide alternative futures for the Red Coconut and/or Gulf View Colony, either a continuation of the current land uses or their transformation into a traditional neighborhood pattern.

...(2) As an alternative, the Village district provides a second set of regulations that would allow the transformation of either of the existing mobile home and recreational vehicle parks into more permanent and durable housing types in a traditional neighborhood pattern, in accordance with the design concepts in the Fort Myers Beach Comprehensive Plan.

Sec. 34-692. - District map and applicability.

The area indicated on Figure 34-18 is the outer boundary of the Village district.

Exhibit A – Comp Plan and LDC discussion of Red Coconut

...(3) Transformation of existing mobile home and recreational vehicle parks. Policies 3-A-5, 3-A-6, and 4-F-2-iii of the Fort Myers Beach Comprehensive Plan have authorized a pre-approved redevelopment option for land in the Village district.

a. The following concepts are expected in this redevelopment process:

1. Traditional neighborhood design emphasizing streets that are interconnected and dwellings with porches or balconies on the front, primary entrances visible from the street, and cars to the rear (except for on-street parking);
2. Detached houses or cottages (with optional accessory apartments) abutting existing single-family homes;
3. Low-rise townhouses or apartments allowed elsewhere on the site;
4. Walkable narrow streets with shade trees that double as view corridors to the Preserve and Gulf;
5. Open space that allows views to be maintained from Estero Boulevard to the Gulf;
6. Mixed commercial and residential uses along the bay side of Estero Boulevard;
7. Quiet internal street connections to the north and south;
8. Significantly reduced density from the existing level of 27 RV/mobile homes per acre at the Red Coconut to a maximum level of 15 dwelling units per acre; and
9. A site design that accommodates a publicly acquired access point to the Matanzas Pass Preserve.

b. At the option of landowners in the Village district, a development order may be obtained to redevelop all or part of this property in accordance with the option described in more detail in § 34-693 below, and generally in accordance with either of the conceptual site plans found in the community design element of the Fort Myers Beach Comprehensive Plan. Until such time as this development order is obtained, the regulations in § 34-693 below shall have no effect.

RESOLUTION NUMBER 24-73

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

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, Sec. 2-96, “Applications for Development Agreements”, of the Town’s Land Development Code provides in pertinent part that:

No person shall have the right to apply for or receive development agreement approval, unless such right is so provided in an appropriate administrative code which establishes procedures for such applications. Should such an administrative code be adopted, then the town shall establish a schedule of fees and charges which shall be imposed for the filing and processing of each such application.

WHEREAS, after discussion during public meetings before the members of the Fort Myers Beach Land Planning Agency and the Fort Myers Beach Town Counsel, and after allowing input from the public, an administrative code providing for the procedures to be followed for the application for, and the approval of, development agreements with deviations has been decided upon; and

WHEREAS, the Town Council has determined it is in the best interest of the Town of Fort Myers Beach and its residents and business owners to adopt this Resolution.

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

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

Section 2. The Town Council hereby adopts the attached Exhibit “A” as the Town of Fort Myers Beach Administrative Code Providing Procedures for Development Agreements with Deviations.

Section 3. This Resolution shall be effective immediately after the adoption by Resolution of the schedule of fees and charges which shall be imposed for the filing and processing of each application for a Development Agreement with Deviations.

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

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

ADOPTED this 1st day of April 2024, by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers
Dan Allers (Apr 12, 2024 14:28 EDT)
Dan Allers, Mayor

ATTEST:

Amy Baker
Amy Baker (Apr 23, 2024 13:30 EDT)
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 Stuparich
Nancy Stuparich (Apr 25, 2024 21:28 EDT)
Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 12th day of April 2024.

**TOWN OF FORT MYERS BEACH
ADMINISTRATIVE CODE PROVIDING
PROCEDURES FOR DEVELOPMENT AGREEMENTS WITH DEVIATIONS**

Pursuant to Section 2-100 and 2-96 of the Town's Land Development Code, the Town may enter into a Development Agreement with Deviations with a property owner. A Development Agreement with Deviations is a non-statutory development agreement that may allow for approval of amendments, modifications, variances or exceptions ("deviations") from the Town's Land Development Code, and, if appropriate under the provisions of the Town's Comprehensive Plan, relief from the building height limitations in the Comprehensive Plan. Approval of a Development Agreement and the deviations provided for in such Development Agreement shall be considered tantamount to and commensurate to a planned development for purposes of determining consistency with the Comprehensive Plan. Approval of a Development Agreement with Deviations shall be subject to the procedures set forth herein.

1. Development Agreement with Deviations Application Procedures.

The following information/exhibits shall be required with the application for a Development Agreement with Deviations (hereinafter "Development Agreement"):

1.1. Legal description and address of the parcel of land which will be the subject of the Development Agreement (hereinafter "Land").

1.2. The name, address and telephone number of the applicant and any attorney or agent who is or will be representing the applicant.

1.3. A title opinion from a Florida attorney (which opinion is in a form acceptable to and in favor of the town), which shall identify and provide the names, addresses and telephone numbers of all legal and equitable owners having interest in the Land, as well as all mortgage or lien holders, holders of easement interests, and other encumbrances, upon the Land. As of the date of recordation of any Development Agreement, the applicant shall be required by the town to update the foregoing information in this subparagraph to the date of recording of the Development Agreement.

1.4. An application signed by, or on behalf of, the owner and any lien holder(s) as to the Land subject to the Development Agreement, and if not signed by the owner a notarized consent signed by the owner authorizing the person to sign the application.

1.5. Payment of any required application fee as set by resolution of the town council.

1.6. A survey of the Land showing the approximate location of all environmentally sensitive lands, or lands subject to the jurisdiction of the U.S. Army Corps of Engineers, Florida Department of Environmental Regulation, the Southwest Florida Water Management District or Lee County, Florida.

1.7. A statement and finding demonstrating that the proposed Development Agreement will be consistent with the comprehensive plan of the town.

1.8. The desired duration of the Development Agreement shall not be less than the expected completion of the development on the Land.

1.9. Development uses and regulations currently legally permitted on the Land, including densities, intensities, heights of structures, and setbacks; and, if different, any of the same that are currently on the Land, or that were on the Land at any time in the last 24 months.

1.10. Development uses and regulations, including densities, intensities, heights of structures, and setbacks being requested on the Land.

1.11. A description of the public facilities which will provide services to support the development, the approximate date that new public facilities, if needed, will be constructed, and a schedule to assure that the public facilities and services will be available concurrent with the impacts of development.

1.12. A description of any current or proposed reservation or dedication of land for public purposes.

1.13. Any deed restrictions existing or being imposed upon the Land, and a description of any current or proposed reservation or dedication of land for public purposes.

1.14. The application must explicitly identify each instance of conflict with existing ordinances and expressly provide for the Development Agreement to control, or else all of the provisions of such conflicting ordinances shall control to the extent that the Development Agreement fails to expressly provide otherwise. Any ambiguity with respect to whether a Development Agreement or an ordinance is to control shall be interpreted to favor the ordinance. A statement listing all contemplated zoning districts or land use modifications or requests for more flexibility that will be required if the proposed Development Agreement were to be approved.

1.15. A sketch of site plan showing where buildings (with heights), structures, parking, and other features/amenities of the proposed development shall be located. If the Land is located on the water, any view corridors or public access location(s), if any, will be located.

1.16. A statement that a copy of the Development Agreement with Deviations Application has been furnished by First Class U.S. Mail to all property owners within 100 feet of the boundaries of the Land at the addresses of such property owners found on the Lee County Property Appraiser website, and a list of such property owners and addresses.

1.17. A concise and complete recital of the proposed contents of the Development Agreement using the Form of Development Agreement with Deviations attached as Ex. "A".

2. Development Agreement Minimum Content Requirements.

The following information shall be required within a Development Agreement.

2.1. A legal description of the land subject to the agreement and the identification of all persons having legal or equitable ownership therein.

2.2. The duration of the development agreement, which duration shall not be less than the anticipated time period needed to fully build out the development.

2.3. The development rights to be permitted on the land, and setting forth densities, intensities, building height(s), and setbacks. Uses of the land shall be those allowed in the underlying zoning district unless otherwise specifically provided, such as when a special exception is a part of the development agreement.

2.4. A description of the public facilities and services, including on-site improvements that will serve the proposed project, including designation of the entity or agency that shall be providing such facilities. Additionally, if new facilities are needed to serve the project, the date by which such facilities will be constructed and a schedule to assure that public facilities and services shall be available concurrent with the impact of the development project.

2.5. A description of any reservation or dedication of land for public purposes. The Development Agreement shall provide specifically how the land dedication obligation for the project, if any, is to be met. In the event that land or any interest herein is to be conveyed to the town or other entity in discharge of the foregoing, the Development Agreement shall provide that such conveyance or dedication will be by warranty deed or easement, or other instrument in form and substance acceptable to the town attorney, together with evidence of title in form acceptable to the town attorney prepared by an attorney who is a member of the Florida Bar, or a title company licensed in Florida, all depicting who is the owner in fee simple of the land subject to the conveyance or dedication, and the holders of any other interest or liens affecting said land.

2.6. A description of all local permits approved or needed to be approved for the development of the Land, specifically to include at least the following:

Any required submission to the Southwest Florida Regional Planning Council and any required permission of the State of Florida, Department of Environmental Regulation, the U.S. Corps of Army Engineers, the Southwest Florida Water Management District, the U.S. Environmental Protection Agency or any other required governmental permission. The Development Agreement shall specifically provide that said development permission will be obtained at the sole cost of the owner of the Land, and that any approvals previously given, including the Development Agreement, shall not in any manner obligate the town or any other governmental agency to grant other permit approvals. Under these conditions, action in reliance on the Development Agreement or expenditures in pursuance of its terms or any rights accruing to the project owner thereunder shall not vest any development rights in the owner of the Land or the project to a continuation of the Development Agreement.

2.7. A specific finding in the Development Agreement that the proposed project permitted or proposed is consistent with the town's Comprehensive Plan and Land Development Code, or that, if deviations are necessary for the zoning district or land use plan designations on the subject Land, such Development Agreement specifically lists such deviations in detail.

2.8. Statement in the Development Agreement showing how sidewalk and pedestrian travel is being addressed in a conceptual plan showing the proposed layout of streets, lots, green areas, conservation areas, bike ways, parks, public facilities and such other amenities.

2.9. A statement in the Development Agreement describing how environmentally sensitive land, if any, will be preserved and managed.

2.10. A statement in the Development Agreement describing how threatened or endangered species are being protected.

2.11. A statement in the Development Agreement explicitly identifying each instance of conflict with existing ordinances and expressly providing for the Development Agreement to control, or else all of the provisions of such conflicting ordinances shall control to the extent that the Development Agreement fails to expressly provide otherwise. Any ambiguity with respect to whether a Development Agreement or an ordinance is to control shall be interpreted to favor the ordinance. A statement indicating that failure of the Development Agreement to address a particular permit condition, term or restriction shall not relieve the owner or developer of the necessity of complying with the laws governing said permitting requirements, conditions, terms or restriction.

2.12. A provision that any matter or action required under existing ordinances of the town shall not be otherwise amended, modified or waived, unless such modification, amendment or waiver is expressly provided for in the Development Agreement with specific reference to the Code provision so waived, modified or amended (“deviations”).

2.13. A statement whereby if the applicant, upon approval of the Development Agreement, fails to comply with the terms of the agreement, the town may bring an action in a court of law with competent jurisdiction to protect its rights and interests. All associated reasonable costs and attorney's fees shall be reimbursed to the town if an action at law is necessary regardless of whether the Town is the prevailing party

2.14 Post-Development Agreement requirements. An acknowledgement that prior to the issuance of any building permits being issued for the development that:

2.14.1 All existing and proposed utilities and the manner in which existing utilities will be extended to the site and/or expanded for the use of the development including water, sewer, gas, electricity, cable television, and other utilities shall have been approved by the Town;

2.14.2 The proposed drainage plan for the proposed project shall have been approved by the Town;

2.14.3 The proposed grading plan and elevation requirements of the town, including, but not limited to those related to the National Flood Insurance Program as applicable to the town shall have been approved by the town;

2.14.3. The traffic impact and parking plans as applicable to the town shall have been approved by the town; and

2.14.4 All other town requirements are met that are necessary for the initial building permits to build the project on the Land.

2.15. An acknowledgement that the town shall not have any liability whatsoever for any expenses or other damages that may be incurred as a result of denial of the Development Agreement or for denial of building permits due to the failure to meet the town's requirements as to any Post-Development Agreement requirements.

2.16. A description of any special benefit to the Town as a result of the development such as, the promotion of economic development, affordable housing, hurricane recovery, provision of needed public facilities, provision of public land or recreation, and/or elimination of blight.

2.17. A finding that the proposed Development Agreement is reasonable and not arbitrary and in the best interest of the town.

3. *Development Agreement with Deviations Review Procedures.*

The following regulations shall be followed during the review of a Development Agreement with Deviations.

3.1. Staff negotiation. The town manager or the town manager's designee (typically the town planner) shall review the proposed project and shall meet and hold preliminary nonbinding negotiations with the applicant regarding the appropriate terms and conditions on which said Land should be developed. At such time as a tentative agreement is reached as to the recommended terms and conditions of the development agreement, or the town manager or town manager's designee deems that no further negotiations would be useful because of the unlikely possibility of reaching a concurrence on the terms and conditions of a Development Agreement, the proposal shall be reduced to a nonbinding and unexecuted writing. Such tentative agreement, whether oral or written, shall not give rise to any development rights or equitably or legally vest any development rights in the owner of the Land or other substantially affected person.

3.2. Reduction of proposal to writing

3.2.1. In the event that the town manager or the town manager's designee and the applicant have negotiated the terms of a mutually acceptable, nonbinding and tentative Development Agreement, the terms of that Development Agreement shall be reduced to writing in a contractual form for review and for further discussion, consideration and approval or disapproval as provided herein. The Development Agreement may include a provision that authorizes administrative amendments to the site plan provided that height, density and intensity are not increased, and the plan remains consistent with the Town's Comprehensive Plan.

3.2.2. In the event that the town manager or town manager's designee and the applicant have been unable to negotiate a mutually satisfactory Development Agreement, within thirty (30) days of said determination by the town manager or the town manager's designee, the applicant may prepare a proposed Development Agreement consistent with all requirements hereof for review by the town's Local Planning Agency ("LPA").

3.2.3 It shall not be required for the town manager, or designee to make a recommendation as to whether the town council should approve or not approve a Development Agreement.

3.3. Public hearings

3.3.1. At such time as the Development Agreement has been reduced to written nonbinding contractual form, or the applicant has prepared a Development Agreement as set forth above in subsection 3.2, the town manager or town manager's designee shall transmit such Development Agreement to the LPA.

3.3.2. A public hearing shall be held by the LPA concerning said application, and the LPA shall issue a recommendation for approval or denial of the Development Agreement to the town council. Thereafter a public hearing shall be held by the town council as to the Development Agreement.

3.3.3. Notice of each of the public hearings shall be noticed on the town's website, and said notice shall be mailed to all property owners within a five hundred (500) foot radius of the boundaries of the Land at the addresses of such property owners found on the Lee County Property Appraiser website prior to the first public hearing. Said advertisement and notice of each of the two public hearings may be combined in one notice, but must include:

3.3.3.1. Location of the Land subject to the Development Agreement.

3.3.3.2. Proposed development's project land use, building intensities, estimated population and building heights.

3.3.3.3. Location where a copy of the proposed Development Agreement may be reviewed.

3.3.3.4. Date, time and place of the public hearing(s).,

3.3.3.5. At the public hearings and in compliance with any and all procedures established by law for the conduct of said hearings, the LPA and the Town Council shall accept any public comment on the terms of the Development Agreement. Following the town council public hearing, the town clerk shall immediately dispatch, postage prepaid by regular, first class, U.S. mail and in writing, a copy of the determination of the town council to the applicant, or anyone who has requested a copy advising them of the town council's decision. The determination shall state that the decision of the town council is final agency action.

4. Development Agreement Execution Procedures and Recording.

Development Agreements shall be executed as established below:

4.1. All Development Agreements shall be executed on behalf of the applicant by all persons having legal or equitable title in the Land subject to the Development Agreement, including the fee simple owner and any mortgagees or other lien holders or owners of other equitable interests in the Land, unless the town attorney approves the execution of the development agreement without the necessity of such joinder or subordination in that the substantial interests of the town will not be adversely affected thereby.

4.2 Development Agreements shall not be executed on behalf of the town and shall not be recorded unless and until all Post-Development Agreement requirements have been met as set forth in Sec. 2-14 above. The applicant shall bear the expense of recording the Development Agreement, which shall be recorded by the town clerk.

5. Amendment to Development Agreement.

5.1 Except for Administrative Amendments, if allowed in the Development Agreement, an amendment to a Development Agreement shall not occur unless and until there have been hearings thereon before the LPA and before the town council. Noticing of the LPA and town council hearings shall be in the same manner as for the original hearings for Development Agreements.

RESOLUTION NUMBER 24-74

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING RESOLUTION 24-73, CONTAINING THE PROCEDURES FOR DEVELOPMENT AGREEMENTS WITH DEVIATIONS TO CLARIFY THAT THESE DEVELOPMENT AGREEMENTS ARE HOME RULE DEVELOPMENT AGREEMENTS AND TO AMEND RELATED NOTICE REQUIREMENTS FOR CONSISTENCY WITH NOTICE REQUIREMENTS IN SECTION 2-98 AND CHAPTER 34 OF THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE AND REQUIRE A RECOMMENDATION FROM THE TOWN MANAGER REGARDING THE PROPOSED DEVELOPMENT AGREEMENT; 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 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 April 1, 2024, the Town Council of the Town of Fort Myers Beach adopted Resolution 24-73, approving an administrative code setting forth procedures for the application and approval of home rule development agreements, which among other things may provide for deviations; and

WHEREAS, the Town Council wishes to amend Resolution 24-73 for clarity and consistency with notice provisions in Section 2-98 and Chapter 34 of the Town's Land Development Code; and

WHEREAS, the Town Council has determined it is in the best interests of the residents of Fort Myers Beach to adopt this Resolution.

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

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

Section 2. The Town Council hereby adopts the changes as set forth in Exhibit "A."

Section 3. This Resolution shall be effective retroactive to April 1, 2024 upon adoption by the Town Council.

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

ADOPTED this ____ day of _____ 2024, by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

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

EXHIBIT A

TOWN OF FORT MYERS BEACH ADMINISTRATIVE CODE PROVIDING PROCEDURES FOR HOME RULE DEVELOPMENT AGREEMENTS

Pursuant to Section 2-100 and 2-96 of the Town's Land Development Code, the Town may enter into a Home Rule Development Agreement with a property owner. A Home Rule Development Agreement is a non-statutory development agreement authorized pursuant to the Town's home rule authority that may allow for approval of amendments, modifications, deviations, variances or exceptions from the Town's Land Development Code, and, if appropriate under the provisions of the Town's Comprehensive Plan, relief from the building height limitations in the Comprehensive Plan. Approval of a Home Rule Development Agreement and the deviations provided for in such Home Rule Development Agreement shall be considered tantamount to and commensurate to a planned development for purposes of determining consistency with the Comprehensive Plan. Approval of a Home Rule Development Agreement shall be subject to the procedures set forth herein.

1. Home Rule Development Agreement Application Procedures.

The following information/exhibits shall be required with the application for a Home Rule Development Agreement (hereinafter sometimes referred to as "Development Agreement"):

1.1. Legal description and address of the parcel of land which will be the subject of the Development Agreement (hereinafter "Land").

1.2. The name, address and telephone number of the applicant and any attorney or agent who is or will be representing the applicant.

1.3. A title opinion from a Florida attorney (which opinion is in a form acceptable to and in favor of the town), which shall identify and provide the names, addresses and telephone numbers of all legal and equitable owners having interest in the Land, as well as all mortgage or lien holders, holders of easement interests, and other encumbrances, upon the Land. As of the date of recordation of any Development Agreement, the applicant shall be required by the town to update the foregoing information in this subparagraph to the date of recording of the Development Agreement.

1.4. An application signed by, or on behalf of, the owner and any lien holder(s) as to the Land subject to the Development Agreement, and if not signed by the owner a notarized consent signed by the owner authorizing the person to sign the application.

1.5. Payment of any required application fee as set by resolution of the town

council.

1.6. A survey of the Land showing the approximate location of all environmentally sensitive lands, or lands subject to the jurisdiction of the U.S. Army Corps of Engineers, Florida Department of Environmental Regulation, the Southwest Florida Water Management District or Lee County, Florida.

1.7. A statement and finding demonstrating that the proposed Development Agreement will be consistent with the comprehensive plan of the town.

1.8. The desired duration of the Development Agreement shall not be less than the expected completion of the development on the Land.

1.9. Development uses and regulations currently legally permitted on the Land, including densities, intensities, heights of structures, and setbacks; and, if different, any of the same that are currently on the Land, or that were on the Land at any time in the last 24 months.

1.10. Development uses and regulations, including densities, intensities, heights of structures, and setbacks being requested on the Land.

1.11. A description of the public facilities which will provide services to support the development, the approximate date that new public facilities, if needed, will be constructed, and a schedule to assure that the public facilities and services will be available concurrent with the impacts of development.

1.12. A description of any current or proposed reservation or dedication of land for public purposes.

1.13. Any deed restrictions existing or being imposed upon the Land, and a description of any current or proposed reservation or dedication of land for public purposes.

1.14. The application must explicitly identify each instance of conflict with existing ordinances and expressly provide for the Development Agreement to control, or else all of the provisions of such conflicting ordinances shall control to the extent that the Development Agreement fails to expressly provide otherwise. Any ambiguity with respect to whether a Development Agreement or an ordinance is to control shall be interpreted to favor the ordinance. A statement listing all contemplated zoning districts or land use modifications or requests for more flexibility that will be required if the proposed Development Agreement were to be approved.

1.15. A sketch of site plan showing where buildings (with heights), structures, parking, and other features/amenities of the proposed development shall be located. If the Land is located on the water, any view corridors or public access

location(s), if any, will be located.

1.16. A statement that a copy of the Development Agreement with Deviations Application has been furnished by First Class U.S. Mail to all property owners within 100 feet of the boundaries of the Land at the addresses of such property owners found on the Lee County Property Appraiser website, and a list of such property owners and addresses.

1.17. A concise and complete recital of the proposed contents of the Development Agreement using the Form of Development Agreement with Deviations attached as Ex. "A".

2. Development Agreement Minimum Content Requirements.

The following information shall be required within a Development Agreement.

2.1. A legal description of the land subject to the agreement and the identification of all persons having legal or equitable ownership therein.

2.2. The duration of the development agreement, which duration shall not be less than the anticipated time period needed to fully build out the development.

2.3. The development rights to be permitted on the land, and setting forth densities, intensities, building height(s), and setbacks. Uses of the land shall be those allowed in the underlying zoning district unless otherwise specifically provided, such as when a special exception is a part of the development agreement.

2.4. A description of the public facilities and services, including on-site improvements that will serve the proposed project, including designation of the entity or agency that shall be providing such facilities. Additionally, if new facilities are needed to serve the project, the date by which such facilities will be constructed and a schedule to assure that public facilities and services shall be available concurrent with the impact of the development project.

2.5. A description of any reservation or dedication of land for public purposes. The Development Agreement shall provide specifically how the land dedication obligation for the project, if any, is to be met. In the event that land or any interest herein is to be conveyed to the town or other entity in discharge of the foregoing, the Development Agreement shall provide that such conveyance or dedication will be by warranty deed or easement, or other instrument in form and substance acceptable to the town attorney, together with evidence of title in form acceptable to the town attorney prepared by an attorney who is a member of the Florida Bar, or a title company licensed in Florida, all depicting who is the owner in fee simple of the land subject to the conveyance or dedication, and the holders of any other interest or liens affecting said land.

2.6. A description of all local permits approved or needed to be approved for the development of the Land, specifically to include at least the following:

Any required submission to the Southwest Florida Regional Planning Council and any required permission of the State of Florida, Department of Environmental Regulation, the U.S. Corps of Army Engineers, the Southwest Florida Water Management District, the U.S. Environmental Protection Agency or any other required governmental permission. The Development Agreement shall specifically provide that said development permission will be obtained at the sole cost of the owner of the Land, and that any approvals previously given, including the Development Agreement, shall not in any manner obligate the town or any other governmental agency to grant other permit approvals. Under these conditions, action in reliance on the Development Agreement or expenditures in pursuance of its terms or any rights accruing to the project owner thereunder shall not vest any development rights in the owner of the Land or the project to a continuation of the Development Agreement.

2.7. A specific finding in the Development Agreement that the proposed project permitted or proposed is consistent with the town's Comprehensive Plan and Land Development Code, or that, if deviations are necessary for the zoning district or land use plan designations on the subject Land, such Development Agreement specifically lists such deviations in detail.

2.8. Statement in the Development Agreement showing how sidewalk and pedestrian travel is being addressed in a conceptual plan showing the proposed layout of streets, lots, green areas, conservation areas, bike ways, parks, public facilities and such other amenities.

2.9. A statement in the Development Agreement describing how environmentally sensitive land, if any, will be preserved and managed.

2.10. A statement in the Development Agreement describing how threatened or endangered species are being protected.

2.11. A statement in the Development Agreement explicitly identifying each instance of conflict with existing ordinances and expressly providing for the Development Agreement to control, or else all of the provisions of such conflicting ordinances shall control to the extent that the Development Agreement fails to expressly provide otherwise. Any ambiguity with respect to whether a Development Agreement or an ordinance is to control shall be interpreted to favor the ordinance. A statement indicating that failure of the Development Agreement to address a particular permit condition, term or restriction shall not relieve the owner or developer of the necessity of complying with the laws governing said permitting requirements, conditions, terms or restriction.

2.12. A provision that any matter or action required under existing ordinances

of the town shall not be otherwise amended, modified or waived, unless such modification, amendment or waiver is expressly provided for in the Development Agreement with specific reference to the Code provision so waived, modified or amended ("deviations").

2.13. A statement whereby if the applicant, upon approval of the Development Agreement, fails to comply with the terms of the agreement, the town may bring an action in a court of law with competent jurisdiction to protect its rights and interests. All associated reasonable costs and attorney's fees shall be reimbursed to the town if an action at law is necessary regardless of whether the Town is the prevailing party

2.14 Post-Development Agreement requirements. An acknowledgement that prior to the issuance of any building permits being issued for the development that:

2.14.1 All existing and proposed utilities and the manner in which existing utilities will be extended to the site and/or expanded for the use of the development including water, sewer, gas, electricity, cable television, and other utilities shall have been approved by the Town;

2.14.2 The proposed drainage plan for the proposed project shall have been approved by the Town;

2.14.3 The proposed grading plan and elevation requirements of the town, including, but not limited to those related to the National Flood Insurance Program as applicable to the town shall have been approved by the town;

2.14.3. The traffic impact and parking plans as applicable to the town shall have been approved by the town; and

2.14.4 All other town requirements are met that are necessary for the initial building permits to build the project on the Land.

2.15. An acknowledgement that the town shall not have any liability whatsoever for any expenses or other damages that may be incurred as a result of denial of the Development Agreement or for denial of building permits due to the failure to meet the town's requirements as to any Post-Development Agreement requirements.

2.16. A description of any special or public benefit to the Town as a result of the development such as, the promotion of economic development, affordable housing, hurricane recovery, provision of needed public facilities, provision of public land or recreation, and/or elimination of blight.

2.17. A finding that the proposed Development Agreement is reasonable and not arbitrary and in the best interest of the town.

3. Home Rule Development Agreement Review Procedures.

The following regulations shall be followed during the review of a Development Agreement.

3.1. Staff negotiation. The town manager or the town manager's designee (typically the town planner) shall review the proposed project and shall meet and hold preliminary nonbinding negotiations with the applicant regarding the appropriate terms and conditions on which said Land should be developed. At such time as a tentative agreement is reached as to the recommended terms and conditions of the Development Agreement, or the town manager or town manager's designee deems that no further negotiations would be useful because of the unlikely possibility of reaching a concurrence on the terms and conditions of a Development Agreement, the proposal shall be reduced to a nonbinding and unexecuted writing. Such tentative agreement, whether oral or written, shall not give rise to any development rights or equitably or legally vest any development rights in the owner of the Land or other substantially affected person.

3.2. Reduction of proposal to writing

3.2.1. In the event that the town manager or the town manager's designee and the applicant have negotiated the terms of a mutually acceptable, nonbinding and tentative Development Agreement, the terms of that Development Agreement shall be reduced to writing in a contractual form for review and for further discussion, consideration and approval or disapproval as provided herein. The Development Agreement may include a provision that authorizes administrative amendments to the site plan provided that height, density and intensity are not increased and the plan remains consistent with the Town's Comprehensive Plan.

3.2.2. In the event that the town manager or town manager's designee and the applicant have been unable to negotiate a mutually satisfactory Development Agreement, within thirty (30) days of said determination by the town manager or the town manager's designee, the applicant may prepare a proposed Development Agreement consistent with all requirements hereof for review by the town's Local Planning Agency ("LPA").

3.2.3 The town manager, or designee will make a recommendation as to whether the town council should approve or not approve a Development Agreement prior to adoption and approval of the Development Agreement.

3.3. Public hearings

3.3.1. At such time as the Development Agreement has been reduced to written nonbinding contractual form, or the applicant has prepared a

Development Agreement as set forth above in subsection 3.2, the town manager or town manager's designee shall transmit such Development Agreement to the LPA.

3.3.2. A public hearing shall be held by the LPA concerning said application, and the LPA shall issue a recommendation for approval, approval with conditions, or denial of the Development Agreement to the town council. Thereafter, two public hearings shall be held by the town council **prior to approval of** the Development Agreement. The Development Agreement shall be adopted by Ordinance, following two readings of the title at the two public hearings and publication of a notice 10 days in advance of the second public hearing in a newspaper of general circulation.

3.3.3. Notice of the public hearings shall be available on the town's website, and a notice shall be mailed to all property owners within a five hundred (500) foot radius of the boundaries of the Land at the addresses of such property owners found on the Lee County Property Appraiser website prior to the first public hearing in accordance with notice procedures in Chapter 34 of the Land Development Code. A **home-rule** **Development Agreement** shall comply with notice requirements in Chapter 34 of the Land Development Code. Notwithstanding the foregoing, as provided in Section 2-98, failure to comply with Chapter 34 notice requirements shall not be a basis for invalidating a Development Agreement.

3.3.3.4. At the public hearings and in compliance with any and all procedures established by law for the conduct of said hearings, the LPA and the Town Council shall accept any public comment on the terms of the Development Agreement. Following the final Town Council public hearing, the town clerk shall immediately dispatch, postage prepaid by regular, first class, U.S. mail and in writing, a copy of the determination of the Town Council to the applicant, or anyone who has requested a copy advising them of the town council's decision. The determination shall state that the decision of the town council is final agency action.

4. Development Agreement Execution Procedures and Recording.

Development Agreements shall be executed as established below:

4.1. All Development Agreements shall be executed on behalf of the applicant by all persons having legal or equitable title in the Land subject to the Development Agreement, including the fee simple owner and any mortgagees or other lien holders or owners of other equitable interests in the Land, unless the town attorney approves the execution of the development agreement without

the necessity of such joinder or subordination in that the substantial interests of the town will not be adversely affected thereby.

4.2 Development Agreements shall not be executed on behalf of the town and shall not be recorded unless and until all Post-Development Agreement requirements have been met as set forth in Sec. 2-14 above. The applicant shall bear the expense of recording the Development Agreement, which shall be recorded by the town clerk.

5. *Amendment to Development Agreement.*

5.1 Except for Administrative Amendments, if allowed in the Development Agreement, an amendment to a Development Agreement shall not occur unless and until there have been hearings thereon before the LPA and before the Town Council in the same manner as for the original hearings for the Development Agreement.



3001 Estero Boulevard
Applicant's Report
September 20, 2024

I. APPLICATION SUMMARY

Applicant/Owner: Seagate Fort Myers Beach, LLC

Request: Adoption of a Home Rule Development Agreement for a Site Plan with Deviations to redevelop 9.43 acres of a 10.72 acre Property spanning from Matanzas Pass Preserve to the Gulf of Mexico.

Subject Property: See attached Legal Description and Sketch (Exhibit A to Development Agreement)

Physical Address: 3001 Estero Boulevard

STRAP #s: 29-46-24-W1-00145.10000, 30-46-24-W2-00001.0000, 29-46-24-W1-00145.5000, 29-46-24-W1-0120A.0010

FLU: Boulevard & Mixed Residential

Zoning: Village

Adjacent zoning and land uses

North: Matanzas Pass Preserve

South: Environmentally Critical/Recreation Beach

East: Boulevard & Mixed Residential
Single and Multi-family Residential, Former Arts Complex, Former FMB Fire Department Station

West: Boulevard & Mixed Residential/Village
Vacant, Former Gulfview Mobile Home Park

II. BACKGROUND & ANALYSIS

a. Framework

On April 1, 2024 the Town Council approved Ordinance 24-72, outlining procedures for Development Agreements (“DA”) with Deviations. These procedures establish:

“A Development Agreement with Deviations is a non-statutory development agreement that may allow for approval of amendments, modifications, variances or exceptions (“deviations”) from the Town’s Land Development Code, and, if appropriate under the provisions of the Town’s Comprehensive Plan, relief from the building height limitations in the Comprehensive Plan. Approval of a Development Agreement and the deviations provide for in such a Development Agreement shall be considered tantamount to and commensurate to a planned development for purposes of determining consistency with the Comprehensive Plan.”

As part of the DA process, a specific finding is required to be provided that the “proposed project permitted or proposed is consistent with the Town’s comprehensive plan and land development code or that if deviations are necessary for the zoning district or land use plan designations on the subject land, such Development Agreement specifically lists such deviations in detail.” Additionally, a statement is to be provided in the DA “explicitly identifying each instance of conflict with existing ordinances and expressly providing for the Development Agreement to control...”

Seagate Fort Myers Beach has submitted a DA to establish a conceptual site plan for the redevelopment of the Property and request deviations to promote the clustering of density, provision of public parks, recreation and beach access, and view corridors to the Gulf of Mexico. The DA identifies the anticipated uses, density, intensity, duration of the agreement, proposed public benefits, and the requested deviations. As exhibits to the DA, the applicant has provided:

- Exhibit A - Legal Description and Sketch for the portion of the Property landward of the 1978 CCCL line;
- Exhibit B - Conceptual Plans and Renderings;
- Exhibit C – Public Easement Areas;
- Exhibit D – Pattern Book.

With the exhibits, the DA establishes the conceptual parameters which will guide the review of the detailed plans and calculations to be submitted for the required Town of Fort Myers Beach Development Order (“DO”), South Florida Water Management District Environmental Resource Permit (“ERP”), and other permits. Construction is not permitted to begin until all permits are secured. Due to the number of subsequent permits necessary and coordination with outside agencies, the Applicant has proposed a 10-year timeline for the DA. This duration will provide enough time to obtain all necessary permit approvals, continue coordination with Lee County and

the Town to address dedication of required easements, park programming and public access, and unforeseen circumstances.

b. Property

Prior to Hurricane Ian, the Property was developed as an RV and mobile home park with supporting recreational amenities, owned/operated by the Myers Family since 1984 and accepted its first visitors in 1925.¹ The park's opening was approximately 12 years after construction of the first beach hotel and a year before the swing bridge connected Fort Myers Beach to mainland Lee County.² Due to the development pre-dating the incorporation of the Town of Fort Myers Beach ("Town") by over 73 years and a density of 27 RV/mobile homes per acre, the Property is located within a redevelopment area identified by the Comprehensive Plan³ and Land Development Code ("LDC").⁴ The intent of the redevelopment area is for the Town to "take positive steps to redevelop areas that are reaching obsolescence or beginning to show blight ... by providing an opportunity for landowners to replace vulnerable mobile homes and recreational vehicles with permanent structures in the ...Red Coconut area."⁷ Implementing this intent, Policies 3-A-5, 3-A-6 and 4-F-2 identify that redevelopment within the designated area is *encouraged* to incorporate specific design concepts into a pre-approved redevelopment option. (emphasis added) The Village district implements these policies by "...provid[ing] alternative futures for the Red Coconut...either a continuation of the current land uses or their transformation into a traditional neighborhood pattern."⁵ A DO can be obtained to redevelop property within the Village district consistent with the design criteria outlined in LDC Section 34-693 establishing allowable uses, street layout, view corridors, setbacks, etc. The DA process permits deviations to be requested from these design criteria.

c. Comprehensive Plan

The Town's comprehensive plan was adopted in 1999 and since that time, has not been fully evaluated for consistency with State building codes, coastal building regulations and the Federal floodplain requirements. Per the Future Land Use map, the Property is within three future land use ("FLU") designations, Boulevard, Mixed Residential and Recreation.

Boulevard – described by Policy 4-B-5 as a "...mixed use district along portions of Estero Boulevard, including less intense commercial areas, historic cottages and mixed housing types." This designation occurs along the approximately 90-foot-deep portion of the Property fronting on the north side of Estero Boulevard and all of the parcels along the south side of Estero Boulevard. Consistent with this location, the proposed site plan locates the private recreational amenity, 2 publicly accessible

¹ Red Coconut | RV Park. <https://www.redcoconut.com>. Accessed April 28, 2024

² FMB Comprehensive Plan, Commercial Design Element, Page 3-3

³ FMB Comprehensive Plan, Policy 4-F-2

⁴ FMB LDC Section 34-691 et.al.

⁵ FMB LDC Sec 34-691

parks, terraced planters and water feature, and the 10,000 square foot restaurant within this FLU category.

Mixed Residential – described by Policy 4-B-4 as “...old subdivisions with mixed housing types on smaller lots, newer high-rise buildings, and mobile home and RV parks.” The portion of the Property between Matanzas Pass and the Boulevard FLU is considered Mixed Residential. Consistent with this location, the proposed site plan locates the multi-family and single-family residential units within this FLU category.

Recreation – the portion of the Property seaward of the 1978 Coastal Construction Control Line is within the Recreational FLU. Consistent with Policy 4-B-8, this portion of the Property is not proposed for development, is not included in the calculations related to density or intensity and is not included in the Legal Description attached to the Development Agreement.

The proposed uses and location are consistent with the underlying FLU categories for the Property.

Beyond the FLU categories, the comprehensive plan considers the “appropriate future uses in the event of a change in ownership or pans or a natural disaster” for the Property.⁶ Specifically, Policies 3-A-6, and 4-F-2 outline the *anticipated* redevelopment for the Gulfview Colony/Red Coconut. (emphasis added) Future Land Use Policy 4-F-2.iii identifies the design “concepts [that] are encouraged” to be included in the pre-approved redevelopment options Many of these design concepts are reiterated in LDC Section 34-692(3) as design “concepts [that] are *expected* in the redevelopment process.” The DA process permits deviations to be requested from the design criteria outlined in Section 34-692(3). In addition, Policy 3-A-5 describes a desire for neighborhoods “which are pedestrian and bicycle friendly with an internal circulation system that makes it possible to walk or bicycle to schools and services without always using Estero Boulevard; which retain the psychological connection and views to both the Bay and the Beach; and which offer a variety of housing types and opportunity for mixed uses.”

The 9.43 acres subject to the DA is only a portion of the redevelopment area described by the comprehensive plan, additional vacant acreage occurs immediately to the west and north of Estero Boulevard. As only a portion of the redevelopment area, the proposed plan provides 7 of the 9 design characteristics outlined in Policy 4-F-2. The remaining design characteristics have not been provided due to changes to the State building code, coastal construction regulations or Federal floodplain requirements, the transfer of density from the parcels south of Estero Boulevard to the parcels to the north, and the reduction of intensity on the parcels south of Estero Boulevard. The proposed design does provide opportunities for circulation without a vehicle and enhances the pedestrian realm while increasing public views of the Gulf and Matanzas Pass, meeting the intent

⁶ FMB Comprehensive Plan, Community Design Element, Page 3-8

of the redevelopment vision while adapting to the required State Building Code and Coastal Construction regulations as well as Federal Floodplain regulations.

The comprehensive plan also considers requests for additional height in Policy 4-C-4; which specifically indicates “different heights may be applied to officially designated redevelopment areas such as ... Red Coconut/Gulf View Colony.” As described above, Policy 4-F-2 identifies a redevelopment area for the Red Coconut/Gulf View Colony. Requests for additional height need to demonstrate consistency with the comprehensive plan and public benefits promoted by the site design due to the request, such as view corridors to the Gulf or Bay. Consistent with these policies, the proposed conceptual plan includes an increase in the permitted height for the mixed-use structure. The additional height enables the Gulf side parcel density to be transferred to the bay side portion of the Property and cluster most of the available density in a mixed-use structure on the bay side of Estero Boulevard. This density transfer also limits the intensity of the redevelopment of the gulf side parcels. As a result, the conceptual plans incorporate multiple public parks, 2 new view corridors to the Gulf, a new pedestrian beach access, and access and views to Mantanzas Pass Preserve are maintained to promote appropriate public benefits to support the requested height increase.

The proposed project is consistent with the Town’s comprehensive plan, provides many of the design concepts encouraged and anticipated by Policies 3-A-5, 3-A-6, and 4-F-2, and establishes appropriate public benefits for the requested height increase consistent with Policy 4-C-4.

d. Village Zoning District

The Property is within a redevelopment zoning district known as the Village which implements Policies 3-A-5, 3-A-6, and 4-F-2 of the Town’s Comprehensive Plan. The purpose of the Village district is “to implement specific redevelopment concepts established in the Fort Myers Beach Comprehensive Plan and for other situations where conventional or planned development zoning districts are inappropriate.” The Village district “provide[s] alternative futures for the Red Coconut...allowing a transformation... into a more permanent and durable housing types in a traditional neighborhood pattern.”⁷ “A vision for this area...is a complete neighborhood with an internal circulation system making it possible to walk or ride bikes to school, recreation areas, and shopping without using Estero Boulevard.”⁸ The LDC outlines concepts expected to be provided across all properties in the Village district. The Property is only a portion of the Village district and provides 7 of the 9 criteria envisioned when the Village zoning district was established in 2003 by Ordinance 03-03.

- Detached houses or cottages (with optional accessory apartments) abutting existing single-family homes;

⁷ FMB LDC Section 34-691

⁸ FMB Comprehensive Plan, Community Design Element, Page 3-8

- Walkable narrow streets with shade trees that double as view corridors to the Preserve and Gulf;
- Open space that allows views to be maintained from Estero Boulevard to the Gulf;
- Mixed commercial and residential uses along the bay side of Estero Boulevard;
- Quiet internal street connections to the north and south;
- Significantly reduced density...to a maximum level of 15 dwelling units to the acre; and
- A site design that accommodates a publicly acquired access point to Matanzas Pass Preserve.

The remaining 2 criteria, a traditional neighborhood development with ground floor gathering spaces and low-rise townhomes or apartments, cannot be provided with the changes made to the floodplain mapping and regulations from 2008 onward. Portions of the Property are included in the Velocity Zone and Coastal A Zone and Limit of Wave Action which require significant elevation of enclosed space and severely limit enclosures and improvements that can occur at ground level. Rather than structural gathering spaces, the proposed site design incorporates public parks and enhanced design features to activate the street front and promote pedestrian interconnectivity. The Village district requires compliance with the Commercial Design Standards which also support enclosed space and commercial display at the ground level. The Development Agreement includes conceptual renderings of the enhanced design concepts for the structures and a pattern book to guide the future detailed architectural elevations and floor plans to address needed flexibility from the Commercial Design Standards to accompany future permit applications.

As demonstrated by Exhibit B Conceptual Plans, Exhibit C Public Easement Areas, and Renderings, and Exhibit D Pattern Book the enhanced design features and public parks/gathering spaces incorporated into the overall concept is consistent with the “pre-approved redevelopment option” and with the approval of the DA can submit a DO application to implement the proposed redevelopment consistent with LDC Section 34-693.

e. Requested Development

The proposed development seeks to maintain the previous residential and commercial uses to promote a mixed-use development with single family and multi-family residential, restaurant, and private beach club. Before submitting the application and during the review process, stakeholder input was gathered by the Applicant. Several one-on-one meetings were conducted in the initial stages of the conceptual site design and led to the establishment of the linear park through the Property. The Applicant held an interview with Beach Talk Radio to solicit broad based input from the Town residents prior to submittal. A second interview with Beach Talk Radio was held after the initial review of the application and coincided with an invitation only in person meeting for property owners within 500 feet of the Property. Copies of the conceptual renderings were provided to Beach Talk Radio and posted to their social media pages and website. Additionally, the applicant established a website specific to the project to distribute updated conceptual plans before and after the in-person meeting with surrounding residents. As a result

of these open forum meetings and submitted comments, the number of access points along Donora Boulevard was reduced, opportunities for the Lee County School District to utilize the valet pull off locations were created, the landscaping and hardscaping elements adjacent to the new sidewalk along Donora Boulevard were enhanced, public parking was eliminated from the park adjacent to Matanzas Pass, and private membership opportunities were added to the Beach Club.

The maximum development parameters of the property will be 141 residential units and 616,156.2 square feet of commercial uses to promote a beach club, single and multi-family residential, and a commercial restaurant.

i. Beach Club

The gulf side parcels are proposed to be redeveloped with an approximately 29,000 square foot private beach club providing private recreational amenities to the residents and guests of the residential units and a membership organization for members of the public meeting the specific requirements of the club. Within the beach club, there is a private restaurant providing services to the residents, guests and members only along with outdoor terraces and a pool. A minimum of 25% of the membership will be reserved for public access, providing an opportunity for residents of the Town to utilize the facilities. The structure is 3 stories (including ground level parking) and will not exceed the 40-foot height maximum above base flood as permitted by the Village District. Height exceptions as permitted by LDC Section 34-631 may be requested at the time of final design. To ensure pedestrian activity to and from the beach club does not impede traffic flow along Estero Boulevard, a private pedestrian walk over is proposed to connect the Beach Club with the multi-family residential units. Vehicular access to the beach club is provided via a single access point from Estero Boulevard to the ground level parking under the structure. An additional 75 parking spaces will be provided across Estero Boulevard within the mixed-use building to further support the memberships proposed for the beach club.

ii. Public Beach Access & View Corridors to the Gulf of Mexico

On either side of the beach club structure are 120-foot view corridors maintaining a permanent view of the Gulf of Mexico from Estero Boulevard. On the west side of the beach club structure, the view corridor coincides with a new public park that includes a 10-foot-wide access to the sandy beach. There is a sidewalk along Estero Boulevard that will be repaired and maintained. The Applicant has requested a deviation to increase the setback for the beach club to promote the planting of enhanced landscaping with shade trees to improve the pedestrian environment down Estero Boulevard. The programmatic development of the park has not been finalized. The applicant has included language in the Development Agreement to require ongoing coordination with the Town of Fort Myers Beach to ensure the final design is consistent with the Town's vision. The Development Agreement also commits that the Applicant will maintain ownership and maintenance of the park and a perpetual easement will be recorded for public access and use. As a result, the Town will have a new public park with beach access without requiring an investment in tax funds for the purchase, development, or maintenance of the park.

iii. Mixed Use Structure

The portion of the bay side parcels between Estero Boulevard and the east/west Donora Boulevard extension is proposed to be redeveloped with a mixed-use structure with 137

residential units, a 10,000 square foot commercial restaurant, 2 stories of structured parking, and a tiered landscaping and water feature incorporated into the building podium.

The Village district permits any dwelling unit to be rented for periods of one day or longer. While rentals are anticipated to occur within this development, the Applicant has agreed to limit rentals to a week or longer through restrictive covenants.

The primary access to the structure is an internal street from Estero Boulevard leading to a turn around and a valet drop off area; which routes into the Property screening the proposed street and vehicle drop off by the proposed structure eliminating visibility from adjacent roadways. Additionally, the turnaround and stacking area at the end of the internal street exceeds Town standards to ensure no impacts to adjacent public roadways. The portion of the structure fronting Estero Boulevard is proposed for terraced landscaping and water feature and a commercial restaurant which are designed to be 3 stories (including structured parking) consistent with the Village district for mixed used structures. Additional height in feet and stories as permitted by LDC Section 34-631 will be requested at the time of final design to address the height of the commercial space and required base flood elevation. Providing these features within the height limitations of the Village district shields the structured parking provided to support the development. The architectural elements of the commercial restaurant wrap the corner of Estero and Donora Boulevards to ensure appropriate screening along Donora Boulevard. The Applicant has requested a deviation to increase the setback for the mixed-use structure to promote the planting of enhanced landscaping with shade trees to improve the pedestrian environment down Estero and Donora Boulevards. The Applicant has also agreed to provide public art along the Donora Boulevard building facade.

As the setback from Estero increases the structure height also increases. Behind the 3-story façade for the commercial restaurant and terraced landscaping with water feature are the proposed multi-family residential towers which vary in height from a maximum of 17 stories (including 2 stories of structured parking) and 235 feet. To support the residential towers, lobbies, fitness facilities, social spaces, and meeting rooms with outdoor amenities are proposed. The architectural treatments and elevations for the residential towers will be provided consistent with the proposed pattern book at the time of Development Order application.

To maintain traffic flow down Estero Boulevard, vehicular pull off points are integrated into the design for the proposed restaurant. This feature will permit patrons to valet their vehicles when dining at the commercial restaurant. Due to the hours of operation of the restaurant and the volume of patrons anticipated at night, the Applicant has agreed to work with Lee County to design the pull off points to permit school buses to utilize this area for morning pick up and afternoon drop off. This joint use of the pull off design will support the nearby existing residential neighborhoods and improve the safety of school age children riding the bus.

iv. Linear Park & New Sidewalk along Donora Boulevard

Adjacent to the western property boundary and new east/west extension of Donora Boulevard is a public 20 foot wide Linear Park to include an 8-foot-wide multi-use path. Originating at Estero Boulevard, the linear park begins internal to a proposed public park along Estero Boulevard and the western bay side property boundary. Paralleling the western property boundary before turning east to parallel the new proposed east/west local street and connecting with the existing north/south Donora Boulevard the linear park provides a landscaped multi-use path. This design enhances interconnectivity through the Property for existing and future residents to promote movement without a vehicle. The park's location also provides an opportunity for expansion to the west when the rest of the properties within the Village zoning district are redeveloped, further enhancing mobility without a vehicle.

Currently there is no public sidewalk along the western side of Donora Boulevard. The proposed conceptual plan increases the setback of the mixed-use structure which will enable enhanced landscaping with shade trees and a sidewalk along Donora Boulevard. These improvements are specifically outlined in the Development Agreement and shade trees are required to improve the pedestrian environment for existing and future residents along Donora Boulevard. Beyond the multi-use path, other programmatic elements of the linear park have not been finalized. The Development Agreement incorporates several commitments from the Applicant related to the public parks:

- On-going coordination with the Town of Fort Myers Beach to ensure final park design is consistent with the Town's vision;
- Recording a perpetual access easement for public access and use of all parks;
- Developer maintenance of all public parks;
- Developer design and provision of site-specific wayfinding signage to all parks and public access points;
- Informational signs related to Matanzas Pass will be developed with Town Staff and constructed.

v. Single family Residential Units

Between the north property boundary and the proposed east/west extension of Donora Boulevard, 4 single family residential units are proposed. These units will front the proposed east/west extension of Donora Boulevard and are set back from the property boundaries by at least 15 feet. Side setbacks are established at 5 feet. Accessory setbacks to the rear property boundary are requested to be 5 feet to permit pools, patios, and screened enclosures.

vi. Bay side Public Parks

The conceptual site plan includes two public parks on the bay side portion of the Property. Along the western property boundary and fronting Estero Boulevard, a public park is proposed. Within this park is the origination point for the proposed linear park. The location of this park aligns with the public park and beach access on the Gulf side park promoting a single pedestrian

crossing point that can be monitored and improved to address demand. Additionally, this location is central to the entire Village District and the future facilities and multi-use path can be utilized by the residents/patrons of the future redevelopment anticipated to the west within the Village District.

A second public park is proposed at the north/south terminus of Donora Boulevard adjacent to Matanzas Pass Preserve. This park's location maintains the previous view corridor available down Donora Boulevard. Additionally, the existing residential lots to the east can utilize this area as a neighborhood park.

Programmatic elements of the parks have not been finalized; however, it is anticipated that future improvements would promote public gathering, interaction, and the activation of the Estero Boulevard street frontage consistent with the Village district. The Development Agreement incorporates several commitments from the Applicant related to the public parks:

- On-going coordination with the Town of Fort Myers Beach to ensure final park design is consistent with the Town's vision;
- On-going coordination with Lee County to promote a pedestrian interconnection to Matanzas Pass Preserve;
- Recording a perpetual access easement for public access and use of all parks;
- Developer maintenance of all public parks;
- Developer design and provision of site-specific wayfinding signage to all parks and public access points;
- Informational signs related to Matanzas Pass will be developed with Town Staff and constructed.

f. Requested Deviations

i. *Traditional Neighborhood Design*

- 1) **Request to deviate from 34-692(3)a.1 that expects traditional neighborhood design with interconnected streets, porches, or balconies at the front of dwellings, primary entrances visible from the street and cars directed toward the rear to allow:**

A single primary entry and internal street from Estero Boulevard for the bay side parcels (see also Deviation #2)

An internal east/west street extension from Donora Boulevard (see also Deviation #2)

Porches or balconies on all facades of the multi-family portion of the mixed-use structure & terraced landscaping with water feature for the façade fronting Estero Boulevard for the mixed-use structure

Outdoor seating and terraces for the beach club and public restaurant portion of the mixed-use structure

Private pedestrian entry above ground level along Estero Boulevard for the beach club & mixed-use structure

A single primary entry along the side façade and drop off only along the front façade for the beach club

Vehicular access from controlled access points to ground level parking for the mixed-use structure and private recreation facility

Justification for Deviation #1: Traditional Neighborhood is not a defined term in the Town's LDC or Comprehensive Plan. The Community Design Element does offer some context with the following language, visual renderings, and multiple site plans for the Red Coconut and Gulfview Colony area:

"A vision for this area...is as a complete neighborhood with an internal circulation system making it possible to walk or ride bikes to school, recreation areas and shopping without using Estero Boulevard. ...Neighborhood design is not dominated by garages and features porches on the front, walkable narrow streets with shade trees that double as view corridors to the preserve and beach and quiet internal street connections to the north and south"

The design elements described are not expressly required but were anticipated as part of the vision described in the Community Design Element. Unfortunately, these design elements have not been updated throughout the years to adapt to the changing circumstances related to the floodplain and federal construction regulations. Since the adoption of the comprehensive plan in 1999, the Town's floodplain maps have been amended three times.⁹ The current maps were adopted November 17, 2022, and establish the Property is subject to a VE-14 flood zone for the entire gulf side and a portion of the bay side. The Coastal A zone and LiMWA (Limit of Wave Action) occurs on the bay side portion of the Property. Additionally, the 1991 Coastal Construction Control Line occurs on the bay side portion of the Property. These conditions require **all** structures to be elevated above the base flood zone of approximately 14 feet, significantly limiting the opportunity for ground level enclosed space, and require construction to utilize breakaway walls. Due to these design requirements, structures within these floodplain zones cannot provide the desired porches and primary entries on the ground floor.

The proposed site plan does activate the street front without ground level commercial space or porches and balconies and primary entries visible from the street. The proposed public parks fronting the gulf and bay side of Estero Boulevard and adjacent to the western property boundaries will provide public recreational opportunities as well as gathering space for existing and future residents. Within these parks are the origination points for the linear park with an 8-foot-wide multi-use path on the bay side parcels and the 10-foot-wide public beach access within the proposed park on the Gulf side. The parks and pedestrian connections are centrally located to the Village district establishing a single point to cross Estero Boulevard consistent with Policy 7-E-4. On the eastern side of the boulevard entry along Estero Boulevard is the proposed terraced

⁹ 2008, 2019, 2022

landscaping with integrated water feature and enhanced architecture for the area below the proposed restaurant, which shields the building podium.¹⁰ The enhanced architecture associated with the restaurant wraps the corner of Estero and Donora Boulevards. With the requested deviation to increase the building setback to promote enhanced streetscaping, these features will shield the structured parking and supporting building infrastructure. Together, the parks fronting the Gulf and bay side of Estero Boulevard with the increased setbacks, enhanced architectural features and streetscaping, pedestrian interconnectivity will be improved along Estero Boulevard with the gathering spaces of the public parks to establish ground level interaction and activate the street front for a lively pedestrian environment.

The terraced landscaping with integrated water feature and enhanced architecture of the proposed restaurant will be a maximum of 3 stories and comply with the height limitations and exceptions¹¹ for the bay side parcels of the Village district. The remainder of the Estero Boulevard frontage is proposed to be a public park. On the Gulf side of Estero Boulevard, architectural treatments consistent with the proposed pattern book and enhanced landscaping are also proposed with two view corridors to the Gulf.

Above the building podium and setback from the commercial restaurant are the multi-family residential towers which tier in height and are further setback from the building podium. The units are oriented within the towers to promote balconies on all the building facades. The design proposed for the mixed use structure, beach club, and public parks implement the intent of the Village district and Policies 1-A-1, 1-A-2, 1-B-2, 1-B-3, 2-B-1, 4-A-1, 4-A-2 and 4-F-2 by providing ground level gathering space through the proposed parks, an enhanced pedestrian environment with the landscaped terraces with water feature, streetscaping, architectural treatments at the ground level and interaction with the street front from the proposed terraces above the required base flood elevation.

The primary vehicular entry to the mixed-use structure is proposed via Estero Boulevard with a single access point to an internal street with stacking distances that exceed the LDC requirements. The street begins in a north/south orientation and turns east/west to provide a circular turnaround and drop off between the two proposed towers. This design orientation for the internal street ensures that vehicles are directed toward the rear and are shielded from the adjacent public roadways. An east/west through street from Donora Boulevard is proposed to provide access to the proposed single family residential units consistent with the intent of the Village district¹² with the opportunity for a future expansion to Lovers Lane. The property owner does not own the land between the western property boundary and Lovers Lane to provide the street extension discussed in the Village district.

¹⁰ The elements that form the base of the structure and serve to raise the habitable space above the base flood elevation.

¹¹ FMB LDC Section 34-631

¹² FM BLDC Section 34-693(c)(2)

The primary vehicular entry to the beach club is also proposed via Estero Boulevard with a single access point to the side of the beach club. Limiting the primary access and secondary streets within the proposed development eliminates curb cuts on Estero and Donora Boulevards and maintains traffic flow consistent with Policy 7-H-10 and guidance received from Lee County Department of Transportation.

While the secondary streets for vehicular access to the mixed-use structure and beach club do not interconnect to adjacent streets, the proposed design does promote pedestrian and/or bicycle activity throughout the Property to adjacent streets via a linear park and new sidewalks. The proposed layout of the linear park originates at Estero Boulevard, within the proposed public park to provide a specific point on Estero Boulevard for pedestrians to cross and access the beach consistent with Policy 7-E-4. From the proposed public park on the bay side of Estero Boulevard, the linear park travels north along the western property boundary, turning east to parallel the proposed new local street, and ultimately connecting to Donora Boulevard. A new sidewalk with shade trees is proposed along Donora Blvd. This linear park with the new and repaired sidewalks on Estero and Donora Boulevards will be open to the public and contributes to the Hidden Paths desired by Objective 2-A and its supporting policies without requiring public expenditure for implementation. The linear park is also located in a manner that can provide a future interconnection to Lovers Lane. The proposed design for the linear park promotes interconnectivity with existing public infrastructure for existing and future residents consistent with Policies 1-A-2, 4-A-1, 7-B-3, and 7-E-4 and further activates the Estero Boulevard street frontage as desired by the Village district.

The proposed development promotes design features that adapt to the federal design requirements of the VE and Coastal A zone while maintaining the intent of the Village district and comprehensive plan to the maximum extent possible. The public health, safety and welfare will be improved through the elevation of the structure, incorporation of architectural techniques, and public recreation that activates Estero Boulevard for all pass by traffic, a safe linear park that connects to other residential neighborhoods and the maintenance of traffic flow along Estero Boulevard. Other infrastructure improvements are also proposed to enhance pedestrian and bicycle connectivity and view corridors to the Gulf and Matanzas Pass Preserve, consistent with the vision of the Village district.

ii. Street Layout

- 2) Request to deviate from 34-693(c)(1) and (2) that provides options for secondary streets in the Village zoning district and requires an extension of a through street from Donora Boulevard to Lovers Lane that will be permanently accessible by the public to allow:**

A single primary entry and internal street from Estero Boulevard to the mixed-use structure with turn around.

An internal east/west local street extension from Donora Boulevard to the western property boundary.

Justification for Deviation #2: The Village district includes a desired street layout in LDC Figure 34-18 demonstrating the anticipated secondary street layout with the potential for 2 additional access points to Estero Boulevard within the Property and the required east/west extension of Donora Boulevard to Lovers Lane. In addition to the existing north/south portion of Donora Boulevard, Figure 34-18 establishes a minimum of 3 secondary streets within the Property. However, LDC Section 34-693(c) establishes that secondary streets are to be “*generally* in accordance with Figure 34-18.” (emphasis added) The existing north/south portion of Donora Boulevard is one of the secondary streets identified in Figure 34-18, the proposed site plan incorporates a sidewalk along the street to provide improved pedestrian circulation from the adjacent residential neighborhoods.

Due to the pedestrian/bicycle opportunities provided by the proposed site design, vehicle access is purposefully directed to the multi-family or single-family residences and not interconnected. Increasing the internal street connections consistent with Figure 34-18 would increase the number of locations a pedestrian or cyclist would have to cross a street also utilized by vehicles. To reduce the number of conflict points and improve safety, a linear park with an 8-foot-wide multi-use path is incorporated into the site plan separating pedestrian and bicycle traffic through the Property from vehicles. A single internal street is proposed for the multi-family structure from Estero Boulevard with a turn around and stacking distances that exceed the LDC requirements to address the anticipated traffic, drop off for valet, and shield this activity from Estero Boulevard. Policy 7-H-10 specifically identifies that there are “an excessive number of streets and driveways having direct access to Estero Boulevard, reducing its ability to handle peak season traffic. The town shall take advantage of any suitable opportunities to consolidate street connections into fewer access points on Estero Boulevard.” The Property’s approximately 600+ foot frontage on Estero Boulevard is a unique opportunity to implement this policy with the proposed redevelopment. The intent of this policy is reflected in the conceptual site plan by limiting the number of vehicular access points from Estero Boulevard to one for the Gulf and one for the bay side parcels consistent with Policies 1-A-1, 7-H-10 and guidance received from Lee County Department of Transportation.

Two additional access points to the mixed-use structure are provided on the north/south portion of Donora Boulevard, an existing local street, to provide secondary ingress/egress to the structured parking for residents. A new local east/west street is proposed to extend Donora Boulevard through the Property and provide access to the proposed single family residential consistent with Policy 3-A-5 and LDC Section 34-693(c)(2). Consistent with the intent of the Village district and Policy 3-A-6 this design maintains a future opportunity for the through street to extend to Lovers Lane¹³ and promote an interconnected network for existing and future residents

¹³ FMB LDC Section 34-693(c)(2)

to travel to the redeveloped Elementary School and Bay Oaks without utilizing Estero Boulevard. The Property owner does not own the land between the western property boundary and Lovers Lane to provide the full street extension discussed in the Village district. It is anticipated that future redevelopment in the Village district will promote the full extension of the desired local street.

Pedestrian and/or bicycle activity throughout the property and to adjacent streets is promoted through linear park and a new sidewalk with shade trees along Donora Boulevard. The linear park interconnects the public park fronting on Estero Boulevard, travels north along the western property boundary, turns east adjacent to the new internal road, and ultimately connects to Donora Boulevard consistent with Policies 3-A-5, 3-A-6, 4-A-1, and 7-D-5. This linear park will be open to the public and contribute to the Hidden Paths desired by Objective 2-A and its supporting policies without requiring public expenditure for implementation. The location of the linear park adjacent to the proposed new local street also provides the opportunity for a future connection to Lovers Lane, further promoting interconnectivity throughout the Town.

The public health, safety and welfare will be improved through the proposed design by eliminating curb cuts and maintaining the traffic flow on Estero Boulevard. The provided enhancements for pedestrian and bicycle connectivity appropriately address the opportunity for future development on properties not controlled by the applicant. The design of these enhancements reduces the potential conflict points with vehicular traffic and provides a separate safe linear park of pedestrian and bicycle traffic through the site with the opportunity for future expansion to the west. Together the internal streets and linear park improve circulation for vehicles and pedestrians as desired by the Village district.¹⁴

iii. Building Placement

- 3) Request to deviate from 34-693(e), (f), (g) that establishes build-to-lines from all streets at 0, rear setbacks at 20 feet, and a building frontage percent to 50% along Estero Boulevard to allow:**

Elimination of the build-to-lines and building frontage % for all structures;

Establish a 10-foot front setback for structures adjacent to a roadway;

Decrease the rear setback to 10 feet for the mixed-use structure;

Decrease the rear setback to 5 feet for accessory structures associated with the single-family residential units;

Increase the street corner setback beyond 20 feet for the mixed-use structures.

Justification for Deviation #3: The Property fronts Estero and Donora Boulevards and as described in Deviation #1, the Property is within a VE-14 and Coastal A zone requiring the

¹⁴ LDC Section 34-693(c)

elevation of structures within this area to approximately 14 feet above base flood elevation. The bay side parcels are also subject to the 1991 Coastal Construction Control Line which significantly limits the square footage that can be enclosed below base flood elevation and requires breakaway construction practices. With a required elevation of 14 feet, the requested increased setback will enable the area between the property boundary and proposed structure to be utilized for streetscaping and improvement or installation¹⁵ of a public sidewalk. The streetscaping with enhanced architectural elements will screen the building podium providing parking, plumbing, electrical and foundational elements for the mixed-use building and private beach club.

Building frontage is measured as the length of a building façade that faces a street¹⁶, and in the Village district this length is measured at the build to line. The requested front setback is greater than the build-to-line; therefore, by the definition included in the LDC, the building frontage would be 0. Additionally, the proposed mixed use building design includes a public park along Estero Boulevard, which significantly reduces the length of the building façade along Estero Boulevard and provides a significant public benefit. Similarly, the beach club provides two 120-foot view corridors along Estero Boulevard; significantly reducing the length of building façade provided to increase the public benefits offered.

To ensure the structural elements of the building podium are appropriately screened from the adjacent streets, the proposed design includes a setback greater than 10 feet from a right-of-way and 20 feet from corner of street intersections. The increased setback provides additional land area for plantings between the structure and the repaired or new sidewalk to shade the adjacent pedestrian environment and improve the view of pass by traffic as compared to the required construction practices for the 14-foot base flood elevation. In addition to the increased setback, the mixed-use structure utilizes landscaped terraces with a water feature and a public restaurant with terrace to address the pedestrian environment along Estero Boulevard. Additional streetscaping, a new sidewalk and public art are provided along Donora Boulevard. When combined with the public park on the remainder of the Estero Boulevard frontage, these features provide an enhanced pedestrian environment and gathering space as well as an activated street front, implementing the intent of the Village district and Policies 1-A-1, 1-A-2, 1-B-3, and 4-A-1.

The rear setback for the mixed-use structure is proposed to be reduced due to the location of the linear park and new local street providing access to the proposed single family. The building podium will be closer to the linear park than the residential towers which are internally setback from the edge of the building podium increasing the setback from Donora Boulevard and the new local street to ensure the right-of-way and linear park maintain open air and light. The proposed design is consistent with the Village district's intent and Policies 4-A-1 and 4-A-2.

The public health, safety and welfare will be improved through the proposed design by incorporating required construction techniques to address the floodplain elevation while enhancing

¹⁵ The existing sidewalk along Estero Boulevard will be repaired and a new sidewalk will be installed along Donora Boulevard.

¹⁶ FMB LDC Section 34-693(c)

the ground level environment for pass by pedestrian and vehicular traffic consistent with Policies 1-A-1, 1-A-2, 1-A-3, 1-B-3, 2-B-1, 3-A-5, and 4-A-1. The request appropriately adapts the design to implement the intent of the Village district. Additionally, the provided enhancements will interconnect with the proposed linear park and public beach access to further improve circulation for pedestrians as desired by the Village district¹⁷ and Policies 2-A-1, 3-A-5, and 3-A-6.

iv. Building Height

4) Request to deviate from Section 34-693(h) that limits building height to 30 feet above base flood elevation and no taller than three stories for mixed use buildings without enclosed space on the first story on the bay side of Estero Boulevard to allow:

A maximum building height of 17 stories¹⁸ and 235 feet for the tallest portion of the mixed-use building on the bay side of Estero Boulevard consistent with Policy 4-C-4.

Justification for Deviation #4: The Village district was established to reduce density from the previous 27 RV/mobile homes per acre to 15 dwelling units per acre. The average residential density in other locations within the Town is 6 dwelling units per acre. To address the permitted density, desire for open views, public gathering spaces and pedestrian/bicycle interconnectivity, an integral component of the proposed design is the transfer of the permitted density from the Gulf side properties to the bay side properties. This density transfer will keep the height of the development on the Gulf side consistent with the permitted 3 stories in height¹⁹ of the Village district while improving connectivity and visibility to the Gulf compared to the conditions of the previous development. The proposed development plan also limits the intensity of the Gulf side properties to a private recreational amenity and membership organization.

Due to the Property's location within a VE-14 flood zone and Coastal A zone with LiMWA (Limit of Wave Action) the usable square footage and residential units of the mixed-use building need to be elevated above approximately 14 feet. Enclosed space on the first story is significantly limited and construction is required to utilize breakaway walls. Additionally, the 1991 Coastal Construction Control Line occurs on the bay side of Estero Boulevard, also limiting enclosed space on the first story and requiring breakaway wall construction practices. These State and Federal regulations' design requirements promote unenclosed space for the area below base flood, in conflict with the Village district's screening requirements. To address the current design requirements for below base flood and maintain openness of the site design for view corridors and public gathering space, the proposed design reduces the development footprint and requests additional height to cluster the multi-family units into 2 residential towers with multiple tiers at

¹⁷ LDC Section 34-693(c)

¹⁸ To be 15 stories of multi-family units and 2 stories of structured parking.

¹⁹ LDC Section 34-693(h)(2) establishes a height of 40 feet above base flood elevation and LDC 34-631 establishes an additional 5 feet in height for certain architectural enhancements. The future design of the beach club will comply with these exceptions for 45 feet in height.

varying heights from 17 to 13 stories (including the structured parking) or a maximum height of 235 feet above base flood elevation (including the structured parking).

The comprehensive plan also considers requests for additional height in Policy 4-C-4, which specifically indicates “different heights may be applied to officially designated redevelopment areas such as ... Red Coconut/Gulf View Colony.” The Village zoning district implements the redevelopment described as “Red Coconut/Gulf View Colony” in the Comprehensive Plan. Requests for additional height need to demonstrate consistency with the comprehensive plan and public benefits promoted by the site design due to the request, such as view corridors to the Gulf or Bay.

Consistent with architectural practices for increased height, as the residential towers increase in height above the podium, the setback from Estero Boulevard increases. Additionally, the towers are setback from the building podium increasing the separation from the property boundary and Donora Boulevard. The placement of the north/south tower closest to Donora Boulevard aligns with the existing multi-family and the former art campus and Fort Myers Beach Fire District Station that previously existed on the eastern side of Donora Boulevard. The adjacent development is within the VE-14 flood zone and Coastal A zone with a LiMWA and an AE zone with a base flood elevation of 11 to 12 feet. As a result, redevelopment of the fire station and art campus must be elevated 11 to 14 feet. The orientation of the towers with the architectural elements and streetscaping ensures the future building will be compatible with the adjacent single, multi-family and community facilities along Donora Boulevard.

At the ground level, the proposed structure will be elevated and future development on adjacent properties will also be required to elevate consistent with base flood elevation. The building podium of the proposed structure is proposed to be shielded through architectural elements and enhanced landscaping consistent with Policies 1-B-2, 2-B-1, 3-A-5, 4-A-1, 4-A-2. At the intersection of Estero and Donora Boulevard, the commercial restaurant provides a dining terrace and coastal architecture that wraps from Estero to Donora Boulevard consistent with Policy 4-A-3. This design ensures that the Donora Boulevard frontage adjacent to Estero Boulevard is activated and provides a step back from the requested increased height. Traveling further north on Donora Boulevard the north/south residential towers increase in height and the street level is proposed to be enhanced through architectural treatments, an increased planting area for streetscaping and a public art installation. Finally, a new sidewalk will be constructed to provide pedestrian interconnections from the existing residential neighborhoods, the proposed linear park, and Estero Boulevard. The remaining building façade along Estero Boulevard is proposed to be terraced landscaping with water feature to shield the structure and supporting infrastructure while enhancing the pedestrian environment and promoting a special landscape feature along Estero Boulevard consistent with Policies 1-A-1, 1-B-3, 4-A-1. The landscaped terraces, water feature, and restaurant are consistent with the bay side height limitation of 3 stories and 30 feet in height²⁰

²⁰ FMB LDC Section 34-693(h)

and architectural exceptions.²¹ Designing the uses and structure in this manner ensures the requested height does not crowd the Town's roadway network promoting openness and light and the ground level environment contributes to the pedestrian realm.

Promoting a mixed-use structure in the central portion of the Property for 137 of the permitted 141 residential units with increased height enables a reduced building footprint to utilize other portions of the property for improvements that benefit existing and future Town residents. The public parks, linear park, and view corridors are provided to promote public gathering, recreation, views and access to the Gulf and the bay. On the Gulf side, two 120-foot view corridors will maintain a permanent view of the Gulf of Mexico. The western view corridor is a new public park with 10-foot pedestrian access to the sandy beach. On the north side of Estero Boulevard from the Gulf front park, a public park is proposed with the origination point for a proposed linear park. Aligning the Gulf front and bay side parks in this manner promotes a centrally located park to the entire Village district and a single pedestrian crossing of Estero Boulevard. A linear park parallels the western property boundary and the new east/west extension of Donora Boulevard to enhance interconnectivity through the Property for existing and future residents without a vehicle. An opportunity to expand the linear park to the west is available when the remainder of the property within the Village zoning district is redeveloped, furthering enhancing mobility without a vehicle.

The linear park terminates at the intersection of the north/south and east/west portions of Donora Boulevard. In this general location, adjacent to Matanzas Pass Preserve is the final public park. This park's location maintains the previous view corridor available down Donora Boulevard. Additionally, the existing residential lots to the east can utilize this area as a neighborhood park.

The programmatic development of the parks has not been finalized. The applicant has included language in the Development Agreement to require on-going coordination with the Town of Fort Myers Beach to ensure the final design is consistent with the Town's vision. The Development Agreement also commits that the Applicant will maintain ownership and maintenance of the park and an easement will be recorded for public access and use. As a result of this structure, the Town will have a new public park with beach access without requiring an investment in tax funds for purchase, development, or maintenance of the park.

The public health, safety and welfare will be improved through the proposed design through the shielding, ground level interactions and activated street frontage that will be provided by the public parks, terraced landscaping with water feature and enhanced architectural elements consistent with Policies 1-B-2, 2-B-1, 4-A-1, and 4-A-2.

v. Increased FAR & Ground Level Parking Requirements

5) Request to deviate from Section 34-693(i) that restricts Floor Area Ratio ("FAR") to 1.2 and 34-633 includes all stories of covered parking in the measurement of FAR to allow:

²¹ FMB LDC Section 34-631(b)

Elimination of covered parking and parking decks from the calculation of FAR and permit a FAR of 1.5 (616,156.2 square feet) consistent with Policy 4-C-2.

- 6) Request to deviate from Section 34-693(l) that requires off-street parking under a commercial or mixed-use building to be separated from primary streets by usable commercial space at least 200 feet deep, meet all commercial design standards, and have a driveway that connects to a secondary street to allow:**

Parking under the beach club and mixed-use building with no commercial space on the ground level and access from Estero Boulevard or an internal street.

Justification for Deviations # 5 and 6: The Village district establishes a maximum FAR of 1.2 for commercial uses and the Town's comprehensive plan establishes a maximum FAR of 1.5 in Policy 4-C-2. This same policy establishes "the land development code shall specify maximum commercial intensities using floor-area ratios (the total area of the building divided by the area of the site in the category allowing the commercial uses)." LDC Section 34-633(1) specifies "gross floor area includes the total floor area of all stories of a building within the surrounding exterior walls (whether the walls are solid or screened), plus all area below an elevated building that is six feet or more in height, plus all stories of covered parking..."

When considered together, the Comprehensive Plan and LDC establish FAR as a measure of commercial intensity that includes parking structures and unenclosed space on the ground floor. At the time LDC Section 34-633 was adopted in 2003, commercial retail space could be provided in certain locations within the Town on the ground floor level to shield parking and provide an active street front. The vision statements for the Civic Center, which includes the Property, acknowledge that even in 1999 "the current floodplain and coastal setback regulations severely restrict what can be done here."²² Since 1999, there have been multiple changes to the floodplain mapping and building code requirements which continue to increase development restrictions. The proposed development along the Gulf side of Estero Boulevard is within a VE-14 floodzone which is an area subject to high velocity wave action. The remaining portion of the property, on the bay side is within a Coastal A Zone, which is an area subject to breaking waves ranging from 1.5 to 3 feet²³. The building requirements for the flood zones and CCCL significantly limit the permitted enclosed space to a dimension that is not feasible for commercial uses below base flood elevation. Additionally, a portion of the property on the bay side is also within the 1991 CCCL; which the Town's comprehensive plan acknowledges includes structural regulations administered by the Department of Environmental Protection²⁴ limiting enclosed space and requiring breakaway walls which are not feasible for commercial uses below base flood elevation²⁵. Without the ability to utilize the area below base flood elevation for residential or commercial space, a deviation is requested to eliminate the area of the parking structure from the calculation of FAR and a second

²² FMB Comprehensive Plan, Community Design Element, Page 3-6

²³ *Ibid.*

²⁴ FMB Comprehensive Plan, Future Land Use Element, Page 4-9

²⁵ FMB Comprehensive Plan, Future Land Use Element, Page 4-10

deviation is requested to eliminate the requirement for commercial usable space between the ground level parking and Estero or Donora Boulevards.

Another deviation is requested to increase the allowable FAR on the property to 1.5 (616,156.2 square feet) and accommodate the proposed uses. Policy 4-C-2 permits FAR requests up to 1.5 within the Boulevard and Mixed Residential FLU categories. The public restaurant at approximately 10,000 square feet and 137 multi-family units will be constructed within an integrated structure that is classified as a mixed-use building per Policy 4-B-12. The beach club will provide private recreational amenities and a membership organization; which is also a mixed-use building per Policy 4-B-12 as the Town's LDC establishes membership organizations as a commercial use. Mixed use structures must comply with the FAR calculations consistent with past interpretations of Town policy. The combined total area of the proposed structures exceeds the permitted 1.2 FAR even when the parking structure is eliminated from the FAR calculation. It should be noted that the single-family units are a residential product therefore per Policy 4-B-12 do not need to be included in the calculation of FAR for commercial intensity. The requested deviations are consistent with the maximum FAR outlined in Policy 4-C-2 and the current coastal regulations. The additional FAR is being utilized to support multi-family units and a membership organization and does not represent an increase in commercial intensity or intrusion into a residential neighborhood. Consistent with Policy 4-C-3, the Property previously had approximately 10,000 square feet of commercial uses with setback variances and no formal parking.

The public health, safety and welfare will be improved through the mix of uses proposed with the building orientation and layout. The uses provided in the proposed structures are classified as mixed use through the provision of residential and commercial uses. The request does not promote an increase in commercial intensity or intrusion into a residential neighborhood and reflects appropriate limited commercial uses consistent with the anticipated redevelopment in the surrounding area.

7) Request to deviate from Section 34-693(m) that requires commercial and mixed-use buildings visible from Estero Boulevard to abide by the commercial design standards outlined in 34-991-34-1010 to allow:

Conceptual approval of the architectural renderings and the proposed pattern book to permit review of designed elevations as part of the Development Order process.

Justification for Deviation #7: As part of the Development Agreement, Exhibit B is Conceptual Plans and Renderings and Exhibit D is a pattern book to demonstrate the anticipated features of the proposed development. These exhibits provide a conceptual site plan, renderings of the proposed multi-family and beach club structures, perspective viewsheds and expected architectural elements demonstrating the anticipated architectural form and features of the proposed structures. However, detailed architectural elevations and floor plans have not been prepared to evaluate against the commercial design standards outlined in the LDC.

LDC Section 34-992(d)2 permits compliance with architectural standards to be established with the submittal of a development order application. The Conceptual Plans and Renderings with the Pattern Book are provided as exhibits to the DA to demonstrate the anticipated elements of the future building architecture and floor plans. Providing a framework for review and approval of the detailed architectural plans with the development order applications.

The public health, safety and welfare will be maintained through the deviation request. The provided renderings and pattern book establish an architectural theme that reflects a coastal contemporary style. Through the conditions provided in the Development Agreement, this same architectural theme will need to be provided with the Development Order application. At that time Town Staff can review the detailed architectural elevations and floor plans to ensure consistency with Exhibit B Conceptual Plans and Renderings and Exhibit D Pattern Book.

8) Request to deviate from Section 34-631(b)(3) that permits mechanical structural appurtenances to extend above the height limit provided they do not exceed 250 square feet and screening is provided to allow:

No square footage limitation or screening for the portions of the residential tower above 11 stories.

Justification for Deviation #8: The mechanical equipment to support the 137 multi-family residential units will be integrated into the mixed-use structure and located on the roof. Due to the ranging height of the residential towers, the Applicant requests elimination of the limitations regarding square footage and screening for the portions above 11 stories. From the ground level, the mechanical equipment will not be visible and therefore these additional limitations are not necessary to protect the public health, safety and welfare.

g. Public Benefits

The proposed development incorporates several public benefits to provide public recreational opportunities and promote interconnectivity without a vehicle.

i. Public Park with Beach Access & View Corridors to the Gulf of Mexico

Two approximately 120-foot view corridors (50% of the parcel's frontage) are proposed south of Estero Boulevard adjacent to the west and east property boundaries maintaining permanent views of the Gulf of Mexico. The west view corridor is provided with a new public park that incorporates a 10-foot public access to the sandy beach. The programmatic development of the park has not been finalized. The applicant has included language in the Development Agreement to require on-going coordination with the Town of Fort Myers Beach to ensure the final design is consistent with the Town's vision. The Development Agreement also commits that the Applicant will maintain ownership and maintenance of the park and an easement will be recorded for public access and use. As a result of this structure, the Town will have a new public park with beach access without requiring an investment in tax funds for purchase, development or maintenance of the park.

ii. Linear Park

North of Estero Boulevard, adjacent to the western property boundary and paralleling the southern extent of the new east/west extension of Donora Boulevard, a public 20 foot wide Linear Park is proposed consistent with Policies 3-A-5, 3-A-6, 4-A-1, 7-D-5. Originating at Estero Boulevard, the linear park begins internal to a proposed public park along Estero Boulevard and the western bay side property boundary. The linear park provides a landscaped 8-foot-wide multi-use path through the Property to enhance interconnectivity for existing and future residents from the existing nearby residential neighborhoods to Estero Boulevard without a vehicle. The location of the park has been oriented to ensure a future expansion to the west can be provided when the remainder of the property within the Village zoning district is redeveloped, further enhancing mobility without a vehicle consistent with Policy 4-A-2. Additional connectivity will be provided through the repair, maintenance, and installation of sidewalks on either side of Estero Boulevard consistent with Policies 1-A-2, 4-A-1, 7-B-3, and 7-E-4.

Beyond the multi-use path, other programmatic elements of the linear park have not been finalized. The Development Agreement incorporates several commitments from the Applicant related to the public parks:

- On-going coordination with the Town of Fort Myers Beach to ensure final park design is consistent with the Town's vision;
- Recording a perpetual access easement for public access and use of all parks;
- Developer maintenance of all public parks;
- Developer design and provision of site-specific wayfinding signage to all parks and public access points;
- Informational signs related to Matanzas Pass will be developed with Town Staff and constructed.

iii. Two Bay Side Public Parks

Two public parks on the bay side properties are proposed. The first is along the western property boundary and fronting Estero Boulevard, providing the origination point for the proposed linear park. The location of this park aligns with the public park and beach access on the Gulf side park promoting a single pedestrian crossing across Estero Boulevard consistent with Policy 7-E-4. Additionally, this location is central to the entire Village District, ensuring the park facilities and multi-use path can be utilized by the residents/patrons of the future redevelopment anticipated to occur west within the Village District and the existing surrounding neighborhoods.

A second public park is proposed at the north/south terminus of Donora Boulevard adjacent to Matanzas Pass Preserve. This park's location maintains the previous view corridor available down Donora Boulevard. Additionally, the existing residential lots to the east can utilize this area as a neighborhood park.

Programmatic elements of the parks have not been finalized; however, it is anticipated that future improvements would promote public gathering, interaction, and the activation of the Estero Boulevard street frontage consistent with the Village district.

The Development Agreement incorporates several commitments from the Applicant related to the public parks:

- On-going coordination with the Town of Fort Myers Beach to ensure final park design is consistent with the Town's vision;
- Recording a perpetual access easement for public access and use of all parks;
- Developer maintenance of all public parks;
- Developer design and provision of site-specific wayfinding signage to all parks and public access points;
- Informational signs related to Matanzas Pass will be developed with Town Staff and constructed.

iv. *Density Transfer to Bay Side Parcels*

The proposed site plan transfers the residential density of the Gulf side parcels to the bay side parcels to reduce the development footprint and promote increased public recreation opportunities, views of the Gulf from Estero Boulevard, and maintains the view of Matanzas Pass down Donora Boulevard.

Without the transfer of the permitted residential units from the Gulf side to bay side parcels, the Village district only requires a 50-foot view corridor to the beach. The remainder of the approximately 425 feet of beach frontage could be developed with a 4-story structure. The proposed redevelopment increases the available view corridors to approximately 240 feet (50%) of the parcel's frontage on Estero Boulevard. Additionally, the proposed development incorporates a beach club into the uses for the Gulf side parcels for residents and members only. This development is much less intensive than a commercial resort or restaurant which are permitted uses consistent with the Village district. Therefore, the carrying capacity of the Gulf side parcels and adjacent public beach will not be exceeded or strained by the proposed development due to the limited uses proposed as a beach club and the transfer of the residential density.

v. *Pedestrian Overpass, Limited Vehicular Driveways & Bus Pull-Off*

To maintain efficient traffic flow along Estero Boulevard, the proposed development includes only one vehicular access point to the Gulf and bay side parcels, a private pedestrian overpass for residents and guests, and a joint pull-off point for buses and restaurant patrons. The proposed vehicular access points will limit the necessary curb cuts for the proposed development to one for each side of Estero Boulevard consistent with Policies 1-A-1, 1-A-2, and 7-H-10. The pedestrian overpass will interconnect the multi-family residential portion of the structure and beach club appropriately lifting the pedestrian activity associated with the development off Estero Boulevard improving traffic flow and safety for pedestrians consistent with Policies 4-A-1, 4-A-

2, 7-E-4. Sidewalks currently exist along the bay side frontage of Estero Boulevard which will be repaired if needed and maintained through the proposed site plan. A new sidewalk is included in the site plan for Estero Boulevard frontage along the beach side properties and along Donora Boulevard consistent with Policies 4-A-1, 7-B-3, 7-E-4. Vehicular pull-off points are integrated into the design along Estero Boulevard for the proposed restaurant to ensure vehicular stacking does not occur within the public right-of-way consistent with Policies 1-A-2 and 7-E-2. The Applicant also agreed to coordinate with the Lee County School District to ensure the pull-off points' design is adequate to accommodate a school bus and provide a safe location for pick-up and drop-off of school children.

vi. *Public Memberships Available to Beach Club*

At the public's request during the informational meetings and one-on-one interviews, the Applicant has agreed to offer long-term memberships to members of the public. Unlike other resort properties these memberships will not be day passes but rather seasonal and/or annual memberships to the Beach Club to utilize the offered amenities. The Development Agreement commits a minimum of 25% of all memberships offered will be available to the public. To accommodate these public memberships an additional 75 parking spaces will be provided between the ground level car park of the beach club and the mixed-use structure on the bayside Property.

III. CONCLUSIONS

The proposed redevelopment of the Property considers the floodplain and coastal setback regulations while adapting and implementing the vision statements of the Town's Comprehensive Plan. Utilizing the redevelopment option of the Village district significantly reduces the density available from a build back of the former 27 RV units per acre to 15 dwelling units per acre. The permitted density and most of the commercial intensity is transferred from the Gulf side properties to the bayside properties with a request to increase the building height that enables a reduction of the proposed building footprint to accommodate public parks, a linear park, a view corridor and future access to Matanzas Pass Preserve, and additional view corridors to the Gulf. Together, the proposed public benefits promote large open spaces for public gathering, pedestrian and bicycle interconnections and retain psychological connections and views to the Bay and Gulf consistent with the comprehensive plan.

The architectural enhancements and tiered height of the proposed structures ensure the development appropriately frames the adjacent streets, is oriented toward pedestrians, and shields the structured parking provided consistent with the vision outlined in the comprehensive plan for the Town as well as the redevelopment district. Increased setbacks are requested to permit the maintenance of existing sidewalks, the installation of new sidewalks and appropriate area for streetscaping to provide shade for pedestrians and enhance the landscaping associated with the proposed development. A commitment to public art display on Donora Boulevard and shared use of vehicular pull off for the Lee County School District further enhances the pedestrian environment and opportunities for movement without a vehicle on the existing streets.

The requested uses are located in a manner that is consistent with the underlying, split FLU for the Property. The design of the proposed structures and the placement on the property is compatible with the adjacent existing and future development. The requested design flexibility through the site plan with deviations provides ample public benefits to the existing and future residents of the Town as anticipated by the comprehensive plan, LDC, and DA process.



3001 Estero Boulevard
Development Agreement Application
Project Narrative
Revised September 20, 2024

The Town of Fort Myers Beach (“Town”) is a unique coastal community located in Lee County, Florida. As a barrier island, there have been many changes over the years including the establishment of the Matanzas Pass Bridge, development and redevelopment of small businesses, residential construction from small beach cottages to high rise multi-family and revisions to the Florida Building Code and Federal Flood Zone Maps. The Town formally incorporated on December 31, 1995.¹¹ On September 28, 2022, Hurricane Ian, one of the most powerful storms in US history, made landfall near Cayo Casta bringing severe flooding and damage to the Town of Fort Myers Beach. Over a year and 9 months later, much of the Town continues to recover and rebuild.

The recovery and rebuilding of multi-family and commercial properties within the Town includes design features that reflect past development while incorporating new structures consistent with current building code, floodplain, and coastal setback regulations. The proposed redevelopment of the former Red Coconut RV Park is no exception. Purchased by Seagate Fort Myers Beach, LLC in September of 2023, Parcels 29-46-24-W1-00145.1000, 30-46-24-W2- 00001.0000, 29-46-24-W1-00145.5000, and 29-46-24-W1-0120A.0010 continue to be under unified ownership and are proposed for redevelopment as a multi-family community.



Figure 1. Aerial of Subject Property

¹ Fort Myers Beac (“FMB”) Comprehensive Plan, Community Design Element, Page 3-1

At 10.72 acres from the Matanzas Pass Preserve to the Gulf of Mexico, the Property is within the Civic Center planning area, Boulevard and Mixed Residential future land use (“FLU”) categories, the Village zoning district (“Village district”), and has a pre-approved redevelopment option.²² The proposed redevelopment of the Property seeks to collate all these visions into a cohesive development plan that also adapts to changing floodplain regulations and provides the following public benefits to the existing and future residents of the Town.

1. Transfers the residential density and majority of commercial intensity to bay side parcels;
2. 2 view corridors to the Gulf of Mexico from Estero Boulevard;
3. 1 view corridor to Matanzas Pass Preserve;
4. Enhancements to existing private beach access;
5. Incorporating new public beach access with a gulf side public park;
6. A new public park adjacent to Matanzas Pass Preserve;
7. A new public park adjacent to the bay side of Estero Boulevard;
8. A new public linear park interconnecting Estero and Donora Boulevards through the Property;
9. Establishing the first portion of an east/west local street from Donora Boulevard to Lovers Lane;
10. Enhancing the street frontage of Estero Boulevard;
11. Co-locate mass transit improvements with vehicular pull offs on Estero Boulevard;
12. Incorporate a public art installation along Donora Boulevard;

The primary element of the proposed redevelopment is the transfer of density and a majority of the commercial intensity from the beach side parcels and clustering this density and intensity into a mixed-use structure centrally located on the bay side parcels. The redevelopment maintains the previous residential and commercial uses of the Property to promote a mixed-use development with single-family and multi-family residential, a commercial restaurant and private beach club. Utilizing a request for additional height to reduce the development footprint, the design also establishes 3 public parks, and a linear park, through the Property. Two of the three public parks and the linear park are located on the bay side parcels providing interconnectivity with existing adjacent neighborhoods. On the beach side, adjacent to the private beach club facility, a new public beach access is provided with a beach front park promoting an enhanced view corridor to the Gulf. The proposed design also includes single family residences adjacent to the Matanzas Pass Preserve enabling the transition of density and height from the adjacent existing preserve and maintaining the housing type of the adjacent residential area to the east.

The redevelopment of the Property will be accomplished through the requested Development Agreement and Site Plan with Deviations (“DA”) process. A conceptual package is provided including a site plan, public benefits, renderings, and a pattern book to demonstrate the requested development and guide the review of future detailed permit applications. Deviations are requested to provide flexibility related to the site design to promote the clustering of density and intensity, provision of public parks, recreation and beach access, and view corridors to the Gulf of Mexico

² FMB Land Development Code (LDC) Section 64-693

while ensuring compliance, to the maximum extent possible, with the Town’s Land Development Code (“LDC”). *The current application does not request any flexibility from the existing permitted residential density or permitted uses.* A formal Development Order (“DO”) application will be submitted consistent with the LDC after the DA process is complete. Additional permits are required for stormwater management, utilities, and vehicular access.

I. Property Background

Prior to Hurricane Ian, the Property was developed as an RV and mobile home park with supporting recreational amenities and owned/operated by the Myers Family since 1984. The Red Coconut RV Park accepted its first visitors in 1925.³ Approximately 12 years after the first beach hotel was constructed and a year before the swing bridge connected Fort Myers Beach to mainland Lee County.⁴ Due to the development pre-dating the incorporation of the Town by over 73 years, the Property is located within a redevelopment area identified by the Comprehensive Plan⁵ and LDC.⁶ The intent of the redevelopment area is for the Town to “take positive steps to redevelop areas that are reaching obsolescence or beginning to show blight ... by providing an opportunity for landowners to replace vulnerable mobile homes and recreational vehicles with permanent structures in the ...Red Coconut area.”⁷ Implementing this intent, Policies 3-A-5, 3-A-6 and 4-F- 2 identify that *the redevelopment of the Red Coconut is encouraged to incorporate specific design concepts into a pre-approved redevelopment option.* (emphasis added) The Village district implements these policies by “...provid[ing] alternative futures for the Red Coconut...either a continuation of the current land uses or their transformation into a traditional neighborhood pattern.”⁸ A DO can be obtained to redevelop property within the Village district consistent with the design criteria outlined in LDC Section 34-693 establishing allowable uses, street layout, view corridors, setbacks, etc. The Development Agreement process permits deviations to be requested from the design criteria as outlined in the LDC.

The proposed redevelopment maintains the previous primary residential use of the property that occurred with the former RV park and incorporates the previous standalone commercial square footage into the proposed mixed-use structure fronting the bay side of Estero Boulevard. The private beach club provides private recreational amenities to the residents and guests of the residential units and will be a membership organization for those choosing to purchase seasonal or annual access. A commitment has been made to retain 25% of the memberships for the public to utilize. These uses are consistent with land use types outlined in Policy 4-B-12 and commercial intensity described in Policy 4-C-2.

³ Red Coconut | RV Park. <https://www.redcoconut.com>. Accessed April 28, 2024

⁴ FMB Comprehensive Plan, Commercial Design Element, Page 3-3

⁵ FMB Comprehensive Plan, Policy 4-F-2

⁶ FMB LDC Section 34-691 et.al.

⁷ FMB Comprehensive Plan, Objective 4-F

⁸ FMB LDC Sec 34-691

This DA application request seeks to maintain the permitted density and uses outlined by the comprehensive plan and Village district while seeking relief from various design standards to comply with current building codes and floodplain and coastal building setback regulations prior to the submittal of the DO application for the redevelopment of the Property.

II. Future Land Use

The community vision conducted in 1997 and included in the comprehensive plan in 1999 establishes 7 planning areas within the Town in addition to the FLU categories. These planning areas still exist 27 years later to guide the character of development; however, they have not been updated for consistency with changes in State building codes, coastal building regulations and Federal floodplain requirements. The property is within the Civic Center planning area, which extends approximately from Pearl Street to Donora Boulevard on both sides of Estero Boulevard.⁹ Prior to Hurricane Ian this area included a mix of commercial, residential and public services; however the floodplain and coastal setback regulations significantly restricts development and redevelopment.¹¹⁰⁰ The vision statements for the Civic Center establish this area as the “Heart of the Island,” with a system of interconnected pedestrian and bicycle paths, and acknowledge redevelopment of the Property is anticipated.¹¹¹¹

The 10.72-acre Property is within 3 FLU designations, Boulevard and Mixed Residential with a small area of Recreation. Consistent with Policy 4-B-8, the portion of the property within the Recreation FLU is not proposed for development and is not included in the calculation of density or intensity. Leaving this 1.296-acre portion of the Property in its natural state is consistent with the vision of the beach as described in the Comprehensive Plan.¹² A legal description and survey is incorporated into the Development Agreement as Exhibit A identifying the 9.43 acres to be redeveloped and within the Boulevard and Mixed Residential FLU designations.

Policy 4-B-5 outlines the Boulevard FLU category as a, “... mixed-use district along portions of Estero Boulevard, including less intense commercial areas, historic cottages, and mixed housing types.” The proposed site plan locates the public restaurant and private beach club within this FLU consistent with Policy 4-B-5. The Policy also requires commercial activities to contribute to the public realm and design concepts of the Plan and Land Development Code. Policy 4-B-4 outlines the Mixed Residential FLU category as “old subdivisions with mixed housing types on smaller lots, *newer high-rise buildings*, and mobile home and RV parks.” (emphasis added) Commercial activities are limited to lower impact uses but still must contribute to the public realm and design concepts of the Plan and Land Development Code.” The multi-family and single-family units are located within the central and rear portion of the Property consistent with the Mixed Residential FLU described in Policy 4-B-4. The proposed uses and location are consistent with the underlying FLU categories for the Property.

⁹ FMB Comprehensive Plan, Community Design Element, Page 3-6

¹⁰ *Ibid.*

¹¹ FMB Comprehensive Plan, Community Design Element, Page 3-7 & 3-8

¹² FMB Comprehensive Plan, Envisioning Tomorrow’s Fort Myers Beach, Page 2-1

a. Redevelopment Policies

The comprehensive plan considers the “appropriate future uses in the event of a change in ownership or plans or a natural disaster” for the Property.¹³ Specifically, Policies 3-A- 5, 3-A-6, and 4-F-2 outline the anticipated redevelopment for the Gulfview Colony/Red Coconut. Future Land Use Policy 4-F-2 identifies the design characteristics *anticipated* to be included in the “pre-approved redevelopment option” for the Gulfview Colony/Red Coconut. (emphasis added) FLU Policy 4-F-2.iii identifies the design “concepts [that] are encouraged to be included in the pre-approved redevelopment options. Many of these design concepts are reiterated in LDC Section 34-692(3) as design “concepts [that] are *expected* in the redevelopment process.” (emphasis added) The DA process permits deviations to be requested from the design criteria outlined in Section 34-692(3). In addition, Policy 3-A-5 describes a desire for neighborhoods “which are pedestrian and bicycle friendly with an internal circulation system that makes it possible to walk or bicycle to schools and services without always using Estero Boulevard; which retains the psychological connection an views to both the Bay and the Beach; and which offer a variety of housing types and opportunity for mixed uses.” The proposed redevelopment provides these design characteristics except where changes to the State building code, coastal construction regulations or Federal floodplain requirements prohibit compliance as outlined in the remainder of this narrative.

The 9.43 acres subject to the DA is only a portion of the redevelopment area described by the comprehensive plan, additional vacant acreage occurs immediately to the west and north of Estero Boulevard. As only a portion of the redevelopment area, the proposed plan provides 7 of the 9 design characteristics outlined in Policy 4-F-2. The remaining design characteristics have not been provided due to changes to the State building code, coastal construction regulations or Federal floodplain requirements, the transfer of density from the parcels south of Estero Boulevard to the parcels to the north, and the reduction of intensity on the parcels south of Estero Boulevard. The proposed design does provide opportunities for circulation without a vehicle and enhances the pedestrian realm while increasing public views of the Gulf and Matanzas Pass, meeting the intent of the redevelopment vision while adapting to the required State Building Code and Coastal Construction regulations as well as Federal Floodplain regulations.

The comprehensive plan also gives consideration to requests for additional height in Policy 4-C-4; which specifically indicates “different heights may be applied to officially designated redevelopment areas such as ... Red Coconut/Gulf View Colony.” As described above, Policy 4-F-2 identifies a redevelopment area for the Red Coconut/Gulf View Colony. Requests for additional height need to demonstrate consistency with the comprehensive plan and public benefits promoted by the site design due to the request, such as view corridors to the Gulf of Bay. Consistent with these policies, the proposed conceptual plan includes an increase in the permitted height for the mixed-use structure on the bay side of Estero Boulevard. The additional height enables the density of the Gulf side parcel to be shifted to the bay side portion of the Property and cluster a majority of the available density in a mixed-use structure. This density transfer also limits the intensity of the redevelopment on

¹³ FMB Comprehensive Plan, Community Design Element, Page 3-8

the gulf side parcels. As a result, the conceptual plan seeks multiple public parks, two new view corridors to the Gulf, a new pedestrian beach access, and access and views to Matanzas Pass Preserve to promote appropriate public benefits to support the requested increase in height.

b. Commercial Expansion

The Boulevard and Mixed Residential FLU categories both reference that commercial activities need to contribute to the public realm. The Town's comprehensive plan seeks to ensure that commercial activities do not intrude into residential communities¹⁴ to reduce community spaces available to residents.¹⁵ The most difficult conflicts associated with potential commercial development are identified in the comprehensive plan as occurring along Estero Boulevard from the Key Estero Shops to Donora Boulevard.¹⁶ As a result, several design-oriented policies are established supporting Objective 4-A. All of which seek to promote the enjoyment of Fort Myers Beach from outside a car through the creation of a pedestrian-oriented public realm, easy walking access to the Beach, and limit intrusive commercial activities through new development.

The proposed redevelopment is consistent with the visioning policies incorporated into the Comprehensive Plan. As generally described above and in detail within the remainder of this narrative, the public benefits and necessary design elements have been provided to the extent possible within the Property. The request is only a portion of the identified redevelopment area, approximately 4.5 acres west of the Property are also within the Village district and included in the vision outlined by the comprehensive plan. The commercial restaurant is a use that previously existed on the Property and the private memberships will be sold for a longer time period than the previous nightly turnover of the RV park. Therefore, the request does not represent a commercial intensification of the Property. Furthermore, the proposed design shifts the permitted density and intensity off the Gulf side parcels, provides an opportunity for circulation without a vehicle, and enhances the pedestrian realm while increasing public views of the Gulf and Matanzas Pass, meeting the intent of the redevelopment vision while adapting to the required State Building Code and Coastal Construction regulations as well as Federal Floodplain regulations.

III. Village Zoning District

The Property's Village zoning designation implements Policies 3-A-5 and 3-A-6 of the Town's Comprehensive Plan "to implement specific redevelopment concepts established in the Fort Myers Beach Comprehensive Plan and for other situations where conventional or planned development zoning districts are inappropriate".¹⁷ Specifically the Village district "provide[s] alternative futures for the Red Coconut...allowing a transformation... into a more permanent and durable housing types in a traditional neighborhood pattern".¹⁸

¹⁴ FMB Comprehensive Plan, Future Land Use Element 4-28

¹⁵ FMB Comprehensive Plan, Future Land Use Element 4-26

¹⁶ *Ibid*

¹⁷ FMB LDC Section 34-661

¹⁸ FMB LDC Section 34-691

The overall vision for the area “is a complete neighborhood with an internal circulation system making it possible to walk or ride bikes to school, recreation areas, and shopping without using Estero Boulevard.”¹⁹ The LDC outlines the following concepts that are expected to be provided across all the properties within the Village district. (emphasis added) The proposed development incorporates 7 of the 9 design criteria and remaining two which cannot be provided due to changes made to the floodplain mapping and regulations from 2008 onward which require significant elevation of enclosed space and severely limit enclosures and improvements that can occur at ground level. As a result, the proposed site design incorporates public parks and enhanced design features to activate the street front and promote pedestrian interconnectivity. The Village district requires compliance with the Commercial Design Standards which also support enclosed space and commercial display at the ground level. The Development Agreement includes conceptual renderings of the enhanced design concepts for the structures and a pattern book to guide the future detailed architectural elevations and floor plans to address needed flexibility from the Commercial Design Standards to accompany future permit applications.

The intent of the design features has been incorporated into the overall concept as demonstrated by the conceptual site plan, renderings and pattern book ensuring the proposed development is consistent with the “pre-approved redevelopment option” and can submit a DO application to implement the proposed redevelopment. The requested DA seeks needed flexibility to address design and construction requirements associated with the Property’s floodplain elevation and provide enhanced public benefits to existing and future residents.

IV. Requested Development

The proposed development seeks to maintain the previous residential and commercial uses to promote a mixed-use development with single family and multi-family residential, restaurant, and private beach club. Before submitting the application and during the review process, the Applicant gathered stakeholder input. Several one-on-one meetings were conducted in the initial stages of the conceptual site design and led to the establishment of the linear park through the Property. The Applicant held an interview with Beach Talk Radio to solicit broad based input from the Town residents prior to submittal. A second interview with Beach Talk Radio was held after the initial review of the application and coincided with an invitation only in person meeting for property owners within 500 feet of the Property. Copies of the conceptual renderings were provided to Beach Talk Radio and posted to their social media pages and website. Additionally, the applicant established a website specific to the project to distribute updated conceptual plans before and after the in-person meeting with surrounding residents. As a result of these open forum meetings and submitted comments, the number of access points along Donora Boulevard was reduced, opportunities for the Lee County School District to utilize the valet pull off locations were created, the landscaping and hardscaping elements adjacent to the new sidewalk along Donora Boulevard were enhanced, public parking was eliminated from the park adjacent to Matanzas Pass, and private membership opportunities were added to the beach club.

¹⁹ FMB Comprehensive Plan, Community Design Element, Page 3-8

The maximum development parameters of the property will be 141 residential units and 616,156.2 square feet of commercial uses to promote a beach club, single and multi-family residential, and a commercial restaurant.

a. Beach Club

The gulf side parcels are proposed to be redeveloped with an approximately 29,000 square foot private beach club providing private recreational amenities to the residents and guests of the residential units and a membership organization for members of the public meeting the specific requirements of the club. A commitment has been made to reserve 25% of the memberships for the public, providing the opportunity for the residents of Fort Myers Beach to have access to these facilities. Within the beach club, is a private restaurant providing services to the residents, guests and members only along with outdoor terraces and a pool. The structure is 3 stories (including ground level parking) and will not exceed the 40-foot height maximum above base flood as permitted by the Village District. Height exceptions as permitted by LDC Section 34-631 may be requested at the time of final design. To ensure pedestrian activity to and from the private beach club does not impede traffic flow along Estero Boulevard, a private pedestrian walk over is proposed to connect the beach club with the multi-family residential units. Vehicular access to the private beach club is provided via a single access point from Estero Boulevard to the ground level parking under the structure. An additional 75 parking spaces will be provided across Estero Boulevard within the mixed-use building to further support the memberships proposed for the private beach club.

b. Public Beach Access & View Corridors to the Gulf of Mexico

On either side of the beach club structure are 120-foot view corridors maintaining a permanent view of the Gulf of Mexico from Estero Boulevard. On the west side of the beach club structure, the view corridor coincides with a new public park that includes a 10-foot-wide pedestrian access to the sandy beach. There is a sidewalk along Estero Boulevard that will be repaired and maintained. The Applicant has requested a deviation to increase the setback for the beach club to promote the planting of enhanced landscaping with shade trees to improve the pedestrian environment down Estero Boulevard. The programmatic development of the park has not been finalized. The applicant has included language in the DA to require on-going coordination with the Town to ensure the final design is consistent with the Town's vision. The DA also commits that the Applicant will maintain ownership and maintenance of the park and a perpetual easement will be recorded for public access and use. As a result, the Town will have a new public park with beach access without requiring an investment in tax funds for the purchase, development or maintenance of the park.

c. Mixed Use Structure

The portion of the bay side parcels between Estero Boulevard and the east/west Donora Boulevard extension is proposed to be redeveloped with a mixed-use structure with 137 residential units, a 10,000 square foot commercial restaurant, 2 stories of structured parking, and a tiered landscaping and water feature incorporated into the building podium.

The Village district permits any dwelling unit to be rented for periods of one day or longer. While rentals are anticipated to occur within this development, the Applicant has agreed to limit rentals to a week or longer through restrictive covenants.

The primary access to the structure is an internal street from Estero Boulevard leading to a turn around and valet drop off, which routes into the Property enabling the structure to screen the proposed street and vehicle drop off from adjacent public roadways. Additionally, the turnaround and stacking area at the end of the internal street exceeds Town standards to ensure no impacts to adjacent public roadways. The portion of the structure fronting Estero Boulevard is proposed for terraced landscaping and water feature and a commercial restaurant which are designed to be 3 stories (including structured parking) consistent with the Village district for mixed used structures. Additional height in feet and stories as permitted by LDC Section 34-631 will be requested at the time of final design to address the height of the commercial space and required base flood elevation. Providing these features within the height limitations of the Village district shields the structured parking provided to support the development from the public rights-of-way. The architectural elements of the commercial restaurant wrap the corner of Estero and Donora Boulevards to ensure appropriate screening along Donora Boulevard. The Applicant has requested a deviation to increase the setback for the mixed-use structure to promote the planting of enhanced landscaping with shade trees to improve the pedestrian environment down Estero and Donora Boulevards. The Applicant has also agreed to provide public art along the Donora Boulevard building façade to further enhance the pedestrian environment.

As the setback from Estero Boulevard increases the structure height also increases. Behind the 3-story façade for the commercial restaurant and terraced landscaping with water feature are the proposed multi-family residential towers which incorporate a height variation with the maximum tower being 17 stories (including 2 stories of structured parking) and 235 feet. To support the residential towers, lobbies, fitness facilities, social spaces, and meeting rooms with outdoor amenities are proposed. The architectural treatments and elevations for the residential towers will be provided consistent with the proposed pattern book at the time of DO application.

To maintain traffic flow down Estero Boulevard, vehicular pull off points are integrated into the design for the proposed restaurant. This feature will permit patrons to valet their vehicles when dining at the commercial restaurant. Due to the hours of operation of the restaurant and the volume of patrons anticipated at night, the Applicant has agreed to work with Lee County to design the pull off points to permit school buses to utilize this area for morning pick up and afternoon drop off. This joint use of the pull off design will support the nearby existing residential neighborhoods and improve the safety of school age children riding the bus.

d. Linear Park & New Sidewalk along Donora Boulevard

Adjacent to the western property boundary and new east/west extension of Donora Boulevard is a public 20 foot wide Linear Park which includes an 8-foot-wide multi-use path. Originating at Estero Boulevard, the linear park begins internal to a proposed public park along Estero Boulevard and the western bay side property boundary. Paralleling the western property boundary before turning east to parallel the new proposed east/west local street and connecting with the existing north/south Donora

Boulevard the linear park provides a landscaped multi-use path. This design enhances interconnectivity through the Property for existing and future residents to promote movement without a vehicle. The park's location also provides an opportunity for expansion to the west when the rest of the properties within the Village zoning district are redeveloped, further enhancing mobility without a vehicle.

Currently there is no public sidewalk along the western side of Donora Boulevard. The proposed conceptual plan increases the setback of the mixed-use structure which will enable enhanced landscaping with shade trees, a sidewalk and the installation of a public art piece along Donora Boulevard. These improvements are specifically outlined in the Development Agreement and required to improve the pedestrian environment for existing and future residents along Donora Boulevard. Beyond the multi-use path, other programmatic elements of the linear park have not been finalized. The Development Agreement incorporates several commitments from the Applicant related to the public parks:

- On-going coordination with the Town of Fort Myers Beach to ensure final park design is consistent with the Town's vision;
- Recording a perpetual access easement for public access and use of all parks;
- Developer maintenance of all public parks;
- Developer design and provision of site specific wayfinding signage to all parks and public access points;
- Informational signs related to Matanzas Pass will be developed with Town Staff and constructed.

e. Single family Residential Units

Between the north property boundary and the proposed east/west extension of Donora Boulevard, 4 single family residential units are proposed. These units will front the proposed east/west extension of Donora Boulevard and are set back from the property boundaries by at least 15 feet. Side setbacks are established at 5 feet. Accessory setbacks to the rear property boundary are requested to be 5 feet to permit pools, patios and screened enclosures.

f. Bay Side Public Parks

The conceptual site plan includes two public parks on the bay side portion of the Property. Along the western property boundary and fronting Estero Boulevard, a public park is proposed. Within this park is the origination point for the proposed linear park. The location of this park aligns with the public park and beach access on the Gulf side park promoting a single pedestrian crossing point that can be monitored and improved to address demand. Additionally, this location is central to the entire Village District and the future facilities and multi-use path can be utilized by the residents/patrons of the future redevelopment anticipated to the west within the Village District.

A second public park is proposed at the north/south terminus of Donora Boulevard adjacent to Matanzas Pass Preserve. This park's location maintains the previous view corridor available down Donora Boulevard. Additionally, the existing residential lots to the east can utilize this area as a neighborhood park.

Programmatic elements of the parks have not been finalized; however, it is anticipated that future improvements would promote public gathering, interaction and the activation of the Estero Boulevard frontage consistent with the Village district. The Development Agreement incorporates several commitments from the Applicant related to the public parks:

- On-going coordination with the Town of Fort Myers Beach to ensure final park design is consistent with the Town's vision;
- On-going coordination with Lee County to promote a pedestrian interconnection to Matanzas Pass Preserve;
- Recording a perpetual access easement for public access and use of all parks;
- Developer maintenance of all public parks;
- Developer design and provision of site-specific wayfinding signage to all parks and public access points;
- Informational signs related to Matanzas Pass will be developed with Town Staff and constructed.

V. Consistency with Village Zoning District

The Village zoning district seeks to promote "... a complete neighborhood with an internal circulation system making it possible to walk or ride bikes to school, recreation areas, and shopping without using Estero Boulevard."²⁰ The LDC outlines the following concepts that are expected to be provided across all the properties within the Village district. However, the proposed redevelopment is only a portion of the property within the district, due to changing conditions with the zoning district and required design related to floodplain management the proposed redevelopment provides 7 of the 9 criteria envisions when the Village zoning district was established in 203 by Ordinance 03-03.

- Detached houses or cottages (with optional accessory apartments) abutting existing single family homes;
- Walkable narrow streets with shade trees that double as view corridors to the Preserve and Gulf;
- Open space that allows views to be maintained from Estero Boulevard to the Gulf;
- Mixed commercial and residential uses along the bay side of Estero Boulevard;
- Quiet internal street connections to the north and south;
- Significantly reduced density...to a maximum level of 15 dwelling units to the acre; and
- A site design that accommodates a publicly acquired access point to Matanzas Pass Preserve.

Deviations are permitted from the zoning regulations of the property through the Development Agreement and are requested for the remaining 2 design criteria. A traditional neighborhood development with ground floor gathering spaces and low-rise townhomes or apartments, cannot be provided with the changes made to the floodplain mapping and regulations from 2008 onward. Portions of the Property are included in the Velocity Zone and Coastal A Zone and Limit of Wave Action which require significant elevation of enclosed space and severely limit enclosures and

²⁰ FMB Comprehensive Plan, Community Design Element, Page 3-8

improvements that can occur at ground level. Rather than structural gathering spaces, the proposed site design incorporates public parks and enhanced design features to activate the street front and promote pedestrian interconnectivity. The Village district requires compliance with the Commercial Design Standards which also support enclosed space and commercial display at the ground level. The exhibits to the Development Agreement include conceptual renderings of the enhanced design concepts for the structures and a pattern book to guide the future detailed architectural elevations and floor plans to address needed flexibility from the commercial design standards to accompany future permit applications.

The intent of the design features has been incorporated into the overall concept as demonstrated by the conceptual site plan, renderings and pattern book ensuring the proposed development is consistent with the “pre-approved redevelopment option” and can submit a DO application to implement the proposed redevelopment. The requested DA seeks needed flexibilities to address design and construction requirements associated with the Property’s floodplain elevation and provide enhanced public benefits to existing and future residents.

a. Traditional Neighborhood Design

As established in 2003, the desired Traditional Neighborhood Design of the Village district should incorporate interconnected streets, dwellings with front porches and balconies, primary entrances on the street frontage and rear vehicular access. To the maximum extent possible, the proposed design provides these features while adapting to the existing floodplain elevation, location of the coastal construction control line, and current building code.

The Property is located within a VE and Coastal A floodzone, which requires residential structures to be elevated, significantly limits enclosed space on the first story, and requires breakaway wall construction practices. Additionally, the 1991 Coastal Construction Control Line occurs on the bay side of Estero Boulevard, also limiting enclosed space on the first story and requiring breakaway wall construction practices. Due to these required design practices, the proposed mixed-use building utilizes the ground floor and first floor for structured parking and to establish the podium for the multi-family and commercial uses. Similarly, the private beach club utilizes the ground-floor for parking and raises the usable space above the base flood elevation. Architectural enhancements consistent with building code and floodplain requirements are proposed to appropriately screen the parking from adjacent streets and properties. Fronting Estero Boulevard, the podium of the mixed-use building will be shielded by landscaped terraces with a water feature and a public restaurant with terrace. These features comply with the height limitations and exceptions²¹ for the bay side parcels.

²¹ FMB LDC Section 34-631



Figure 2. View South down Estero Boulevard

The proposed structure is also setback further from Estero Boulevard than the required 0 to 10 foot build to line to provide adequate spacing for a public sidewalk and streetscaping to include shade trees along Estero Boulevard consistent with Policies 1-A-1, 3-A-6, 4-A-1, 4-A-2 and 4-F-2. Together these features and design elements will shield the building podium and promote outdoor gathering and interaction with Estero Boulevard consistent with Policies 4-A-1, 4-A-2 and 4-F-2. When combined with the public park along the remaining frontage of Estero Boulevard, the overall site design ensures the street front is activated with pedestrian activity and interaction between the proposed uses and public right-of-way promoting an inviting and active neighborhood that supports public gathering, pedestrian interconnectivity, and synergy between the private development and public benefits as desired by Policies 3-A-5, 3-A-6, 4-A-1, 4-A-2, and 4-F-2, and the Village district.

b. Housing abutting existing single-family homes

Platted lots for single family homes from the Zimmer's Addition to Shell Mound Park as recorded in 1959 exist along the east/west portion of Donora Boulevard and Shell Mound Boulevard. Consistent with this historical plat, north of Shell Mound Boulevard, the proposed site design locates the proposed single family structures abutting Matanzas Pass Preserve with a proposed public park. These uses are consistent with the existing platted single family in the nearby area and it is anticipated that the public park will be utilized by existing and future residents of the surrounding area and the proposed development.

The remaining properties south of Shell Mound Boulevard to Estero Boulevard, along Donora Boulevard, had a mix of uses including the Fort Myers Beach Fire Station, multi-family and the Fort Myers Beach Art Association. The existing land use of these properties would permit the rebuilding of the previous public facilities and multi-family units. As a result, the proposed design

locates the proposed 10,000 square foot restaurant at the intersection of Donora and Estero Boulevards, within the Boulevard FLU and consistent with the height requirements of the Village district with permitted exceptions. The underlying FLU permits this location for commercial development and the Property had approximately 10,000 square feet of commercial uses previously fronting Estero Boulevard. The surrounding civic, public and multi-family uses that are anticipated to be redeveloped are compatible with the proposed commercial consistent with Policies 4-A-3, 4-B-12, 4-C-2 and 4-C-3.

The multi-family portion of the mixed-use structure is placed central to the bay side parcels and aligns with the existing multi-family and former art campus along Donora Boulevard. As with the Estero Boulevard frontage, the Donora Boulevard façade incorporates architectural features to appropriately screen and shield the building podium and underlying parking. Above the building podium, the structure is a series of towers with a tiered height of 11 to 17 stories (including 2 stories of parking) up to a maximum of 235 feet above base flood elevation. Moving north along Donora Boulevard the height of the towers increases as the setback from Estero increases. However, the entire tower is oriented south of Shell Mound Boulevard and near the former Fort Myers Beach Art Association and multi-family structures. The portion of the structure paralleling the proposed Donora extension has a lower height and an increased setback from Donora Boulevard due to the proximity of the single family occurring north of Shell Mound Boulevard. The design of the structure ensures the future building will be compatible with the adjacent development. See the analysis of Building Placement and Height provided on Page 19 for additional information.

The proposed development includes a new east/west local road that functions as an extension of the existing east/west portion of Donora Boulevard consistent with LDC Section 34-693(c)(2). The new street terminates at the western property boundary. As a result, to implement the mobility²² and Hidden Paths²³ concepts of the comprehensive plan, the applicant is proposing to provide a public access easement along this roadway and the adjacent linear park to promote public use and ensure a future interconnection to Lovers Lane for vehicles, pedestrians and cyclists can be obtained consistent with Policy 2-A-1. Once implemented through to Lovers Lane local traffic will be able to utilize this cross connection instead of Estero Boulevard as desired by Policies 2-A-1, 3-A-5, 3-A-6, 4-A-1, 4-A-2, and 4-F-2. The proposed site plan appropriately locates the desired uses on the bay side parcels in a manner consistent and compatible with the surrounding uses as desired by Policies 3-A-5, 3-A-6, 4-A-3, 4-B-12, 4-C-3, and the Village district.

c. Apartments allowed elsewhere on the site

The Village district permits a maximum density of 15 dwelling units per acre. Rather than promote a development pattern of low-rise buildings that utilizes the entire 9.43 acres with little public benefits, the proposed site plan transfers the permitted residential density from the Gulf side

²² FMB Comprehensive Plan, Envisioning Tomorrow's Fort Myers Beach, page 2-1

²³ FMB Comprehensive Plan, Community Design Element, page 3-14

parcels to the bay side and limits the overall footprint of the development to provide approximately 3 public parks and a linear park through the Property.

The proposed multi-family structure is placed central to the bay side parcels and aligns with the existing multi-family and art campus along Donora Boulevard south of Shell Mound Boulevard. The Donora Boulevard façade incorporates architectural features to appropriately screen and shield the building podium and underlying parking. The Applicant has also committed to one public art installation along Donora Boulevard as part of the Development Agreement. Above the building podium, the structure is a series of towers with a tiered height ranging from 17 to 11 stories (including 2 stories of structured parking). Moving north along Donora Boulevard the height increases as the setback from Estero increases. The portion of the structure paralleling the proposed local east/west road has a lower height and increased setback from Donora Boulevard due to the proximity of the single family occurring north of Shell Mound Boulevard. The design of the structure ensures that the future building will be compatible with the adjacent development. See the analysis of Building Placement and Height provided on Page 19 for additional information.

Single family units are proposed adjacent to the Matanzas Pass Preserve and north of the proposed local road extension. In the surrounding area are single family lots platted by the historical Zimmer's Addition to Shell Mound Park as recorded in 1959. The placement of the single family and treatment of the multi-family towers is compatible with the surrounding structures and consistent with Policies 3-A-5, 3-A-6, 4-F-2 and the Village district.

d. Shaded Streets with View Corridors to the Preserve and Gulf

Maintaining a psychological connection to the Matanzas Pass Preserve and the Gulf of Mexico is an element of the anticipated redevelopment of the Gulfview Colony/Red Coconut²⁴. The proposed site plan establishes a public park at the terminus of the north/south portion of Donora Boulevard to ensure views of Matanzas Pass Preserve will be available to the public passing along from Estero Boulevard in perpetuity. The park also provides the opportunity for a connection to be provided to the Preserve in the future contributing to the vision of the natural environment and public recreation as outlined in the comprehensive plan.²⁵ The proposed design incorporates a public sidewalk with enhanced landscaping and shade trees along the western side of Donora Boulevard promoting public accessibility to the proposed park.

Additionally, the Village district requires that the pre-approved redevelopment option for the Property provide a 50-foot-wide view corridor²⁶ from Estero Boulevard to the Gulf of Mexico. The proposed site design enhances this requirement by providing two approximately 120' view corridors on either side of the private beach club ensuring views of the Gulf of Mexico are available to the public passing along Estero Boulevard.

²⁴ FMB Comprehensive Plan, Community Design Element, page 3-8

²⁵ FMB Comprehensive Plan, Envisioning Tomorrow's Fort Myers Beach, page 2-1

²⁶ FMB LDC Section 34-693(d)

The proposed site plan preserves and enhances previously provided view corridors and access points as desired by Policies 3-A-5, 3-A-6, 4-F-2 and the Village district.

e. Open Space with Views to the Gulf

Maintaining and expanding views of the Gulf of Mexico are a design theme of the Town's comprehensive plan. North of the Civic Complex (which includes the Property) is the Times Square planning area which seeks to promote infill development that opens new view corridors to the Gulf of Mexico²⁷. This design concept is brought into the Civic Complex through the Village district requirement for a 50-foot view corridor to be provided between Estero Boulevard and the Gulf of Mexico.²⁸ The proposed site plan exceeds this requirement by providing two, 120 foot view corridors.

The first corridor is approximately 120 feet and includes 10-foot-wide public pedestrian access to the beach. A platted private beach access point continues to exist within the westernmost area of the Gulf side parcels and the proposed view corridor. The proposed design expands this existing private access by incorporating passive park areas along the western property boundary from Estero Boulevard to the Gulf. Incorporating a public park and beach access within the approximately 120' view corridor is consistent with Policies 4-A-4 and 4-A-6.



Figure 3. Gulf View Corridor with Beach Access

On the easternmost area of the Gulf side parcels, the proposed design includes an open pool patio with seating. This area will also provide an approximately 120' view corridor ensuring pedestrians and motorists passing the Property along Estero Boulevard have a view of the Gulf on either side of the proposed private beach club.

²⁷ FMB Comprehensive Plan, Community Design Element, page 3-4

²⁸ FMB LDC Section 34-693(d)

The combined approximately 240 feet of view corridors exceeds the requirements of the Village District by 190 feet and are consistent with Policies 3-A-5, 3-A-6 and 4-F-2.

f. Commercial and Residential uses on the Bay Side

The Property is a portion of the Village district and approximately 4.5 acres to the west of the Property are also within the Village district with the opportunity to provide additional commercial and residential uses. The proposed redevelopment transfers the permitted residential density from the Gulf side parcels to the bay side. This residential density is proposed as single-family lots adjacent to Matanzas Pass Preserve and as a multi-family in a mixed-use structure that includes an approximately 10,000 square foot restaurant with outdoor terrace. The Gulf side parcels are proposed for public beach access and private recreational amenities.

Located at the intersection of Donora and Estero Boulevards, the proposed restaurant is within the Boulevard FLU, which permits commercial development and is a relocation of the previous commercial square footage that fronted Estero Boulevard. The proposed commercial is consistent with Policies 4-A-3, 4-C-2 and 4-C-3 regarding the location of commercial as related to existing platted residential community to the north. The proposed multi-family and single-family residential units are mostly within the Mixed Residential FLU which promotes a mix of housing types as newer high-rise buildings. Due to the mix of uses, the structure is considered mixed use, and the proposed design meets the intent of Policies 3-A-5, 3-A-6, 4-B-4, 4-B-5, 4-B-12, 4-F-2, and the Village district.

g. Significantly Reduced Density

Prior to Hurricane Ian, the Property was developed with an RV park at a documented density of 27 RV/mobile homes per acre.²⁹ Through the implementation of the Village district, that density is reduced to 15 dwelling units per acre.³⁰ The property has 9.430 acres within the Village district providing for a maximum density of 141.45 dwelling units. The requested density for the multi-family and single-family units is consistent with Policies 3-A-5, 3-A-6, 4-F-2, and the Village district.

h. Accommodating a Public Access Point to Matanzas Pass Preserve

As previously described, the proposed site plan maintains the view from Estero Boulevard to Matanzas Pass Preserve by establishing a public park at the north/south terminus of Donora Boulevard. This park is not programmed for services through the requested DA to enable continued coordination with the Town regarding appropriate uses, access, and maintenance. The applicant anticipates that a future connection with the larger Matanzas Pass Preserve will be provided through the proposed park. The proposed site plan compliments the existing trails and boardwalks in the Preserve³¹ and is consistent with Policies 3-A-5 and 3-A-6 and the Village District while also providing the opportunity for future connections to Matanzas Pass Preserve.

²⁹ FMB Comprehensive Plan, Comprehensive Plan Policy 4-F-2

³⁰ *Ibid.*

³¹ FMB Comprehensive Plan, Community Design Element, page 3-7

VI. Design Flexibility

The Village district includes several other design elements for the pre-approved redevelopment option. The proposed conceptual design seeks flexibility from these elements to promote a design with increased public benefits for the current and future residents of the Town. Additional information and details for the requested design flexibility is provided in the Schedule of Deviations narrative.

a. Street layout

The Village district includes a desired street layout in LDC Figure 34-18 demonstrating the anticipated secondary street layout with the potential for 2 additional access points to Estero Boulevard within the Property and the required east/west extension of Donora Boulevard to Lovers Lane. In addition to the existing north/south portion of Donora Boulevard, Figure 34-18 establishes a minimum of 3 secondary streets within the Property. However, LDC Section 34-693(c) establishes that secondary streets are to be “**generally in accordance** with Figure 34-18.” (emphasis added) The Development Agreement procedures permit flexibility to be requested from the existing ordinances as deviations to be approved with a site plan and considered with the agreement.

A deviation is requested to permit an alternative street layout while continuing to provide appropriate circulation for resident vehicles and pedestrians of the existing residential neighborhood and proposed development. The required extension of “a through street from Donora Boulevard to Lovers Lane” is provided within the limits of the Property and provides access to the proposed single-family units consistent with Policy 3-A-5 and LDC Section 34-693(c)(2). The new proposed local street providing an extension of the east/west portion of Donora Boulevard also implements the first portion of the vision described in Policy 3-A-6 to begin the establishment of an interconnected network for existing and future residents to travel to the redeveloped Elementary School and Bay Oaks without utilizing Estero Boulevard. After the remaining properties within the Village district are redeveloped this vision will be a reality.

Instead of the block layout promoted by Figure 34-18 which would increase the access points to Estero Boulevard to 3. Policy 7-H-10 specifically identifies that there are “an excessive number of streets and driveways having direct access to Estero Boulevard, reducing its ability to handle peak season traffic. The town shall take advantage of any suitable opportunities to consolidate street connections into fewer access points on Estero Boulevard.” The Property’s approximately 600+ foot frontage on Estero is a unique opportunity to implement this policy with the proposed redevelopment. The proposed development reflects this policy by limiting the number of vehicular access points from Estero Boulevard to one for the Gulf and one for the bay side parcels consistent with Policies 1-A-1, 7-H-10 and guidance received from Lee County Department of Transportation. Pull off points are integrated into the design for the proposed restaurant to ensure stacking does not occur on Estero Boulevard consistent with Policies 1-A-2 and 7-E-2. The Applicant has agreed to coordinate with Lee Tran and the Lee County School District to co-locate facilities with these vehicular pull offs to promote safe school pick and drop off. Limiting vehicular access and providing pull off spaces in this manner will maintain an efficient flow of vehicular traffic down Estero

Boulevard. A private pedestrian overpass between the Gulf and bay side parcels is proposed for residents of the future development to further eliminate conflicts with vehicular travel on Estero Boulevard consistent with Policy 1-A-2 and 7-H-1.

To promote interconnectivity for pedestrians and cyclists of the existing residential community and the proposed development, an internal linear park is proposed consistent with Policies 3-A-5, 3-A-6, 4-A-1, 7-D-5. The linear park originates at Estero Boulevard within the proposed public park along the western bay side property boundary. The linear park extends along the western property boundary before turning east to parallel the new proposed local street and connect with the existing north/south Donora Boulevard. Paralleling the proposed internal roads ensures the final design exceeds the vision of Policy 3-A-6 for sidewalks and street trees to provide a landscaped 8-foot-wide multi-use path. The origination point, with its central location in the Village district along Estero Boulevard provides the opportunity for the adjacent 4.5-acre parcel to utilize this feature for future patrons consistent with Policy 4-A-2. This design promotes interconnectivity for existing and future residents while also directing pedestrians to a specific point along Estero Boulevard to cross and access the beach consistent with Policy 7-E-4. The proposed public beach access on the Gulf side parcels aligns with the origination point of the linear park on the bay side parcels consistent with Policy 4-A-4. Further promoting connectivity, the sidewalks on either side of Estero Boulevard will be repaired, maintained, or installed to continue to provide safe access down Estero Boulevard consistent with Policies 1-A-2, 4-A-1, 7-B-3 and 7-E-4.



Figure 4. Proposed Vehicular and Pedestrian Access Points

The proposed design does utilize the existing north/south Donora Boulevard to provide the north/south interconnection described by Policy 3-A-6 for vehicles. This is due to the design prioritizing pedestrian and bicycle transportation through the site as desired by the comprehensive plan at large.

The Town's comprehensive plan opens with a descriptive vision of the future in *Envisioning Tomorrow's Fort Myers Beach*, the identified priorities for this vision and the broader comprehensive plan are the natural environment, mobility, and redevelopment objectives for each planning area. The mobility vision includes "a carefully planned and interconnected system of pedestrian and bicycle paths...to reach all the recreational destinations on Estero Island and move easily from one to another."³² The Community Design Element and Transportation Element both describe a system of "Hidden Paths" which seeks to improve mobility throughout the island³³, particularly on the bay side of Estero Boulevard³⁴, and provide an alternative to single vehicle trips between important centers of activity.³⁵ The Future Land Use Element includes Objective 4-A and its supporting policies which identify all people within the Town should be free to "move around" without their cars³⁶, even during peak season and prioritizes development designs that promote a pedestrian oriented realm³⁷ to achieve this vision. Finally, the Transportation Element identifies the Town's "opportunity to increase pedestrian and bicycle activity" due to the physical layout of the community which "encourages walking and biking, with all homes...a short distance from the beach and active commercial areas."³⁸ Policy 7-E-4 directs the Town to "work toward a major expansion of sidewalks and bikeways" in support of this overall vision.

With this broader vision in mind, the proposed redevelopment provides a linear park paralleling the 2 proposed internal streets. This 20-foot-wide linear park provides an 8-foot-wide shared multi-use path to provide interconnected circulation for pedestrians and cyclists in a manner that supports the existing neighborhood, the proposed development, and future redevelopment that may occur consistent with the Town's Comprehensive Plan and the Village district.

b. Building Placement & Height

Most of the Town's redevelopment zoning districts utilize requirements typical of a form-based code for the desired location of buildings and are related to a height restriction of 3 to 4 stories and 20 to 30 feet. As with all the redevelopment districts, the Village district establishes taller structures on the Gulf side parcels than the bay side parcels. Presumably, this was to accommodate the vision in the comprehensive plan for views of the Gulf to occur as the public travels down Estero Boulevard. Unfortunately, with a density of 15 units per acre, these height limitations promote development

³² FMB Comprehensive Plan, *Envisioning Tomorrow's Fort Myers Beach*, Page 2-1

³³ FMB Comprehensive Plan, Future Land Use Objective 2-A, Transportation Objective 7-D, Policy 7-D-5

³⁴ FMB Comprehensive Plan, Transportation Policy 7-D-5

³⁵ FMB Comprehensive Plan, Transportation Element, Page 7-10

³⁶ FMB Comprehensive Plan, Future Land Use Policy 4-A-1

³⁷ FMB Comprehensive Plan, Future Land Use Policy 4-A-2

³⁸ FMB Comprehensive Plan, Transportation Element, Page 7-15

horizontally across the entire property for residential with no supporting amenities, view corridors or public recreation. As an alternative, to accommodate the permitted density, the proposed site design reduces the development footprint through increased height on the bay side while providing the public benefits of accessible recreation, view corridors and pedestrian and bicycle interconnectivity. A deviation is requested to establish a maximum height of 235 feet above base flood elevation. Policy 4-C-4 permits “...different heights may be applied to officially designated redevelopment areas such as Times Square, Red Coconut/Gulf Colony and Villa Santini Plaza).”

The height of the multi-family portion of the structure above the building podium increases via a series of towers as the structure increases in setback/separation from Estero and Donora Boulevard. The proposed design is two residential towers, each tower has height variations above the two-story podium from 17 stories to 11 stories (including structured parking) with the roof top of the lower stories serving as outdoor terraces/plazas. The tallest portion of the residential towers will not exceed 235 feet above base flood elevation. The restaurant portion of the structure is 1 and 2 stories in height above the podium with a large outdoor terrace. Finally, the private beach club is 2 and 3 stories in height above ground floor parking.



Figure 5. Proposed Multi-family Residential Height

Due to the Property's location within a VE-14 flood zone and Coastal A zone with LiMWA (Limit of Wave Action) the usable square footage and residential units need to be elevated above approximately 14 feet, enclosed space on the first story is significantly limited and construction is required to utilize breakaway walls. Additionally, the 1991 Coastal Construction Control Line occurs on the bay side of Estero Boulevard, also limiting enclosed space on the first story and requiring breakaway wall construction practices. The design requirements of these State and Federal regulations promote unenclosed space below base flood elevation, which is utilized in the proposed design for vehicular parking and establish the building podium. The structural elements of the parking and supporting building infrastructure are shielded through architectural treatments (consistent with federal requirements governing the floodplain) and enhanced landscaping. To provide shielding of the building podium, the building façade along Estero Boulevard is proposed to be terraced to incorporate enhanced landscaping and a water feature to shield the structure and supporting infrastructure while providing a special landscape feature along Estero Boulevard consistent with Policies 1-A-1, 1-B-3, 4-A-1. Also along the Estero Boulevard frontage is the public restaurant with ample dining terrace. The landscaped terraces, water feature and restaurant are consistent with the bay side height limitation of 3 stories and 30 feet in height³⁹ and architectural exceptions.⁴⁰ The remaining frontage of Estero Boulevard west of the proposed entry road, will be a public park with the origination point of the linear park promoting additional public gathering and recreation. Together these features work together to will activate the street frontage of Estero Boulevard consistent with Policies 1-A-1, 1-B-1, 1-B-2, 4-A-1, 4-A-2, and the Village district, while ensuring the open portions of the structure for parking are not visible from the public right-of-way.



Figure 6. View of Landscaped Terrace and Estero Boulevard

³⁹ LDC Section 34-693(h)

⁴⁰ LDC Section 34-631(b)

Similarly, along Donora Boulevard, the structural elements of the parking and supporting building infrastructure are shielded through architectural treatments (consistent with federal requirements governing the floodplain) and enhanced landscaping consistent with Policies 1-B-2, 2-B-1, 3-A-5, 4-A-1, 4-A-2. The side façade and terrace of the public restaurant fronts a portion of Donora Boulevard at the intersection with Estero Boulevard consistent with Policy 4-A-3. The façade, outdoor terrace and enhanced landscaping continue the activation of the street frontage from Estero and up Donora Boulevard, ultimately leading to the proposed public park and Matanzas Pass Preserve consistent with Policies 1-B-2, 2-B-1, 4-A-1, and 4-A-2.



Figure 7. View down Donora Boulevard

Above the building podium are the proposed residential towers which are internally setback from the edge of the building podium increasing the setback from Donora Boulevard. When coupled with the proposed tiered height, this design ensures the proposed building façade does not crowd the existing public street and surrounding existing and future development consistent with Policies 4-A-1 and 4-A-2.

With the additional height request, the proposed development also seeks to eliminate the requirement for building frontage and provide an increased building setback. The proposed public parks and gathering spaces provided along Estero Boulevard reduce the required frontage for the structure below the minimums of the Village district. Additionally, the proposed design seeks to increase the building setbacks to provide enhanced landscaping and contribute to the required pedestrian-oriented realm while appropriately addressing the construction requirements of the Property's flood zone, coastal construction requirements, and proposed height. The structural elements with enhanced landscaping described above work together in the increased setback along Estero and Donora Boulevards to appropriately frame the street frontage while providing shaded

pedestrian and bicycle circulation adjacent to these existing roadways consistent with Policies 1- A-1, 1-A-3, 1-B-2, 1-B-3, 2-B-1, 4-A-1 and 4-A-2.

The Town's Comprehensive Plan provides the Red Coconut/Gulf View Colony a different height per Policy 4-C-4, the Village district implements the height restrictions for the pre-development option. This DA is requested to provide flexibility related to the site design and multi-family towers, including additional height, to accommodate the permitted density and proposed public benefits. The proposed development has transferred the permitted residential density from the Gulf side parcels to the bay side. The footprint of the development on the bay side parcels has been reduced to provide for 2 public parks and a linear park. One of the public parks on the bay side includes a view corridor to Matanzas Pass Preserve. The development proposed for the Gulf side parcels incorporates two approximately 120-foot view corridors and another public park with beach access. Consistent with Policy 4-C-4 the provision of enhanced view corridors along with the public parks, interconnectivity for pedestrians and bicyclists, and initial establishment of a hidden path are public benefits that are provided to existing and future residents of the Town for the requested additional height.

c. Floor Area Ratio

The Village district establishes a maximum floor area ratio ("FAR") of 1.2 for commercial uses and the Town's comprehensive plan establishes a maximum FAR of 1.5 in Policy 4-C-2. This same policy establishes "the land development code shall specify maximum commercial intensities using floor-area ratios (the total area of the building divided by the area of the site in the category allowing the commercial uses)." LDC Section 34-633(1) specifies "gross floor area includes the total floor area of all stories of a building within the surrounding exterior walls (whether the walls are solid or screened), plus all area below an elevated building that is six feet or more in height, plus all stories of covered parking..."

When considered together, the Comprehensive Plan and LDC establish FAR as a measure of commercial intensity that includes parking structures and unenclosed space on the ground floor. At the time LDC Section 34-633 was adopted in 2003, commercial retail space could be provided in certain locations within the Town on the ground floor level to shield parking and provide an active street front. The vision statements for the Civic Center, which includes the Property, acknowledge that even in 1999 "the current floodplain and coastal setback regulations severely restrict what can be done here."⁴¹ Since 1999, there have been multiple changes to the floodplain mapping and building code requirements which continue to increase development restrictions. Currently, the ground floor can no longer be enclosed to provide viable commercial space within the V zone or Coastal A zone. With this area unable to be used for commercial or residential space, a deviation has been requested to eliminate the area of the parking structure from the calculation of FAR.

A second deviation is requested to increase the allowable FAR on the property to 1.5 (616,156.2 square feet) and accommodate the proposed uses. Policy 4-C-2 permits FAR requests up to 1.5

⁴¹ FMB Comprehensive Plan, Community Design Element, Page 3-6

within the Boulevard and Mixed Residential FLU categories. The public restaurant at approximately 10,000 square feet and the 137 multi-family units will be constructed within an integrated structure that is classified as a mixed-use building per Policy 4-B-12. The private beach club will provide private recreational amenities and a membership organization. The Town's LDC establishes membership organizations as a commercial use. Consistent with past interpretations of Town policy, mixed use structures must comply with the FAR calculations. The combined total area of the residential units exceeds the permitted 1.2 FAR even when the parking structure is eliminated from the FAR calculation. It should be noted that the single-family units are a residential product therefore per Policy 4-B-12 do not need to be included in the calculation of FAR for commercial intensity.

The requested deviations are consistent with the maximum FAR outlined in Policy 4-C-2 and the current coastal regulations. The additional FAR is being utilized to support multi-family units and a membership organization and does not represent an increase in commercial intensity or intrusion into a residential neighborhood. Consistent with Policy 4-C-3, the Property previously had approximately 10,000 square feet of commercial uses with setback variances and no formal parking. The proposed design to incorporate the commercial use into the frontage of multi-family structure locates this use within the Boulevard FLU consistent with Policy 4-B-5, enables appropriate vehicular access for structured parking and complies with the bay side height limitation of 3 stories and 30 feet in height⁴² and architectural exceptions.⁴³

VII. Conclusions

Upon adoption, the Town's Comprehensive Plan sought to promote an appropriate balance between neighborhood needs, economic vitality, tourist development and mobility⁴⁴. As well as encourage private investment in economic life, physical form and natural amenities of the town, while directing infill and redevelopment toward the Town's vision.⁴⁵ In the context of this vision, the comprehensive plan acknowledges the location of the property in the Civic Complex and the severe restrictions regarding development due to the floodplain and coastal setback regulations from 1999.⁴⁶ In the intervening 25 years these regulations have only become more restrictive.

The proposed redevelopment of the Property considers the floodplain and coastal setback regulations while adapting and implementing the vision statements from 25 years ago. Utilizing the redevelopment option of the Village district significantly reduces the density available from a build back of the former 27 RV units per acer to 15 dwelling units per acre. The permitted density is transferred from the Gulf side properties to the bayside properties with a request to increase the building height that enables a reduction of the proposed building footprint to accommodate 3 public parks, a linear park, a view corridor and future access to Matanzas Pass Preserve, and an additional view corridor to the Gulf. Together, the proposed public benefits promote large open spaces for

⁴² LDC Section 34-693(h)

⁴³ LDC Section 34-631(b)

⁴⁴ FMB Comprehensive Plan, Community Design Element, Page 3-1

⁴⁵ FMB Comprehensive Plan, Community Design Element, Page 3-2

⁴⁶ FMB Comprehensive Plan, Community Design Element, Page 3-6

public gathering, pedestrian and bicycle interconnections and retain psychological connections and views to the Bay and Gulf consistent with the comprehensive plan. The architectural enhancements and tiered height of the proposed structures ensure the development appropriately frames the adjacent streets, is oriented toward pedestrians, and shields the structured parking provided consistent with the vision outlined in the comprehensive plan for the Town as well as the redevelopment district. Increased setbacks are requested to permit the maintenance of existing sidewalks, the installation of new sidewalks and appropriate area for streetscaping to provide shade for pedestrians and enhance the landscaping associated with the proposed development.

The requested uses are located in a manner that is consistent with the underlying, split FLU for the Property. The design of the proposed structures and the placement on the property is compatible with the adjacent existing and future development. The requested design flexibility through the site plan with deviations provides ample public benefits to the existing and future residents of the Town as anticipated by the comprehensive plan, LDC, and DA process.



3001 Estero Boulevard
Development Agreement Application
Schedule of Deviations
Revised September 20, 2024

The requested Development Agreement and Site Plan with Deviations (“DA”) seeks to maintain the permitted density of 15 dwelling units per acre and uses of the Village zoning district (“Village district”) while seeking relief from various design standards to comply with current building codes and floodplain and coastal building setback regulations. Deviations are requested to provide flexibility related to the site design and multi-family structure while ensuring compliance, to the maximum extent possible, with the Town’s Land Development Code (“LDC”). A formal Development Order (“DO”) application will be submitted consistent with the LDC after the DA process is complete. ***The proposed development does not request any flexibility from the existing permitted residential density or permitted uses.*** A overall narrative and comprehensive plan consistency is provided as part of the application materials supporting the DA.

The proposed development transfers the permitted residential density from the gulf side of Estero Boulevard to the bay side while increasing public recreational opportunities throughout the Property. To accommodate the transfer of the permitted density and minimize the building footprint to increase publicly accessible spaces, a number of deviations from the Village district and other sections of the LDC are requested. Ultimately, the objective of the proposed development is to increase benefits available to the Town’s existing and future residents by clustering of the development, limiting the intensity of permitted uses on the gulf side parcels, prioritizing pedestrian and bicycle connectivity over vehicles, and increasing public recreation. The proposed design includes:

- Transfer of the residential density and majority of commercial intensity to the bay side parcels;
- 2 views corridors to the Gulf of Mexico from Estero Boulevard;
- 1 view corridor to Matanzas Pass Preserve
- Enhancements to existing private beach access;
- Incorporating a new public beach access with gulf side public park;
- A public park adjacent to Matanzas Pass Preserve;
- A public park adjacent to the bay side of Estero Boulevard;
- A linear park interconnecting Estero and Donora Boulevards through the Property;
- Establishing the first portion of an east/west local street from Donora Boulevard to Lovers Lane;
- Enhancing the street frontage of Estero Boulevard;
- Parking in excess of LDC requirements for the multi-family structure and single family units.

Many of the deviations are integrated to achieve the proposed design and cannot be considered

individually. The provided justifications are offered for context, however these requests should be considered with a review of supporting project narrative and conceptual plans.

1. **Sec 34-692(3)a.1.** expects traditional neighborhood design with interconnected streets, porches or balconies at the front of dwellings, primary entrances are visible from the street, cars are directed toward the rear to allow:
 - A single primary entry and internal street from Estero Boulevard for the bay side parcels (See also Deviation # 2).
 - An internal east/west street from Donora Boulevard (See also Deviation #2).
 - Porches or balconies on all facades of the multi-family portion of the mixed-use structure & terraced landscaping with water feature for the faced fronting Estero Boulevard for the mixed-use structure.
 - Outdoor seating and terraces for the private beach club and public restaurant portion of the mixed-use structure.
 - Private pedestrian entry above ground level along Estero Boulevard for the private beach club and mixed-use structure.
 - A single primary entry along the side façade and a drop off along the front facade for the private beach club on the Gulf side of Estero.
 - Vehicular access from controlled access points to ground level parking for the mixed-use structure and private beach club structures.

Justification for Deviation #1: Traditional Neighborhood is not a defined term in the Town's LDC or Comprehensive Plan. The Community Design Element does offer some context with the following language, visual renderings, and multiple site plans for the Red Coconut and Gulfview Colony area:

"A vision for this area...is as a complete neighborhood with an internal circulation system making it possible to walk or ride bikes to school, recreation areas and shopping without using Estero Boulevard. ...Neighborhood design is not dominated by garages and features porches on the front, walkable narrow streets with shade trees that double as view corridors to the preserve and beach and quiet internal street connections to the north and south"

The design elements described are not expressly required but were anticipated as part of the vision described in the Community Design Element. Unfortunately, these design elements have not been updated throughout the years to adapt to the changing circumstances related to the floodplain and federal construction regulations. Since the adoption of the comprehensive plan in 1999, the Town's floodplain maps have been amended three times.¹ The current maps were adopted November 17, 2022 and establish the Property is subject to a VE-14 flood zone for the entire gulf side and a portion of the bay side. The Coastal A zone and LiMWA (Limit of Wave Action) occurs on the bay side portion of the property. Additionally, the 1991 Coastal Construction Control Line occurs on the bay side portion of the property. These features require all structures to be elevated above the base flood zone of approximately 14 feet, significantly limiting the opportunity for ground level enclosed space, and require

¹ 2008, 2019, and 2022

construction to utilize breakaway walls. Due to these design requirements, structures within this area cannot provide the desired porches and primary entries on the ground floor.

The proposed site plan does activate the street front without ground level commercial space or porches and balconies and primary entries visible from the street. The proposed public parks fronting the gulf and bay side of Estero Boulevard and adjacent to the western property boundaries will provide public recreational opportunities as well as gathering space for existing and future residents. Within these parks are the origination points for the linear park with 8-foot-wide multi-use path on the bay side parcels and the 10-foot-wide public beach access on the Gulf side. The parks and pedestrian connections are centrally located to the Village District establishing a single point to cross Estero Boulevard consistent with Policy 7-E-4. On the eastern side of the boulevard entry along Estero Boulevard is the proposed terraced landscaping with integrated water feature and enhanced architecture for the area below the proposed restaurant, which shields the building podium.² The enhanced architecture associated with the restaurant wraps the corner of Estero and Donora Boulevards. With the requested deviation to increase the building setback to promote enhanced streetscaping, these features will shield the structured parking and supporting building infrastructure. Together, the parks fronting the gulf and bay side of Estero Boulevard with the increased setbacks, enhanced architectural features and streetscaping, pedestrian interconnectivity will be enhanced along Estero Boulevard with the gathering spaces of the public parks to establish ground level interaction with Estero Boulevard and activate the street front for a lively pedestrian environment.

The terraced landscaping with integrated water feature and enhanced architecture of the proposed restaurant will be a maximum of 3 stories and comply with the height limitations and exceptions¹¹ for the bay side parcels of the Village district. The remainder of the Estero Boulevard frontage is proposed to be a public park. On the Gulf side of Estero Boulevard, architectural treatments consistent with the proposed pattern book and enhanced landscaping are also proposed with two view corridors to the Gulf.

Above the building podium and setback from the commercial restaurant are the multi-family residential towers which tier in height and are further setback from the building podium. The units are oriented within the towers to promote balconies on all the building facades. The design proposed for the mixed use structure, beach club, and public parks implement the intent of the Village district and Policies 1-A-1, 1-A-2, 1-B-2, 1-B-3, 2-B-1, 4-A-1, 4-A-2 and 4-F-2 by providing ground level gathering space through the proposed parks, an enhanced pedestrian environment with the landscaped terraces with water feature, streetscaping, architectural treatments at the ground level and interaction with the street front from the proposed terraces above the required base flood elevation.

² The elements that form the base of the structure and serve to raise the habitable space above the base flood elevation.



Figure 1. The view south on Estero Boulevard

The primary vehicular entry to the mixed-use structure is proposed via Estero Boulevard with a single access point to an internal street with stacking distances that exceed the LDC requirements. The street begins in a north/south orientation and turns east/west to provide a circular turnaround and drop off between the two proposed towers. This design orientation for the internal street ensures that vehicles are directed toward the rear and are shielded from the adjacent public roadways. An east/west through street from Donora Boulevard is proposed to provide access to the proposed single family residential units consistent with the intent of the Village district³ with the opportunity for a future expansion to Lovers Lane. The property owner does not own the land between the western property boundary and Lovers Lane to provide the street extension discussed in the Village district.

The primary vehicular entry to the beach club is also proposed via Estero Boulevard with a single access point to the side of the beach club. Limiting the primary access and secondary streets within the proposed development eliminates curb cuts on Estero and Donora Boulevards and maintains traffic flow consistent with Policy 7-H-10 and guidance received from Lee County Department of Transportation.

While the secondary streets for vehicular access to the mixed-use structure and beach club do not interconnect to adjacent streets, the proposed design does promote pedestrian and/or bicycle activity throughout the Property to adjacent streets via a linear park and new sidewalks. The proposed layout of the linear park originates at Estero Boulevard, within the proposed public park to provide a specific point on Estero Boulevard for pedestrians to cross and access the beach consistent with Policy 7-E-4. From the proposed public park on the bay side of Estero Boulevard, the linear park travels north along the western property boundary, turning east to parallel the proposed new local street, and ultimately connecting to Donora Boulevard. A new sidewalk with shade trees is proposed along Donora Blvd. This linear park with the new and repaired sidewalks on Estero and Donora Boulevards will be open to the

³ FMB LDC Section 34-693(c)(2)

public and contributes to the Hidden Paths desired by Objective 2-A and its supporting policies without requiring public expenditure for implementation. The linear park is also located in a manner that can provide a future interconnection to Lovers Lane. The proposed design for the linear park promotes interconnectivity with existing public infrastructure for existing and future residents consistent with Policies 1-A-2, 4-A-1, 7-B-3 and 7-E-4 and further activates the Estero Boulevard street frontage as desired by the Village district.

The proposed development promotes design features that adapt to the federal design requirements of the VE and Coastal A zone while maintaining the intent of the Village district and comprehensive plan to the maximum extent possible. The public health, safety and welfare will be improved through the elevation of the structure, incorporation of architectural techniques, and public recreation that activates Ester Boulevard for all pass by traffic, a safe linear park that connects to other residential neighborhoods and maintenance of traffic flow along Estero Boulevard. Other infrastructure improvements are also proposed to enhance pedestrian and bicycle connectivity and view corridors to the Gulf and Matanzas Pass Preserve, consistent with the vision of the Village district.

2. **Sec 34-693(c)(1) and (2)** provides options for secondary streets in the Village zoning district and requires an extension of a through street from Donora Boulevard to Lovers Lane that will be permanently accessible by the public to allow:

- A single primary entry and internal street from Estero Boulevard to the mixed use structure with turn around.
- An internal east/west local street extending Donora Boulevard to the western property boundary.

Justification for Deviation #2: The Village district includes a desired street layout in LDC Figure 34-18 demonstrates the anticipated secondary street layout with the potential for 2 additional access points to Estero Boulevard within the Property and the required east/west extension of Donora Boulevard to Lovers Lane. In addition to the existing north/south portion of Donora Boulevard, Figure 34-18 establishes a minimum of 3 secondary streets within the Property. However, LDC Section 34-693(c) establishes that secondary streets are to be “*generally* in accordance with Figure 34-18.” (emphasis added) The existing north/south portion of Donora Boulevard is one of the secondary streets identified in Figure 34-18, the proposed site plan incorporates a sidewalk along the street to provide improved pedestrian circulation from the adjacent residential neighborhoods.

Due to the pedestrian/bicycle opportunities provided by the proposed site design, vehicle access is purposefully directed to the multi-family or single-family residences and not interconnected. Increasing the internal street connections consistent with Figure 34-18 would increase the number of locations a pedestrian or cyclist would have to cross a street also utilized by vehicles. To reduce the number of conflict points and improve safety, a linear park with an 8-foot-wide multi-use path is incorporated into the site plan separating pedestrian and bicycle traffic through the Property from vehicles. A single internal street is proposed for the multi-family structure from Estero Boulevard with a turn around and stacking distances that exceed the LDC requirements to address the

anticipated traffic, drop off for valet, and to shield this activity from Estero Boulevard. Policy 7-H-10 specifically identifies that there are “an excessive number of streets and driveways having direct access to Estero Boulevard, reducing its ability to handle peak season traffic. The town shall take advantage of any suitable opportunities to consolidate street connections into fewer access points on Estero Boulevard.” The Property’s approximately 600+ foot frontage on Estero Boulevard is a unique opportunity to implement this policy with the proposed redevelopment. The intent of this policy is reflected in the conceptual site plan by limiting the number of vehicular access points from Estero Boulevard to one for the Gulf and one for the bay side parcels consistent with Policies 1-A-1, 7-H-10, and guidance received from Lee County Department of Transportation.

Two additional access points to the mixed-use structure are provided on the north/south portion of Donora Boulevard, an existing local street, to address secondary ingress/egress to the structured parking for residents. A new local east/west street is proposed to extend Donora Boulevard through the Property and provide access to the proposed single family residential consistent with Policy 3-A-5 and LDC Section 34-693(c)(2). Consistent with the intent of the Village district and Policy 3-A-6 this design maintains a future opportunity for the through street to extend to Lovers Lane⁴ and promote an interconnected network for existing and future residents to travel to the redeveloped Elementary School and Bay Oaks without utilizing Estero Boulevard. The Property owner does not own the land between the western property boundary and Lovers Lane to provide the full street extension discussed in the Village district. It is anticipated that future redevelopment in the Village district will promote the full extension of the desired local street.

Pedestrian and/or bicycle activity throughout the property and to adjacent streets is promoted through a linear park and new sidewalk with shade trees along Donora Boulevard. The linear park interconnects the public park fronting on Estero Boulevard, travels north along the western property boundary, turns east adjacent to the new internal road, and ultimately connects to Donora Boulevard consistent with Policies 3-A-5, 3-A-6, 4-A-1 and 7-D-5. This linear park will be open to the public and contribute to the Hidden Paths desired by Objective 2-A and its supporting policies without requiring public expenditure for implementation. The location of the linear park adjacent to the proposed new local street also provides the opportunity for a future connection to Lovers Lane, further promoting interconnectivity throughout the Town.

The public health, safety and welfare will be improved through the proposed design by eliminating curb cuts and maintaining the traffic flow on Estero Boulevard. The provided enhancements for pedestrian and bicycle connectivity appropriately address the opportunity for future development on properties not controlled by the applicant. Together the internal streets and linear park improve circulation for vehicles and pedestrians as desired by the Village district.⁵

⁴ FMB LDC Section 34-693(c)(2)

⁵ FMB LDC Section 34-693(c)

3. **Sec 34-693(e), (f), (g)** establish build-to-lines from all streets at 0, rear setbacks at 20 feet and a building frontage percentage of 35 to 50% along Estero Boulevard to allow:

- **Elimination of the build-to-lines and building frontage % for all structures;**
- **Establish a 10 foot front setback for structures adjacent to a roadway;**
- **Decrease the rear setback to 10 feet for the mixed-use structure;**
- **Decrease the rear setback to 5 feet for accessory structures associates with the single-family residential units;**
- **Increase the street corner setback beyond 20 feet for the mixed use structures.**

Justification for Deviation #3: The Property fronts Estero and Donora Boulevards and as described in Deviation #1, the Property is within a VE-14 and Coastal A zone requiring the elevation of structures within this area to approximately 14 feet above base flood elevation. The bay side parcels are also subject to the 1991 Coastal Construction Control Line which significantly limits the square footage that can be enclosed below base flood elevation and requires breakaway construction practices. With a required elevation of 14 feet, the requested increased setback will enable the area between the Property boundary and proposed structure to be utilized for streetscaping and improvement or installation⁶ of a public sidewalk. The streetscaping with enhanced architectural elements will screen the building podium providing parking, plumbing, electrical and foundational elements for the mixed-use building and private beach club.

Building frontage is measured as the length of a building façade that faces a street⁷, and in the Village district this length is measured at the build to line. The requested front setback is greater than the build-to-line; therefore, by the definition included in the LDC, the building frontage would be 0. Additionally, the proposed design includes a public park along Estero Boulevard; which significantly reduces the length of the building façade along Estero Boulevard and provides a significant public benefit. Similarly, the beach club provides two 120-foot view corridors along Estero Boulevard; significantly reducing the length of building façade provided to increase the public benefits offered.

To ensure the structural elements of the building podium are appropriately screened from the adjacent streets, the proposed design includes a setback greater than 10 feet from a right-of-way and 20 feet from corner of street intersections. The increased setback provides additional land area for a planting area between the structure and the repaired or new sidewalk to provide shade the adjacent pedestrian environment and improve the view of passby traffic as compared to the required construction practices for the 14-foot base flood elevation. In addition to the increased setback, the mixed-use structure utilizes landscaped terraces with a water feature and a public restaurant with terrace to address the pedestrian environment along Estero Boulevard. Additional streetscaping and a new sidewalk is provided along Donora Boulevard. When combined with the public park on the remainder of the Estero Boulevard frontage, these features provide an enhanced pedestrian environment and gathering space as

⁶ The existing sidewalk along Estero Boulevard will be repaired and a new sidewalk will be installed along Donora Boulevard.

⁷ FMB LDC Section 34-693(c)

well as an activated street front, implementing the intent of the Village district and Policies 1-A-1, 1-A-2, 1-B-3 and 4-A-1.

The rear setback for the mixed-use structure is proposed to be reduced due to the location of the linear park and new local street providing access to the proposed single family. The building podium will be closer to the linear park than the residential towers which are internally setback from the edge of the building podium increasing the setback from Donora Boulevard and the new local street to ensure the right-of-way and linear park maintain open air and light. The proposed design is consistent with the intent of the Village district and Policies 4-A-1 and 4-A-2.

The public health, safety and welfare will be improved through the proposed design by incorporating required construction techniques to address the floodplain elevation while enhancing the ground level environment for pass by pedestrian and vehicular traffic consistent with Policies 1-A-1, 1-A-2, 1-A-3, 1-B-3, 2-B-1, 3-A-5, and 4-A-1. The request appropriately adapts the design to implement the intent of the Village district. Additionally, the provided enhancements will interconnect with the proposed linear park and public beach access to further improve circulation for pedestrians as desired by the Village district¹⁷ and Policies 2-A-1, 3-A-5, and 3-A-6.

4. **Sec. 34-693(h)** limits building height to 30 feet above base flood elevation and no taller than three stories for mixed use buildings without enclosed space on the first story on the bay side of Estero Boulevard to allow:

A maximum building height of 17 stories (including 2 stories of parking) and 235 feet for the mixed use building on the bay side of Estero Boulevard consistent with Policy 4-C-4.

Justification for Deviation #4: The Village district was established to reduce density from the previous 27 RV/mobile homes per acre to 15 dwelling units per acre. The average residential density in other locations within the Town is 6 dwelling units per acre. To address the permitted density, desire for open views, public gathering spaces and pedestrian/bicycle interconnectivity, an integral component of the proposed design is the transfer of the permitted density from the Gulf side properties to the bay side properties. This density transfer will keep the height of the development on the Gulf side consistent with the permitted 3 stories in height and 30 feet (without exceptions) of the Village district while improving connectivity and visibility to the Gulf compared to the conditions of the previous development. The proposed development plan also limits the intensity of the Gulf side properties to a private recreational amenity and membership organization.



Figure 2. Proposed Multi-family Residential Height

Due to the Property's location within a VE-14 flood zone and Coastal A zone with LiMWA (Limit of Wave Action) the usable square footage and residential units of the mixed-use building need to be elevated above approximately 14 feet. Enclosed space on the first story is significantly limited and construction is required to utilize breakaway walls. Additionally, the 1991 Coastal Construction Control Line occurs on the bay side of Estero Boulevard, also limiting enclosed space on the first story and requiring breakaway wall construction practices. The design requirements of these State and Federal regulations promote unenclosed space for the area below base flood, in conflict with the screening requirements of the Village district. In addressing the current design requirements for below base flood, and to maintain the openness of the site design for view corridors and public gathering space, the proposed design reduces the development footprint and requests additional height to cluster the multi-family units into 2 residential towers with multiple tiers at varying heights from 17 to 13 stories (including the structured parking) or a maximum height of 235 feet above base flood elevation (including the structure parking).

The comprehensive plan also gives consideration to requests for additional height in Policy 4-C-4, which specifically indicates "different heights may be applied to officially designated

redevelopment areas such as ... Red Coconut/Gulf View Colony.” The Village zoning district implements the redevelopment described as “Red Coconut/Gulf View Colony” in the Comprehensive Plan. Requests for additional height need to demonstrate consistency with the comprehensive plan and public benefits promoted by the site design due to the request, such as view corridors to the Gulf or Bay.



Figure 3. View South down Estero Boulevard

Consistent with architectural practices for increased height, as the residential towers increase in height above the podium, the setback from Estero Boulevard increases. Additionally, the towers are setback from the building podium increasing the separation from the property boundary and Donora Boulevard. The placement of the north/south tower closest to Donora Boulevard aligns with the existing multi-family and the former art campus and Fort Myers Beach Fire District Station that previously existed on the eastern side of Donora Boulevard. The adjacent development is within the VE-14 flood zone and Coastal A zone with a LiMWA and an AE zone with a base flood elevation of 11 to 12. As a result, redevelopment of the fire station and art campus will need to be elevated 11 to 14 feet. The orientation of the towers with the architectural elements and streetscaping ensures the future building will be compatible with the adjacent single, multi-family and community facilities along Donora Boulevard.

At the ground level, the proposed structure will be elevated and future development on adjacent properties will also be required to elevate consistent with base flood elevation. The building podium of the proposed structure is proposed to be shielded through architectural elements and enhanced landscaping consistent with Policies 1-B-2, 2-B-1, 3-A-5, 4-A-1, 4-A-2. At the intersection of Estero and Donora Boulevard, the commercial restaurant provides a dining terrace and coastal architecture that wraps from Estero to Donora Boulevard consistent with Policy 4-A-3. This design ensures that the Donora Boulevard frontage adjacent to Estero Boulevard is activated and provides a step back from the requested increased height. Traveling further north on Donora Boulevard the north/south residential towers increase in height and the street level is proposed to be enhanced through

architectural treatments, an increased planting area for streetscaping and a public art installation. Finally, a new sidewalk will be constructed to provide pedestrian interconnections from the existing residential neighborhoods, the proposed linear park and Estero Boulevard. The remaining building façade along Estero Boulevard is proposed to be terraced landscaping with water feature to shield the structure and supporting infrastructure while enhancing the pedestrian environment and promoting a special landscape feature along Estero Boulevard consistent with Policies 1-A-1, 1-B-3, 4-A-1. The landscaped terraces, water feature, and restaurant are consistent with the bay side height limitation of 3 stories and 30 feet in height²⁰ and architectural exceptions.²¹ Designing the uses and structure in this manner ensures the requested height does not crowd the Town's roadway network promoting openness and light and the ground level environment contributes to the pedestrian realm.

Promoting a mixed-use structure in the central portion of the Property for 137 of the permitted 141 residential units with increased height enables a reduced building footprint to utilize other portions of the property for improvements that benefit existing and future Town residents. The public parks, linear park, and view corridors are provided to promote public gathering, recreation, views and access to the Gulf and the bay. On the Gulf side, two 120-foot view corridors will maintain a permanent view of the Gulf of Mexico. The western view corridor is a new public park with a 10 foot public pedestrian access to the sandy beach. On the north side of Estero Boulevard from the Gulf front park, a public park is proposed with the origination point for a proposed linear park. Aligning the Gulf front and bay side parks in this manner promotes a centrally located park to the entire Village district and a single pedestrian crossing of Estero Boulevard. A linear park parallels the western property boundary and the new east/west extension of Donora Boulevard to enhance interconnectivity through the Property for existing and future residents without a vehicle. An opportunity to expand the linear park to the west is available when the remainder of the property within the Village zoning district redevelops, furthering enhancing mobility without a vehicle.



Figure 4. View down Donora Boulevard

The linear park terminates at the intersection of the north/south and east/west portions of Donora

Boulevard. In this general location, adjacent to Matanzas Pass Preserve is the final public park. The location of this park maintains the previous view corridor that was available down Donora Boulevard. Additionally, the existing residential lots to the east can utilize this area as a neighborhood park.

The programmatic development of the parks has not been finalized. The applicant has included language in the Development Agreement to require on-going coordination with the Town of Fort Myers Beach to ensure the final design is consistent with the Town's vision. The Development Agreement also commits that the Applicant will maintain ownership and maintenance of the park and an easement will be recorded for public access and use. As a result of this structure, the Town will have a new public park with beach access without requiring an investment in tax funds for purchase, development or maintenance of the park.

The public health, safety and welfare will be improved through the proposed design through the shielding, ground level interactions and activated street frontage that will be provided by the public parks, terraced landscaping with water feature and enhanced architectural elements consistent with Policies 1-B-2, 2-B-1, 4-A-1, and 4-A-2.

5. **Sec. 34-693(i)** restricts Floor Area Ratio (FAR) to 1.2 and 34-633 includes all stories of covered parking in the measurement of FAR to allow:

Elimination of covered parking and parking decks from the calculation of FAR and permit a FAR of 1.5 (626,156.2 square feet) consistent with Policy 4-C-2.

6. **Sec. 34-693(l)** requires off-street parking under a commercial or mixed-use building to be separated from primary streets by usable commercial space at least 20 feet deep, meet all commercial design standards and have a driveway that connects to a secondary street to allow:

Parking under a commercial or mixed-use building with no commercial space on the ground level and permit access from Estero Boulevard or an internal street.

Justification for Deviations # 5 and 6: The Village district establishes a maximum FAR of 1.2 for commercial uses and the Town's comprehensive plan establishes a maximum FAR of 1.5 in Policy 4-C-2. This same policy establishes "the land development code shall specify maximum commercial intensities using floor-area ratios (the total area of the building divided by the area of the site in the category allowing the commercial uses)." LDC Section 34-633(1) specifies "gross floor area includes the total floor area of all stories of a building within the surrounding exterior walls (whether the walls are solid or screened), plus all area below an elevated building that is six feet or more in height, plus all stories of covered parking..."

When considered together, the Comprehensive Plan and LDC establish FAR as a measure of commercial intensity that includes parking structures and unenclosed space on the ground floor. At the time LDC Section 34-633 was adopted in 2003, commercial retail space could be provided in certain locations within the Town on the ground floor level to shield parking and provide an active street front. The vision statements for the Civic Center, which includes the Property, acknowledge that

even in 1999 “the current floodplain and coastal setback regulations severely restrict what can be done here.”⁸ Since 1999, there have been multiple changes to the floodplain mapping and building code requirements which continue to increase development restrictions. The proposed development along the gulf side of Estero Boulevard is within a VE-14 floodzone which is an area subject to high velocity wave action. The remaining portion of the property, on the bay side is within a Coastal A Zone; which is an area subject to breaking waves ranging from 1.5 to 3 feet⁹. The building requirements for the flood zones and CCCL significantly limit the permitted enclosed space to a dimension that is not feasible for commercial uses below base flood elevation. Additionally, a portion of the property on the bay side is also within the 1991 CCL; which the Town’s comprehensive plan acknowledges includes structural regulations administered by the Department of Environmental Protection¹⁰ also limiting enclosed space and requiring breakaway walls which are not feasible for commercial uses below base flood elevation¹¹. Without the ability to utilize the area below base flood elevation for residential or commercial space, a deviation is requested to eliminate the area of the parking structure from the calculation of FAR and a second deviation is requested to eliminate commercial usable space between the parking and Estero or Donora Boulevards.

Another deviation is requested to increase the allowable FAR on the property to 1.5 (616,156.2 square feet) and accommodate the proposed uses. Policy 4-C-2 permits FAR requests up to 1.5 within the Boulevard and Mixed Residential FLU categories. The public restaurant at approximately 10,000 square feet and the 137 multi-family units will be constructed within an integrated structure that classified as a mixed-use building per Policy 4-B-12. The Town’s land development code establishes membership organizations as a commercial use. Consistent with past interpretations of Town policy, mixed use structures must comply with the FAR calculations. The combined total area of the structures exceeds the permitted 1.2 FAR even when the parking structure is eliminated from the FAR calculation. It should be noted that the single family units are a residential product therefore per Policy 4-B-12 do not need to be included in the calculation of FAR for commercial intensity. The requested deviations are consistent with the maximum FAR outlined in Policy 4-C-2 and the current coastal regulations. The additional FAR is being utilized to support multi-family units and a membership organization and does not represent an increase in commercial intensity or intrusion into a residential neighborhood. Consistent with Policy 4-C-3, the Property previously had approximately 10,000 square feet of commercial uses with setback variances and no formal parking.

The public health, safety and welfare will be improved through the mix of uses proposed with the building orientation and layout. The uses provided within the proposed structures are appropriately classified as mixed use through the provision of residential and commercial uses. The request does not promote an increase in commercial intensity or intrusion into a residential neighborhood and reflects appropriate limited commercial uses consistent with the anticipated

⁸ FMB Comprehensive Plan, Community Design Element, Page 3-6

⁹ *Ibid.*

¹⁰ FMB Comprehensive Plan, Future Land Use Element, Page 4-9

¹¹ FMB Comprehensive Plan, Future Land Use Element, Page 4-10

redevelopment in the surrounding area.

7. **Sec. 34-693(m)** requires commercial and mixed-use buildings that are visible from Estero Boulevard to abide by the commercial design standards outlined in 34-991-34-1010 to allow:

Conceptual approval of the architectural renderings and the proposed pattern book to permit review of designed elevations as part of the Development Order process.

Justification for Deviation #7: As part of the Development Agreement, Exhibit B is Conceptual Plans and Renderings and Exhibit D is a pattern book to demonstrate the anticipated features of the proposed development. These exhibits provide a conceptual site plan, renderings of the proposed multi-family and beach club structures, perspective viewsheds and expected architectural elements demonstrating the anticipated architectural form and features of the proposed structures. However, detailed architectural elevations and floor plans have not been prepared to evaluate against the commercial design standards outlined in the LDC.

LDC Section 34-992(d)2 permits compliance with architectural standards to be established with the submittal of a development order application. The Conceptual Plans and Renderings with the Pattern Book are provided as exhibits to the DA to demonstrate the anticipated elements of the future building architecture and floor plans. Providing a framework for review and approval of the detailed architectural plans with the development order applications.

The public health, safety and welfare will be maintained through the deviation request. The provided renderings and pattern book establish an architectural theme that reflects a coastal contemporary style. Through the conditions provided in the Development Agreement, this same architectural theme will need to be provided with the Development Order application. At that time Town Staff can review the detailed architectural elevations and floor plans to ensure consistency with Exhibit B Conceptual Plans and Renderings and Exhibit D Pattern Book.

8. **Sec. 34-631(b)(3)** requires mechanical structural appurtenances that extend above the height limit provided they do not exceed 250 square feet and screening is provided to allow:

No square footage limitation or screening for the portions of the residential tower above 11 stories.

Justification for Deviation #8: The mechanical equipment to support the 137 multi-family residential units will be integrated into the mixed-use structure and located on the roof. Due to the ranging height of the residential towers, the Applicant requests elimination of the limitations regarding square footage and screening for the portions above 11 stories. From the ground level, the mechanical equipment will not be visible and therefore these additional limitations are not necessary to protect the public health, safety and welfare.

HOME RULE DEVELOPMENT AGREEMENT (Draft ~~109-243~~12-16-24)

THIS DEVELOPMENT AGREEMENT (hereinafter, "Agreement" or "Development Agreement") is entered into this _____ day of _____ 20____, by and between **THE TOWN OF FORT MYERS BEACH, FLORIDA**, a municipality of the State of Florida (hereinafter "Town"), having its principal office at 2731 Oak Street, Fort Myers Beach, FL, and **SEAGATE FORT MYERS BEACH, LLC**, a Florida limited liability company (hereinafter "Developer"), whose address is 9921 Interstate Commerce Drive, Fort Myers, FL.

WHEREAS, Section 2-100 of the Town's Land Development Code, authorizes it to enter into a home rule development agreement pursuant to article VIII, § 1(f), of the Constitution of the State of Florida and F.S. chs. 163, 166 and 380, and specifically recognized by the State Legislature in F.S. § 163.3220(5); and

WHEREAS, the Developer has requested approval of this Development Agreement pursuant to Section 2-96 of the Town's Land Development Code and Resolution 24-73; and

WHEREAS, Seagate owns approximately 10.72 +/- acres of land located within the Town, said property, of which 9.43 acres are located landward of the 1978 Coastal Construction Control Line (hereinafter "CCCL"), being legally described in Exhibit "A" attached hereto (hereinafter, "the Property"); and

WHEREAS, the Town and the Developer desire to enter into this Agreement to provide for the approval and a comprehensive understanding of the development parameters consistent with the Town's Land Development Code and Comprehensive Plan as set forth herein; and

WHEREAS, a public hearing was held before the Town of Fort Myers Beach Local Planning Agency("LPA") on the 22nd~~8th~~ day of October, 2024, and the LPA reviewed the request and by a vote of 4~~—~~ to 2~~—~~ recommended denial~~_____~~ to the Town Council; and

WHEREAS, the Town conducted ~~three~~two public hearings on the 28th~~1st~~ day of October, 2024, the 2nd day of December and the 16th day of December~~4th day of November~~, 2024, prior to entering into this Agreement, both of which were properly noticed on the Town's website and by mailing to affected property owners within a 500 foot radius of the boundaries of the real property at the addresses of such property owners found on the Lee County Property Appraiser's website prior to the first public hearings; and

WHEREAS, the Town Council has determined after consideration of the recommendation of the LPA, Town staff, and following two public hearings, which provided an opportunity for comment, testimony and evidence from the Developer, Town staff, and the public, the Town Council has determined that the Development Agreement

is reasonable and not arbitrary and in the best interest of the Town and the residents of the Town Fort Myers Beach.

NOW, THEREFORE, in consideration of the covenants and conditions contained herein, for the purposes set forth in Section 2-100 and 2-96 of the Town's Land Development Code, the benefits to accrue to each party, and for other good and valuable consideration, the receipt of which the parties hereby acknowledge, the Town and the Developer agree as follows:

1. Recitals. The foregoing recitations are true and correct and are incorporated herein by reference. All exhibits to this Agreement are deemed a part hereof.

2. Property Subject to this Agreement. The real property described in Exhibit "A" is subject to the terms and conditions of this Agreement ("Property").

3. Ownership. Developer represents that it is the legal and equitable owner, having an interest in the Property pursuant to Instrument No.: 2023000309279 recorded as Doc Type D, Pages 7 on September 20, 2023 in the Official Records of Lee County, Florida, and as such may lawfully enter into this Agreement. The Town is in receipt of a title opinion from a Florida attorney upon which it can rely for the purpose of confirmation of the Developer's ownership representation.

4. Proposed Development and Use of the Property. The proposed Uses and development of the Property ~~shall~~ will be consistent with the following:

A. Residential Density. A maximum of 141 residential units to be developed as 4 single and 137 multi-family units on the North side of Estero Blvd., as shown on Page 2 of the Conceptual Plans and Renderings, dated the 54th day of ~~September~~December, 2024 and attached as Exhibit B. Density from other properties owned by the Developer within the Town may be transferred for 8 additional single family units (to be located north of proposed Seahorse Street) and up to a maximum of 149 units.

B. Vehicular Access. The residential multi-family units ~~shall~~ will be accessible through a maximum of 2 ingress/egress points from Donora ~~Boulevard~~ and 1 ingress/egress from Estero Boulevard. Additional separate delivery, ~~and~~ service, and solid waste pick up access points ~~may will~~ be ~~provided~~ collocated on from Donora Boulevard ~~for solid waste pickup and delivery for the building and for the restaurant to occur~~ within the building footprint. 4 single family residential units ~~shall~~ will be accessed through a new, non-gated, east/west local street extending from Donora Boulevard.

The Developer will work with Lee County to implement turn lanes if possible on Estero Boulevard to access the proposed

development and Donora Boulevard.

B.C. Rental Restrictions. Rental of any permitted dwelling unit will be limited to ~~a single renting entity during any one month period,~~ with a minimum stay of thirty days one week and a total of three rental periods per calendar year.

C.D. Parking. Parking for the residential uses and commercial restaurant ~~shall~~ be provided consistent with the regulations at the time of building permit. An additional 75 membership spaces will be provided to support the beach club.

D.E. Commercial Area. Up to 10,000 square feet of commercial uses as identified in the Village Zoning Category. The commercial uses ~~shall~~ be open to the public, including but not limited to commercial personal services, such as hair and nail salons, a laundry service, daycares, a small-scale convenience retail, restaurants, and coffee shops and other uses as permitted in the underlying zoning district.

F. Beach Club. A beach club not to exceed 29,000 square feet of enclosed air conditioned space with private recreational amenities and a private membership organization. At least 25% of the memberships in the beach club will be available to non-residents of the Property. The beach club ~~shall~~ provide the following uses and amenities: pool and pool deck, event space for members and their guests only (including conference center, wedding venue, and meeting space and similar uses), umbrellas, chairs, cabanas, and a restaurant with consumption on premises (indoor and outdoor) and terrace.

G. Parks and Access Areas. All parks and access areas will be maintained by the Developer or an association of property owners. A minimum of three (3) parks and access areas upon which the Town will be provided an easement for public use and located as follows (and substantially as shown in Exhibit C):

(1) Matanzas Pass Preserve Park. To provide public recreation and access to Matanzas Pass Preserve to be coordinated with Lee County and the Town; and

(2) a linear park providing pedestrian and cyclist access from Donora Blvd. to Estero Blvd. through the property a minimum of 20ft wide at all points with a minimum of 8ft wide multi-use path. The Developer will coordinate with the Town regarding directional and safety signage; and

(3) The area west of the private beach club and not utilized

for public and private vehicular access will be improved to include park like features; such as, bike racks, picnic tables, shade structures and/or landscaping, subject to permitting requirements by the Town and the Florida Department of Environmental Protection. ~~a~~An enhanced beach access to include: a 10ft wide pedestrian-only beach access between Estero Blvd., and the beach (while also maintaining a beach access on the southern portion of the Property). The public beach access may not be located with the existing private platted beach access.

The Developer will limit the paved access to the minimum access and/or turn around required by Lee County and the Town of Fort Myers Beach Fire Department.

The Developer will provide temporary public bathrooms accessible from the area west of the private beach club and public water fountain (to include pet hydration) subject to permitting requirements by the Town of Fort Myers Beach, Federal Emergency Management Agency, and Florida Department of Environmental Protection; and

(4) 2943 Estero Blvd. to provide a public recreation park.

The dedication of the parks and access areas ~~sh~~will be by easement acceptable to the Town Attorney, together with evidence of title in a form acceptable to the Town Attorney prepared by an attorney who is a member of the Florida Bar, or a title company licensed in Florida, all depicting who is the owner in fee simple of the land subject to the conveyance or dedication, and the holders of any other interest or liens affecting said land.

- H. Height. ~~No building shall be more than 15 stories over 2 stories of structured parking in height.~~ The maximum height of the tallest residential multi-family tower ~~sh~~will not exceed a total of 15 stories over 2 stories of structured parking and 235 feet above base flood elevation. Additional height limitations range from 9 to 14 stories over 2 stories of structured parking and must be in substantial compliance with Page 2 of the Conceptual Plans and Renderings, dated the 54th day of ~~Septe~~December, 2024 and attached as Exhibit B.
- I. Area. The combined square footage of all the ~~all~~-structures within this development, other than the detached single-family residences and the covered motor vehicle parking structures, ~~sh~~will not exceed 616,156.2 sf which is the equivalent of a FAR of 1.5.
- J. Mixed Use Structure Setbacks. 10 ft setbacks from all street right-of-ways-~~s~~ and 10ft rear setbacks along the proposed Linear Park. The beach-facing property line for the beach club may be built to the 1978 CCCL.

- K. Single Family Lot Setbacks. 10 ft setbacks from the street right-of-way, 20 ft rear setback along the Matanzas Pass Preserve property line for the principal structure and 5 ft rear setback for accessory structures and 5 ft side setbacks.
- L. Other Permitted Uses. Other permitted uses of the land ~~shall~~ will be those allowed in the underlying zoning district unless otherwise specifically provided herein.
- M. Internal Traffic Circulation. Pedestrian travel is identified in the conceptual plan, a copy of which is attached as Exhibit B on Sheet 3 of the Conceptual Plans and Renderings dated the ~~54th of Septe~~December 2024, which shows the proposed layout, streets, lots, green areas, bikeways, parks, public facilities, and other such amenities.
- N. Environmentally Sensitive Land. There are no environmentally sensitive lands on-site.
- O. Threatened and Endangered Species. There are no threatened or endangered species on-site.
- P. Conflicts. Any conflict between the matters set forth in this paragraph and paragraph 9 and other paragraphs in this Agreement ~~shall~~ will be resolved in favor of the terms and conditions in this Paragraph and paragraph 9. Moreover, this Agreement identifies known instances in which the proposed redevelopment conflicts with the Town's existing Land Development Code. Any ambiguity with respect to whether this Development Agreement or an ordinance is to control ~~shall~~ will be interpreted to favor the ordinance. Failure of this Development Agreement to address a particular permit condition, term or restriction ~~shall~~ will not relieve the owner or developer of the necessity of complying with the laws governing said permitting requirements, conditions, terms or restriction. Any matter or action required under existing ordinances of the town ~~shall~~ will not be otherwise amended, modified or waived, unless such modification, amendment or waiver is expressly provided for in the Development Agreement with specific reference to the Code provision so waived, modified or amended ("Deviations").

~~5. Consistency with Comprehensive Plan. The Town finds that the proposed development for the Property set forth above is consistent with the Town of Fort Myers Beach Comprehensive Plan and Land Development Code as provided in this Agreement. Review and approval of this Agreement through the process outlined in Resolution 24-73 is commensurate and tantamount to approval through the Town's planned development rezoning process. Notwithstanding the foregoing, the deviations identified in paragraph 9 are approved.~~

56. Public Facilities. The following public facilities will serve the Proposed Development on the Property:

A. Potable Water:

Potable water will be supplied by Town of Fort Myers Beach and is presently adequate to serve the Proposed Development. Notwithstanding the foregoing, nothing in this Agreement ~~shall~~ be interpreted nor is it the intent of the parties to create a reservation of capacity. Capacity for the project ~~shall~~ be based on its availability at the time of submission of a Development Order. The Developer is responsible for improvements to the utility system required to service the proposed development.

B. Sanitary Sewer:

Wastewater services will be provided solely by Lee County, which are presently adequate to serve the Proposed Development. Notwithstanding the foregoing, nothing in this Agreement ~~shall~~ be interpreted nor is it the intent of the parties to create a reservation of capacity. Capacity for the project ~~shall~~ be based on availability at the time of submission of a Development Order. The Developer is responsible for improvements to the utility system required to service the proposed development.

C. Solid Waste:

Developer ~~shall~~ coordinate solid waste services with Lee County, the Town, or a third party service provider, adequate to serve the Proposed Development, prior to issuance of the development order. Notwithstanding the foregoing, this does not create a reservation of capacity. Capacity for the project ~~shall~~ be based on availability at the time of submission of a building permit.

D. Drainage:

Drainage will be in accordance with the applicable environmental resource permit ("ERP") to be issued by the South Florida Water Management District ("SFWMD") for the Property. Prior to issuance of the development order, if applicable, Developer

shawill provide plans related to storm water run-off into the Town's system to the Town. The Developer is responsible for improvements to the drainage system required to service the proposed development.

E. Fire and Rescue

Fire control and rescue services will be provided by the Fort Myers Beach Fire Control District, and Emergency Medical Services will be provided by Lee County Emergency Medical Services. It is the responsibility of the developer to verify the adequacy of service available from the designated entities at the time of development order approval.

F. Transportation

Developer agrees to assist with installation and maintenance of a transit shelter and shawill coordinate the availability of bus service and associated infrastructure with Lee Tran and Lee County School District prior to issuance of development order.

G. Public Schools.

Developer shawill provide a letter of capacity from Lee County School District prior to issuance of development order. Impact fees may be required.

H. Recreation

Developer will record an easement acceptable to the Town Attorney dedicating access to the parks for public usage.

In the event new or additional facilities are needed to serve the project, the Developer shawill bear the burden of the cost of such facilities to be constructed and provide a schedule to the Town to assure that the public facilities and services shawill be available concurrent with the impact of the development project.

76. Impact Fees. Impact fees, if-when adopted by Town Ordinance for all new development and change in use, shawill be calculated at time of issuance of a development order and payment shawill be required prior to building permit approval. Offsite impacts will be evaluated by the Town at the time of development order application.

87. Development Permits Needed for Proposed Development. A list of all known governmental permits needed for the Proposed Development is set forth below:

Town of Fort Myers Beach Development Order
Town of Fort Myers Beach Building Permit
South Florida Water Management District Environmental Resource Permit
South Florida Water Management District Water Use Permit (dewatering)
South Florida Water Management District Water Use Permit (irrigation)
FDEP Wastewater Permit
LCDOH Potable Water Permit

The failure of this Agreement to address a particular permit, condition, term or restriction shall not relieve the Developer of the necessity of complying with the law governing said permitting requirements, conditions, terms, or restrictions. The Developer shall be responsible at its sole cost for obtaining any required approval and shall not in any manner obligate the Town or any other governmental agency to grant other required permit approvals. Any reliance on this Agreement or expenditures in pursuance of its terms or any rights accruing to the Developer shall not vest any development right in the Developer or the project to a continuation of this Agreement.

98. Developer Commitments and Obligations. For and in consideration of the benefits received pursuant to this Agreement, the Developer agrees to the following commitments, obligations and associated public benefits; which are deemed to be in the public interest:

- a. The Developer will not utilize the post disaster build-back provisions for 27 dwelling units an acre;
- b. Project density will be limited to 15 dwelling units per acre for a total density of 141 dwelling units consistent with the Village zoning district;
- c. All permitted density of the gulf side parcels (at least 21 units) (south of Estero Boulevard) will be transferred to the bay side parcels (north of Estero Boulevard) (these units are already included in the 141 units identified in paragraph 4(A));
- d. Development of the bay side parcels (north of Estero Boulevard) will be limited to single family and multi-family residential, approved commercial uses and public parks;
- e. Development of the gulf side parcels (south of Estero Boulevard) will be limited to a beach club that provides a private recreational facility and private membership organization significantly reducing the intensity of the previous development and potential disruption to the surrounding neighborhood than the permitted uses of the Village zoning district;

f. Increase the view corridor to the Gulf from the required 50 feet to 240 feet;

g. Provide a minimum 120 foot wide view corridor to Matanzas Pass Preserve;

g.h. Establish an enhanced beach access with 10 foot pedestrian beach access point, consistent with Exhibit C at no cost to the Town and record a perpetual public access easement;

h.i. A private elevated pedestrian crossover above Estero Boulevard will be provided for future residents and guests to eliminate negative impacts to traffic flow;

i.j. Establish a public park adjacent to Matanzas Pass Preserve, consistent with Exhibit C at no cost to the Town and record a perpetual public access easement. The Developer will work with Town Staff to establish appropriate programming, infrastructure, and a maximum of 2 public parking spaces for this park;

j.k. Establish a public park adjacent to the western property boundary and Estero Boulevard that incorporates the origination point for the linear park with multi-use path, consistent with Exhibit C at no cost to the Town and record a perpetual public access easement. The Developer will work with Town Staff to establish appropriate programming and infrastructure for this park;

k.l. Implement the Hidden Paths infrastructure within the bay side property through:

- a. A linear park interconnecting Estero Boulevard and Donora Boulevard;
- b. An east/west pedestrian and bicycle access connecting Donora Boulevard to the western property boundary;
- c. Portions of the linear park and pedestrian/bicycle access may occur within the same easement;
- d. Pedestrian connectivity to Matanzas Pass Preserve through the proposed park;
- e. Pedestrian connectivity to the Gulf through the proposed park;
- f. Site specific wayfinding signage along Estero and Donora Boulevards adjacent to the project limits for the linear park, beach access and Matanzas Pass access areas;
- g. 4 informational and education panels regarding Matanzas Pass resources will be designed with Town Staff and erected prior to Temporary Certificate of Occupancy.

~~l.m.~~ Maintain a sidewalk along the north side of Estero Boulevard and provide a sidewalk along the south side of Estero Boulevard;

~~m.n.~~ Provide a sidewalk along Donora Boulevard;

~~n.o.~~ Along Estero and Donora Boulevards enhanced streetscaping with shade trees will be provided to improve the visual aesthetic for vehicular and pedestrian traffic;

~~o.p.~~ Required landscaping for the development will incorporate Florida Friendly plantings that do not require irrigation;

~~p.q.~~ Vehicular access to the property from Estero Boulevard will be limited to a single access for the north side and a single access for the south side to maintain traffic flow on Estero Boulevard;

~~q.r.~~ The residential multi-family units ~~sh~~will be accessible through a maximum of 2 ingress/egress points from Donora Boulevard and 1 ingress/egress from Estero Boulevard. Additional separate delivery, service, and solid waste pick up access points will be collocated on Donora Boulevard within the building footprint. 4 single family residential units ~~sh~~will be accessed through a new east/west local street extending from Donora Boulevard; Vehicular access to the property from Donora Boulevard will be limited to two access points for the multifamily residential units. Additional delivery and service points may be provided from Donora Boulevard for solid waste pickup and delivery for the building and for the restaurant to occur within the building footprint;

~~r.s.~~ One Public Art installation (i.e. sculpture; mural) viewable from Donora Boulevard and location identified during the Development Order process will be installed prior to Certificate of Occupancy.

910. Deviations. The following deviations are granted pursuant to this Agreement, in compliance with the Comprehensive Plan, and found to achieve the objectives of the proposed development, benefit the public interest, and preserve and promote the public health, safety and welfare:

- a. Deviation from LDC Section 34-693(h): Allowable height for the multi-family residential towers of the mixed use structure is increased to 15 stories over 2 stories of structured parking and 235 feet above base flood elevation on the North side of Estero Boulevard; and
- b. Deviation from LDC Section 34-693(e), (f), (g): Project buildings will not be subject to the “build to line” and “building frontage” along

Estero and Donora Boulevards, providing a minimum 10 foot front setback and the rear setback will be reduced to 10 for the multi-family structure and 5 feet for accessory structures associated with the single family structures; and

- c. Deviation from LDC Section 34-693(m): The Developer is granted a deviation from the Commercial Design Standards and approval is granted for the architectural design depicted in the Conceptual Plans and Renderings attached hereto as “Exhibit B” And Pattern Book attached hereto as “Exhibit D”; and
- d. Deviation from LDC Section 34-693(c)(1) and (2): The Developer is granted a deviation from the street layout and approval is granted for the limited curb cuts and internal street layout depicted in the Master Conceptual Plans and Renderings attached hereto as “Exhibit B”; and
- e. Deviation from LDC Section 34-692(3)a.1.: The Developer is granted a deviation from the elements of Traditional Neighborhood Design that require interconnected streets, porches or balconies at the front of dwellings, primary entrance visibility from the street and car access from the rear to allow single family units, a mixed use building of multi-family and commercial restaurant and a beach club consistent with the Conceptual Plans and Renderings attached hereto as “Exhibit B”; and
- f. Deviation from LDC Section 34-693(i): Eliminate covered parking and parking decks from the calculation of Floor Area Ratio and increasing the maximum FAR to 1.5 which is equal to 616,156.2 square feet;; and
- g. Deviation from LDC Section 34-693(l): Eliminate required commercial space to separate parking under a building and vehicular connection to a secondary street; and
- h. Deviation from LDC Section 34-631(b)(3): Eliminate the square footage and screening requirements of mechanical structure appurtenances located above 11 stories.

140. Consistency with the Comprehensive Plan. The Proposed Development outlined in this Agreement is consistent with the Town of Fort Myers Beach Comprehensive Plan [and Land Development Code](#). The deviations approved as part of this Agreement are necessary for the zoning district or land use plan designations on the **P**roperty that is the subject of this Agreement. The Town’s Comprehensive Plan allows the proposed project to be more than 2 stories above flood elevation in height as a matter of right. The Town’s Comprehensive Plan also allows the height to be increased as provided in Policy 4-C-4 in redevelopment zoning districts (i.e Village zoning district) and in the event the increase is approved as part of a planned development rezoning. This Agreement has been reviewed and approved by the Town in a manner consistent with the

procedures required of a planned development rezoning and this approval and procedure is deemed tantamount to and commensurate to a planned development for purposes of determining consistency with the Comprehensive Plan as outlined in Resolution 24-73. Notwithstanding the foregoing, the deviations identified in paragraph 10 are approved.

121. Existing Ordinances. Any matter or thing required to be performed under existing ordinances of the Town ~~shall~~ will not be otherwise amended, modified or waived, except as such modification, amendment or waiver is expressly provided for in herein.

123. Post Development Agreement Requirements. Prior to the issuance of any building permits being issued for the development the following must occur:

- a. All existing and proposed utilities and the manner in which existing utilities will be extended to the site and/or expanded for the use of the development including water, sewer, gas, electricity, cable television, and other utilities ~~shall~~ will have been approved by the Town; and
- b. The proposed drainage plan for the proposed project ~~shall~~ will have been approved by the South Florida Water Management District. If an interconnection is required to the Town's stormwater management system, approval by the Town will be necessary; and
- c. The proposed grading plan and elevation requirements of the town, including, but not limited to those related to the National Flood Insurance Program as applicable to the town ~~shall~~ will have been approved by the town; and
- d. The traffic impact and parking plans for the proposed project ~~shall~~ will have been approved by the town; and
- e. All other town requirements necessary for the initial building permits to build the proposed project on the Land.
- f. The Town ~~shall~~ will not have any liability whatsoever for any expenses or other damages that may be incurred as a result of denial of the Development Agreement or for denial of building permits due to the failure to meet the Town's requirements as to any Post-Development Agreement requirements..

143. Amendment and Termination.

- A. This Agreement may be amended or terminated with the Parties'

mutual consent, in writing signed by both Parties.

- B. This Agreement may be amended administratively by Town staff and the Developer without the need for approval by Town Council to provide for changes to the site plan and/or the Conceptual Plans provided such changes do not include increased building intensity, density, increased height, reduction in open space, reduction in public benefits. Substantial Deviations from the approved Conceptual Plans will require approval by Town Council. Substantial Deviations include but are not limited to, moving the residential towers to an alternative location on-site. Density from other properties may be transferred for 8 additional single family units (to be located north of proposed Seahorse Street) and up to a maximum of 149 units.
- C. At Developer's option, Developer may terminate this Agreement at any time prior to the issuance by the Town of a building permit for any portion of the Proposed Development of the Property. Notwithstanding the foregoing, in the event of termination, Developer ~~shall~~ will not leave any improvements in an unsafe condition.

145. Notices. All notices required or permitted under this Agreement ~~shall~~ will be in writing and ~~shall~~ will be mailed by certified mail, return receipt requested to the following addresses, or to such other person or address as any Party may designate from time to time in writing:

If to the Developer: Matt Price
Seagate Fort Myers Beach, LLC
9221 Interstate Commerce Drive
Fort Myers, FL 33913

with a copy to: Tim Byal
Seagate Fort Myers Beach, LLC
9221 Interstate Commerce Drive
Fort Myers, FL 33913

If to the Town: Town Manager

with a copy to: Town Attorney

156. Remedies. Any material breach of this Agreement may be enforced by either party as against the other by appropriate action in law or equity filed in a court of competent jurisdiction; provided, however, no such action may be brought until the defaulting party has been given notice and ninety (90) days in which to cure the default. If the default cannot reasonably be cured within the ninety (90) day period, such period

shawill be extended if the cure is commenced within such ninety (90) days and the defaulting party is proceeding with due diligence for such period of time reasonably required to complete such cure.

176. Governing Law. This Agreement shawill be construed and interpreted according to the laws of the State of Florida, and venue with respect to any litigation between the Parties related to this Agreement shawill be exclusively in Lee County, Florida.

187. Enforcement. In the event the Developer, upon approval of the Development Agreement, fails to comply with the terms of this Agreement, the Town may bring an action in a court of law with competent jurisdiction to protect its rights and interests as provided herein. All associated reasonable costs and attorney's fees shawill be reimbursed to the Town if an action at law is necessary regardless of whether the Town is the prevailing party thereunder. In no event shawill the Town be liable for payment of the Developer's attorney fees.

198. Post Development Agreement Liability. The parties acknowledge that the Town shawill not have any liability for any expenses or other damages that may be incurred as a result of denial of building permits due to the failure of the proposed development to meet the Town's requirements as to any Post-Development Agreement requirements.

1920. Severability. If any part, term, or provision of this Agreement is held to be illegal, void, or unenforceable, the remaining portions or provisions of this Agreement shawill not be affected or impaired, each remaining provision shawill remain in full force and effect, and the rights and obligations of the Parties shawill be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

240. Entire Agreement; Termination of Prior Agreements. This Agreement embodies the whole agreement of the Parties. There are no promises, terms, conditions, or obligations other than those contained herein; and this Agreement shawill supersede all previous communications, representations, or agreements, either verbal or written, regarding the Proposed Development of the Property between the Parties.

221. Covenants Running with the Land and Successors and Assigns. The obligations imposed and entitlements created pursuant to this Agreement shawill run with the property and bind Seagate's successors and assigns to the covenants as set forth in this Agreement and shawill be enforceable by and against the Parties hereto, their personal representatives, heirs, successors, grantees, and assigns. The obligations of the Developer may be assigned to one or more successor developers or, property owners associations, and the Developer shawill thereafter be relieved of all obligations hereunder.

232. Effective Date and Duration. This Agreement will become effective upon full execution by both Parties and recording of the Agreement in the Public Records of

Lee County pursuant to paragraph 235 below. ~~The term of this Agreement shall begin upon its effective date and run for a period of for ten (10) years~~The Developer must apply for a development order for at least a portion of the development contemplated herein within five (5) years of the effective date. ~~In the event no building permits are issued to applied for by the Developer within five (5)ten (10) years of the effective date, the Agreement shall terminate. If requested by the Developer, T~~the term of the Agreement may be extended at the sole discretion of the Town Council and a finding that the Developer is unable to fulfill its obligations due to circumstances beyond its control. The development of the project may proceed in phases in any sequence ~~within the stated term of this Agreement.~~ Notwithstanding the provisions of this paragraph, unless terminated as provided herein, or pursuant to paragraph 13 above, the obligations imposed and entitlements created pursuant to this Agreement shall run with the property and shall be enforceable by and against the Parties hereto, their personal representatives, heirs, successors, grantees, and assigns.

243. Recording of Agreement. This Agreement will be recorded by the Town in the Public Records of Lee County within fourteen (14) days of approval by the Town. The costs of recording this Agreement will be paid by the Developer.

254. Representation and Warranties. The parties make the following representations to each other as stated herein:

- A. The execution, delivery and performance of this Agreement by the Developer and a third party ~~shall~~ not violate any law, or the term s of any agreement by which they are bound.
- B. The Town and Seagate have the power and authority to enter into this Agreement, and to perform the development as set forth herein, and all the documents have been duly authorized, executed, and delivered and the transactions contemplated herein have been duly authorized.
- C. This Agreement constitutes a valid and legally binding obligation of the Developer and the Town after independent investigation by both of the information contained herein and is enforceable in accordance with its terms.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year written below.

WITNESSES:

SEAGATE FORT MYERS BEACH, LLC, a
Florida limited liability company

Print Name: _____

Print Name _____

By: _____

Name: _____

Title: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2024, by _____, as _____ of Seagate Fort Myers, LLC, a Florida limited liability company, who is personally known to me or who produced _____ as identification.

Notary Public Signature

My Commission Expires:

Type/Print Notary Public Name

Commission No.: _____

**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

Exhibits:

- A. Legal Description and Sketch of the Property
- B. Conceptual Plans and Renderings dated the 4th day of September and 5th day of December, 2024 (16_Pages)
- C. Public Easement Overlay dated the 16th— day of September, 2024 (1 Page)
- D. Pattern Book dated the 4th day of September, 2024 (6 Pages)

Exhibit A

Legal Description and Sketch of the Property:

DRAFT

Exhibit B

Conceptual Plans and Renderings
September 4, 2024 and December 4, 2024

DRAFT

Exhibit C

**Public Easement Overlay
September 416, 2024**

DRAFT

Exhibit D

**Pattern Book
September 4, 2024**

DRAFT

APPLICATION FOR DEVELOPMENT AGREEMENT with DEVIATIONS

[LDC Section 2-94]

Project Name: 3001 Estero Boulevard

Current Zoning: Village

-
1. **Name of Applicant:** Seagate Fort Myers Beach, LLC
Address: 9921 Interstate Commerce Drive
City, State, Zip: Fort Myers, FL 33913
Phone Number: _____
E-mail Address: mprice@seagatedevelopmentgroup.com
 2. **Relationship of Applicant to owner (check one) and provide [Affidavit of Authorization](#) form:**
☐ Applicant is the sole owner of the property.
☒ Applicant has been authorized by the owner(s) to represent them for this action.
 3. **Authorized Agent: (If different than applicant) Name of the person who is to receive all County-initiated correspondence regarding this application.**
 - a. **Company Name:** Stearns Weaver Miller, PA
Contact Person: Tina M. Ekblad, MPA, AICP
Address: 106 E. College Avenue, Suite 700
City, State, Zip: Tallahassee, FL 32301
Phone Number: 850-354-7624 Email: tekblad@stearnsweaver.com
 - b. **[Additional Agent\(s\)](#):** Provide the names of other agents that the County may contact concerning this application.
 4. **Property owner(s): If multiple owners (corporation, partnership, trust, association), provide a list with owner interest.**
Name: Seagate Fort Myers Beach, LLC
Address: 9921 Interstate Commerce Drive
City, State, Zip: Fort Myers, FL 33913
Phone Number: _____ E-mail: mprice@seagatedevelopmentgroup.com
 5. **Disclosure of Interest**
☒ Attach [Disclosure of Interest](#) Form.
 6. **STRAP Number(s)**
29-46-24-W1-00145.100; 0120A.0010; 00145.5000 30-46-24-W2-00001.0000
 7. **Street Address of Property:** 3001 Estero Boulevard, Fort Myers Beach, FL
 8. **Legal Description (must submit one):**
☒ Legal description (metes and bounds) and sealed sketch of the legal description.
OR
☐ Legal description (NO metes and bounds) if the property is located within a subdivision platted per F.S. Chapter 177, and is recorded in the Official Records of Lee County under Instruments or Plat Books.
([Click here](#) to see an example of a legal description with no metes and bounds.)
 9. **Future Land Use:** Boulevard and Mixed Residential
 10. **Zoning District:** Village

10. **Written Narrative:** Provide a written narrative statement explaining exactly what is proposed.
11. **Deviations:** If any relief is requested from the provisions of the Land Development Code (LDC), provide a **written explanation** of the specific relief requested (a schedule of deviations). Explain what conditions currently exist which warrant this request for relief from the regulations (a written justification for each of the requested deviations). Include specific references to any section (number{s} and name{s}) of the LDC from which relief is sought including why the requested relief is necessary and how it will affect the project. All deviation requests must be specifically keyed to the location on the Master Concept Plan. LDC 34-932(b)
12. **Master Concept Plan (MCP):** Provide a MCP and detailed drawings of any deviations or changes being proposed at a size of 24"x36" consistent with LDC 34-212(4)

SUBMITTAL REQUIREMENT CHECKLIST

Clearly label your attachments as noted in bold below.

☒	Completed application
☐	Filing Fee
☒	Affidavit of Authorization Form
☐	Additional Agents
☐	Multiple Owners List
☒	Disclosure of Interest Form
☒	Legal description (must submit one)
☒	Legal description (metes and bounds) and sealed sketch of legal description
	OR
☐	Legal description (NO metes and bounds) if the property is located within a subdivision platted per F.S. Chapter 177, and is recorded in the Official Records of Lee County under Instruments or Plat Books. (Click here to see an example of a legal description with no metes and bounds.)
☒	Narrative of Request
☒	Schedule of Deviations (if applicable)
☒	MCP and detailed drawings of any proposed deviations (if applicable) (24"x36")

Note: All information submitted with the application becomes a part of the public record and will be a permanent part of the file. Department staff will review this application for compliance with requirements of the Land Development Code. The applicant will be notified of any deficiencies.

Acceptance of an application in no way guarantees its approval. If the Town Manager determines that the requested amendment is beyond the scope of Land Development Code and that a public hearing is necessary, then all fees paid toward the administrative application may be applied toward an application for public hearing.



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 APPROVING A HOME RULE DEVELOPMENT AGREEMENT FOR PROPERTY LOCATED AT 3001 ESTERO BOULEVARD, FORT MYERS BEACH, FL, STRAP NO. _____ AND OWNED BY SEAGATE FORT MYERS BEACH LLC, AS AUTHORIZED BY SECTION 2-100 OF THE TOWN'S LAND DEVELOPMENT CODE AND IN COMPLIANCE WITH THE PROCEDURES FOR APPLICATION AND APPROVAL OF DEVELOPMENT AGREEMENTS WITH DEVIATIONS SET FORTH IN RESOLUTION NUMBER 24-73 FOR THE PURPOSE OF REDEVELOPMENT OF THE PROPERTY PREVIOUSLY KNOWN AS THE RED COCONUT RV PARK; PROVIDING FOR TERMS AND CONDITIONS INCLUDING BUT NOT LIMITED TO THE IDENTIFICATION OF THE PROPOSED USE OF THE PROPERTY, A FINDING OF CONSISTENCY WITH THE TOWN OF FORT MYERS BEACH COMPREHENSIVE PLAN, COMMITMENTS AND DEVELOPMENT OBLIGATIONS, DEVIATIONS NEEDED FOR DEVELOPMENT; 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 Fort Myers Beach is of the view that a business impact estimate is not required by state law¹ for the proposed ordinance, but the Fort Myers Beach is, nevertheless, providing this Business Impact Estimate as a courtesy and to avoid any procedural issues that could impact the enactment of the proposed ordinance. This Business Impact Estimate may be revised following its initial posting.

- ☐ The proposed ordinance is required for compliance with Federal or State law or regulation;
- ☐ The proposed ordinance relates to the issuance or refinancing of debt;
- ☐ The proposed ordinance relates to the adoption of budgets or budget amendments, including revenue sources necessary to fund the budget;

¹ See Section 166.041(4)(c), Florida Statutes.

- ☐ 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):

This ordinance approves a home rule development agreement between the Town and the developer, Seagate Fort Myers Beach, LLC. This ordinance furthers the health, safety, welfare, and morals of the residents of the Town by allowing developers to rebuild the Town following catastrophic losses after Hurricanes Irma, Ian, Helene, and Milton. A rebuilding and redevelopment of the Town would benefit the local tourism and promote the growth of the Town.

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):

[You may wish to include in this section the methodology or data used to prepare the Business Impact Estimate. For example: Fort Myers Beach staff solicited comments from businesses in the Fort Myers Beach as to the potential impact of the proposed ordinance by contacting the chamber of commerce, social media posting, direct mail or direct email, posting on Fort Myers Beach website, public workshop, etc. You may also wish to include efforts made to reduce the potential fiscal impact on businesses. You may also wish to state here that the proposed ordinance is a generally applicable ordinance that applies to all persons similarly situated (individuals as well as businesses) and, therefore, the proposed ordinance does not affect only businesses].

Not applicable.



NOTICE OF PUBLIC HEARING/DEVELOPMENT AGREEMENT (Seagate Fort Myers Beach, LLC)

Notice is hereby given that the Town Council of the Town of Fort Myers Beach will hold two public hearings regarding an ordinance for the redevelopment of real property formerly known as the Red Coconut RV Park, as follows:

Monday, October 28, 2024

9:00 AM

Town Hall Council Chambers

2731 Oak Street, Fort Myers Beach, FL 33931

Monday, November 4, 2024

9:00 AM

Town Hall Chambers

2731 Oak Street, Fort Myers Beach, FL 33931

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING A HOME RULE DEVELOPMENT AGREEMENT FOR PROPERTY LOCATED AT 3001 ESTERO BOULEVARD, 2943 ESTERO BOULEVARD, 2932 ESTERO BOULEVARD, 211 DONORA BOULEVARD, FORT MYERS BEACH, FL, STRAP NO. 29-46-24-W1-00145.1000, 29-46-24-W1-00145.5000, 30-46-24-W2-00001.0000, 29-46-24-W1-0120A.0010 AND OWNED BY SEAGATE FORT MYERS BEACH LLC, AS AUTHORIZED BY SECTION 2-100 OF THE TOWN'S LAND DEVELOPMENT CODE AND IN COMPLIANCE WITH THE PROCEDURES FOR APPLICATION AND APPROVAL OF DEVELOPMENT AGREEMENTS WITH DEVIATIONS SET FORTH IN RESOLUTION NUMBER 24-73 FOR THE PURPOSE OF REDEVELOPMENT OF THE PROPERTY PREVIOUSLY KNOWN AS THE RED COCONUT RV PARK; PROVIDING FOR TERMS AND CONDITIONS INCLUDING BUT NOT LIMITED TO THE IDENTIFICATION OF THE PROPOSED USE OF THE PROPERTY, A FINDING OF CONSISTENCY WITH THE TOWN OF FORT MYERS BEACH COMPREHENSIVE PLAN, COMMITMENTS AND DEVELOPMENT OBLIGATIONS, DEVIATIONS NEEDED FOR DEVELOPMENT; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.



If any person should choose to appeal a decision made at any of these public hearings, such person would need a record of the proceedings, and for that purpose may need to ensure that a verbatim record of the proceedings is made, which record indicates the testimony and evidence upon which the appeal is to be based.

Copies of the full ordinance text are available at Fort Myers Beach Town Hall. Call 239-765-0202 for more information. Town Hall is open between the hours of 8:30 AM and 4:30 PM, Monday through Friday. Reasonable accommodation will be made in accordance with the Americans with Disabilities Act. If you are in need of reasonable accommodation, contact Town Hall at 239-765-0202. Amy Baker, Town Clerk

NOTICE OF PUBLIC HEARING/ DEVELOPMENT AGREEMENT

(Seagate Fort Myers Beach, LLC)

Notice is hereby given that the Town Council of the Town of Fort Myers Beach will hold a public hearing regarding an ordinance for the redevelopment of real property formerly known as the Red Coconut RV Park, as follows:
Monday, November 18, 2024, 9:00 AM, Town Hall Chambers, 2731 Oak Street, Fort Myers Beach, FL 33931

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING A HOME RULE DEVELOPMENT AGREEMENT FOR PROPERTY LOCATED AT 3001 ESTERO BOULEVARD, 2943 ESTERO BOULEVARD, 2932 ESTERO BOULEVARD, 211 DONORA BOULEVARD, FORT MYERS BEACH, FL, STRAP NO. 29-46-24-W1-00145.1000, 29-46-24-W1-00145.5000, 30-46-24-W2-00001.0000, 29-46-24-W1-0120A.0010 AND OWNED BY SEAGATE FORT MYERS BEACH LLC, AS AUTHORIZED BY SECTION 2-100 OF THE TOWN'S LAND DEVELOPMENT CODE AND IN COMPLIANCE WITH THE PROCEDURES FOR APPLICATION AND APPROVAL OF DEVELOPMENT AGREEMENTS WITH DEVIATIONS SET FORTH IN RESOLUTION NUMBER 24-73 FOR THE PURPOSE OF REDEVELOPMENT OF THE PROPERTY PREVIOUSLY KNOWN AS THE RED COCONUT RV PARK; PROVIDING FOR TERMS AND CONDITIONS INCLUDING BUT NOT LIMITED TO THE IDENTIFICATION OF THE PROPOSED USE OF THE PROPERTY, A FINDING OF CONSISTENCY WITH THE TOWN OF FORT MYERS BEACH COMPREHENSIVE PLAN, COMMITMENTS AND DEVELOPMENT OBLIGATIONS, DEVIATIONS NEEDED FOR DEVELOPMENT; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.



Interested parties may appear and be heard. If any person should choose to appeal a decision made at any of this public hearing, such person would need a record of the proceedings, and for that purpose may need to ensure that a verbatim record of the proceedings is made, which record indicates the testimony and evidence upon which the appeal is to be based. Copies of the full ordinance text are available at Fort Myers Beach Town Hall. Call 239-765-0202 for more information. Town Hall is open between the hours of 8:30 AM and 4:30 PM, Monday through Friday. Reasonable accommodation will be made in accordance with the Americans with Disabilities Act. If you are in need of reasonable accommodation, contact Town Hall at 239-765-0202. Amy Baker, Town Clerk



Town of Fort Myers Beach
COMMUNITY DEVELOPMENT DEPARTMENT STAFF
REPORT

TYPE OF CASE: Development Agreement

CASE NUMBER: DA 20240170

CASE NAME: 3001, 2943 and 2932 Estero Blvd and 211 Donora Blvd; Development Order to allow a 141 dwelling unit mixed-use development

LPA

HEARING DATE: October 22, 2024, at 9 AM

1st TOWN COUNCIL

HEARING DATE: October 28, 2024, at 9 AM

ADDITIONAL PUBLIC

HEARING DATE: December 3, 2024 at 9 AM

2ND TOWN COUNCIL

HEARING DATE: December 16, 2024, at 9 AM

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

I. APPLICATION SUMMARY

Applicant/Owner: Tina Ekblad, AICP, MPA, Sage Entitlements, LLC/ Seagate Fort Myers Beach, LLC

Request: Development Agreement for a mixed-use development with 141 living units, approximately 10,000 square feet of commercial space and approximately a 29,000 square foot beach club.

Subject property: See attached Master Concept Plan

Physical Address: 3001, 2943 and 2932 Estero Blvd and 211 Donora Blvd

STRAP #: 29-46-24-W1-00145.1000, 29-46-24-W1-00145.5000,
30-46-24-W2-00001.0000, and 29-46-24-W1-
0120A.0010,

FLU: Mixed Residential, Boulevard, and Low Density

Zoning: Village

Adjacent zoning and land uses:

North:	County Facility, Matanzas Pass Preserve
South:	EC, Beach
East:	Low Density, Single-family homes/ Institutional, FMB Art Association/ Residential Multifamily, Apartment Complex/ Commercial Boulevard, Fire Station, Portion of Junkanoo Building
West:	Village, Vacant/ Commercial Resort, Estero Sands Condominium Building/ EC, Beach

II. BACKGROUND AND ANALYSIS

Background:

Seagate Fort Myers Beach, LLC, is proposing a development agreement (DA) for the property previously known as the Red Coconut RV Park. This property contains 9.43 acres of land zoned Village. The property also contains 1.3 acres of land zoned as EC, however this portion of the property is not subject to the DA. The Red Coconut RV Park was developed with a density of 27 RVs or mobile homes per acre and included residential units, transient guest spaces, recreational amenities, and commercial uses, including restaurants and a nail salon, most recently.

Analysis:

The Comprehensive Plan and the Land Development Code anticipated the redevelopment of the Village Zoning District and provided a pre-approved redevelopment plan for the area. Based on the language in the code it seems clear that the development does not have to match, precisely, the pre-approved plans, however, the policies and land development code sections (attached as Exhibit A) all repeat similar but slightly different recommended criteria for redevelopment of the property. The criteria included in these sections and policies include: walkable streets, highly connected streets and alleys, streets connecting Donora and Shell Mound through to Lovers Lane, shade trees, traditional neighborhood design emphasizing streets that are interconnected and dwellings with porches or balconies on the front, primary entrances visible from the street, and cars to the rear, variety of housing types, detached homes and cottages abutting existing single family homes, low rise apartments interior to the property, reduced density to 15 units per acre, substantial open space and view corridors, public access points to Matanzas Pass Preserve, mixed commercial and residential uses.

The Land Development Code provides several benefits for development that is compliant with the pre-approved development option which are expected to meet the criteria listed in the code. These benefits include: 1) Uses in the "Open" subgroup of

table 34-1 which includes restaurants, retail stores, personal services, and bar or cocktail lounge; and 2) Residential density of up to 15 dwelling units per acre. The proposed development is reliant on both of these benefits.

Policy 3-A-6 directs the Town to “evaluate any alternative redevelopment concepts for any portion of the Gulfview Colony/ Red Coconut properties as to the following design principles:

- i. retains and/or creates water views through street layout, site design, and architectural design;
- ii. provides a variety of housing types rather than uniformity;
- iii. locates the more durable housing types and mix of uses along the Bay side of Estero Boulevard;
- iv. new streets create a highly connected network which includes mid-block paths or alleys;
- v. streets have sidewalks and street trees;
- vi. local streets are interconnected from Donora and Shell Mound through to the north.

The proposed DA meets many of the items referenced in Policy 3-A-6 and LDC Section 34-692(3). The applicant has requested several deviations, from the LDC, which are allowed through this process. The DA includes a complete list of proposed uses, eight (8) requests to deviate from the code requirements, and a list of public benefits.

List of Uses

1. Residential Density. A maximum of 141 residential units to be developed as 4 single and 137 multi-family units on the North side of Estero Blvd.
2. Vehicular Access. The residential multi-family units will be accessible through a maximum of 2 ingress/egress points from Donora Blvd, 1 ingress/egress from Estero Boulevard. Additional separate delivery, service and solid waste pick up access points will be collocated on Donora Boulevard within the building footprint. 4 single family residential units will be accessed through a new non-gated east/west local street extending from Donora Boulevard.
3. Rental Restrictions. Rental of any permitted dwelling unit will be limited to a minimum stay of thirty days and a total of three rental periods per calendar year.
4. Parking. Parking for the residential uses and commercial restaurant will be provided consistent with the regulations at the time of building permit. An additional 75 membership spaces will be provided to support the beach club.
5. Commercial Area. Up to 10,000 square feet of commercial uses as identified in the Village Zoning Category. The commercial uses will be open to the public, including but not limited to commercial personal services, such as hair and nail salons, a laundry service, daycares, a small-scale convenience retail, restaurants, coffee shops and other uses permitted in the underlying

zoning district.

6. Beach Club. A beach club not to exceed 29,000 square feet of enclosed air-conditioned space with private recreational amenities and a private membership organization. At least 25% of the memberships in the beach club will be available to non-residents of the Property. The beach club will provide the following uses and amenities: pool and pool deck, event space for members and their guests only (including conference center, wedding venue, and meeting space and similar uses), umbrellas, chairs, cabanas, and a restaurant with consumption on premises (indoor and outdoor) and terrace.
7. Parks and Access Areas. All parks and access areas will be maintained by the Developer or an association of property owners. A minimum of three (3) parks and access areas upon which the Town will be provided an easement for public use and located as follows (and substantially as shown in Exhibit C):

(1) Matanzas Pass Preserve Park. To provide public recreation and access to Matanzas Pass Preserve to be coordinated with Lee County and the Town; and

(2) a linear park providing pedestrian and cyclist access from Donora Blvd. to Estero Blvd. through the property a minimum of 20ft wide at all points with a minimum of 8ft wide multi-use path. The Developer will coordinate with the Town regarding directional and safety signage; and

(3) an enhanced beach park with a 10ft wide pedestrian-only beach access between Estero Blvd. and the beach. The public beach access may not be located within the existing private platted beach access. Improvements will include park like features including a public bathroom, water fountain and pet station subject to additional permitting requirements; and

(4) 2943 Estero Blvd. to provide a public recreation park.

Deviations from the Code

The attached document entitled *Schedule of Deviations* includes the applicant's complete justification for the deviations.

1. Deviation from LDC Section 34-692(3)a.1.: The Developer is granted a deviation from the elements of Traditional Neighborhood Design that require interconnected streets, porches or balconies at the front of dwellings, primary entrance visibility from the street and car access from the rear to allow single family units, a mixed use building of multi-family and commercial restaurant and a beach club consistent with the Conceptual Plans and Renderings attached hereto as "Exhibit B"; and

2. Deviation from LDC Section 34-693(c)(1) and (2): The Developer is granted a deviation from the street layout and approval is granted for the limited curb cuts and internal street layout depicted in the Master Conceptual Plans and Renderings attached hereto as "Exhibit B"; and
3. Deviation from LDC Section 34-693(e), (f), (g): Project buildings will not be subject to the "build to line" and "building frontage" along Estero and Donora Boulevards, providing a minimum 10 foot front setback and the rear setback will be reduced to 10 for the multi-family structure and 5 feet for accessory structures associated with the single family structures; and
4. Deviation from LDC Section 34-693(h): Allowable height for the multi-family residential towers of the mixed-use structure is increased to 15 stories over 2 stories of structured parking and 235 feet above base flood elevation on the North side of Estero Boulevard; and
5. Deviation from LDC Section 34-693(i): Eliminate covered parking and parking decks from the calculation of Floor Area Ratio and increasing the maximum FAR to 1.5 which is equal to 616,156.2 square feet; and
6. Deviation from LDC Section 34-693(l): Eliminate required commercial space to separate parking under a building and vehicular connection to a secondary street; and
7. Deviation from LDC Section 34-693(m): The Developer is granted a deviation from the Commercial Design Standards and approval is granted for the architectural design depicted in the Conceptual Plans and Renderings attached hereto as "Exhibit B" And Pattern Book attached hereto as "Exhibit D"; and
8. Deviation from LDC Section 34-631(b)(3): Eliminate the square footage and screening requirements of mechanical structure appurtenances located above 11 stories.

Applicant Proposed Public Benefits

A full description of the applicant proposed public benefits can be found in the Applicant's Report, pages 23-26.

1. Public Park with enhanced Beach Access & View Corridors to the Gulf of Mexico
2. Linear Park
3. Two Bay Side Public Parks & View Corridor to Matanzas Pass Preserve
4. Density Transfer to Bay Side Parcels
5. Pedestrian Overpass, Limited Vehicular Driveways & Bus Pull-Off

6. Public Memberships Available to Beach Club

Public Benefit items not listed in the Applicant's Report but found in the DA include:

1. Provision of new sidewalk along Donora Blvd with enhanced landscaping and shade trees;
2. One public art installation viewable from Donora Blvd;
3. Maintenance of sidewalk along the north side of Estero Blvd;
4. Informational education panels at the park adjoining Matanzas Pass Preserve and wayfinding and safety signs along the linear park;
5. Coordination with Lee County to design the pull-off points on Estero Blvd to allow school buses to utilize the pull off;
6. Florida friendly plantings that do not require irrigation; and
7. Limiting the access along Donora for two entrances plus service entrances.

General Description of Development

The DA proposes a development consisting of 141 dwelling units. Four (4) dwelling units are proposed as single family detached residences and the remainder will be multifamily dwelling units. The applicant has requested the ability to administratively transfer density from other properties for up to eight (8) additional single family units at the rear of the property, for a total of 149 units.

The development would consist of a two (2) story pedestal for parking, with nine (9) up to 15-story towers over the parking pedestal. The maximum requested height for the development is 235 feet over base flood elevation. The portion of the development abutting the north side of Estero Blvd would be a two (2) story restaurant. The portion of the development abutting the south side of Estero Blvd would be a three (3) story beach club building with pool and pool amenities also along Estero Blvd.

The development would provide 10-foot setbacks from Donora Blvd and Estero Blvd. The main building on the north side of Estero Blvd would provide a 10-foot setback from the linear park. The beach club building would be permitted to develop up to the 1978 Coastal Construction Control Line (CCCL). The single-family residences would provide a 10-foot street setback, 20-foot rear setback, and 5-foot side setbacks. Accessory structures would provide a 5-foot setback.

Neighborhood Compatibility:

These parcels are separated from adjacent single family and multi-family residential units by Donora Boulevard. The development proposes single-family dwellings along the north side of the property, closest to the existing single-family dwellings. The proposed multi-family development will be a good deal taller than all surrounding uses in this neighborhood. However, the proposed use is residential in nature, and the applicant has agreed to limit rental of residential units to a maximum of one rental per

month and only three times per year. The proposed uses do not appear to create conflict with the adjacent uses, although the structures may be imposing in comparison to the existing neighborhood.

Findings and Conclusions:

The applicant has provided a DA meeting the minimum statutory requirements of the Code of Ordinances. The DA has been processed in accordance with the procedures in the Administrative Code (attached as Exhibit B).

III. RECOMMENDATION

The development agreement in your agenda packet is the product of preliminary negotiations between the applicant and Town staff, in compliance with the processes and procedures of the administrative code section (Resolution 24-73 is attached as Exhibit B).

Due to Hurricane Milton, the LPA hearing was held on October 22nd. The LPA recommended denial of the Development Agreement, stating that the proposed public benefits were inadequate for requested height. The LPA did recommend several changes, which the applicant updated in their newly amended Development Agreement, attached to this agenda item.

The Town held a first Town Council hearing on this case and recommended scheduling a second hearing on a 4-1 vote, with the changes that were discussed during the hearing. Another hearing was requested by the applicant and held on December 2, 2024 to present the changes to the Development Agreement by Town Council. The Town Council again recommended scheduling a second hearing on a 3-1 vote. On November 18, 2024 the Town Council amended the Development Agreement procedures to include a recommendation by the Town Manager or designee. The Town Manager or designee will make a recommendation before the public hearing is closed.

IV. CONDITIONS OF APPROVAL

Conditions of approval are contained within the DA.

Staff Report Exhibits:

A – Comprehensive Plan and LDC discussion of Red Coconut

B – Resolution 24-73 Procedures for development agreements with deviations

1. **Request:**

Meeting Date: December 16, 2024

Second Reading and Final Public Hearing of an Ordinance Entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING THE COMMERCIAL PLANNED DEVELOPMENT (CPD) ZONING FOR THE PROPERTY LOCATED AT 2310 ESTERO BLVD AND 2316/2320 ESTERO BLVD. GENERALLY IDENTIFIED AS STRAP NUMBERS 19-46-24-W3-0430N.0001, 19-46-24-W3-04300.00CE AND 19-46-24-W3-0110A.0010 FORT MYERS BEACH COMMONLY KNOWN AS THE NEPTUNE RESORT, TO ALLOW 148 LODGING UNITS AND ACCESSORY RETAIL AND RECREATIONAL USES; 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 request must be approved through the Commercial Planned Development (CPD) process. The Town Council approves or denies CPDs.

What the action accomplishes:

Approval of the CPD will allow development of a 148 unit resort.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Ordinance

4. **Submitter of Information:**

Sarah Propst, Community
Development, Planning
Manager

5. **Background:**

The Neighborhood Company, applicant for 2310 and 2316/2320 Estero Blvd, is requesting a rezoning for the portion of the property landward of the CCCL from Commercial Resort zoning to Commercial Planned Development to allow the development of a resort building with 148 lodging units, accessory retail uses, and recreational uses. The proposed development will be a total of 129,925 square feet with an FAR of 1.48. There are two access points on Estero Blvd and one point of only egress from Delmar Ave with a separate access to the dumpster enclosure on the east side of the property. The proposed resort is designed with 4 stories of habitable hotel space above 2 levels of parking for a maximum zoned height of 51 feet as measured from the base flood elevation (FDEP design flood elevation) to mean roof height. The site previously contained a resort with 71 lodging units and accessory resort uses. The title to the proposed ordinance was read on first reading on December 3, 2024 and approved for second reading on December 16, 2024.

Attachments:

1. Ordinance 24-36
2. TC Staff Report
3. Exhibit A to Ordinance - Master Concept Plan
4. Exhibit B to Ordinance Conditions and Schedule of Uses
5. Exhibit C Applicant's Narrative
6. Exhibit D Neptune Proposed Condition-Commitments 12.02.24
7. Exhibit E Application

Financial Impact:

unknown

6. **Alternative Action**

Recommend approval with additional conditions

7. **Management Recommendations:**

Recommend denial

8. **Recommended Approval:**

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

Created/Initiated - 12/2/2024
Approved - 12/2/2024
Approved - 12/3/2024
Approved - 12/5/2024
Final Approval - 12/5/2024

ORDINANCE 24-36

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 2310 ESTERO BLVD AND 2316/2320 ESTERO BLVD. GENERALLY IDENTIFIED AS STRAP NUMBERS 19-46-24-W3-0430N.0001, 19-46-24-W3-04300.00CE AND 19-46-24-W3-0110A.0010 FORT MYERS BEACH COMMONLY KNOWN AS THE NEPTUNE RESORT, TO ALLOW 148 LODGING UNITS AND ACCESSORY RETAIL AND RECREATIONAL USES; 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, CHG Neptune Acquisitions, LLC and The Neighborhood Company, owner and agents for the property owner, located at 2310 Estero Blvd. and 2316/ 2320 Estero Blvd., parcels generally identified as STRAP numbers 19-46-24-W3-0430N.0001, 19-46-24-W3-04300.00CE and 19-46-24-W3-0110A.0010 in the Town of Fort Myers Beach, filed applications to rezone the property from the Commercial Resort Zoning District to CPD with Master Concept Plan (MCP) with certain deviations to the Land Development Code (LDC) in order to develop 148 lodging units and accessory retail and recreational uses; and

WHEREAS, the subject property is a combination of three parcels located in the Boulevard 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 November 12, 2024; and

WHEREAS, at the November 12, 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 November 12, 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 CPD by a 5-0 vote with members Boan and Eckmann absent; and

WHEREAS, on December 2, 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 noticed in an appropriate publication 10 days prior to the Town Council on December 16, 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 published on the Town's website; and

WHEREAS, with the following terms, conditions, and requirements which the LPA finds to be in the public health, safety, and welfare, all of which are in compliance with the comprehensive plan and the Land Development Code; and

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

WHEREAS, Exhibit B provides the approved property development regulations, the schedule of uses and conditions of approval 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 Commercial Resort Zoning District to CPD with MCP with certain deviations to the Land Development Code (LDC) in order to develop a resort with 148 lodging units and accessory retail and recreational uses, is a unique and individual application which does not set precedent for future development or rezoning applications.

Deviation #1

Relief from LDC Sec. 10-285, Table 10-1 – Connection Separation, which requires a 250' separation between street and accessways, in order to allow driveway separations as depicted on the Master Concept Plan (MCP).

Deviation #2

Relief from LDC Sec. 10-416(C)(2) – Landscaping of parking and vehicular use areas, which has specific tree and landscape island dimensional requirements to allow an alternate landscape betterment plan as allowed per LDC Sec. 10-419.

Deviation #3

Relief from LDC Sec. 34-1804(A) and Sec. 34-2020, which regulates parking for hotels/motels and other accessory uses, to allow reduced parking requirements as justified by the project's independent parking analysis.

Deviation #4

Relief from LDC Sec. 34-633, which includes covered parking in the floor area ratio (FAR) calculation to exclude the two stories of under-building parking from this hotel's FAR calculation.

Deviation #5

A deviation from LDC Division 4, Table 34-3 for the CR zoning district which limits height to 30 feet zoned height and three (3) stories to allow a maximum zoned height of 61 feet, an overall maximum height of 71 feet from grade to top of highest roof elements (towers) and a maximum of six (6) stories consisting of four (4) stories above two (2) levels of parking.

Deviation #6

Relief from LDC Sec. 34-1803(a)(1), which allows the conversion of dwelling units to hotel/motel guest units per established equivalency factors, in order to exceed said factors as allowed per LDC Sec. 34-1803(a)(2). This deviation would allow a maximum equivalency factor of 6.2 resulting in a maximum of 148 resort hotel units.

Deviation #7

Relief from LDC Section 34-645(b) and Table 34-3, which allows for a Floor Area Ratio (FAR) maximum of 1.2 within the Commercial Resort (CR) zoning district, to allow for a maximum FAR of 1.5.

Findings for the rezoning:

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

- a. Minor ambiguities were resolved through the deviation process.
- b. The previous development on the subject property was destroyed by fire and adoption of the rezoning with deviations ameliorates longstanding design issues on the site due to the lot's odd shape and orientation.
- c. The rezoning would carry out the policies and requirements of the Comprehensive Plan and Land Development Code.
- d. The Town Council carefully considered the testimony of the applicant, the recommendations of staff and of the local planning agency, and testimony from the public.
- e. The rezoning would be consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses in the Comprehensive Plan.
- f. The rezoning would meet or exceed all performance and locational standards set forth for the proposed use.
- g. Urban services are available and adequate to serve the proposed use.
- h. Rezoning would protect, conserve, or preserve environmentally critical areas and natural resources.
- i. The rezoning would be compatible with existing and planned uses and not cause

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

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

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

WHEREAS, the Town Council finds that this application to approve Ordinance 24-XX 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-XX and the conditions of approval for the commercial planned development zoning, **does/ does not** meet the requirements of the Town Comprehensive Plan and LDC. Therefore, based upon the recommendations, testimony, and evidence presented by the Applicant, Town staff, and interested parties, the Town Council **DENY/ APPROVE/ APPROVE WITH CONDITIONS** the requested application.

Section 3. Town Ordinance 24-XX is adopted and the schedule of uses and conditions of approval for the Property's CPD set forth in Exhibit A, attached hereto and incorporated herein by this reference is approved.

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

Section 5. Any typographical errors that do not affect the intent of this Ordinance may be corrected with notice to and authorization of the Town Manager without further process.

Section 6. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason, declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision will not affect the validity of the Ordinance as a whole, or any part thereof, other than the part so declared.

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

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

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

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

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

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

Attachments:

A – Master Concept Plan (MCP)

B – Conditions of Approval and Schedule of Uses



Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT STAFF REPORT

TYPE OF CASE: Commercial Planned Development

CASE NUMBER: DCI Rezoning, 20230213

CASE NAME: 2310 and 2316/2320 Estero Blvd, rezone the portion of the property currently zoned Commercial Resort to Commercial Planned Development for the redevelopment of a resort including 148 lodging units and accessory retail use and recreational uses.

**TOWN COUNCIL
HEARING DATE:** 1st hearing - December 2, 2024 at 9 AM
2nd hearing - December 16, 2024 at 9 AM

**LPA
HEARING DATE:** November 12, 2024 at 9 AM

**STAFF
RECOMMENDATION:** Denial

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

I. APPLICATION SUMMARY

Applicant: The Neighborhood Company

Owner: CHG Neptune Acquisitions, LLC

Request: Rezone the portion of the property zoned Commercial Resort to Commercial Planned Development for the redevelopment of a resort including 148 lodging units and accessory retail and recreational uses.

Subject property: See attached site plan

Physical Address: 2310 and 2316/2320 Estero Blvd

STRAP #: 19-46-24-W3-0430N.0001, 19-46-24-W3-04300.00CE and 19-46-24-W3-0110A.0010

FLU: Boulevard

Zoning: Commercial Resort

Adjacent zoning and land uses:

North: Commercial Boulevard/ Vacant Commercial

South: Environmentally Critical /Beach

East: Multi-Family Residential / Vacant Commercial

West: Multi-Family Residential / Single Family Residential and
vacant commercial

II. BACKGROUND AND ANALYSIS

Background:

The Neighborhood Company, applicant for 2310 and 2316/2320 Estero Blvd, is requesting a rezoning for the portion of the property landward of the CCCL from Commercial Resort zoning to Commercial Planned Development to allow the development of a resort building with 148 lodging units, accessory retail uses, and recreational uses. The proposed development will be a total of 129,925 square feet with an FAR of 1.48. There are two access points on Estero Blvd and one point of only egress from Delmar Ave with a separate access to the dumpster enclosure on the east side of the property. The proposed resort is designed with 4 stories of habitable hotel space above 2 levels of parking for a maximum zoned height of 51 feet as measured from the base flood elevation (FDEP design flood elevation) to mean roof height. The site previously contained a resort with 71 lodging units and accessory resort uses.

The Commercial Resort zoning district permits resort use by right. However, the Applicant would need to request several variances for the proposed plan and therefore the applicant is requesting to rezone the property to CPD. Seven deviations are requested from the land development code requirements.

Analysis:

2310 and 2316/2320 Estero Blvd has supported a resort or an Inn with 71 units for many years. The previous development included one-three story building and two-two story buildings which were substantially damaged during Hurricane Ian. The previous buildings did not meet current flood requirements.

The property has the Future Land Use designation of Boulevard which allows a maximum density of 6 dwelling units per acre or 14 dwelling units on this 2.46-acre property. Application of the equivalency factors established in LDC Section 34-1803, would allow 35 lodging units with an area less than 450 square feet or 28 lodging units with an area between 450 and 750 square feet. The Town's buildback policy in Section 34-3238 would allow the Applicant to rebuild the previously existing 71 units with limitations on total square footage. The Applicant is proposing 148 lodging units and is therefore requesting a rezoning to CPD with a Master Concept Plan and seven deviations from the Town's Land Development Code.

The Boulevard Future Land Use designation allows a maximum of 1.5 FAR and CR zoning district permits a maximum FAR of 1.2. The proposed resort is 129,925 square feet with 1.48 FAR. The applicant is requesting a deviation to exclude the square footage for two-stories of car parking underneath the building.

The development proposes automobile 164 parking spaces, 138 delineated spaces and an additional 26 valet spaces when needed. Additionally, the plan includes 32 bicycle parking spaces and 16 public parking spaces along Delmar Ave. The code requires 1.5 parking spaces per unit greater than 450 square feet area and 1.2 parking space per unit less than 450 square feet in area, which would require 212 parking spaces. The code requires 2 parking spaces for every 1000 square feet of accessory retail and recreational uses, which would require a total of 8 parking spaces for 4,420 square foot accessory uses area. The total number of code required parking spaces is 220. The applicant is proposing eight four-space bike racks, which decreases the number of required spaces by one. With the reduction of one parking space, the Applicant is requesting a deviation for reduction in parking spaces by 55 spaces.

A 25-foot-wide view corridor and a 15-foot-wide Type C perimeter landscaping buffer is proposed along the east property line. As per LDC Section 10-416 (d), a Type C buffer includes a minimum of 5 trees, 18 shrubs and a minimum 6 feet high wall. All trees and shrubs required in the buffer must be placed on the residential side of the wall. This combination of trees, shrubs and the 6-foot-high wall of the 15-foot-wide landscape buffer might obstruct the view of the Gulf from the proposed 25-foot-view corridor. The Applicant is also proposing a 20-foot-wide view corridor on the west side of the property along Delmar Avenue.

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

Requested Deviations:

1) Relief from LDC Sec. 10-285, Table 10-1 – Connection Separation, which requires a 250' separation between street and accessways, in order to allow driveway separations as depicted on the Master Concept Plan (MCP).

Applicant Justification: LDC Section 10-285, Table 10-1 states that when a street or accessway is constructed or improved, it must be spaced a minimum distance from all other streets or accessways. Estero Blvd. is classified as a major street, requiring streets and accessways to be spaced 250 feet from centerline to centerline. Prior to Hurricane Ian, visitors entered and exited the Neptune Resort along Estero Blvd. through a curb cut which measured approximately 95 feet wide and contained 6 parking spaces at its north side.

The proposed site configuration as shown on the proposed MCP provides an improved traffic flow throughout the site with controlled access both entering and exiting the property. Visitors will enter the site through two dedicated accessways from Estero Blvd. The western primary access facilitates full turning movements and a drive aisle with no parking spaces that will allow vehicles to move efficiently

from Estero Blvd. into the property and provide for on-property stacking and vehicle maneuverability without impeding traffic flow on Estero Blvd. This accessway is approximately 140 feet from centerline to centerline from Delmar Ave. The second accessway is 85 feet east of the primary and provides for right-in/left-in and right-out only along Estero Blvd. This limited accessway will provide appropriate turning movements based on the lane configuration of Estero Blvd at this location and will reduce left out conflict points along Estero Blvd.

The project proposes an egress only accessway located on the western side of the property from the parking garage onto Delmar Ave. The exit onto Delmar Ave. will allow visitors to have a third alternative to exit onto Estero Blvd from an already existing roadway intersection.

The proposed improvements address operational and safety issues on the property and Estero Blvd. They will enhance functionality through the decreased width of the accessway and the relocation of parking to appropriate locations onsite, thus working toward achieving general consistency with intent of LDC Section 10-285 to provide as much connection separation as possible while protecting the health, safety and welfare of island residents and visitors.

Staff Comment: The property previously had one entrance from Estero and one from Delmar Ave, which appear to be consistent with the Town's regulation for 250 feet separation between the previous accessway and Delmar Ave and between the previous accessway and Mango Street. The proposed layout with two accesses from Estero Blvd is a design choice to support 148 lodging units and is not consistent with the Town's regulations. The Applicant will need to coordinate with Lee County to permit the second access from Estero Blvd.

2) A deviation from LDC Sec. 10-416(C)(2) – Landscaping of parking and vehicular use areas, which has specific tree and landscape island dimensional requirements to allow an alternate landscape betterment plan as allowed per LDC Sec. 10-419.

Applicant Justification: The deviation from LDC Sec. 10-416(C)(2) is requested to allow the use of an alternate landscape betterment plan for the redevelopment of the site. The limited size of the property and the need to redevelop the site due to hurricane damages has created unique circumstances that limit the ability meet the strict tree and landscape island size requirements. There will be limited surface parking available with most of the proposed parking provided by two levels of garage parking under four levels of hotel.

The proposed surface parking will be heavily landscaped within appropriately located landscape islands and of adequate size to sustain the required trees and grass/ground cover/approved landscape materials. The intent of the finalized landscape betterment plan approved under the Development Order will be to provide additional landscaped open space areas within the frontage area of the project to help offset any potential landscape island size reduction. The alternate landscape betterment plan, as allowed per LDC Sec. 10-419, will meet the intent of LDC Sec. 10-416 (C)(2) and will not cause or result in any negative impacts to the community's health, safety, and welfare.

Staff Comment: The proposed development exceeds the landscaping requirements of the Town's LDC for the total number of trees, native trees and shrubs required within the site and parking area. The Applicant is requesting a deviation to allow no internal landscaping islands for the parking area underneath the building, while compensating for the requirement in other parts of the property. Any development within the Town that meets the intent of the LDC and exceeds the minimum landscaping standards of the code, as per LDC 10-419, may be approved for an alternate landscape betterment plan. Staff recommends approval of this request.

3) Relief from LDC Sec. 34-1804(A) and Sec. 34-2020, which regulates parking for hotels/motels and other accessory uses, to allow reduced parking requirements as justified by the project's independent parking analysis.

Justification: *The requested deviation from LDC Sec. 34-1804(A) and Sec. 34-2020 is to allow for a reduction in the parking requirements by promoting and providing resort guests and visitors a variety of alternative modes of transportation options as well as utilizing the results of the independent parking analysis provided by TR Transportation Consultants, Inc. dated May 13, 2024. Under the strict regulations provided in the town's LDC, the proposed resort and accessory uses would require 220 parking spaces. The developer will provide, at a minimum, 138 delineated parking spaces with an additional 26 spaces that can be achieved via valet service stacking. Combined, the resort will be able to park 164 vehicles with an additional 16 spaces along Delmar dedicated for public use. The enclosed parking analysis memorandum dated May 13, 2024, finds the peak season parking demand to be 118 parking spaces. The proposed supply of a minimum of 164 parking spaces, inclusive of parking via valet service, will exceed anticipated demand based on the Institute of Transportation Engineer's (ITE) **Parking Generation Manual, 6th Edition**, which was published by ITE in October of 2023 as well as the **Urban Land Institutes - Shared Parking, 3rd Edition** manual and analysis spreadsheet.*

The alternative transportation mode options to be promoted and potentially provided to resort guests and visitors include using bicycles, golf carts, walking, transit and potentially land and water-based shuttle services. The developer intends to provide numerous bicycle racks within the adjacent Delmar Ave right-of-way, along the east side of the development as part of the new public beach access corridor, the surface parking area, and parking garage. Land Development Code Section 34-2020(c) allows for the reduction of one typical vehicle parking space for every 4 bicycle spaces provided. It is the intent of the developer to provide a minimum of 32 bicycle parking spaces throughout the development and adjacent public beach access, thus contributing to a reduction of 8 required vehicle parking spaces. The Neptune Resort will also make bicycles available to guests and visitors in order to further encourage this very popular alternative mode of transportation on the island. Adequate pedestrian connectivity will also be designed at the time of development order approval and constructed to ensure

easy access to the nearby trolley stops along Estero Blvd. as well as encouraging guests and visitors to walk to nearby destinations rather than driving and searching for parking. The project will also be incorporating golf cart parking and potential on-site rentals to support a reduction in the need to use and park vehicles on property or throughout the island. There is also an effort being considered by various transient lodging proprietors on the island to study and potentially implement, if feasible, a dedicated airport/island shuttle service as well as support a local water taxi/ferry service. The Neptune Resort's developer is supportive of this alternative transportation initiative and is committed to working to develop either a private or public/private partnership and fund their fair-share to ensure its success. All these alternative modes when successfully implemented will further reduce over parked developments and help alleviate traffic congestion on the island, and in turn reduce any associated negative impacts to the health, safety and welfare of the island's residents and visitors.

Staff Comment: The proposed development has a similar use to the previous development. The Applicant is requesting a reduction of 55 parking spaces and proposing more than four times the units permitted by the zoning district and twice as permitted by right under the Town's build back policy. This proposed reduction in parking spaces may lead to an undue burden on the parking and transportation facilities in the Town. The Applicant is encouraging alternate means of transportation at the same time and proposing 16 public parking spaces along Delmar Ave. A detailed review by Town's traffic consultant will be required at the Development Order phase.

4) Deviation from LDC Sec. 34-633, which includes covered parking in the floor area ratio (FAR) calculation to exclude the two stories of under-building parking from this hotel's FAR calculation.

Applicant Justification: A component of this planned development rezoning petition is a deviation request from LDC Sec. 34-633 that requires covered parking to be included in the FAR calculation. This deviation specifically requests that the proposed two stories of under-building (covered) parking not be calculated towards the maximum allowed FAR and the resulting gross floor area calculation. The maximum floor area ratio (FAR) proposed for the site is 1.48 which equates to approximately 129,925 SF of habitable gross floor area and is not inclusive of 2 levels of under-building parking. A maximum FAR of 1.5 is being requested through this CPD and deviation #7, in order to provide some leeway for changes that may be needed as the project progresses to final design and permitting.

Exceptional circumstances now exist due to the destruction caused by Hurricane Ian and the need to create a code compliant, more resilient, and sustainable resort that will contribute to the rebuilding of the island and strengthening its economic base. Other exceptional circumstances exist that support the need for the two levels of parking to be excluded from the FAR calculation. These include changes to FEMA standards and Florida Building Code regulations, the extreme costs of construction and the need to create and provide for a modern family friendly resort with amenities for both visitors and island residents to enjoy. Current

building code regulations and FEMA standards require the resort to be significantly elevated above the design flood elevation. As a result of the requirement to elevate the structure, a beneficial opportunity is presented to design the structure and utilize this open area for covered parking and other support facilities as allowed within the design flood elevation. When designing elevated structures to mitigate impacts of potential hurricane/flooding disaster on coastal communities, there is justification of providing the flexibility to not hinder the logical application of incorporating under-building (covered) parking and it not counting towards the gross floor area determined by the maximum FAR.

It is common to apply a FAR to only that portion of a development that contributes to much of the massing associated with usable and habitable space. It is also beneficial to encourage under-building (covered) parking to not encourage vast and expansive parking lots. The Neptune Resort is designed to provide much of the habitable gross floor area above the required design flood elevation and utilize covered parking for the majority of the required parking, thus helping to reduce impervious surfaces and reducing the impacts of stormwater runoff.

Based on the above stated justification, the granting of this deviation from LDC Sec. 34-633 will not be injurious to the neighborhood or negatively impact the overall health, safety, and welfare of the island.

Staff Comment: There has been some discussion in support of amendment to LDC Sec 34-633 to exclude a single story of parking from FAR calculations. However, further discussion is needed on this topic during the LDC update.

- 5) A deviation from LDC Division 4, Table 34-3 for the CR zoning district which limits height to 30 feet zoned height and three (3) stories to allow a maximum zoned height of 61 feet, an overall maximum height of 71 feet from grade to top of highest roof elements (towers) and a maximum of six (6) stories consisting of four (4) stories above two (2) levels of parking.**

Applicant Justification: *The CPD property development regulations are to be consistent with the CR zoning district regulations, which limit the maximum height to 30 feet and 3 stories. The proposed project is requesting a maximum zoned height of 51 feet as measured from design flood elevation plus 3 feet to the mid-point of the main roof. See Figure 1 below.*



Figure 1. Zoned Building Height

As shown in Figure 1, the zoned height proposed under this deviation is not measured to the proposed “tower” architectural elements. These tower elements are non-habitable space proposed to further enhance the contemporary coastal architectural design and theme of the Neptune Resort by providing complementary and varied rooflines the town is seeking to promote. As requested by staff, an additional zoned height measurement is provided in Figure 1 consistent with the strict LDC method of measurement from the design flood elevation plus 3 feet to the mid-point of the highest roof; the tower element. This measurement indicates a difference of approximately 9.5 feet. Also, as shown on Figure 1, the overall height will not exceed 70’ 7” (71’) from grade to the top of the proposed tower elements.

The Town’s comprehensive plan allows for additional heights beyond the limits provided in the CR zoning district on a case-by-case basis. As stated in the comprehensive plan, the request would be “approved, modified, or denied, based on the conformance of the specific proposal with all aspects of the comp plan, including land use and design policies, pedestrian orientation, and natural resource criteria. Particular attention would be paid to any permanent view corridors to the Gulf that could be provided in exchange for allowing the building to be taller.” The previous development was constructed on the east property line which allowed no view corridor to the Gulf and the view corridor on the west was limited to the width of Delmar Ave. The building was seaward of the Coastal Construction Control Line which was established after the hotel was constructed in the 1960’s.

The redesigned site places the building out of the Coastal Construction Control Line boundary and setback from the side property lines thus limiting the available footprint for the structure. This made it necessary to increase the height of the building to achieve the appropriate square footage necessary to create the quality resort desired. The redevelopment height allows additional view corridors, creates space for additional buffering against Cottage Avenue properties and increased setbacks with enhanced landscaping/pedestrian amenity nodes from and along Estero Boulevard while creating a more aesthetically pleasing development with updated architecture and varied rooflines.

As demonstrated in the photos below (Figure 2) the Neptune Resort is located adjacent to and near buildings which range from 3 stories up to 13 stories. Thus, the proposed height of 51 feet and 4 stories over 2 levels of parking garage is compatible and consistent with building heights within this area of the island.



Figure 2. Photos of adjacent building heights. (West – left and East – right)

The proposed height and redevelopment design provide the ability to create a more resilient development while correcting non-conformities which previously existed. The granting of this deviation request will not result in harm to the overall health, safety or welfare of island residents or guests.

Staff Comment: The properties to the north and east currently are developed as single-family residential and the properties on the west appear to be multi-family residential buildings ranging between two to four stories in height. The resort use has been in existence in this area for many years and is compatible with this neighborhood.

The Applicant is proposing a 25-foot-wide view corridor on the east and a 20-foot-wide view corridor on the west. The proposed 25-foot-wide view corridor contains a 15-foot-wide Type C perimeter landscaping buffer which might obstruct the view of the Gulf. The Applicant is also advocating that the proposed 20-foot-wide view corridor together with Delmar Ave will effectively create a 70-foot-wide view corridor on the west. Staff believes that rights-of-way do not count towards view corridors and the proposed Type C perimeter landscaping might obstruct view in the east view corridor. Staff does not find the proposed view corridors sufficient to allow additional height as permitted by the Town's Comprehensive Plan.

- 6) Deviation from LDC Sec. 34-1803(a)(1), which allows the conversion of dwelling units to hotel/motel guest units per established equivalency factors, in order to exceed said factors as allowed per LDC Sec. 34-1803(a)(2). This deviation would allow a maximum equivalency factor of 6.2 resulting in a maximum of 148 resort hotel units.**

Applicant Justification: *The Neptune Resort property consists of 2.46± acres located within the Boulevard Future Land Use category. The property is comprised of a total of 24 platted lots – 10 lots within the W.W. Watson Subdivision and 14 lots within the Beach Estates Subdivision. Each platted lot would be permitted 1 unit by right, for a total of 24 dwelling units.*

Per the equivalency factors outlined in LDC Sec. 34-1803(a)(1), the 24 residential units can be converted into guest units based at a ratio of 2.5 guest unit per residential unit. LDC Sec. 34-1803(a)(2), further allows these established ratios to

be exceeded under exceptional circumstances and when providing public benefit as part of the planned development process. The exceptional circumstances applicable to the Neptune Resort include the devastation sustained due to Hurricane Ian, the construction requirements mandated through the Florida Building Code and FEMA, the increased cost of construction, high interest rates and the shortages of materials and labor. Additionally, through the planned development process, the applicant is proposing the following public benefits that contribute to the project's consistency with LDC Sec. 34-1803(a)(2):

- *A gulf side neighborhood sit-down restaurant and tiki bar open to the public.*
- *A minimum 25' wide view corridor on the east side of the subject property.*
- *Enhancement and improvements to the Delmar Avenue right-of-way and public beach access that include:*
 - o *Complementary enhanced landscaping and open space features;*
 - o *Additional public parking spaces (16) to be dedicated to the Town; and*
 - o *Expanded view corridor from Estero Boulevard.*
- *Improved pedestrian and vehicular access and site parking design to improve movements to and from Estero Boulevard and eliminate potential conflict points.*
- *Planting of shade trees and pedestrian amenity nodes along Estero Blvd.*
- *Restored dune habitat and native vegetation plantings*
- *Elimination of non-conformities*
- *Improved setbacks*
- *Elimination of structures beyond the CCCL*
- *Replacement of non-FEMA compliant structures with a hardened, and resilient resort which will meet all Florida Building Code and FEMA requirements and will benefit public health, safety and welfare.*
- *Development of a high-quality resort product with superior design and styling*
- *Provision of bicycle parking*
- *Provision of bicycles for guest to reduce vehicular traffic*
- *Fair share contribution toward mobility solutions to reduce traffic on the island*
- *Participation in efforts to promote the Beach School and after-care, increase enrollment and provide flexibility to hotel employees to drop-off and pick up their children*
- *Contributions to the local economy via ad valorem property taxes, the bed tax, sales tax, job creation and partnerships with local businesses and vendors*
- *Support the Town's vision as a family-oriented destination by providing a family friendly resort that honors its longstanding heritage on this island.*

The Neptune Resort is requesting 148 hotel units through this CPD. The total number of hotel units is derived as follows: 24 ("by right" dwelling units) x 6.2 = 148 hotel units.

The deviation requesting an equivalency factor of 6.2 is justified as outlined above. Additionally, for comparison purposes, Margaritaville obtained a 9.1 equivalency ratio. Given the devastating hurricane, the unprecedented cost to rebuild, and the proposed public benefits proportionate with the size of the property and the scale of the request, this deviation is reasonable and will not adversely impact the

public's health, safety, and welfare.

Staff Comment: The property has the Future Land Use designation of Boulevard which allows a maximum density of 6 dwelling units per acre or 14 dwelling units on this 2.46-acre property. The property comprises of 24 platted lots, which may be built into 24 dwelling units using the Minimum Use Determination.

As per the equivalency factors established for the Town's Future Land Use districts in LDC Section 34-1803, 35 lodging units with an area less than 450 square feet and an equivalency factor of 2.5 or 28 units of area between 450 square feet to 750 square feet with an equivalency factor of 2 are permitted by right. The property supported 71 guest units prior to Hurricane Ian. Per the Town's Build back policy, the Applicant may build back the previously existing 71 units, however, the Applicant plans to build 148 lodging units with an equivalency factor of 6.2 and is therefore, requesting a deviation from LDC Sec. 34-1803(a)(1).

7) Relief from LDC Section 34-645(b) and Table 34-3, which allows for a Floor Area Ratio (FAR) maximum of 1.2 within the Commercial Resort (CR) zoning district, to allow for a maximum FAR of 1.5.

Justification: The property is located within the Boulevard Future Land Use designation which allows a maximum FAR of 1.5. Although the preliminary design for the resort shows a FAR of 1.48, a maximum FAR of 1.5 is requested to provide leeway for changes that may be needed as the project progresses to final design and permitting. As stated in the Comprehensive Plan an increase in FAR is permitted up to the allowance set within the specific future land use designation. The requested 1.5 FAR is equal to the maximum allowable FAR for the Boulevard Future Land Use designation as set within the Comprehensive Plan, which by comparison is far less than the 2.5 FAR allowed within the Pedestrian Commercial district that is a few hundred feet to the west of the Neptune property.

The increase in FAR is requested to allow the development of the type of resort desired by the community and consistent with today's market expectations. The Neptune Resort will offer high end guest amenities, such as an on-site restaurant open to the public, pools, pool bar, conference rooms, recreational areas, and open space. Additionally, the increased FAR is needed to address today's building codes, FEMA regulations, and updated hospitality standards that call for larger rooms, back of house and support facility areas.

The CPD allows applicants to request an FAR of up to 1.5 within the Boulevard FLU designation. In support of the CPD and the request to increase the FAR to 1.5, the applicant is proposing the following public benefits:

- A gulf side neighborhood sit-down restaurant and tiki bar open to the public.*
- A minimum 25' wide view corridor on the east side of the subject property.*
- Enhancement and improvements to the Delmar Avenue right-of-way and public beach access that include:*
 - o Complementary enhanced landscaping and open space features;*

o Additional public parking spaces (16) to be dedicated to the Town; and
o Expanded view corridor from Estero Boulevard.

- Improved pedestrian and vehicular access and site parking design to improve movements to and from Estero Boulevard and eliminate potential conflict points.*
 - Planting of shade trees and pedestrian amenity nodes along Estero Blvd.*
 - Restored dune habitat and native vegetation plantings*
 - Elimination of non-conformities*
 - Improved setbacks*
 - Elimination of structures beyond the CCCL*
 - Replacement of non-FEMA compliant structures with a hardened, and resilient resort which will meet all Florida Building Code and FEMA requirements and will benefit public health, safety and welfare.*
 - Development of a high-quality resort product with superior design and styling*
 - Provision of bicycle parking*
 - Provision of bicycles for guest to reduce vehicular traffic*
 - Fair share contribution toward mobility solutions to reduce traffic on the island*
 - Participation in efforts to promote the Beach School and after-care, increase enrollment and provide flexibility to hotel employees to drop-off and pick up their children*
 - Contributions to the local economy via ad valorem property taxes, the bed tax, sales tax, job creation and partnerships with local businesses and vendors*
 - Support the Town's vision as a family-oriented destination by providing a family friendly resort that honors its longstanding heritage on this island*
- The requested deviation for increased FAR is consistent with the Comprehensive Plan and the Land Development Code and will not result in any negative impacts to the public's health, safety, and welfare.*

Staff Comment: Boulevard Future Land Use designation allows a maximum of 1.5 FAR and CR zoning district permits a maximum FAR of 1.2. The proposed resort is 129,925 square feet with 1.48 FAR excluding the square footage for two-story car parking underneath the building and requires a deviation.

Neighborhood Compatibility:

The property on the North is zoned Commercial Boulevard and the properties towards the east and west of the proposed development are zoned as multi-family residential. The properties to the north and east currently support single-family residential and the properties on the west appear to support multi-family residential buildings ranging between two to four stories in height. This resort use has been in existence in this area for many years and is compatible with this neighborhood.

The scale of the resort has changed and may be less compatible with the adjacent residential properties than the previous resort. However, the separation distance between the resort and the additional landscaping buffers may ameliorate the impacts of the scale.

Findings and Conclusions:

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

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

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

Staff response: No errors or ambiguities exist.

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

Staff response: The previous structure was destroyed by Hurricane Ian and the site is available for redevelopment. Additionally, the flood regulations do require a higher elevation for usable floor area, than was allowed when the original resort was developed.

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

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

(4) The testimony of any applicant.

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

(6) The testimony of the public.

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

Staff response: The use is a permitted use by right in Commercial Resort zoning. The Applicant is requesting a deviation of 0.3 FAR to allow a FAR of 1.5, the maximum allowed intensity of the Boulevard Future Land Use district. The new structure will be designed to meet current building and flood requirements, which is supported by the comprehensive plan. The proposed development does exceed the height recommended in the comprehensive plan.

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

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

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

Staff response: The urban services exist in this location.

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

Staff response: The request will have no impact on environmentally critical areas and natural resources. The EC portion of the property is not being rezoned.

(11) Whether the request will be compatible with existing or planned uses and not

cause damage, hazard, nuisance, or other detriment to persons or property.

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

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

Staff response: The proposed development has a similar use to the previous development. The Applicant is requesting a reduction of 55 parking spaces and proposing more than four times the units permitted by the zoning district and twice the number permitted by right under the Town's build back policy. It appears that the proposed reduction may lead to an undue burden on the parking and transportation facilities in the Town. A detailed review of traffic impacts will determine impact fees during development of the property.

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

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

(1) The Fort Myers Beach Comprehensive Plan.

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

(2) This chapter.

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

(3) Any other applicable town ordinances or codes.

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

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

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

Staff response: A resort is permitted use by right in Commercial Resort zoning district. The proposed use has existed in this location without creating a nuisance.

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

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

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

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

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

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

Staff response: Not applicable.

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

Staff response: The proposed use is similar to the previously existing development and is consistent with Policy 4-B-5 and 4-C3 of the Town's Comprehensive Plan.

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

Staff response: The proposed structure will be a six-story building (four stories of hotel over two stories of parking) and 51 feet above the base flood elevation, where a maximum height of three story or 30 feet high building is permitted in the CR zoning district. As per Policy 4-C-4 of the Town's Comp Plan, permanent view corridors to Gulf or Bay waters may be provided in exchange for allowing a building to be taller than three stories, including the ground story. The Applicant is however proposing a 25-foot-wide view corridor obstructed by a 15-foot-wide landscape buffer on the east. The Applicant is also proposing a 20-foot view corridor on the west.

The property on the east and west are zoned as multi-family residential. The properties to the east are developed as single-family residential and the properties on the west appear to support multi-family residential buildings ranging between two to four stories in height. Therefore, the requested building height is consistent with the neighborhood, but not consistent with the view corridors as specified in Policy 4-C-4 of the Town's Comprehensive Plan.

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

Staff response: Not applicable.

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

Staff response: Not applicable.

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

Staff response: The proposed development has a similar use to the previous development. The Applicant is requesting a reduction of 55 parking spaces and proposing more than four times the units permitted by the zoning district and twice the number permitted by-right under the Town's build back policy. The Applicant proposes 16 public parking spaces on Delmar Ave and will encourage alternate modes of transportation on site.

There is a possibility that the proposed reduction in parking spaces may lead to a burden on the parking and transportation facilities in the Town.

Findings for Deviation Requests:

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

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

Staff response: The requested deviations allow the development of the site with the design that the applicant has chosen.

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

Staff response: The proposed deviations are a result of design choice that might be underestimating the parking needs.

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

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

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

Staff response: The deviations are not consistent with the comprehensive plan.

III. RECOMMENDATION

Staff finds that the CPD with deviations does not meet the criteria set forth in Sec. 34-85(b) and (c) and 34-216(2) of the LDC and recommends denial of DCI20230213.

On November 12, 2024, the LPA voted 5-0 in favor of approval with conditions of the requested CPD with deviations. Two members were absent. At the December 2, 2024 Town Council hearing, the Council unanimously voted in favor of scheduling a second hearing for this case.

IV. CONDITIONS OF APPROVAL

The applicant has provided a document of conditions and commitments which should be discussed in further detail at the second hearing for potential incorporation into the final adopted ordinance. If the Town Council recommends approval for the rezoning, town's staff recommends the following conditions of approval.

1. A local development order is required prior to any development of the site, in accordance with this planned development approval.
2. All state and local permits, including but not limited to right of way and stormwater permits, must be applied for and received prior to site development.
3. Addresses 2310 and 2316/2320 Estero Blvd must be combined as a single parcel under one STRAP number.

4. Lee County must approve the permit for the second access from Estero Blvd.
5. Landscaping on adjacent properties must be protected during construction or replaced at the expense of the owner, CHG Neptune Acquisitions, LLC.
6. All signage and landscaping must meet the Vehicle Visibility at Intersection requirements found in Sec. 34-3131.
7. A parking agreement and a perpetual parking easement must be established with the Town for the proposed 16 public parking spots along Delmar Ave and street improvements prior to commencement of construction.
8. Failure to comply with any of the above-mentioned conditions of approval for the Special exception will render this approval null and void.

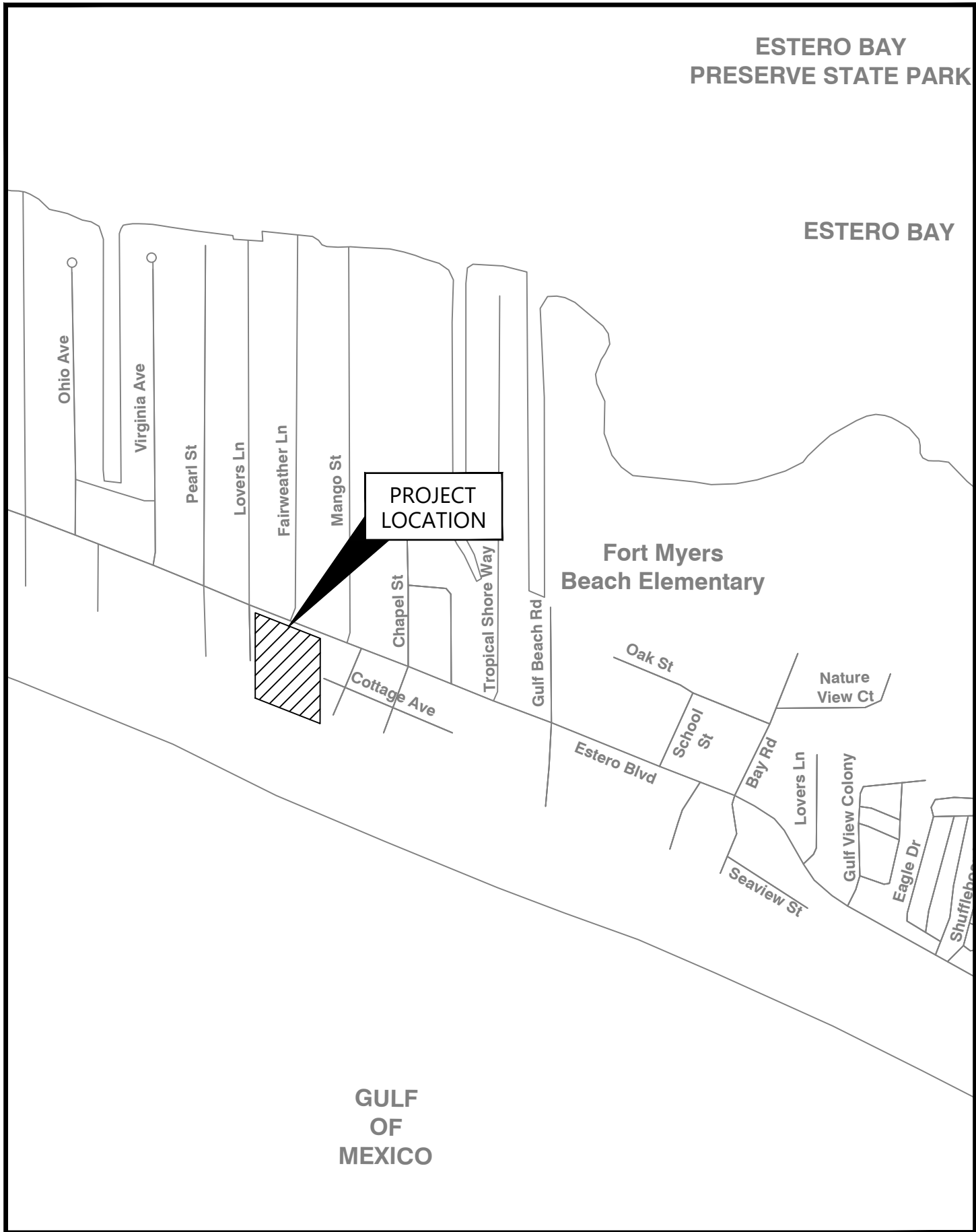
Staff Report Exhibits:

- A – Master Concept Plan
- B – Conditions and Schedule of Uses
- C – Applicant’s Narrative
- D – Applicant Proposed Conditions and Commitments
- E – Complete Application

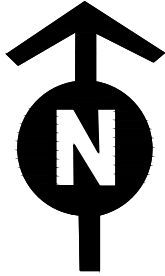
MASTER CONCEPT PLAN FOR

NEPTUNE RESORT CPD

SECTION 19, TOWNSHIP 46S, RANGE 24E,
FORT MYERS BEACH, FLORIDA



VICINITY MAP
N.T.S.



SITE LOCATION MAP
N.T.S.

PREPARED BY:



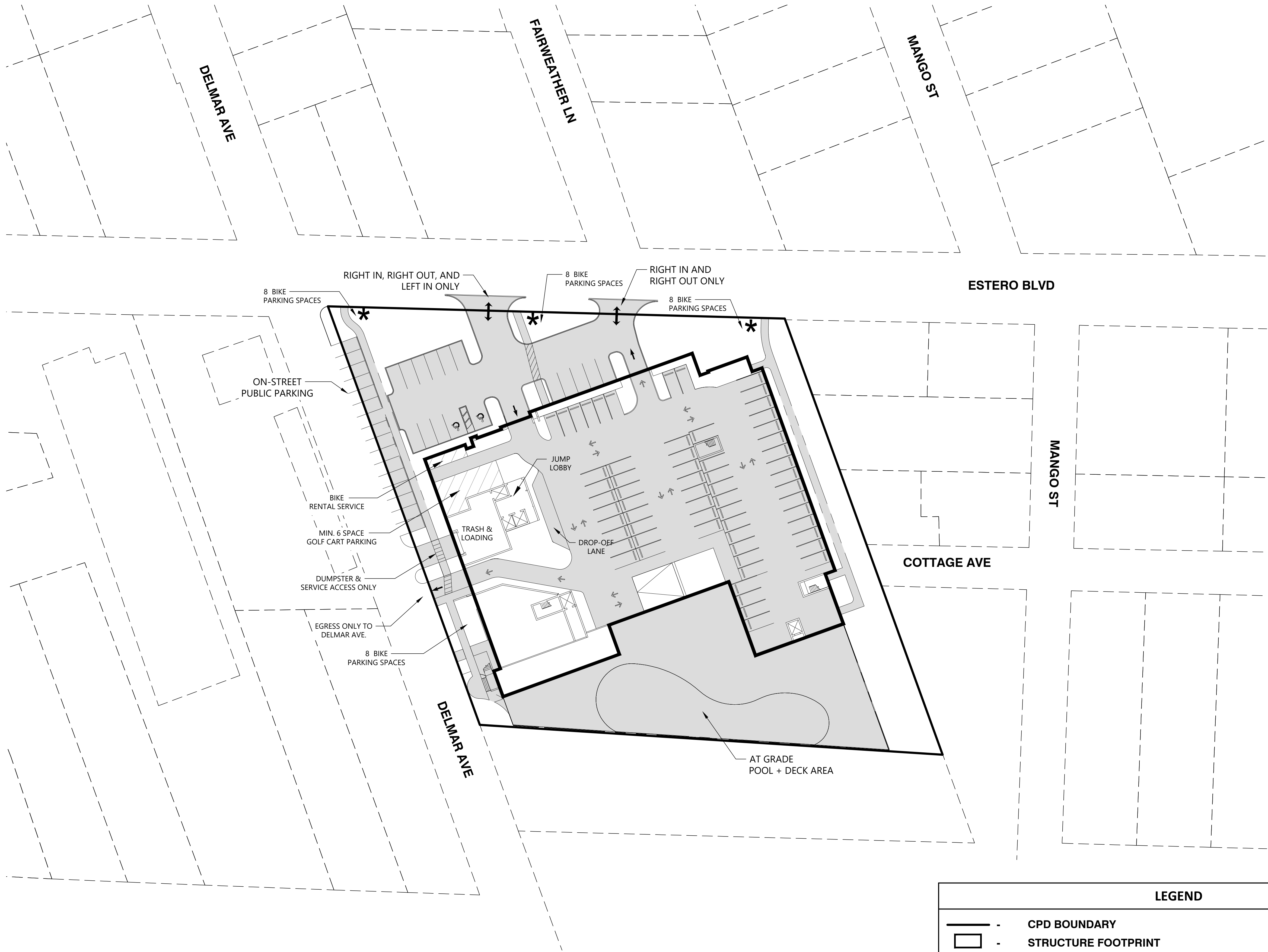
5618 WHISPERING WILLOW WAY
FORT MYERS, FL 33908

PREPARED FOR:

CHG NEPTUNE ACQUISITIONS, LLC

150 EAST BROAD ST, SUITE 800
COLUMBUS, OH 43215

CONTENTS		
SHEET NUMBER	SHEET DESCRIPTION	
1	COVER SHEET	
2	MASTER CONCEPT PLAN	
3	CONCEPT PARKING PLAN	
4	NOTES	
DATE:	PROJECT No.:	SHEET No.:
October, 2023	220050.01.01	1 OF 4



LEGEND			
	-	CPD BOUNDARY	
	-	STRUCTURE FOOTPRINT	
	-	AT GRADE PARKING, SIDEWALKS, DECKS, POOL, AND PATHWAY AREAS	
	-	PEDESTRIAN AMENITY AREA	
	-	VEHICULAR INGRESS / EGRESS	

PROJECT NO.: 220050.01.01		CLIENT: CHG NEPTUNE ACQUISITIONS, LLC	
DATE: 08/23	DRAWN: F.L.	PROJECT: NEPTUNE RESORT COMMERCIAL PLANNED DEVELOPMENT (CPD)	
DESIGN: K.G.	DATE: 01/24	TITLE: CONCEPT PARKING PLAN	
SHEET NUMBER: 3	OF 4	F.L. DRAWN DATE	
1 PER COUNTY COMMENTS		# REVISION	

THE NEIGHBORHOOD COMPANY
5618 WHISPERING WILLOW WAY | FORT MYERS, FL 33908
WWW.THENEIGHBORHOOD.COM/COMPANY

0 20 40

GENERAL NOTES:

1.

THIS MASTER CONCEPT PLAN (MCP) IS CONCEPTUAL IN NATURE. THE OVERALL CONFIGURATION, SIZE AND LOCATION OF THE STRUCTURES AND OTHER IMPROVEMENTS MAY VARY. FINAL DESIGN AND IMPROVEMENT **DETAILS** WILL BE PROVIDED AS PART OF THE DEVELOPMENT ORDER (D.O.) PROCESS.
2.

TOTAL LOT AREA IS 2.46 ACRES OF WHICH 2.01 ACRES IS LANDWARD OF THE 1978 CCCL.
3.

WATER MANAGEMENT NEEDS CAN VARY SIGNIFICANTLY. THE WATER MANAGEMENT PLAN WILL BE DESIGNED AT TIME OF D.O.
4.

THE PROJECT WILL BE DEVELOPED IN ONE PHASE.
5.

ALL OTHER DEVELOPMENT STANDARDS SHALL BE SET FORTH IN LDC CHAPTER 24 OR OTHER APPLICABLE PROVISIONS OF THE LDC.
6.

NO ENVIRONMENTALLY SENSITIVE LAND OR WATER EXISTS ON SITE AS THIS SITE WAS IMPACTED BY PREVIOUS DEVELOPMENT. NO PROTECTED SPECIES SURVEY IS REQUIRED PER APPROVED WAIVER.
7.

PARKING ON DELMAR WILL BE IN COMPLIANCE WITH LDC SEC. 34-2011(3) REGULATION ON-STREET PARKING.
8.

AT GRADE BEACH PATHWAYS AND DUNE WALKOVERS WILL BE LOCATED AT TIME OF D.O.
9.

THE MAXIMUM OF 148 HOTEL UNITS IS PERMITTED PURSUANT TO LDC SECTION 34-1803, ALLOWABLE INTENSITY EQUIVALENCY TABLE, FOOTNOTE #2.

SCHEDULE OF USES:

LODGING:

- HOTEL/MOTEL (INCLUSIVE OF HOTEL CONDOMINIUMS)
- GUEST UNITS
- RESORT

LODGING ACCESSORY USES:

- ON PREMISE CONSUMPTION OF ALCOHOLIC BEVERAGES
- RESORT ACCESSORY USES
- PERSONAL SERVICES
- RECREATIONAL FACILITIES
- PATHWAYS AND DUNE WALKOVERS

RETAIL:

- SUBORDINATE COMMERCIAL USES
- RETAIL STORE

MAXIMUM INTENSITY:

- MAXIMUM OF 148 HOTEL UNITS
- MAXIMUM FLOOR AREA RATIO (F.A.R.): 1.5 OR 131,333 SF (NOT INCLUSIVE OF 2 LEVELS OF PARKING)

PARKING:

VEHICLE:

- MIN. REQUIRED PER PARKING STUDY: 118 PARKING SPACES
- MIN. PROVIDED:

138 ON-SITE DELINEATED PARKING SPACES FOR RESORT USE

26 ON-SITE PARKING SPACES FOR RESORT USE VIA VALET SERVICE

TOTAL: 164 FOR RESORT USE

16 PARKING SPACES FOR PUBLIC USE

BICYCLE:

- MIN. REQUIRED: 0 SPACES
- MIN PROVIDED: 32 SPACES

GOLF CART:

- MIN. REQUIRED: 0 SPACES
- MIN. PROVIDED: 6 SPACES

DEVELOPMENT STANDARDS

DEVELOPMENT STANDARDS	PRINCIPAL STRUCTURE	ACCESSORY STRUCTURE
MINIMUM FRONT YARD - FROM ESTERO BLVD	27 FEET	SPS
MINIMUM REAR YARD - FROM SOUTHERN BOUNDARY	62 FEET	SPS
MINIMUM SIDE YARD FROM DELMAR AVE	20 FEET OR 12 FEET FOR EXTERNAL STAIRCASE	SPS
MINIMUM SIDE YARD - FROM EASTERN BOUNDARY	25 FEET	SPS
MAXIMUM ZONED HEIGHT ¹	54 FEET	N/A
MAXIMUM ACTUAL HEIGHT ²	81 FEET	N/A
MAXIMUM STORIES	4 ABOVE 2 LEVELS OF PARKING	N/A
MAXIMUM FLOOR AREA RATIO ³	1.5	N/A

1.

MEASURED FROM DESIGN FLOOD ELEVATION TO MID-POINT OF MAIN ROOF
2.

MEASURED FROM GRADE TO PEAK OF HIGHEST ROOF
3.

EXCLUDES THE TWO UNDER-BUIDING LEVELS OF PARKING

SPS: SAME AS PRINCIPAL STUCTURE

DEVIATIONS:

1.

A DEVIATION FROM LDC SEC. 10-285, TABLE 10-1 – CONNECTION SEPARATION, WHICH REQUIRES A 250’ SEPARATION BETWEEN STREET AND ACCESSWAYS, IN ORDER TO ALLOW DRIVEWAY SEPARATIONS AS DEPICTED ON THE MASTER CONCEPT PLAN (MCP).
2.

A DEVIATION FROM LDC SEC. 10-416(C)(2) – LANDSCAPING OF PARKING AND VEHICULAR USE AREAS, WHICH HAS SPECIFIC TREE AND LANDSCAPE ISLAND DIMENSIONAL REQUIREMENTS TO ALLOW AN ALTERNATE LANDSCAPE BETTERMENT PLAN AS ALLOWED PER LDC SEC. 10-419.
3.

A DEVIATION FROM LDC SEC. 34-1804(A) AND SEC. 34-2020, WHICH REGULATES PARKING FOR HOTELS/MOTELS AND OTHER ACCESSORY USES, TO ALLOW REDUCED PARKING REQUIREMENTS AS JUSTIFIED BY THE PROJECT’S INDEPENDENT PARKING ANALYSIS.
4.

A DEVIATION FROM LDC SEC. 34-633, WHICH INCLUDES COVERED PARKING IN THE FLOOR AREA RATION (FAR) CALCULATION TO EXCLUDE THE TWO STORIES OF UNDER-BUILDING PARKING FROM THIS HOTEL’S FAR CALCULATION.
5.

A DEVIATION FROM LDC DIVISION 4, TABLE 34-3 FOR THE CR ZONING DISTRICT WHICH LIMITS HEIGHT TO 30 FEET ZONED HEIGHT AND THREE (3) STORIES TO ALLOW A MAXIMUM ZONED HEIGHT OF 51 FEET AND A MAXIMUM OF SIX (6) STORIES CONSISTING OF FOUR (4) STORIES ABOVE TWO (2) LEVELS OF PARKING.
6.

A DEVIATION FROM LDC SEC. 34-1803(A)(1), WHICH ALLOWS THE CONVERSION OF DWELLING UNITS TO HOTEL/MOTEL GUEST UNITS PER ESTABLISHED EQUIVALENCY FACTORS, IN ORDER TO EXCEED SAID FACTORS AS ALLOWED PER LDC SEC. 34-1803(A)(2). THIS DEVIATION WOULD ALLOW A MAXIMUM EQUIVALENCY FACTOR OF 6.2 RESULTING IN A MAXIMUM OF 148 RESORT HOTEL UNITS.
7.

A DEVIATION FROM THE LDC SECTION 34-645(B) AND TABLE 34-3, WHICH ALLOWS FOR A FLOOR AREA RATIO (FAR) MAXIMUM OF 1.2 WITHIN THE COMMERCIAL RESORT (CR) ZONING DISTRICT, TO ALLOW FOR A MAXIMUM FAR OF 1.5.

0

30

60

DATE

DRAWN

REVISION

#

THE NEIGHBORHOOD COMPANY

5618 WHISPERING WILLOW WAY | FORT MYERS, FL 33908
WWW.THENEIGHBORHOOD.COM/PANY

CLIENT:

CHG NEPTUNE ACQUISITIONS, LLC

PROJECT:

NEPTUNE RESORT COMMERCIAL
PLANNED DEVELOPMENT (CPD)

TITLE:

NOTES

PROJECT NO:

220050.01.01

DATE:

08/23

DRAWN:

F.L.

DESIGN:

K.G.

SHEET NUMBER:

4 OF 4

Page 230 of 694

EXHIBIT A: CONDITIONS OF APPROVAL & SCHEDULE OF USE

Conditions of Approval

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 DCI20230213 with the attached conditions:

1. A local development order is required prior to any development of the site, in accordance with this planned development approval.
2. All state and local permits, including but not limited to right of way and stormwater permits, must be applied for and received prior to site development.
3. Addresses 2310 and 2316/2320 Estero Blvd must be combined as a single parcel under one STRAP number.
4. An approval letter for the second access from Estero will be required prior to construction.
5. Landscaping on adjacent properties must be protected during construction or replaced at the expense of the owner, CHG Neptune Acquisitions, LLC.
6. All signage and landscaping must meet the Vehicle Visibility at Intersection requirements found in Sec. 34-3131.
7. A parking agreement and a perpetual parking easement must be established with the Town for the proposed 16 public parking spots along Delmar Ave and street improvements prior to commencement of construction.
8. No permanent or temporary structures are permitted within the 25-foot-wide view corridor on the East and within the 20-foot-wide view corridor on the West side of the property.
9. Failure to comply with any of the above-mentioned conditions of approval for the Special exception will render this approval null and void.

Schedule of Use

Lodging

- Hotel/ Motel (inclusive of Hotel Condominiums)
- Guest Units
- Resort

Lodging Accessory Uses

- On premises consumption of Alcohol beverages
- Resort accessory uses
- Personal services
- Recreational Facilities
- Pathways and dune walkovers

Accessory Retail use

- Accessory commercial uses
- Retail store

**THE NEPTUNE RESORT
COMMERCIAL PLANNED DEVELOPMENT (CPD) REZONING**

NARRATIVE

BACKGROUND & REQUEST

The subject property is located at 2310/2316/2320 Estero Boulevard, Fort Myers Beach, FL 33931. The property consists of 3 parcels (19-46-24-W3-0430N.0001, 19-46-24-W3-0110A.0010; and 19-46-24-W3-04300.00CE) totaling 2.46+/- acres, situated south of Estero Boulevard, east of Delmar Avenue and west of Mango St (See Figure 1). The property has a Future Land Use (FLU) Designation of Boulevard and a zoning designation of Commercial Resort (CR). CHG Neptune Acquisitions, LLC (CHG), has owned the property since September 2021 and is the applicant for this rezoning request.



Figure 1. Location Map



The Neighborhood Company, on behalf of CHG Neptune Acquisitions, LLC, is submitting this Planned Development Rezone Application to request the following:

- Rezone the subject property from Commercial Resort (CR) to Commercial Planned Development (CPD) to allow the redevelopment of the prior Neptune Inn site with a 148-unit resort hotel, accessory retail and recreational uses, and a restaurant and tiki bar open to the public.

History of The Neptune Inn

In the 1960's, the subject property was developed as an "Old Florida" style motor inn (See Figure 2) known as the Neptune Inn. The inn consisted of 71 rooms/suites within three buildings and parking on the interior of the property. Most of the buildings were two stories in height. However, the beachfront portion of the building along Delmar Avenue was three stories. Amenities included two pools, shuffleboard courts, and shaded picnic areas.

The Neptune Inn had a long-standing history of providing a home away from home for vacationers, who returned year after year to enjoy the many qualities of Fort Myers Beach. The property was purchased in September of 2021 by CHG Neptune Acquisitions, LLC, which is a subsidiary of Continental Real Estate Companies. Although the inn was dated, the ownership valued the hotel's heritage and nostalgic charm. They intentionally decided not to completely redevelop the hotel, but rather update, refresh and renovate the existing hotel to better serve and meet the needs and wants of its loyal customers.



Figure 2. Vintage Neptune Inn



As a result of Hurricane Ian, the property and existing structures suffered extensive damage (See Figure 3). The ownership evaluated the opportunity to repair the hotel under the 50% Rule, but it was deemed unfeasible for numerous reasons including: long-term resiliency, FEMA and Florida Building Code requirements, site issues related to the Coastal Construction Control Line (CCCL), insurance obligations, the age and anticipated lifespan of existing structures, repair costs, and today's hospitality market and consumer expectations. Based on this detailed assessment, the property owners decided to redevelop the property with a brand-new beach resort that will respect the Neptune Inn's heritage while allowing for a prosperous and sustainable future. The proposed resort will remain family oriented but will offer the quality and modern amenities that today's consumers expect. The resort will be beautiful and resilient while also eliminating existing nonconformities and risks associated with older structures.



Figure 3. Post Hurricane Ian Photos

To redevelop the property and to eliminate existing nonconformities it is necessary to rezone the property from Commercial Resort (CR) to Commercial Planned Development. This request will not require a change to the Comprehensive Plan and the property's "Boulevard" Future Land Use Category.

PROPOSED USE/REDEVELOPMENT

The intent of the Commercial Resort (CR) zoning district is to designate suitable locations for hotels, motels, resorts, and related services. As stated in the Land Development Code (LDC), "... the Commercial Planned Development District (CPD) is to allow a landowner the ability to submit a specific proposal for a land development that is primarily nonresidential or mixed-use in character and that complies with the Fort Myers Beach Comprehensive Plan, but which does not meet all of the specific requirements of a conventional or redevelopment zoning district." The proposed rezone from CR to CPD is being requested as a direct result of Hurricane Ian damage, meets the intent of the CPD, and provides the best vehicle for the property owner to build back better and stronger. The proposed CPD will enhance the property's resiliency, provide an outstanding product that meets today's consumer expectations, and will result in a project with multiple



benefits to the Town and its residents. Through the CPD rezoning process, the property owner is seeking to develop the site with a 148-unit resort, retail and recreational uses subordinate to the hotel use, and a restaurant and tiki bar that will be open to the public. The proposed resort will be built landward of the established 1978 Coastal Construction Control and will comply with all FEMA and Florida Building Code requirements.

Redevelopment, Resiliency and Economic Feasibility

Hurricane Ian devastated the Neptune Inn and its supporting infrastructure as it did to many hotels and resorts on the island. The Town of Fort Myers Beach, its residents, and businesses remain strong and are working tirelessly on the recovery and reconstruction of their island and its economy.

Prior to Hurricane Ian, Fort Myers Beach had a significant hotel inventory of approximately 2,156 rooms, which was below the peak inventory that existed prior to Hurricane Charley in 2004. Post Ian, the Lee County Visitor and Convention Bureau estimates that only 408 rooms are currently available for occupancy. This represents a decline of over 81% in available rooms. This significant reduction in hotel room supply significantly impacts the Town's economy and impedes the road to recovery. Tourism affects all facets of the local economy - it creates jobs and small business opportunities for local residents; it supports local bars, restaurants and entertainment venues; it contributes to the Town and County's tax base; and it provides the critical mass needed for certain business such as grocery stores and pharmacies to be viable and for services such as dentists, sports therapists, healthcare clinics and gyms to thrive. As such, it is vital that we rebuild the hotel stock and that we promote a strong tourism economy. Redevelopment and reconstruction of hotels and resorts will bring visitors back to the island, which in turn will help reopen and keep restaurants, bars, and retail stores thriving. In combination, all these key commercial uses will provide a strong economic engine for the Town.

It is going to take time to recover and there are still many challenges ahead. Fort Myers Beach will once again be the robust tourist destination it was before Hurricane Ian but challenges such as new FEMA and Florida Building Code regulations, the need to harden and construct resilient structures, and insurance changes will seriously affect the ability to rebuild. The high cost of construction, limited availability of labor, the need for modern amenities that meet today's consumer expectations, high interest rates, overall inflation and the significant risks associated with local tourism (i.e., red tide, COVID, major storms) seriously affect investment decisions and what type of hotel can be rebuilt. Smaller, ground level hotels can no longer be constructed due to current regulations, nor can they be rebuilt due to today's economic reality. As many island residents can attest to, the cost to rebuild on Fort Myers Beach has increased exponentially and this does not even factor in land costs. As such, it is not realistic to believe that hotels, motels, and resorts can



be rebuilt at the same size and with the same number of lodging units as before. In order to offset these high costs and to hedge against unforeseen risks, hotels will need to be bigger than they once were.

CHG has carefully analyzed and evaluated these challenges. While rebuilding is not a quick or easy task, they are committed to this Town and want to be a significant community partner, and an asset to the Town of Fort Myers Beach by paying homage to the history of the Neptune Inn by developing a new family-oriented resort. The new resort seeks to strike a balance between the need to address today's economic and regulatory realities and delivering a design that respects the surrounding context and community character. The new Neptune Resort will not only provide new hotel rooms to bolster the economy and replenish units lost since Hurricane Charley and Ian, but will also provide a new resort that provides public benefits and amenities that include:

- A gulf side neighborhood sit-down restaurant and tiki bar open to the public.
- A minimum 25' wide view corridor on the east side of the subject property.
- Enhancement and improvements to the Delmar Avenue right-of-way and public beach access that include:
 - Complementary enhanced landscaping and open space features;
 - Additional public parking spaces (16) to be dedicated to the Town; and
 - Expanded view corridor from Estero Boulevard.
- Improved pedestrian and vehicular access and site parking design to improve movements to and from Estero Boulevard and eliminate potential conflict points.
- Planting of shade trees and pedestrian amenity nodes along Estero Blvd.
- Restored dune habitat and native vegetation plantings
- Elimination of non-conformities
- Improved setbacks
- Elimination of structures beyond the CCCL
- Replacement of non-FEMA compliant structures with a hardened, and resilient resort which will meet all Florida Building Code and FEMA requirements and will benefit public health, safety and welfare.
- Development of a high-quality resort product with superior design and styling
- Provision of bicycle parking



- Provision of bicycles for guest to reduce vehicular traffic
- Fair share contribution toward mobility solutions to reduce traffic on the island
- Participation in efforts to promote the Beach School and after-care, increase enrollment and provide flexibility to hotel employees to drop-off and pick up their children
- Contributions to the local economy via ad valorem property taxes, the bed tax, sales tax, job creation and partnerships with local businesses and vendors
- Support the Town's vision as a family-oriented destination by providing a family friendly resort that honors its longstanding heritage on this island

LOCATION, DESIGN ELEMENTS AND COMPATIBILITY

Location

The property is located within the Civic Complex area of Fort Myers Beach at the southeast corner of Estero Boulevard and Delmar Avenue and is approximately three quarters of a mile east/southeast of Times Square. This area of the island contains many of the community's key public facilities such as the historic elementary school, the public library, Town Hall, Bay Oaks Recreation Center, and the Matanzas Pass Preserve. Pre-lan, this neighborhood was home to a mix of institutional, residential, commercial, and lodging uses. As envisioned in the Comprehensive Plan, this area is truly the "Heart of the Island" in that it contains an eclectic mix of uses that serve visitors and residents alike. This segment of the island creates a transition zone between the downtown Core Area and the Quiet Center district. It provides a logical and functional transition between the more intense commercial, resort and entertainment uses downtown and the predominantly residential character of the Quiet Center. The Civic Complex is not as lively and "funky" as downtown but is sufficiently close to it and has the right balance of uses to appeal to both visitors and residents.

The Civic Complex is close enough to downtown and Time Square that it can be easily accessed by pedestrians and cyclists but is sufficiently removed from the entertainment center to create a markedly different district that has its very own character. The Civic Complex is a little more mellow than downtown but remains lively with a diverse mix of uses that include family resorts, neighborhood commercial uses, civic and recreational uses.



The Neptune Resort is located towards the northern end of the Civic Center district, along the gulf side of Estero Boulevard and in close proximity to other family-oriented resorts including the Diamond Head and the former Estero Island Beach Club. Visitors to the Neptune Resort will be able to reach Times Square via a short walk or bike ride while enjoying shops, restaurants or the beach along the way. There are trolley stops located nearby providing visitors with another option to travel about the island. The town is also bicycle friendly, allowing resort guests to visit other parts of the island without the use of a car. The Neptune Resort will provide dedicated public bicycle parking onsite and bicycles for resort guests so they can conveniently experience restaurants, shops, and entertainment throughout the island.

Surrounding Uses and Site Design

The future land use category, zoning and existing land uses surrounding the property are as follows:

	FUTURE LAND USE	ZONING DISTRICT	EXISTING LAND USES
NORTH	Boulevard	Commercial Boulevard	Estero Boulevard ROW and Vacant Commercial
SOUTH	Recreation	Waterfront	Beach
EAST	Boulevard	Commercial Resort & Residential	Vacant/Destroyed Commercial
WEST	Boulevard	Residential Multi-family	Residential & Vacant Commercial

The project has been designed to be a high quality and welcoming hotel resort that complements the surrounding community. The site design includes elements tailored to improve compatibility with neighboring properties, eliminate any existing nonconformities and provide amenities beneficial to resort guests and general public visiting the resort and beach. These elements include a structure that is setback farther from adjacent properties, Estero Boulevard and the CCCL; an entrance point off of Estero Boulevard to provide unimpeded vehicle movements into the property so as not to obstruct the flow of traffic along Estero Boulevard; dedicated and appropriately designed ingress and egress points; enhanced landscaping and pedestrian amenity areas along the Estero Boulevard frontage; an oversized sidewalk with benches and decorative hardscape; two enhanced view corridors (See Figure 4); additional public parking spaces along Delmar Avenue; bicycle parking; and a restaurant and tiki bar open to the public.

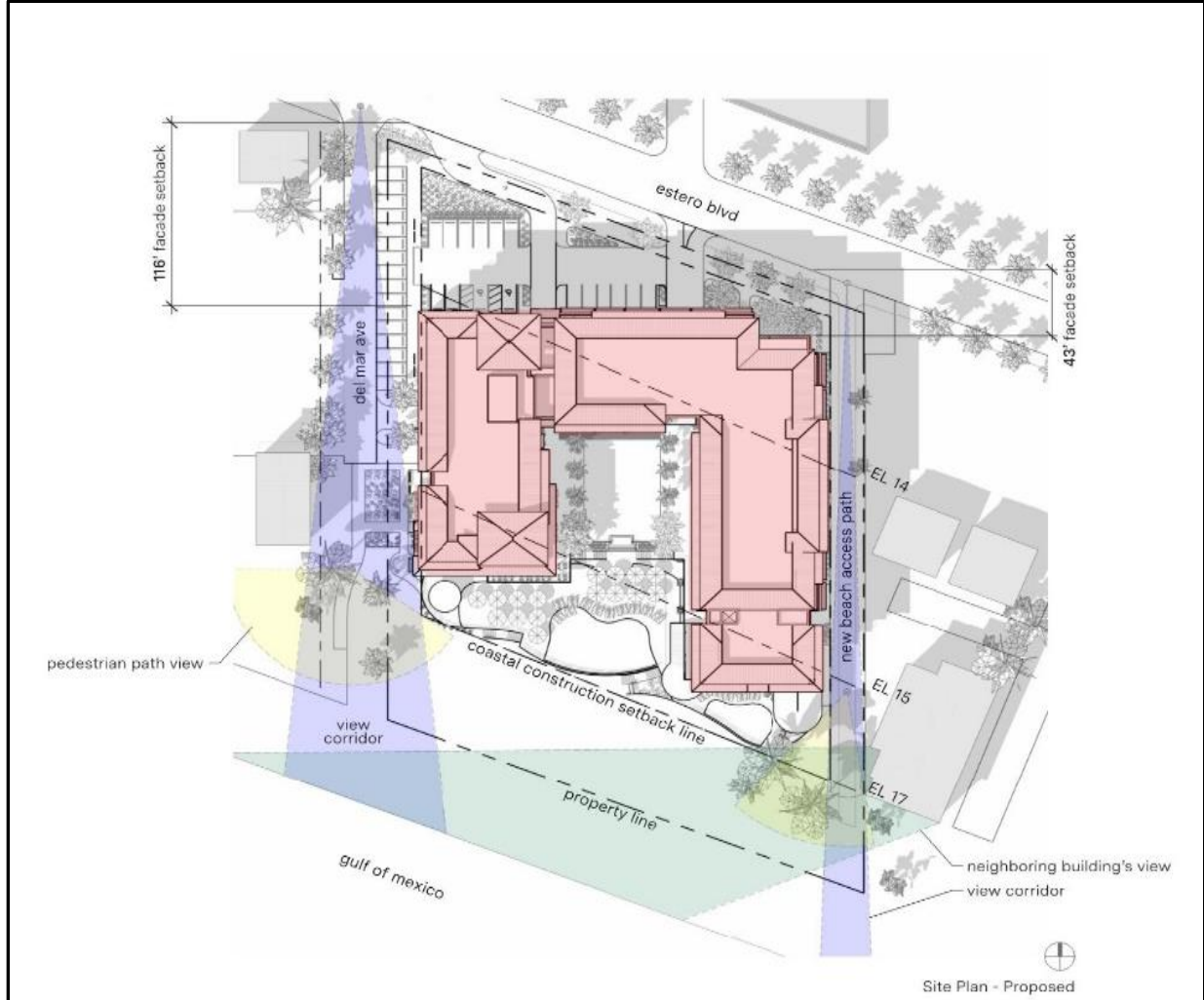


Figure 4. Overall Site Design Setbacks/View Corridors

Height

The Town's comprehensive plan allows for additional heights beyond the limits provided in the Commercial Resort (CR) zoning district on a case-by-case basis when utilizing the planned development rezoning process. As stated in the comprehensive plan, the request would be "approved, modified, or denied, based on the conformance of the specific proposal with all aspects of the comp plan, including land use and design policies, pedestrian orientation, and natural resource criteria. Particular attention would be paid to any permanent view corridors to the Gulf that could be provided in exchange for allowing the building to be taller."



The proposed resort is designed with 4 stories of habitable hotel space above 2 levels of parking for a maximum zoned height of 51 feet as measured from design flood elevation plus 3 feet to mid-point of the main roof. (See Figure 5a and the Height Exhibit included with the submittal). The allowance for additional height will result in a more attractive hotel, will help ensure its economic feasibility and will allow the Applicant to provide public benefits such as the additional view corridor, an enhanced corridor along Delmar, dedicated public parking and restaurant and tiki bar amenities which will serve the public and resort guests.

Hurricane Ian's destructive storm surge and flooding emphasizes the need for resilient construction that complies with FEMA standards and the Florida Building Code. As noted above, the project's zoned height is 51 feet, however the need to comply with FEMA and DEP's minimum design flood elevation adds height to the proposed resort and so does the varied rooflines which were included to provide visual interest and architectural embellishment. This results in a maximum actual height of 78 feet, 11 inches, measured from grade to the peak of the highest roof. Height measurements are presented in Figure 5a below and the Neptune Resort Height Exhibit included with the submittal.

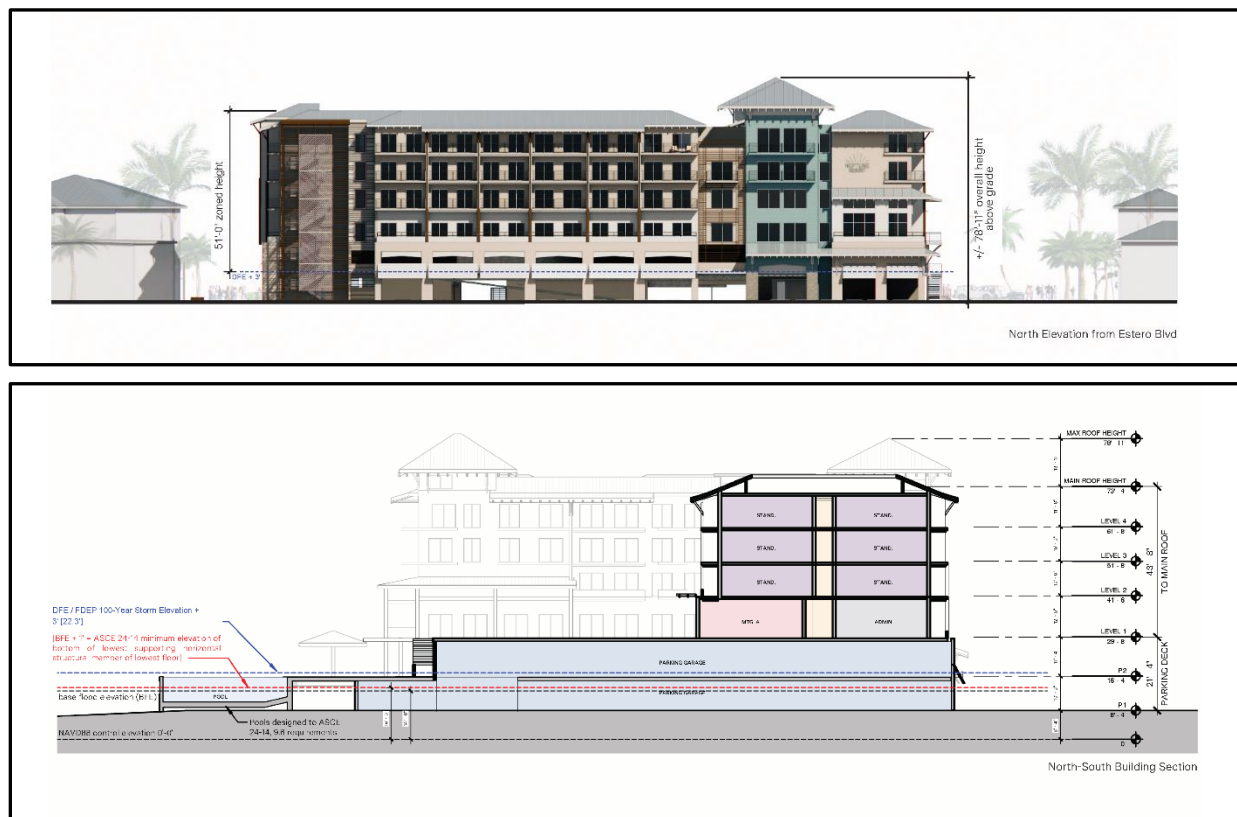


Figure 5a: Building Height and Building Cross-Section



A detailed treatment of the proposed height and how it is compatible with surrounding uses is provided below in the Comprehensive Plan Compliance section and more specifically in addressing Policy 4-C-4.



Figure 5b: Photos of adjacent building heights (West – left and East – right)

Setbacks & Buffers

The development proposes a minimum front yard setback from Estero Boulevard of 27 feet with increased front setbacks of 116 feet and 43 feet for the western and eastern corners respectively; a minimum side yard setback from Delmar Avenue of 20 feet, a minimum eastern side setback of 25 feet from the property line, and a minimum setback from the southern boundary of 62 feet. The proposed setbacks will alleviate the nonconformities which existed with the original development and allow for the addition of a view corridor on the eastern side of the property. The new site layout will also improve views of the beach for the properties to the east. This configuration will also eliminate the nonconforming structures built over the 1978 Coastal Construction Control Line.

Along the eastern boundary, a 15-foot, type “C” buffer, which will consist of vegetation and a wall is proposed where none previously existed. This will create separation and screening from adjacent properties and will provide a softer and aesthetically appealing separation from the structures to the east. While no buffers are required for the Estero Boulevard and Delmar Avenue sides of the property, the developer will provide enhanced landscaping per the planting plan provided to create a more inviting public realm and to provide shade for the pedestrian.



Density/Intensity

The Neptune Resort consists of ± 2.46 acres located within the Boulevard Future Land Use category. Due to the catastrophic damage caused by Hurricane Ian and the need to create a resilient luxury resort with amenities expected by today's consumers, building back the property as it existed is not feasible. Conditions have changed significantly since the original construction of the Neptune Inn. The cost of construction materials, the availability of labor, the construction requirements mandated by the Florida Building Code and FEMA regulations are some of the many challenges. Due to the exponential increase in construction cost and today's consumer preferences, additional hotel units and gross floor area are needed to justify this level of investment and deliver an economically feasible development that can thrive for years to come.

The subject property is comprised of a total of 24 platted lots – 10 lots within the W.W. Watson Subdivision and 14 lots within the Beach Estates Subdivision. Each platted lot would be permitted 1 unit by right, for a total of 24 dwelling units. Per the equivalency factors outlined in LDC Sec. 34-1803(a)(1), the 24 residential units can be converted into guest units based at a ratio of 2.5 guest unit per residential unit. LDC Sec. 34-1803(a)(2), further allows these established ratios to be exceeded under exceptional circumstances and when providing public benefit as part of the planned development process.

The exceptional circumstances applicable to the Neptune Resort include the devastation sustained due to Hurricane Ian, the construction requirements mandated through the Florida Building Code and FEMA, the increased cost of construction, high interest rates and the shortages of materials and labor. The applicant is proposing public benefits, as outlined previously on pages 5 and 6, that further contribute to the project's consistency with LDC Sec. 34-1803(a)(2). Recognizing the exceptional circumstances, proposed public benefits, and utilizing the underlying 24 "by-right" dwelling units for density conversion, the Neptune Resort is requesting 148 hotel units through this CPD rezone request. The total number of hotel units is derived as follows: 24 ("by right" dwelling units) x 6.2 (requested equivalency factor – See Deviation #6) = 148 hotel units. For further details related to the proposed hotel/motel density conversion outlined above, see the "Narrative Supplement – Hotel/Motel Density & Allowable Intensity" document included with this submittal.

The floor area ratio (FAR) as conceptually established for the project is 1.48 or 129,925 SF (not inclusive of 2 levels of parking), which is detailed in the Neptune Resort FAR Exhibit as part of the application submittal. However, we are requesting a maximum FAR of 1.5 to provide some leeway for changes that may be needed as the project progresses to final design and permitting. Additionally, the increase in FAR is requested to allow the development of the type of resort desired by the community and consistent with today's market expectations. The Neptune Resort will offer high-end guest amenities, such as an on-site



restaurant open to the public, pools, pool bar, conference rooms, recreational areas, and open space. The increased FAR is also needed to address today's building codes, FEMA regulations, and updated hospitality standards that call for larger rooms, back of house and support facility areas. This proposed FAR is equal to the maximum FAR of 1.5 as allowed under the Boulevard Future Land Use category. Additionally, as part of this CPD rezoning petition are deviations from LDC Sec. 34-633 to exclude the two levels of under-building parking when calculating the FAR and a deviation from LDC Sec. 34-645(b) and Table 34-3 to exceed the maximum 1.2 FAR within the Commercial Resort zoning district.

Transportation and Parking

A traffic impact assessment has been performed by T.R. Transportation Consultants and concludes that with the proposed rezoning to CPD, the future redevelopment of this resort hotel with 148 units along with restaurant and tiki bar, open to the public, will not place an undue burden on the island's roadway network. The level of service analysis provided is based on data collected prior to Hurricane Ian and shows that Estero Boulevard was over capacity during season. Due to the destruction caused by the hurricane, and due to the significant amount of time it will take to rebuild and re-establish pre-storm population and traffic levels, this development will not create an undue burden on the island roads.

Parking for hotels within the Town of Fort Myers Beach is based on LDC Section 34-1804 which states, "the minimum requirement for off-street parking is 1.2 parking spaces for guest units up to 450 square feet and 1.5 spaces for each larger guest unit." Parking requirements for ancillary uses contained within the hotel are calculated based on their square footage and as outlined in LDC Section 34-2020. As demonstrated below the total number of spaces required per the LDC is 220.

Hotel Resort Parking Calculations			
Estimated Unit Size	Estimated # of Units	Required Spaces per Unit	
Less than 450 SF	36	1.2	43.2
Greater than 450 SF	112	1.5	168
		Hotel Only	211.2
Parking for Ancillary uses = 3.0 % of total SF			
Location	SF	Spaces per SF	
Interior	2,623	2 / 1000 SF	5.2
Exterior	1,048	2 / 1000 SF	2.1
Tiki	749	2 / 1000 SF	1.5
		Ancillary Uses	8.8
		Total for Hotel & Ancillary Uses	220



As we know, local land development codes tend to have conservative parking requirements that often lead to overparking. As such, parking requirements recommended by the Institute of Transportation Engineers (ITE) were also analyzed. Per the ITE Manual definitions, Resort Hotel (Land Use 330) specifically applies to the proposed project. As described in the ITE Manual, a Resort Hotel (Land Use 330) “is similar to a hotel (Land Use 310) in that it provides sleeping accommodation, full-service restaurants, cocktail lounges, retail shops and guest services. The primary difference is that a resort hotel caters to the tourist and vacation industry, often providing a wide variety of recreational facilities/programs...”. The attached memorandum from TR Transportation Consultants, Inc. dated May 13, 2024, further evaluates the parking demands based on the **Institute of Transportation Engineer’s (ITE) Parking Generation Manual, 6th Edition**, which was just published by ITE in October of 2023, and the **Urban Land Institute (ULI) Shared Parking, 3rd Edition** manual and spreadsheet, the Master Concept Plan and the requested parking deviation. The analysis finds that the maximum peak parking demand for the proposed Neptune Resort is 118 spaces. The on-site supply of a minimum of 138 delineated parking spaces with an additional 26 spaces that can be achieved via valet service stacking, for a total of 164 spaces will be sufficient.

Further, the Town’s LPA and Council have discussed strategies to reduce car trips and encourage visitors to leave their car at home. In an attempt to reduce parking space and support the Town’s desire to reduce car dependency, the project proposes a minimum of 164 resort parking spaces, inclusive of parking via valet service, and 16 public parking spaces along Delmar Avenue through a dedicated easement to the Town of Fort Myers Beach.

The developers propose to enhance the on-site vehicle parking by providing alternative transportation options such as bicycle parking for visitors, complimentary/rental bicycles for use by resort guests or the public, golf cart parking, pedestrian connectivity to and from the property to existing trolley stops and encourage guest to leave their cars at home by promoting alternative modes of transportation. The developers of the Neptune Resort are seasoned resort operators throughout the United States and based on their experience they feel confident that the proposed parking is adequate for the resort. Nonetheless, the Applicant commits to work with the Town and other local hotel proprietors in developing and promoting alternative modes of transportation and agrees to contribute their fair share to comprehensive transportation/parking solutions.

Compatibility

As presented above and further discussed in the Rezoning Approval Criteria below, careful consideration was given to designing a resort that fits into the fabric of Fort Myers Beach while remaining feasible from a regulatory and economic standpoint. By honoring the Neptune Inn’s heritage as a family-oriented hotel, and through the proposed setbacks, buffers, enhanced landscaping, moderate height and scale,



exceptional architecture, thoughtful site design, and public benefits, the proposed resort ensures compatibility with surrounding properties. The Neptune Resort has a long and beloved history on Fort Myers Beach and will continue to be an asset to the island for years to come by providing a family-oriented destination resort for visitors, by building a resort that is open to local residents, by providing public benefits and by being active participants in developing Town-wide mobility solutions and promoting the Beach School.

(intentionally left blank)



REZONING APPROVAL CRITERIA

The proposed rezoning request from CR to CPD must be found consistent with the established rezoning criteria provided for in LDC Section 34-85 and Section 34-216 as well as post-disaster build back criteria in accordance with Policy 4-D-1 of the Fort Myers Beach Comprehensive Plan and LDC Section 34-3238. The following narrative demonstrates compliance with the Town of Fort Myers Beach Comprehensive Plan and Land Development Code.

(intentionally left blank)



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

A. COMPREHENSIVE PLAN AMENDMENTS

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

Mixed Use Districts Designation - Civic Center and Coconut Village RV Park Mixed-Use District



Figure 6. Proposed FLUM category

The applicant is aware that the Town of Fort Myers Beach has initiated an update to the Comprehensive Plan Future Land Use Element (FLUE) and Future Land Use Map (FLUM). This initiative was presented before the LPA on January 18, 2023 (Yellow Sheet #2023-895) and the Town Council on March 20, 2023. As of the date of this submittal, these updates are still in process. Should the proposed updates be approved, the subject property would be reclassified to the "Civic Center and Coconut Village RV Park Mixed-Use District" FLUM category (See Figure 6). At this time, the Applicant desires to move forward with this petition and intends to be consistent with the existing Boulevard FLUM designation, while also taking into consideration the current drafted language for the proposed Civic Center & Coconut Village RV Park Mixed-Use District category. Items included in the updated FLUE, which have been considered within this petition, include coordination regarding beach access improvements along with contributions to the public realm.



B. PHASING OF CONSTRUCTION

The development is to be constructed in a single phase.

(intentionally left blank)



COMPREHENSIVE PLAN COMPLIANCE

COMMUNITY DESIGN ELEMENT:

OBJECTIVE 1-A ESTERO BOULEVARD: Improve the functioning and appearance of Estero Boulevard as the premier public space and primary circulation route of Fort Myers Beach.

POLICY 1-A-1: Changes along Estero Boulevard should improve on the characteristics that make it a boulevard in character and not just in name: safe and interesting to walk along, impressive landscaping, and scaled to people rather than high-speed traffic.

The developer has made a conscious and significant effort to create a resort that is attractive and provides additional functionality to the Estero Boulevard corridor. Through the addition and expansion of view corridors, enhanced streetscape along Estero Boulevard, creation of safe pedestrian walkways from Estero to the beach, and exceptional architectural design, the new Neptune Resort will embody the vision that is desired through the Comprehensive Plan's Community Design Element.

The project will be constructed with 4 stories of habitable hotel space above 2 levels of parking for a maximum zoned height of 51 feet, measured from design flood elevation plus 3 feet to mid-point of the main roof and an overall height above grade of approximately 78 feet – 11 inches (See Figure 5a above).

Through the use of architectural features and color, the building will be aesthetically pleasing and complementary to the surrounding area. The main building will have warm and colorful earthtones with more vibrant pops of color added through elements such as canopies and architectural features. The two-level parking garage is disguised through design elements such as awnings and the use of color and complimentary materials. The structure will have varying rooflines, oversized windows, balconies, and terraces to enhance the open feel of the design. See architectural renderings (Figure 7) on the following page.

(intentionally left blank)



Figure 7: Architectural Renderings



The view corridors will be on both the east and west side of the resort. The eastern side of the resort will be set back from the property line to allow a minimum 25-foot view corridor on the subject property. The current building sits on the eastern property line and inhibits the neighboring residences' beach view. Additionally, there is no buffer between the uses. The increased setback will allow for the creation of enhanced landscaping and hardscaping as well as a buffer between the resort and the neighboring residences. This setback will also allow neighboring residences a less obstructed view of the beach.

The western side of the resort, along Delmar Avenue, will be set back approximately 20 feet from the property line. This proposed 20-foot setback and the Delmar Ave. right-of-way will provide approximately 70 feet of view corridor, as well as 16 public parking spaces, public bicycle parking and external access to the resort's restaurant. The developer will provide enhanced landscaping where permissible to create a welcoming environment for both island residents and visitors along Delmar Ave.

These two corridors will allow better views of the beach from Estero Boulevard for resort patrons and the public, thus creating a more attractive experience for visitors along Estero Boulevard.

The proposed development will incorporate items and amenities throughout the site to enhance the Boulevard character. These include the following:

- Public Access/Use
- Restaurant, tiki bar open to public
- Bicycles for guests
- Improved traffic flow, circulation and access through the appropriately designed access points along Estero Boulevard and the egress onto Delmar Avenue from the parking garage.
- Increasing sidewalk width, pedestrian amenity nodes, and providing shade through landscaping to beautify the public realm to create a more pedestrian friendly environment.
- Coastal Old Florida/Cracker architectural elements – siding, porches, metal roof etc.
- Elimination of nonconforming side setbacks
- Economic benefits will include the creation of jobs, additional funding for the town from the collection of taxes, i.e., Tourist Development Tax, sales tax and property taxes, and additional visitor spending at local shops, restaurants, etc.
- The developer will work with the school to increase student enrollment by informing employees that their children are eligible to attend the Beach School and through the coordination of work schedules for employees with children in the school.
- The new construction will meet modern construction requirements to harden and be more resilient.
- All new structures will be located landward of the Coastal Construction Control Line.



- As described above the redeveloped site will allow for an increase in setbacks and buffers, wider view corridors, more separation from adjoining properties and an additional view corridor on the eastern side of the property.
- Enhanced landscaping to create an aesthetically pleasing site.
- Dune restoration in coordination with the Town to prevent beach erosion and provide additional protection during storm events.
- The developer pledges to work with the Town on alternative modes of transportation such as shuttle and ferry.

Through the features described above and uses proposed, the development will enhance the appearance of Estero Boulevard and provide additional opportunities for both lodging and public use thus demonstrating consistency with the Community Design Element, Objective 1-A, Policy 1-A-1.

FUTURE LAND USE ELEMENT:

GOAL 4: To keep Fort Myers Beach a healthy and vibrant “small town,” while capitalizing on the vitality and amenities available in a beach–resort environment and minimizing the damage that a hurricane could inflict.

OBJECTIVE 4-A SMALL-TOWN CHARACTER: Maintain the small-town character of Fort Myers Beach and the pedestrian-oriented “public realm” that allows people to move around without their cars even in the midst of peak-season congestion.

The devastation caused by Hurricane Ian has emphasized the need for more resilient structures on Fort Myers Beach. The Neptune Inn, though left standing, sustained significant damage and intends to redevelop into a more sustainable resort with additional public benefits. As expressed in Object 4-A, the desire is for the small-town character of Fort Myers Beach to be maintained while continuing the pedestrian-oriented “public realm” that encourages people to move around without their cars even in the midst of peak-season congestion. In planning the redevelopment of the property, the owners have considered what is needed in this area of the island for both visitors and residents to achieve this goal.

With the construction of a new building that meets Florida Building Code and FEMA standards, the site will be more resilient and able to withstand impacts from future hurricanes. Through the reconfiguration of the access to the property, widened sidewalks, hardscape enhancements, additional view corridor along the eastern portion of the property, enhanced landscaping and pedestrian amenities along Estero Boulevard and Delmar Avenue, public bicycle racks, and a restaurant and tiki bar open to the public, the Neptune Resort will contribute to Fort Myers Beach’s goal of being a healthy and vibrant “small town,” while capitalizing on the vitality and amenities available in this beach resort environment.



POLICY 4-A-1: Maintaining the town’s current “human scale” is a fundamental redevelopment principle. Fort Myers Beach is best enjoyed from outside a car; new buildings should be designed to encourage use or admiration by people on foot or bicycle, rather than separating them with gates, walls, deep setbacks, or unnecessary building heights.

The overall site, building placement, additional setback, height and massing were carefully designed to create a resort that approachable and human scale. While today’s construction requirements mandate stronger and taller structures especially in “V” zones, additional landscape and hardscape proposed along Estero Boulevard, Delmar Avenue, and the eastern view corridor soften the resorts massing and contribute to creating a human scale on FMB and along Estero Boulevard. The subject property is a perfect location for visitors to use as their home base as they explore all the island has to offer through walking and bicycling.

POLICY 4-A-6: The beaches provide incomparable recreational and environmental benefits to the town; careful management of the beach, including renourishment, when necessary, can increase both. Frequent beach access is essential to the town’s character and should be maintained and expanded where possible.

The proposed MCP provides a visual representation of the orientation of the building and its amenities which focus on the Gulf of Mexico overlooking the beach. The proposed on-street parking along Delmar Avenue increases access to the beach. The property owners have entered into a beach restoration and management easement agreement with the Town of Fort Myers Beach as evidenced by the enclosed agreement. This agreement demonstrates the property owners’ commitment to protecting and promoting beach access for all.

POLICY 4-A-9: Many amenities available to local residents are the result of the local tourist economy and would diminish if hotels and motels were displaced. Landowners may redevelop hotels and motels for other uses, but special incentives of this plan such as post-disaster and pre-disaster build back (Objectives 4-D and 4-E) only apply if the current use is maintained.

The proposed development shall support the Fort Myers Beach goals of keeping a healthy and vibrant “small town” atmosphere. This development is designed to not only benefit hotel guests, but to also provide enhancements that can be enjoyed by, and to benefit, the general public. The proposed development will provide health, safety and quality of life benefits to public by providing a restaurant and tiki bar which will be open to the public, additional public parking along Delmar Avenue, pedestrian mobility and connectivity along Estero Boulevard, beautification of the public realm through enhanced landscaping and hardscaping, and fair share contributions to mobility solutions such as a potential future water ferry and airport shuttle service, public parking for bicycles, bicycles for guests, along with the rebuilding of structures to be



compliant with today's Florida Building Code. The proposed structures shall be constructed in the "Coastal" vernacular to complement and further the town's desire to provide unique and attractive architecture. Through these proposed amenities, contributions, and architectural style, the development complies with Policy 4-A-1, 4-A-6, and 4-A-9.

POLICY 4-B-5 BOULEVARD: A mixed-use district along portions of Estero Boulevard, including less intense commercial areas, historic cottages, and mixed housing types. This category is not intended to allow commercial uses on all properties; its mixed-use nature is intended to remain permanent. To obtain approval for a new or expanded commercial activities, proposals must be sensitive to nearby residential uses, complement any adjoining commercial uses, contributed to the public realm as described in this comprehensive plan, and meet the design concepts of this plan and the Land Development Code. These qualities and overall consistency with this comprehensive plan shall be evaluated by the town through the planned development rezoning process.

The proposed Neptune Resort redevelopment consists of hotel lodging units as well as a restaurant and tiki bar that are open to the public. The project will be sensitive to any existing or future residential uses by utilizing increased setbacks and extensive landscaping/buffering. The mixed-use resort will complement and benefit adjacent commercial uses. Additionally, the proposed Neptune Resort is contributing to the public realm by providing enhancement to the existing Delmar Avenue public beach access, creating a new view corridor along the eastern property boundary, and addressing improved landscaping/hardscape elements along Estero Boulevard. The Neptune Resort will also comply with all applicable design standards as required under the Land Development Code at the time of Development Order approval.

POLICY 4-C-2: The maximum intensity of allowable commercial development in any category may be controlled by height regulations (see Policy 4-C-4) or by other provisions of this plan and the Land Development Code. Standards in the Land Development Code will encourage more intense commercial uses only in the "Pedestrian Commercial" category. The Land Development Code shall specify maximum commercial intensities using floor-area-ratios (the total floor area of the building divided by the area of the site in the category allowing commercial uses). The Land Development Code may allow floor-area-ratios in the "Pedestrian Commercial" category as high as 2.5, and in other categories as high as 1.5.

Under the provisions of Policy 4-C-2, "other" categories can achieve a Floor Area Ratio (FAR) of 1.5. A maximum FAR of 1.5 is proposed utilizing the Commercial Planned Development process to rezone the subject property from CR to CPD, which is consistent with Policy 4-C-2.



POLICY 4-C-4 BUILDING HEIGHTS: The Land Development Code shall limit the height of new buildings under most conditions to two stories above flood elevation (exceptions may include the buildback situations (see Policies 4-D-1 and 4-E-1), and different heights may be applied to officially designated redevelopment areas such as Times Square, Red Coconut/Gulf View Colony, and Villa Santini Plaza). In those few cases where individual parcels of land are so surrounded by tall buildings on lots that are contiguous (or directly across a street) that this two-story height limit would be unreasonable, landowners may seek relief through the planned development rezoning process, which requires a public hearing and notification of adjacent property owners. The town will approve, modify, or deny such requests after evaluating the level of unfairness that would result from the specific circumstances and the degree the specific proposal conforms with all aspects of this comprehensive plan, including its land-use and design policies, pedestrian orientation, and natural resource criteria. Particular attention would be paid to any permanent view corridors to Gulf or Bay waters that could be provided in exchange for allowing a building to be taller than two stories. In each case, the town shall balance the public benefits of the height limit against other public benefits that would result from the specific proposal.

The Neptune Resort proposes 4 stories of habitable hotel space above 2 levels of parking. This design results in a maximum zoned height of 51 feet as measured from design flood elevation plus 3 feet to the mid-point of the main structural roof and a maximum actual height of 78 feet and 11 inches as measured from grade to the peak of the highest roof.

The existing Neptune Inn varies in height from 2 to 3 stories. The proposed Neptune Resort height is consistent with other adjacent multi-story buildings that vary in height from 3-13 stories. Directly adjacent to the east and west of the subject property are 3 story buildings. Farther to the west is the Surf Song Condominiums at five stories and the Diamond Head Resort at 13 stories. The proposed resort is not located in an area of the town that is specifically identified to strictly limit building heights. A proposed height of 4 habitable stories over 2 levels of parking is not synonymous to or considered to be a high-rise tower, but more consistent with other mid-level (4-5 story) multi-family/hotel condo developments throughout the island. The surrounding existing/planned commercial uses to the north will not be negatively impacted by the Neptune Resort. Allowing for increased heights beyond the typical limits, provides opportunities for architectural design alternatives and varied rooflines. Strictly limiting or restricting height often results in flat roofs or limited roofline variations that negatively impact a community's desired aesthetic.

Redeveloping the property requires compliance with the Florida Building Code and FEMA standards to ensure structures are more resilient and can withstand impacts from future storms. All newly constructed buildings on this property must be elevated so that the habitable space is above the design flood elevation



plus 3 feet (DFE)/FDEP 100-Year Storm elevation of 22.3 feet. Any habitable space must be at least 22.3 feet in elevation. This creates a significant amount of unutilized space under the building and presents an ideal location for covered parking (parking garage) and support facilities. Due to these requirements, it is impossible to redevelop the Neptune Resort as it existed prior to Hurricane Ian. Any new structure must be more resilient, stronger, and taller. Only one additional story of habitable space is proposed for this project; however, the ramifications of meeting modern building standards and FEMA requirements dictate much of the need for additional height.

Consistent with the planned development rezoning process, the Neptune Resort is providing public benefits by enhancing the view corridor along Delmar Avenue, providing public parking along Delmar Avenue, and providing a new 25-foot-wide view corridor along the eastern property line. The ability to provide for these view corridors, and additional public parking result from additional height and increasing side setbacks. Additionally, the project will be designed to eliminate the non-conforming encroachments over the Coastal Construction Control Line (CCCL) and side setbacks. The proposed buildings will be constructed landward of the current Coastal Construction Control Line, thereby bringing the site into compliance with the coastal construction regulations, setback requirements, and removing the existing nonconformity. These elements would not be easily achieved or feasible if not for the increasing the height of the proposed structure.

POLICY 4-C-6 – MOTEL DENSITIES The Land Development Code shall specify equivalency factors between guest units (which include motel rooms) and full dwelling units. These factors may vary based on size of guest unit and on land-use categories on the Future Land Use Map. They may vary between a low of one guest unit and a high of three guest units for each dwelling unit. (These factors would apply only where guest units are already permitted.)

Consistent with and in support of this policy, LDC Sec. 34-1803 establishes equivalency factors for various Future Land Use categories. The equivalency factor for the Boulevard Future Land Use category and applicable to his property is as follows:

Comprehensive Plan Land Use Category	Equivalency Factors for Guest Units of Various Sizes (in square feet)		
	<450	450 to 750	750 to 1,000
Boulevard	2.5	2.0	1.5

Due to the catastrophic damage caused by Hurricane Ian and the need to create a resilient luxury resort with amenities expected by today's consumers, building back of the property as it existed is not feasible. Conditions have changed significantly since the original construction of the Neptune Inn. The cost of construction materials, the availability of labor, the construction requirements mandated by the Florida



Building Code and FEMA regulations are some of the many challenges. Due to the exponential increase in construction cost and today's consumer preferences, additional hotel units are needed to justify this level of investment and deliver an economically feasible development.

The only reasonable way to build back a better and more resilient Neptune Resort is through the proposed CPD rezoning process that will allow for increased hotel units and development flexibility. Through Policy 4-C-6 and the implementing regulations of LDC Sec. 34-1803(a)(2), hotel unit limits that are based on the established equivalency factors can be increased as a result of "exceptional circumstances" and the public benefits attributed to the project when approved as a deviation through the planned development rezoning process. The exceptional circumstances can be attributed mostly to the unprecedented impacts of Hurricane Ian, but also to the increasing impacts and risks to local tourism such as the nationwide COVID shutdown and regularly occurring red tide/algae blooms. Recognizing the exceptional circumstances, proposed public benefits as outlined throughout this narrative, and the deviation request (See Deviation #6) of utilizing the underlying 24 "by-right" dwelling units for density conversion, the Neptune Resort is requesting 148 hotel units through this CPD rezone request. The total number of hotel units is derived as follows: 24 ("by right" dwelling units) x 6.2 (requested equivalency factor – See Deviation #6) = 148 hotel units.

OBJECTIVE 4-D POST-DISASTER REDEVELOPMENT: Provide for the organized and healthy reconstruction of Fort Myers Beach after a major storm by showcasing successful local examples of floodproofing, by requiring redevelopment activities to meet stricter standards for flood- and wind-resistance, and by improving the current post-disaster buildback policy.

Although the subject property is eligible to rebuild under Policy 4-D-1(i) which states "Buildings/development damaged less than 50% of their replacement cost (measured at the time of damage) can be rebuilt to their original condition, subject only to current building and life safety codes", the property owners have chosen to rebuild their site in compliance with the more stringent regulations as a measure of investment for the future.

Through the redevelopment of the site many non-conformities will be eliminated. The new construction will improve public health and safety by replacing the outdated structures with Florida Building Code and FEMA compliant structures, by removing existing structures seaward of the Coastal Construction Control Line and providing additional freeboard by elevation all habitable space above the minimum design elevation. As such, the proposed development will not only meet Object 4-D of the Comprehensive Plan but exceeds what is required through Policy 4-D-1(i).



POLICY 4-E-2 COASTAL SETBACKS: To protect against future storm damage and to maintain healthy beaches, the Town of Fort Myers Beach wishes to see all buildings relocated landward of the 1978 Coastal Construction Control Line. This line has been used on the Future Land Use Map to delineate the edge of land-use categories allowing urban development.

Some existing buildings lie partially seaward of this line; when these buildings are reconstructed (either before or after a natural disaster), they shall be rebuilt landward of this line. Exceptions to this rule may be permitted by the town only where it can be scientifically demonstrated that the 1978 line is irrelevant because of more recent changes to the natural shoreline. The town shall seek the opinion of the Florida Department of Environmental Protection in evaluating any requests for exceptions.

The redeveloped project site will remove all existing structures seaward of the 1978 CCCL and new building will be constructed landward of the 1978 CCCL. Thus, complying with Policy 4-E-2.

COASTAL MANAGEMENT ELEMENT:

GOAL 5: To keep the public aware of the potential effects of hurricanes and tropical storms and to plan a more sustainable redevelopment pattern that protects coastal resources, minimizes threats to life and property, and limits public expenditures in areas subject to destruction by storms.

POLICY 5-A-1: The town shall maintain and enforce building codes at least as stringent as required by Florida law to limit the potential damage of structures from hurricanes and tropical storms. These codes shall include wind-resistance commensurate with the risk of a coastal environment and building elevation requirements that conform with federal laws and Flood Insurance Rate Maps.

The Coastal Management Element addresses special coastal management concerns which are specific to the Town of Fort Myers Beach and its need to protect resources, human life and property which are vulnerable to events such as hurricanes and flooding. The proposed development will be constructed in compliance with up-to-date Florida Building Codes, FEMA standards and landward of the 1978 Coastal Construction Control Line (CCCL), thus complying with GOAL 5 and Policy 5-A-1.



OBJECTIVE 5-D BEACHES AND DUNES: Conserve and enhance the shoreline of Estero Island by increasing the amount of dunes, renourishing beaches to counter natural erosion, and reducing negative man-made impacts on beaches and dunes.

POLICY 5-D-1: The town's policies on shoreline protection measures shall be as follows:

- ii. Sand dunes should be protected and recreated wherever they have been removed. Native dune plants should be protected, and non-native exotics removed. Dune walkovers should be constructed where they do not exist, and existing structures should be maintained.

To facilitate the Beach recovery, the property owners have entered into an easement agreement with the Town of Fort Myers for the purpose of nourishing the beach, repairing the dune system, removing debris, and providing erosion control. Through these actions and proposed new construction, this project complies with Objective 5-D and Policy 5-D-1.

OBJECTIVE 5-E ACCESS TO THE WATER: Increase the number of well-maintained accesses to beaches, bays, and navigable waters to serve the existing and future population and visitors.

The proposed improvements to the public beach access on Delmar included in the development plan will be an amenity to not only the hotel visitors but will also serve existing and future island residents. Through this provision, the developers will provide improvements to existing beach access and comply with Objective 5-E.

CONSERVATION ELEMENT:

POLICY 6-B-4 UPLAND HABITATS: Preserve all remaining coastal strand and hammocks, and improve the existing habitat through removal infestations of exotic plants and replanting with native species. When these habitats are in private ownership:

- ii. Beaches seaward of the 1978 Coastal Construction Control Line are designated on the Future Land Use Map as "Recreation" to preclude their use for further urban development.

The property owners have granted a Temporary Beach Management and Access Easement to the Town of Fort Myers Beach for dune restoration and beach renourishment to support the restoration and preservation of the dunes and beaches. No urban development will be permitted on the beaches seaward of the 1978 Coastal Construction Control Line consistent with Policy 6-B-4.



POLICY 6-E-4: The following activities are prohibited to protect dunes and beaches:

- iv. Any construction activity seaward of the Coastal Construction Control Line not specifically approved by the DEP.**

The proposed redevelopment of the site will remove all existing buildings that are within the 1978 CCCL. The proposed MCP shows that all new structures will be built out of the 1978 CCCL and through the granting of a temporary easement will support the beach/dune system repair and ongoing maintenance.

TRANSPORTATION ELEMENT:

GOAL 7: To improve peak-season mobility without reducing the permeability of Estero Boulevard to foot traffic or damaging the small-town character of Fort Myers Beach. The town seeks to reduce speeding, improve evacuation capabilities, and improve mobility through balanced transportation improvements such as a continuous system of sidewalks and bikeways, a network of trolleys and water taxis linked to off island systems, and parking options matched to road capacity.

POLICY 7-A-2 PARKING: Even though existing parking lots are not used to capacity; parking is not abundant at Fort Myers Beach. The welcome rebirth of commercial activity near Times Square will increase the demand for parking. The Town of Fort Myers Beach will address parking shortages through the methods outlined in this plan.

The parking for the proposed development will be provided onsite. Parking space calculations are based on the number and size of hotel units and the accessory uses and square footage as outlined in the Land Development Code. The site, as conceptually designed, provides 164 spaces and 16 parking spaces along Delmar Avenue to be dedicated to the Town for public use. The resort will also provide bicycle parking racks for both the public and guests, as well as golf cart parking to encourage this alternative mode of transportation on the island.

POLICY 7-D-3 ALTERNATE TRAVEL MODES: The town shall support alternatives to car travel to free up road capacity for trips that do require a car. Public funding sources shall include county/state gasoline taxes and road impact fees. The town shall modify its road impact fee ordinance by 1999 to allow these fees to be spent (within legal limits) on capital improvements that relieve road congestion, such as better sidewalks, trolley improvements, and off-island parking areas.



The Town of Fort Myers Beach has completed extensive improvements to Estero Boulevard and through the Comprehensive Plan encourages a variety of travel modes to address traffic congestion caused by the influx of visitors drawn to the town every year. The developer has incorporated additional bike racks for public use and will be providing bicycles as an amenity for its guests as a way to encourage a less car centric experience for those on the island. The proposed development will also provide enhanced landscaping, pedestrian amenity areas and sidewalks both adjacent to and within the development to encourage walkability both on and off property.

The developers are willing to participate in and make appropriate contributions to programs which the town may set up to alleviate mobility challenges on the island during peak traffic times. Alternatives which have been discussed to date such as, but not limited to, shuttle service from local airports with central drop-off points for guests, a water taxi, a hidden-path system through Fort Myers Beach for bicycles and pedestrians and a trolley system for visitors with both on and off island locations are all options which may benefit the Town, its visitors and residents.

OBJECTIVE 7-I LEVEL-OF-SERVICE STANDARD: Maintain minimum acceptable levels of service for the transportation system.

POLICY 7-J-2 TRAFFIC IMPACT ANALYSIS: A thorough traffic impact analysis is currently required only for major rezonings and very large development orders. The town shall amend its Land Development Code during 2010 to:

- i. **decrease the thresholds for requiring traffic impact analyses;**
- ii. **require them to study the cumulative impacts of potential development; and**
- iii. **use the results in assessing whether impacts are acceptable, and whether an improved design could offset some of the impacts.**

A traffic impact assessment has been performed by T.R. Transportation Consultants and concludes that the development of this 148-unit resort hotel along with restaurant and tiki bar, open to the public, will not place an undue burden on the island roadway network. The level of service information provided is based on data collected prior to Hurricane Ian and shows that Estero Boulevard was over capacity during season. Due to the destruction caused by the Hurricane, and the need for the Town to rebuild and re-establish its population, traffic levels that existed in peak season prior to the storm will not be reached for some time. The impact mitigation strategies such on-site bicycle spaces, golf cart parking and airport shuttle service all contribute to reducing the overall transportation related impacts from this redevelopment project.



UTILITIES ELEMENT:

GOAL 8: To improve the existing systems that provide safe drinking water, irrigation water, sewer service, and solid waste disposal in order to reduce environmental impacts on land and water while keeping costs as economical as possible.

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

Complying with GOAL 8 and Policy 8-A-1, the proposed development will connect to central water and sewer utilities.



C. DESIGN STANDARDS COMPLIANCE

The post-hurricane redevelopment of the Neptune Resort will be generally consistent with the overall purpose and intent of the commercial design standards provided under LDC Sections 34-991 through 34-997. The following outlines compliance with the specified design standards within the applicable LDC sections:

As demonstrated through the architectural elevations prepared by Meyers & Associates and included in this submittal, the Neptune Resort is designed in a contemporary coastal architectural style. The building features exterior walls with façade elements including balconies, railings, awnings, wood look architectural elements, and stucco finishes to achieve compliance with Sec. 34-994 and Sec. 34-995. The hipped roof will have tower features both at the front and rear of the buildings and will be constructed of metal to comply with Sec. 34-996. The u-shaped building will have an open area at the rear of the building containing an events plaza, two pools with deck area, open restaurant seating and a tiki bar. The pedestrian passage improvements proposed along Delmar Ave. include additional vehicle and bicycle parking as well as sidewalks on the property to provide safe, designated access for vehicular, bicycle and pedestrian traffic.

The redeveloped Neptune Resort achieves the goals set forth in the Comprehensive Plan and the Land Development Code by creating a development that will enhance the town's sense of place, implements the design concepts in the LDC and creates an attractive destination which will enhance the island and its property values.



D. DECISION MAKING COMPLIANCE

The following considerations from LDC Sec. 34-85 shall be considered by town council whenever applicable:

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

There are no known errors or ambiguity that must be corrected in relation to the requested rezoning from Commercial Resort to CPD. If any exist, they will be discussed and resolved during staff review and public hearings before the Local Planning Agency (LPA) and Town Council. Utilizing the proposed CPD rezone request, reductions or elimination of an existing non-conformities will be corrected as applicable.

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

The existing site was significantly damaged by Hurricane Ian and although the property owner could build back under the 50% threshold, they desire to redevelop the site to meet today's life-safety best practices, and Florida Building Code and FEMA standards, which are much more stringent than regulation which existed when the Neptune Inn was originally constructed. The Applicant's wish to improve the site will provide a better resort product for the island, will increase the ad valorem tax base as well as provide additional bicycle parking, employment opportunities, public restaurant choices and an additional view corridor for the Town of Fort Myers Beach, its citizens and visitors.

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

The proposed change will not have any impact on the intent of this chapter (LDC). The CPD will encourage and promote the redevelopment of a devastated popular and historic hotel/motel into a high-quality amenity-rich resort that will be a benefit to the island. Through the rezoning process allowed under this chapter and subsequent development order review and approvals, the redeveloped Neptune Resort will not negatively impact the community's health, safety, and general welfare.

(4) The testimony of any applicant.

The professional experts retained by the applicant to support this petition will provide testimony at both the Local Planning Agency (LPA) hearing and the Town Council hearing.



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

The Town staff will review the petition and provide a written report to be presented to the local planning agency at their appropriate public hearing. The petition along with the staff's report and the LPA recommendation will then be presented to the Town Council at the designated public hearing.

(6) *The testimony of the public.*

The public will be provided with the opportunity to present testimony to the LPA and Town Council.

(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.*

As evidenced throughout this narrative, 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.

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

The request to rezone to a CPD is ideal for this location. The proposed CPD demonstrates sound planning principles and best management practices through redeveloping a resort use in a location proximate to the downtown core, with existing infrastructure, by providing an additional view corridor, enhanced landscaping, and additional buffering from adjacent properties. The property across Estero Boulevard is developed with commercial and retail uses and will provide a natural gradient in intensity of use from the proposed resort use on the subject property to the residences on the bay side of Estero Boulevard. The Commercial Resort zoning designation to the east and the Residential Multifamily to the west are compatible with the proposed development and will benefit from the improvements proposed to this site. The proposed resort with detailed development standards included in the CPD and the benefits outlined in this application will meet and exceed performance and locational standards.



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

All urban services were in place and utilized by the existing Neptune Inn and will remain in place to adequately serve the subject site. Additionally, adequate services were in place for well over 2,000 hotel/motel units prior to both Hurricanes Charley and Ian, but now approximately 400 hotel/motel units are online. This is a decline of almost 81%. 2020 Census data also shows that the overall permanent population in Fort Myers Beach has declined roughly 11% since the 1990 Census. The Town's population estimates associated with transient lodging also show a decline over the last 30 years and the percentage of the in-season population attributed transient lodging has declined from 24% to 18%.

- 1990 Peak Season Population Estimate – Lodging: 3,620 or 24% of the overall population.
- 2020 Peak Season Population Estimate – Lodging: 3,133 or 18% of the total population.

Based on the data outlined above, existing urban services are and will be available to support not only the proposed Neptune Resort but many other proposed projects that will assist in the rebuilding of Fort Myers Beach.

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

The proposed redevelopment will remove all existing structures beyond the 1978 Coastal Construction Control Line and will participate, as required, in the support of the beach renourishment/dune system repair and ongoing maintenance of the beaches. The proposed rezoning and subsequent redevelopment will ensure the protection and preservation of the beach/dune system.

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

The request is compatible with existing or planned commercial and multi-family uses adjacent to the subject redevelopment and will not cause damage, hazard, nuisance or other detriment to persons or property of Fort Myers Beach. A hotel/motel use was in existence prior to Hurricane Ian and the proposed improvements to the site create a new resort which is compatible with the surrounding uses. As discussed above, overall site design, setback, buffers, sand separation from adjacent properties will ensure compatibility.



(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.

Based on the TIS as prepared by TR Transportation, the proposed request will not place an undue burden upon existing transportation or other services and facilities and can be served by Estero Boulevard, which has the capacity to carry traffic generated by the development. Adequate transportation services, utilities and recreational facilities were in place for well over 2,000 hotel/motel units prior to both Hurricanes Charley and Ian. With now just over 400 hotel/motel units available for occupancy, there will continue to be available transportation capacity and level of service to not only support the proposed Neptune Resort, but many more future transient lodging units and other non-residential developments needed in the Town. Additionally, the Town is actively working to promote alternative modes of transportation and provide mobility solutions to mitigate peak seasonal traffic.

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

This request to rezone the subject property from Commercial Resort (CR) to Commercial Planned Development (CPD) will be presented at public hearings before the LPA and the Town Council consistent with LDC Sec. 34-216(a)(1). As demonstrated throughout this narrative and Exhibit A: "Review Criteria for Sec. 34-216(2)", the proposed CPD meets the following findings criteria under LDC Sec. 34-216(2):

- a. The proposed uses are appropriate to the location as they are compatible with surrounding uses and lodging in existence for years prior to Hurricane Ian.
- b. Sufficient safeguards are in place or will be provided through applicable special conditions within the rezoning approval document, to protect the public interest.
- c. Special conditions will be provided through the rezoning approval document as determined to be necessary.
- d. The proposed uses meet all specific requirements of the comprehensive plan that are relevant to the requested planned development, such as the following:
 1. Policies 4-B-5 and 4-C-3 on commercial rezonings in the "boulevard" category. See Section "C" within the above narrative.
 2. Policy 4-C-4 on building heights taller than the standard height limit. See Section "C" within the above narrative.
 3. Policy 4-C-8 on density transfers. Not Applicable.



4. Policy 4-E-1 on pre-disaster build back. See Section “C” within the above narrative.
5. Policy 7-J-2 on traffic impact analyses and potential design improvements that could offset traffic impacts. See Section “C” within the above narrative.

CONCLUSION

As detailed in the above narrative, supporting application documents, and the proposed MCP, the application demonstrates consistency and compliance with both the Fort Myers Beach Comprehensive Plan and Land Development Code. Addressing the unique characteristics of the subject property through the CPD process, elimination of prior non-conformities, and compliance with today's Florida Building Codes and FEMA standards, the developer will provide a project that is better, safer and will provide multiple public benefits.



NEPTUNE RESORT
COMMERCIAL PLANNED DEVELOPMENT
Rezoning Application

PROPOSED CONDITIONS/COMMITMENTS:

TRAFFIC MITIGATION

1. Pedestrian Amenity Nodes and Estero Boulevard Shade Trees

- a. Three Pedestrian Amenity Nodes will be provided on the subject property along the Estero Boulevard boundary. These nodes are meant to enhance the pedestrian experience and promote pedestrian activity. At a minimum, these nodes will include shade trees, public benches, bike racks, lighting and trash receptables. Additionally, The Neptune will provide shade trees along Estero Boulevard per the detailed Alternative Landscape Betterman Plan included as part of the CPD.

2. Public Parking

- a. The Neptune will provide an easement to the town and construct 16 public parking spaces along Delmar Ave. The Town will operate and maintain the public spaces and retain the right to charge and collect parking fees.

3. Don't Rent a Car (DRaC) Program (Generally consistent with the approved condition for Myerside - Ord. No. 24-15)

- a. To help mitigate traffic congestion, the owner and resort operator will promote various marketing initiatives that support and encourage all guests to use alternative modes of transportation rather than drive a vehicle to or while on the island. Such efforts will include:
 - A dedicated page on the resort website outlining and promoting alternative modes of transportation and informing guests on ways to reduce vehicular trips including:
 - Information on the walkability of the area and businesses of interest to guests within walking distance;
 - Bicycle rentals;
 - Ferry service;
 - Shuttle service;
 - Golf cart rental;
 - Car hailing and taxi service;
 - Fort Myers Beach's LeeTran "TROLLEE" and seasonal TRAM Service Schedules and Route Maps, and
 - Food delivery service



- Establish partnerships with businesses on the island, especially in the “Heart of the Island”, to provide incentives and discounts for guests. Hotel guests who do not drive onto the island will receive monetary discounts or vouchers for future stays and/or with participating local businesses, such as restaurants, bike, golf cart, and watersport rentals, and tour/tourism operators.
- The Neptune Resort will participate in a town-initiated traffic mitigation planning effort and along with other committed developments, will contribute their agreed upon fair share towards implementing mitigation measures, such as:
 - Off-island parking and transport initiatives, e.g. Water ferry/taxi discounts for those staying at the hotel.
 - Off-site parking availability identification systems.
 - Transit or Alternative Transportation Mode improvements.

4. Bicycles

- a. The property owner or resort operator will provide for rent or complementary bicycles with bike locks, and dedicated bike parking at the resort for hotel guests.
- b. Minimum of 32 bicycle parking spaces (multiple bike racks) for public use will be provided as shown on the Master Concept Plan.

5. Golf Cart Parking

- a. The Neptune will provide minimum of 6 dedicated golf cart parking spaces available to guests or the public.

DESIGN

6. Architecture & Site Design

- a. Final design must be generally consistent with renderings provided in addition to the Master Concept Plan.

7. View Corridors

- a. A minimum 25' view corridor will be provided along the eastern boundary of The Neptune property. No permanent or temporary structures, other than a controlled access gate/fence, landscaping and screening wall consistent with a Type C buffer, are allowed within the view corridor.
- b. The existing view corridor at Delmar Avenue will be enhanced and widened by setting back all buildings 20' from the western boundary. In combination, that will create a 70' view corridor along Delmar Avenue.

8. Beach Access

- a. The existing beach access at Delmar Avenue will be beautified and enhanced in coordination with the Town of Fort Myers Beach and The Garden Club. At a minimum the, The Neptune will install palm and/or canopy trees 20' on-center along the western side of Delmar Avenue from Estero Boulevard to the beach, and will provide public seating, a trash receptacle, foot rinse, and a bike rack.



9. Dune Plantings (Willing to provide more specifics if language provided by environmental staff)

- a. Pursuant to the temporary beach access, restoration and management easement granted to the town, The Neptune will work with Town staff to expedite the installation of dune plantings along the beachside portion of their property. The Neptune understands and values the importance of a well-established dune system for coastal protection, and as a habitat and resiliency feature.

10. Landscaping & Buffering

- a. Enhanced landscaping and buffering will be provided per the detailed Alternative Landscape Betterman Plan included as part of the CPD. This landscaping plan is meant to improve project aesthetics, provide shade trees along Estero Boulevard, and to create separation and buffering from adjacent properties.

FORT MYERS BEACH ELEMENTARY SCHOOL

11. Promoting the Beach School

- a. The property owner or resort operator will work with the Town, Fort Myers Beach Chamber of Commerce, the School District of Lee County, and Fort Myers Beach Elementary School to promote the opportunity for resort employees to enroll their children at Fort Myers Beach Elementary School. As part of the employee on-boarding and training process, educational materials will be provided to employees regarding enrollment and after school care programs.

AMENITIES

12. Beachfront Restaurant and Tiki Bar

- a. The public will have full access to the resort restaurant and Tiki Bar. A dedicated public access/entrance to the restaurant will be provided along Delmar Avenue for residents and island visitors.

13. Beach access bathroom facility (The Applicant is evaluating options to address this request.)

MISCELLANEOUS

14. Hurricane Parking

- a. Pursuant to issuance of a mandatory hurricane evacuation, The Neptune will allow local residents to park their vehicles, based on availability, on the second level of the parking garage. It is understood that the resort would be held harmless for any damages.



15. **Resident Rewards and Discounts** (Applicant evaluating rewards and discount options)

- a. The Neptune Resort will establish a local resident loyalty program (residency will be verified via government issued ID) that will provide rewards and discounts applicable to hotel stays, restaurant, and tiki bar visits.



October 12, 2023

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

**Subject: The Neptune Resort Commercial Planned Development (CPD) - Submittal #1
Rezone from Commercial Resort (CR) to Commercial Planned Development (CPD)**

Intake Team:

The Neighborhood Company is pleased to submit on behalf of our client, CHG Neptune Acquisitions, LLC, an Application for a Planned Development Rezone associated with the subject property located at 2310/2316/2320 Estero Blvd., Ft Myers Beach, FL 33931. The proposed request is to seek the following:

- Rezoning of the subject property to allow flexibility to redevelop the subject property and to build a transient lodging/resort with supporting commercial retail/services/restaurants.

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

1. Application Filing Fee
2. Application for Public Hearing
 - a. Additional Agent List
 - b. Approved Application Waiver for Submittal Requirements;(Exhibit 3-1)
 - c. List of Property Owners (Exhibit 5-1)
 - d. Explanatory Notes – Affidavit (Exhibit 5-3 Condominium)
 - e. Letter of Opinion (Exhibit 5-4)
 - f. Affidavit of Authorization & Letter of Authorization
 - g. Legal Description
 - h. Boundary Survey (Exhibit 6-2)
 - i. Area Location Map; (Exhibit 6-3)
 - j. Surrounding Property Owners List (Exhibit 6-6)
 - k. Surrounding Property Owners Map (Exhibit (6-7)
 - l. Surrounding Property Owners Mailing Labels
3. Supplement PH-D for a Planned Development
 - a. Request Narrative with Attachment(s)
 - b. Schedule of Deviations & Justifications
 - c. Master Concept Plan; PV & Felipe
 - d. Traffic Impact Statement
 - e. Architectural Elevations
 - f. Schedule of Uses
 - g. Development Standards



4. Supplemental Information
 - a. Stormwater Narrative
 - b. Public Outreach Summary
 - c. Landscaping/Planting Plan -To be provided under separate cover.
 - d. Dune Easement Agreement
 - e. Parking Analysis – To be provided under separate cover TR Transportation

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

Sincerely,

The Neighborhood Company

Kenrick Gallander, AICP
Vice President, Partner

Attachments: Application Submittal Requirements (listed above)

cc: Mark A. Damante
Noel Davies
File: # 220056.01.02



Neptune Resort Planned Development (PD)
Planned Development Rezone
Filing Fee

Town Fee Schedule 2022:

- Planned Development Rezone Base Fee = \$8,000 + \$1,000/additional acre ($\$8,000 \times 1.46AC$) = \$9,460

TOTAL: \$9,460



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: 2310/2316/2320 Estero Blvd., Ft Myers Beach, Florida 33931

STRAP Number: 19-46-24-W3-0430N.0001, 19-46-24-W3-0110A.0010; 19-46-24-W3-04300.00CE

Applicant: CHG Neptune Acquisitions, LLC Phone: 614-507-2203

Contact Name: Mark Damante Phone: _____

Email: mdamante@continental-realestate.com Fax: _____

Current Zoning District: Commercial Resort (CR)

Future Land Use Map (FLUM) Category: Boulevard

FLUM Density Range: 6 du/acre Platted Overlay: ☐ YES ☒ NO

ACTION REQUESTED

☐ Special Exception

☐ Variance

☐ Conventional Rezoning

☒ Planned Development ☒ Commercial ☐ Residential

☐ Master Concept Plan Extension

☐ Appeal of Administrative Action

☐ Vacation of Platted Right-of-way and Easement

☐ Other – cite LDC Section: _____

SUPPLEMENTAL FORM REQUIRED

PH-A

PH-B

PH-C

PH-D

PH-E

PH-F

PH-G

attach on separate sheet

PART I – General Information

A. Applicant*: CHG Neptune Acquisitions, LLC Phone: 614-507-2203

**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: 145 School St. Fort Myers Beach, FL 33931

Email: mdamante@continental-realestate.com Fax: _____

Contact Name: Mark Damante Phone: 614-507-2203



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

B. Relationship of Applicant to subject property:

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

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

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

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

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

Name: See Attached Sheet for Additional Names 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 CR 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: LDC Sec. 10-416 Description: See exhibit 3-1 for
complete waiver application package.

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

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, Mark A. Damante 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;

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

Mark A. Damante
Printed Name

STATE OF OHIO COUNTY OF FRANKLIN

The foregoing instrument was certified and subscribed before me by means of ☒ physical presence OR _____ online notarization, this 29 day of August, 2023, by _____, ☒ who is personally known to me OR ☐ who has produced

_____ as identification.

Notary Public, State of Ohio
My Commission Expires 01-21-25



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

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 (Affidavit of mailing & meeting minutes)
- ☒ 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

Joanne Leheney - 4716 Azalea Lane, Olmstead, Ohio 44070

Fractional Interest 9 of Unit 109N

Brian and Deborah Walsh

Fractional Interest 9 of Unit 115N

12510 Pinecrest Drive, Plymouth, Michigan, 48170

If the property is owned by a CORPORATION, list the officers and stockholders and the percentage of stock owned by each.

Name, Address and Office

Percentage of Stock

If the property is in the name of a TRUSTEE, list the beneficiaries of the trust with percentage of interest.

Name and Address

Percentage of Interest



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

If the property is in the name of a ^{Limited Liability Company} ~~GENERAL PARTNERSHIP OR LIMITED PARTNERSHIP~~,
list the names of the general and limited partners.

Name and Address

CHG Neptune Acquisitions, LLC
150 East Broad Street, Suite 800
Columbus, Ohio 43215

Percentage of Ownership

Fee simple owner of all
units and fractional interests,
except as listed above

If there is a CONTRACT FOR PURCHASE, whether contingent on this application or not,
and whether a Corporation, Trustee, or Partnership, list the names of the contract
purchasers below, including the officers, stockholders, beneficiaries, or partners.

Name, Address and Office

Percentage of Stock

Date of Contract: _____

If any contingency clause or contract terms involve additional parties, list all individuals
or officers, if a corporation, partnership, or trust.

Name

Address

For any changes of ownership or changes in contracts for purchase subsequent to the
date of the application, but prior to the date of final certificate of compliance, a
supplemental disclosure of interest must be filed.

The above is a full disclosure of all parties of interest in this application, to the best of
my knowledge and belief.

Signature

Printed Name



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

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

Signature

Title

Typed or Printed Name

Date

STATE OF _____ COUNTY OF _____

The foregoing instrument was certified and subscribed before me by means of ____ physical presence OR ☐ online notarization, this ____ day of _____, 20____, by _____, ☐ who is personally known to me OR ☐ who has produced _____ as identification.

Seal

Notary Public Signature

PART VI- Property Information

A. Legal Description:

STRAP: 19-46-24-W3-0110A.0010; 19-46-24-W3-04300.00CE

Property Address: 2310/2316/2320 Estero Blvd., Ft Myers Beach, Florida 33931

Is the subject property within a platted subdivision recorded in the official Plat Books of Lee County? ☒ No. Attach a legible copy of the legal description as Exhibit 6-1.

☐ Yes. Property identified in subdivision: _____

Book: _____ Page: _____ Unit: _____ Block: _____ Lot(s): _____

B. Boundary Survey:

☒ Attach a Boundary Survey of the property meeting the minimum standards of Chapter 61G17-6 of the Florida Administrative Code. A Boundary Survey must bear the raised seal and original signature of a Professional Surveyor and Mapper licensed to practice Surveying and Mapping by the State of Florida. Attach and label as Exhibit 6-2.



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

C. Property Dimensions:

Width (please provide an average width if irregular in shape) 318+/- feet

Depth (please provide an average width if irregular in shape) 294.2+/- feet

Frontage on street: 318+/- feet. Frontage on waterbody: 318+/- feet

Total land area: 2.46+/- ☒ acres ☐ square feet

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

Southeast of the intersection of Delmar Ave and Estero Blvd.

☒ Attach Area Location Map as Exhibit 6-3

E. Property Restrictions (check applicable):

☒ There are no deed restrictions and/or covenants on the subject property.

☐ A list of deed restrictions and/or covenants affecting the subject property is attached as Exhibit 6-4.

☐ A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 6-5.

F. Surrounding Property Owners (these items can be obtained from the Lee County Property Appraiser):

☒ Attach a list of surrounding property owners within 500 feet as Exhibit 6-6.

☒ Attach a map showing the surrounding property owners as Exhibit 6-7.

☒ Provide Staff with two (2) sets of surrounding property owner mailing labels.

G. Future Land Use Category (see Future Land Use Map):

☐ Low Density

☐ Marina

☐ Mixed Residential

☐ Recreation

☒ Boulevard

☐ Wetlands

☐ Pedestrian Commercial

☐ Platted Overlay



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

EXPLANATORY NOTES

Please do not print, copy and submit these instructions

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

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

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

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

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

Explanatory Notes – Part I

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

Explanatory Notes – Part II

Indicate the requested action.

Explanatory Notes – Part III

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

Explanatory Notes – Part IV

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



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

Explanatory Notes – Part V

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

Explanatory Notes – Part VI

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



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

line. Exhibit 6-2

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

Explanatory Notes – Part IV & V

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



**The Neptune Resort Planned Development (PD)
A Commercial Planned Development**

ADDITIONAL AGENTS LIST

Attorney

Noel Davies
Davies Duke, PLLC
1415 Panther Lane, Suite 442
Naples, FL 34109
239-216-2792
Noel.davies@daivesduke.com

Environmental Consultant

Shane Johnson
Passarella & Associates, Inc.
13620 Metropolis Ave., Suite 200
Fort Myers, FL 33912
239-274-0067
Shanej@passarella.net

Stormwater Management

JR Evans Engineering
9351 Corkscrew Road, Suite 102
Estero, FL 33928
239-405-9148
239-288-2537 Fax

Traffic Consultant

Ted Treesh
TR Transportation Consultants Inc.
2726 Oak Ridge Ct., Suite 503
Fort Myers, FL 33901
TBT@trtrans.net

Elizabeth Fountain, P.E.
Elizabeth@jrevansengineering.com

Surveyor

Stephen E. Berry, L.S.
BBLS Surveyors Inc.
8860 Terrene Court
Bonita Springs, FL 34135
239-597-1315



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: Neptune Resort
Applicant: CHG Neptune Acquisitions, LLC
Strap Number: 119-46-24-W3-0110A.0010; 19-46-24-W3-04300.00CE
Street Address: 2310/2316/2320 Estero Blvd., Ft Myers Beach, Florida 33931
Phone Number: 850-803-5621
Email: mdamante@continental-realestate.com



Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

Application for Waiver of Submittal Requirements

Specific requirements from which waiver is sought

Section Number	Requirement
LDC Sec. 10-473	Listed Species Survey

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.

See attached Waiver Narrative.

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] Sept. 13, 2023
Signature Date

Director's Decision ☒ Approved ☐ Denied

Comments:

[Signature] 9/14/23
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



**The Neptune Resort Planned Development (PD)
A Commercial Planned Development**

Waiver Justification Narrative

The property located at 2310/2316/2320 Estero Blvd., Fort Myers Beach, FL 33931 is the subject property for the application to be submitted for a rezoning request from Commercial Resort (CR) to Commercial Planned Development (CPD). This rezone request is necessary to allow the redevelopment of the Neptune Resort site due to the destruction which was caused by Hurricane Ian in September 2022.

The Neighborhood Company, on behalf of our client, CHG Neptune Acquisitions, LLC is submitting this Waiver Request from LDC Sec. 10-473 which requires a Listed Species Survey to be completed and submitted with the rezone request application. This request is made due to the property being previously developed and no native vegetation exists on the property.

It should be noted that the property owners have signed the Town's Beach Renourishment Easement and it is our understanding that there will be dune restoration with that effort.

This waiver was previously discussed with Chadd Chustz, Town of Fort Myers Beach Environmental Project Manager. Per his email response dated August 3, 2023 (Exhibit A), he was agreeable to this waiver of submittal requirement request. This waiver is requested due to the fact that the property was previously developed, and the redevelopment will be within the limits of the previously developed site. Therefore, there is no listed species to impact on this site.

Laura Tefft

From: Chadd Chustz <Chadd@fmbgov.com>
Sent: Thursday, August 3, 2023 8:27 PM
To: Laura Tefft
Cc: Pat Vanasse; Ken Gallander; Stephen Poposki; Sarah Propst; Jason Smalley
Subject: RE: PD Rezone Application Question

Yes, I am comfortable waiving the listed species survey requirement for the Neptune Property at 2310 Estero Blvd.

Chadd Chustz
Environmental Project Manager
Town of Fort Myers Beach

From: Laura Tefft <lt@theneighborhood.company>
Sent: Wednesday, August 2, 2023 12:00 PM
To: Chadd Chustz <Chadd@fmbgov.com>
Cc: Pat Vanasse <pv@theneighborhood.company>; Ken Gallander <kg@theneighborhood.company>
Subject: PD Rezone Application Question

Good A. ernoon Chad,

This is a follow up to my call this morning. We are working on the PD rezone application package for the Neptune Resort and wanted to know if a waiver request would be supported by staff for a listed species survey since the property was previously developed. The property is located at 2310 Estero Blvd.

Please feel free to contact me at 239-462-3452 when you are available to discuss this matter.

We look forward to speaking with you and appreciate your attention to this matter.

Sincerely,

Laura



THE NEIGHBORHOOD
COMPANY

-LAND PLANNING + DESIGN-

LAURA TEFFT, AICP

Land Use Planner
239.462.3452

www.theneighborhood.company

Note: Florida has a very broad public records law. Most communication(s) to or from Fort Myers Beach officials regarding Town business are public records available to the public and media upon request. Your email communications and email address may be subject to public disclosure.

Note: Florida has a very broad public records law. Most communication(s) to or from Fort Myers Beach officials regarding Town business are public records available to the public and media upon request. Your email communications and email address may be subject to public disclosure.



**The Neptune Resort Planned Development (PD)
A Commercial Planned Development**

**Exhibit 5-1
Property Owners List**

19-46-24-W3-0110A.0010
CHG Neptune Acquisitions LLC
150 E. Broad St., STE 800
Columbus, OH 43215

19-46-24-W3-04300.00CE
Neptune Inn Condo Association Inc.
P. O. Box 508
Richmond, IL 60071

19-46-24-W3-0430N.0001
CHG Neptune Acquisitions LLC
150 E. Broad St., STE 800
Columbus, OH 43215

AFFIDAVIT OF MAILING

NOTICE OF APPLICATION FOR PUBLIC HEARING

STATE OF FLORIDA)
) SS:
COUNTY OF LEE)

Noel J. Davies ("Affiant"), being duly sworn, deposes and says that:

1. That Affiant has knowledge of the facts set forth in this Affidavit.
2. That on the 19th day of September, 2023, Affiant did mail a Notice of Application for Public Hearing ("Notice"), a copy of which is attached hereto as **Exhibit "A"**.
3. The Notice was mailed to each addressee listed on **Exhibit "B"** by enclosing the same in an envelope and depositing it in an official depository under the exclusive care and custody of the United States Postal Service by regular and certified mail.

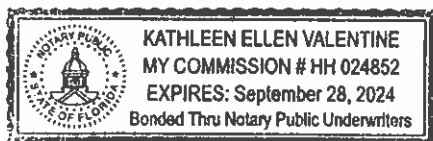


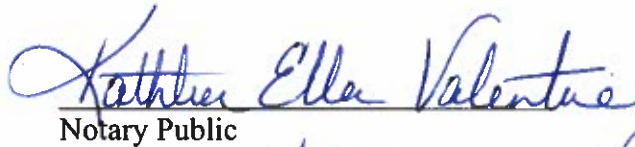
NOEL J. DAVIES

STATE OF FLORIDA)
) ss:
COUNTY OF LEE)

The foregoing instrument was acknowledged before me by means of [☒] physical presence or [☐] online notarization, this 20th day of September, 2023, by Noel J. Davies. He [☒] is personally known to me or [☐] has produced a driver's license as identification.

Notary Seal:





Notary Public

Printed Name: Kathleen Ellen Valentine

My Commission Expires: 9/28/2024

EXHIBIT "A"

NOTICE OF APPLICATION OF PUBLIC HEARING

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED
AND REGULAR U.S. MAIL

NOTICE OF APPLICATION FOR PUBLIC HEARING

As a fractional owner of a unit within The Neptune, a Condominium, you are entitled to receive the notice provided herein. Please be advised that a formal application for Public Hearing will be submitted to the Town of Fort Myers Beach seeking approval for rezoning from CR to Commercial PD for the following described property:

Site Address:	2310/2316/2320 Estero Blvd., Ft Myers Beach, Florida 33931 (Neptune Inn)
STRAP Number:	19-46-24-W3-0110A.0010; 19-46-24-W3-04300.00CE and 19-46-24-W3-0430N.0001
Applicant:	CHG Neptune Acquisitions, LLC
Current Zoning District:	Commercial Resort (CR)
Current Future Land Use	
Map (FLUM) Category:	Boulevard
Current FLUM Density Range:	6 du/acre
Action Requested:	Planned Development
Rezoning:	CR to Commercial PD

Below is a location map of the parcel:

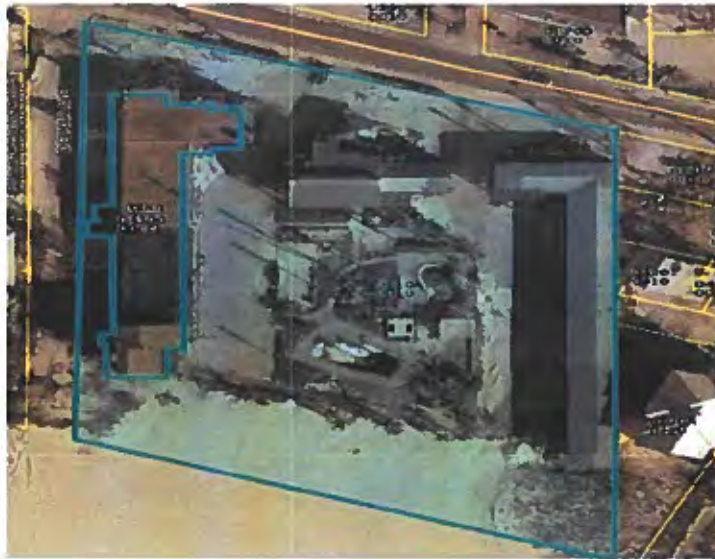


EXHIBIT "B"

LIST OF OWNERS

Joanne Leheney	and	Deborah Leheney
4716 Azalea Lane		28063 Andorra Drive
Olmstead, OH 44070		North Olmstead, OH 44070

Brian and Deborah Walsh
12510 Pinecrest Dr
Plymouth, MI 48170

THE NEPTUNE INN CONDOMINIUM ASSOCIATION, INC.
REGULAR BOARD MEETING MINUTES
Monday, September 18, 2023
Neptune Resort, 2310 Estero Blvd, Fort Myers Beach

The following are the minutes of the Board of Directors meeting for the Neptune Inn Condominium Association, Inc., a Florida corporation (hereafter “Association”) conducted pursuant to the By-Laws

1. Roll call made by Mark Damante on behalf of CHG Neptune Acquisitions
Present:
Adam Valente, Director
Mark Damante, Director
Adam Giere, Director
Sean Williams
Erin Atwood, General Manager of the Neptune Resort
2. Quorum of Association Members (representatives of CHG Neptune Acquisitions, LLC, holding 1728/1734 weeks ~99.65%)
Mark Damante certified a quorum of Association members was present
3. Quorum of Directors
Mark Damante certified all three Directors are present
4. Call to Order made by Mark Damante at 2:00 PM
5. Proof of Notice
Sean Williams produced evidence of proper notice sent via email on 9/14/23 to owners and posted on the property on 9/13/23 in accordance with FL statutes and recorded Condominium Documents (attached)
6. Consider and take action on submittal of formal application for Public Hearing to the Town of Fort Myers Beach seeking approval for rezoning from CR to Commercial PD for 2310/2316/2320 Estero Blvd., Ft Myers Beach, Florida 33931 (Neptune Inn)
As counted by Sean Williams, CHG Neptune Acquisitions, LLC placed 1728 votes each for
Mark Damante
Adam Valente
Adam Giere
7. Adjournment
Mark Damante made a motion to adjourn the meeting. Adam Giere seconded the motion and it passed unanimously.

Matthew Bernholc

From: Erin Atwood <eatwood@springboardhospitality.com>
Sent: Wednesday, September 13, 2023 8:54 PM
To: Matthew Bernholc
Subject: Re: [External] Neptune Resort - Notice for Regular Meeting of Board of Directors

Hi Matt

Pls see the pic attached showing the sign posted.

If you need anything else pls let me know.

Erin

THE NEPTUNE INN CONDOMINIUM ASSOCIATION, INC.

Notice for the Regular Meeting of the Board of Directors

In-Person Attendance or via Teams Video Call
(Teams Meeting invite to follow via email. Login details attached)

Date: September 18, 2023
Time: 2:00 p.m. Eastern Time
Location: 3301 Bonita Beach Road, Suite 213, Bonita Springs, FL 34134

AGENDA

- A. Call to Order
- B. Establish Quorum
- C. Proof of Notice of Meeting
- D. New Business
 - a. Vote on withdrawal of formal application for Public Hearing to the Town of Fort Myers Beach seeking approval for rezoning from CR to Commercial PD for 3301 Bonita Beach Road, Suite 213, Bonita Springs, Florida 34134 (Neptune Inn)
- E. Adjourn

Respectfully submitted on behalf of The Neptune Inn Condominium Association

Location: Microsoft Teams Meeting
Start: Mon 9/18/2023 2:00 PM
End: Mon 9/18/2023 2:30 PM
Recurrence: (none)
Meeting Status: Meeting organizer

Microsoft Teams meeting

Join on your **computer, mobile app or room device**
[Click here to join the meeting](#)

Meeting ID: 270 541 254 859
Passcode: WwC4sk
[Download Teams](#) | [Join on the web](#)

Or call in (audio only)
+1 614-706-7664 802 083 947# United States, Columbus
Phone Conference ID: 802 083 947#
[Find a local number](#) | [Reset PIN](#)

[Learn More](#) | [Meeting options](#)





Sent from my iPhone

Matthew Bernholc

From: Matthew Bernholc
Sent: Thursday, September 14, 2023 1:30 PM
To: brian; Dwalsh34@hotmail.com
Cc: Mark Damante; Adam Valente; Adam Giere; 'Sean Williams'
Subject: THE NEPTUNE INN CONDOMINIUM ASSOCIATION - NOTICE OF BOARD OF DIRECTORS MEETING
Attachments: Neptune Resort - Notice for Regular Meeting of Board of Directors.pdf

Brian and Debbie,

Thank you for taking part in the Teams Meeting earlier today. As mentioned, we have scheduled an upcoming Regular Board Meeting of The Neptune Inn Condominium Association, Inc., which will be held on **September 18, 2023 at 2:00 p.m. Eastern Time at 3301 Bonita Beach Road, Suite 213, Bonita Springs, FL 34134** for the purpose of approving the submittal of an application for rezoning to the Town of Fort Myers Beach. A copy of the Meeting Notice is attached. Please let us know if you will be able to attend in person or via the Teams Meeting video call. The Teams Meeting invite will follow this email.

Thank you,

Matt Bernholc
Counsel
Continental Real Estate Companies
150 East Broad Street, Suite 800
Columbus, Ohio 43215
mbernholc@continental-realestate.com
614-883-1005 (direct dial)

Matthew Bernholc

From: Matthew Bernholc
Sent: Thursday, September 14, 2023 1:30 PM
To: dleheney@gmail.com
Cc: Mark Damante; Adam Valente; Adam Giere; 'Sean Williams'
Subject: THE NEPTUNE INN CONDOMINIUM ASSOCIATION - NOTICE OF BOARD OF DIRECTORS MEETING
Attachments: Neptune Resort - Notice for Regular Meeting of Board of Directors.pdf

Joanne and Debbie:

I hope you are doing well. We are still awaiting your reply on scheduling an informal phone/Teams Meeting video call regarding future plans for The Neptune Resort. Please let us know your availability for the call as soon as possible. We have also scheduled an upcoming Regular Board Meeting of The Neptune Inn Condominium Association, Inc., which will be held on **September 18, 2023 at 2:00 p.m. Eastern Time at 3301 Bonita Beach Road, Suite 213, Bonita Springs, FL 34134** for the purpose of approving the submittal of an application for rezoning to the Town of Fort Myers Beach. A copy of the Meeting Notice is attached. Please let us know if you will be able to attend in person or via the Teams Meeting video call. The Teams Meeting invite will follow this email.

Thank you,

Matt Bernholc
Counsel
Continental Real Estate Companies
150 East Broad Street, Suite 800
Columbus, Ohio 43215
mbernholc@continental-realestate.com
614-883-1005 (direct dial)

Noel J. Davies, Esq.
239.216.2792
Noel.Davies@DaviesDuke.com

September 19, 2023

Becky Vose
Vose Law Firm
Town of Fort Myers Beach Attorney
2525 Estero Boulevard
Fort Myers, Beach, FL 33931

Re: CHG Neptune Acquisitions, LLC – Application for Public Hearing - Rezoning

Dear Ms. Vose:

Please be advised that I represent CHG Neptune Acquisitions, LLC regarding their Application for Public Hearing pertaining to their request for rezoning from CR to Commercial PD. To the best of my knowledge, I am providing this letter of opinion in accordance with LDC Section 34-201(a)(1)b.3.

I have reviewed the following documents pertaining to The Neptune, a Condominium:

1. Declaration of Condominium;
2. Amendment to Declaration of Condominium, and
3. Second Amendment to Declaration of Condominium.

Based on my examination of the above documents, I conclude, to the best of my knowledge, that the act of applying or petitioning the Town of Fort Myers Beach violates none of the provisions therein, or any federal or state laws regulating condominiums or timeshare plans, or the rights of any of the nonparticipating unit owners, as derived from such documents and laws, and that approval of the requested act by the Town of Fort Myers Beach would violate no such rights.

Sincerely,



Noel J. Davies, Esq.
DAVIES DUKE, PLLC



THE NEIGHBORHOOD
COMPANY

I Mark A. Damante, as Vice President of CHG Neptune Acquisitions, LLC owner of property located at 2310 Estero Blvd., Fort Myers Beach, FL, identified by STRAP Number 19-46-24-W3-0110A.0010, hereby authorizes The Neighborhood Company to serve as owners' agent for the Town of Ft. Myers Beach Planned Development Rezone Application regarding the above-referenced property.

CHG Neptune Acquisitions, LLC.

By: [Signature]
Print Name: Mark A. Damante
Title: Vice President

STATE OF OHIO
COUNTY OF FRANKLIN

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this 29 day of August, 2023 by Mark A. Damante, as Vice President of CHG Neptune Acquisitions, LLC, on behalf of the company(s), who ☐ is personally known to me OR ☐ has produced a(n) driver's license as identification.

(NOTARY STAMP)

[Signature]
Notary Public, State of Ohio
Print Name: _____
My Commission Expires: _____



SHAYLA MOFFITT
Notary Public, State of Ohio
My Commission Expires 01-21-25



**NEPTUNE RESORT COMMERCIAL PLANNED DEVELOPMENT (CPD)
Planned Development Rezone**

EXHIBIT 6-1: STRAP # & LEGAL DESCRIPTION

- **STRAP #:** 19-46-24-W3-0430N.0000, 19-46-24-W3-0110A.0010, & 19-46-24-W3-04300.00CE

- **LEGAL DESCRIPTION**

A PORTION OF LOTS 1-10, BLOCK A, W.W. WATSONS SUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 5, AT PAGE 67 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, AND A PORTION OF LOTS 1 THROUGH 6 BLOCK B, AND LOTS 1 THROUGH 7 BLOCK A, BEACH ESTATES ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 6, AT PAGE 68 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE NORTHEASTERLY CORNER OF LOT 6, BLOCK A OF SAID BEACH ESTATES; THENCE RUN S00°01'41"E, ALONG THE EASTERLY LINE OF SAID BEACH ESTATES FOR A DISTANCE OF 374.80 FEET TO THE SOUTHEASTERLY CORNER OF LOT 1, BLOCK A OF SAID BEACH ESTATES; THENCE RUN N68°38'37"W, ALONG THE SOUTHEASTERLY LINE OF SAID BEACH ESTATES AND THE SOUTHERLY LINE OF SAID W.W. WATSONS SUBDIVISION A DISTANCE OF 306.87 FEET TO THE SOUTHWESTERLY CORNER OF LOT 1, BLOCK A, OF SAID W.W. WATSONS SUBDIVISION; THENCE RUN N22°01'41"W, ALONG THE WESTERLY LINE OF SAID W.W. WATSONS SUBDIVISION FOR A DISTANCE OF 375.05 FEET TO THE NORTHWESTERLY CORNER OF LOT 10, BLOCK A, OF SAID W.W. WATSONS SUBDIVISION; THENCE RUN S68°36'00"E, ALONG THE NORTHERLY LINE OF SAID W.W. WATSONS SUBDIVISION AND THE NORTHERLY LINE OF SAID BEACH ESTATES FOR A DISTANCE OF

306.96 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBES AN AREA OF APPROXIMATELY 107,107 SQUARE FEET OR 2.46 ACRES OF LAND.

SUBJECT TO EASEMENTS, RESTRICTIONS AND RESERVATIONS OF RECORD.



Neptune

Project Location

FILE NO:	220037.01.01
DRAWN BY:	F.L.
DESIGN BY:	P.V.
DATE:	FEBRUARY 2023

List Size: 150

OwnerName	OwnerName2	MailAddress	MailAddress2	MailCity	MailState	MailZip	MailCountry
CHG NEPTUNE ACQUISITIONS LLC	MARK A DAMANTE	150 E BROAD ST	STE 800	COLUMBUS	OH	43215	
2201 ESTERO LLC		8360 SW 112TH ST		MIAMI	FL	33156	
2201 ESTERO LLC		8360 SW 112 ST		MIAMI	FL	33156	
2201 ESTERO LLC		8360 SW 112 ST		MIAMI	FL	33156	
BROWN LENNDA JOE TR		16210 LARSEN AVE		GOWEN	MI	49326	
JMP&W LLC		7906 ARIEL WAY		MCLEAN	VA	22102	
KOSTER RODNEY & THERESE		880 3RD ST		FORT MYERS BEACH	FL	33931	
MATTHEWS JOHN MORRIS		221 S ADAMS ST		WEST CHESTER	PA	19382	
FERRARO KIM A +		800 BENJAMIN FRANKLIN DR #208		SARASOTA	FL	34236	
TOLLETTE JEFFREY R &		1959 135TH AVE NW		ANDOVER	MN	55304	
B + B CASH GROCERY STORES INC		PO BOX 1808 #78		TAMPA	FL	33601	
BC MASTERPIECE LLC		12601 LAS OLAS LANE # 123		FORT MYERS	FL	33919	
BIRKART HANS +		12601 LAS OLAS LN #123		FORT MYERS	FL	33919	
DEWESE BRUCE R +		14685 WESTON RD		WESTON	OH	43569	
WHITE SWAN INVESTMENTS LLC		148 BAYLOR AVE		HILLSDALE	NJ	7642	
COULTER BEAU & TRACY R		760 STONEGATE PASS		COLGATE	WI	53017	
1249 ESTERO ADVENTURES LLC		290 BAHIA VIA		FORT MYERS BEACH	FL	33931	
DYE GARY A & LOIS +		S53 W31115 OLD VILLAGE RD		MUKWONAGO	WI	53149	
DEWEY KEITH CARTER & AMANDA		118 FAIRWEATHER LN		FORT MYERS BEACH	FL	33931	
MAIER SIMEON E II		1999 92ND ST		CALEDONIA	MI	49316	
WOAD LLC		1999 92ND ST		CALEDONIA	MI	49316	
WD RETREAT LTD		330 LOUISIANA AVE		PERRYSBURG	OH	43551	
WD RETREAT LTD		330 LOUISIANA AVE		PERRYSBURG	OH	43551	
KATTA DAN II LLC		5040 SE BENT WOOD DR		STUART	FL	34997	
CHITTENDEN DALE R & JOANN TR		15925 138TH AVE		SPRING LAKE	MI	49456	
WOLFPACK PROPERTIES LLC		567 SIMBURY ST		COLUMBUS	OH	43228	
WOLFPACK PROPERTIES LLC		567 SIMBURY ST		COLUMBUS	OH	43228	
NANKO RAYMOND S		919 WEST JACKSON ST		MUNCIE	IN	47305	
YANKE RONALD		328 BUCKLIN ST		LA SALLE	IL	61301	
YANKE RONALD		328 BUCKLIN ST		LA SALLE	IL	61301	
THOMAS E SWANBECK PA		2450 ESTERO BLVD		FORT MYERS BEACH	FL	33931	
YANKE RONALD		328 BUCKLIN ST		LA SALLE	IL	61301	
EMPIRE HOLDING CORP TR		PO BOX 19492		INDIANAPOLIS	IN	46219	
EMPIRE HOLDING CORP TR	RAINBOW REALTY GROUP INC	6104 E 21ST ST		INDIANAPOLIS	IN	46219	
FRENCH EDWIN T III		PO BOX 22538		INDIANAPOLIS	IN	46222	
FRENCH EDWIN T III		PO BOX 22538		INDIANAPOLIS	IN	46222	
COASTAL COTTAGES LLC		6850 W SOUTH LAKE GAGE DR		ANGOLA	IN	46703	
COASTAL COTTAGES LLC		6850 W SOUTH LAKE GAGE DR		ANGOLA	IN	46703	
TEZAK HELEN C TR		50 CHAPEL ST #4		FORT MYERS BEACH	FL	33931	
GOLDBERG GENNIE M TR		11793 ROYAL TEE CT		CAPE CORAL	FL	33991	
FMB COTTAGE LLC		2440 COTTAGE AVE		FORT MYERS BEACH	FL	33931	
BONFIGLI ANDREW & SUSAN		2434 COTTAGE AVE		FORT MYERS BEACH	FL	33931	
PAISLEY LLC		414 MARKET ST		IOWA CITY	IA	52245	
MCLAUGHLIN SAMUEL R &		4700 EDEN PARK DR		ZANESVILLE	OH	43701	
SCHLICHTE EDITH		61 MANGO ST		FORT MYERS BEACH	FL	33931	
CHAPEL BY THE SEA		PO BOX 2997		FORT MYERS BEACH	FL	33932	
GERSTENHABER RAM TR	BEACH CONNECTION	2401 ESTERO BLVD		FORT MYERS BEACH	FL	33931	
CZULEWICZ MARYLU TR		4281 ORANGE RIVER LOOP RD		FORT MYERS	FL	33905	
BOREK TINA D		1605 PENNSAUKEN ST		CINNAMINSON	NJ	8077	
MANGO STREET LLC		126 MANGO ST		FORT MYERS BEACH	FL	33931	
PAOLERCIO WILLIAM		2367 JIM HENRY RD		DANDRIDGE	TN	37725	
MERIDIAN ENTERPRISES II LLC		2248 OLD STATE RD		BEAUFORT	MO	63013	
BURNS PROPERTY MANAGEMENT LLC		536 SONOMA DR		BOLINGBROOK	IL	60490	
ROTH ALLAN T & RHONDA K		12232 JAY CIR NW		COON RAPIDS	MN	55448	
STALTER RICHARD		169 CHAPEL ST		FORT MYERS BEACH	FL	33931	
YANKE RONALD		328 BUCKLIN ST		LA SALLE	IL	61301	
MEEHAN PATRICIA LYNN		293 ELM ST W		SUDBURY	ON	P3C 1V6	CANADA
BIG MARLIN PROPERTIES LLC		4704 VINCENNES BLVD		CAPE CORAL	FL	33904	
PFAFFINGER HEDWIG TR	JAMES SCHULTZ	1030 SPINDLE HILL RD		WOLCOTT	CT	6716	
RYAN JAMES		139 CHAPEL ST		FORT MYERS BEACH	FL	33931	
CHAPEL BY THE SEA		PO BOX 2997		FORT MYERS BEACH	FL	33932	
1249 ESTERO ADVENTURES LLC		290 BAHIA VIA		FORT MYERS BEACH	FL	33931	
1249 ESTERO ADVENTURES LLC		290 BAHIA VIA		FORT MYERS BEACH	FL	33931	
1249 ESTERO ADVENTURES LLC		290 BAHIA VIA		FORT MYERS BEACH	FL	33931	
BESSEY JAMES D		2 BARTLETT RD		NANTUCKET	MA	2554	
TOMMAR INC		9616 ROUND LAKE BLVD		WHITE LAKE	MI	48386	
SOTO JESUS +		PO BOX 366265		BONITA SPRINGS	FL	34136	
WICKETT LLOYD A &		5647 SHADDELEE LN W		FORT MYERS	FL	33919	

WICKETT LLOYD A &		5647 SHADDELEE LN W		FORT MYERS	FL	33919	
ROTH ALLAN		12232 JAY CIRCLE		COON RAPIDS	MN	55448	
ROTH ALLAN T		12232 JAY CIRCLE		COON RAPIDS	MN	55448	
SEA BREEZE ESTATES CONDO ASSN		325 W LOCUST LN		KENNETT SQUARE	PA	19348	
71 MANGO LLC		15440 CATALPA COVE LANE		FORT MYERS	FL	33908	
71 MANGO LLC		15440 CATALPA COVE LN		FORT MYERS	FL	33908	
NEPTUNE INN CONDO ASSN INC	BLUE VISTA CAPITAL LLC	PO BOX 508		RICHMOND	IL	60071	
PALMA FRED JR & RHONDA +		139 S PARK BLVD		GLEN ELLYN	IL	60137	
MAUGANS ALICE B		12890 SPENCER STREET		FORT MYERS	FL	33908	
MCMILLAN MICHAEL		150 PEARL ST		FORT MYERS BEACH	FL	33931	
MORIONDO LARRY E TR		15482 LAWRENCE 2130		MOUNT VERNON	MO	65712	
LANGLEY COLIN M TR		130 PEARL ST		FORT MYERS BEACH	FL	33931	
LANGLEY COLIN M & DIONE C TR		130 PEARL ST		FORT MYERS BEACH	FL	33931	
HORKAN CHAD M TR		1189 FOUR WINDS WAY		HARTLAND	WI	53029	
PAREDERO CLEMENTE & MARY L		140 PEARL ST		FORT MYERS BEACH	FL	33931	
NEAF JAMES C		125 PEARL ST		FORT MYERS BEACH	FL	33931	
2085 ESTERO LLC		2001 ESTERO BLVD		FORT MYERS BEACH	FL	33931	
WILLIAMS JENNILEE R +		1913 SE 12TH ST		CAPE CORAL	FL	33990	
ERICKSON CELIA		131 PEARL ST		FORT MYERS BEACH	FL	33931	
MORLOCK WADE T &		10317 SE 28TH PL		BEAUX ARTS	WA	98004	
BUICE NANCY HURD TR		15174 PORTSIDE DR		FORT MYERS	FL	33908	
PEARL STREET PROPERTY HOLDINGS		PO BOX 2611		FORT MYERS BEACH	FL	33931	
JENKINS WAYNE +		829 NORWEST RD STE 421		KINGSTON	ON	K7P 2N3	CANADA
DIAMONDHEAD BEACH RESORT LLC		2000 ESTERO BLVD		FORT MYERS BEACH	FL	33931	
2001 ESTERO LLC		400 BAYLAND RD		FORT MYERS BEACH	FL	33931	
NIESE LYNNE A		13781 RD X		LEIPSIK	OH	45856	
SURFUS JOHN D		PO BOX 2415		FORT MYERS BEACH	FL	33932	
ALFARO-MALDONADO LINDA		121 DELMAR AVE		FORT MYERS BEACH	FL	33931	
127 DELMAR LLC		7449 CEDAR RIDGE DR		PORTLAND	MI	48875	
FRIEDRICH CHARLES DAVID +		114 FAIRBANKS ST		SANTA CRUZ	CA	95060	
DELMAR BROTHERS LLC		135 DELMAR AVE		FORT MYERS BEACH	FL	33931	
MARTIN RICHARD E &		11034 E KRAMER RD		BOWLING GREEN	OH	43402	
BAISCH GAYLE LYNN +		1443 CLARET CT		FORT MYERS	FL	33919	
CBD LLC		414 E MARKET ST		IOWA CITY	IA	52245	
SURF SONG CONDO ASSOC INC		2088 ESTERO BLVD UNIT 2H		FORT MYERS BEACH	FL	33931	
POLYNESIAN VACATION VILLAS		2096 ESTERO BLVD		FORT MYERS BEACH	FL	33931	
CHG NEPTUNE ACQUISITIONS LLC	MARK A DAMANTE	150 E BROAD ST	STE 800	COLUMBUS	OH	43215	
BENNETT ROBERT W		5889 WATSON RD		EAU CLAIRE	MI	49111	
R DOUGLAS HOVENDEN TRUST +		2088 ESTERO BLVD #2A		FORT MYERS BEACH	FL	33931	
JOHNSON ROGER A TR		2088 ESTERO BLVD APT 2B		FORT MYERS BEACH	FL	33931	
KAUFMAN CHRISTINE V TR		26442 BRICK LN		BONITA SPRINGS	FL	34134	
HILL DOUGLAS E & KAYLA K		43 ONONDAGA ST		SKANEATELES	NY	13152	
HAMILTON ROGER A & JANE M		580 WRENCROFT CT		LEBANON	OH	45036	
OLIVER KENT D & JO-ANN A		18900 NALLE RD		NORTH FORT MYERS	FL	33917	
MENDENHALL MURRAY J III &		10407 WOODLAND RIDGE WEST		FORT WAYNE	IN	46804	
RAUSHEL JAN R TR		103 SOUTH DR		AITKIN	MN	56431	
WALCHLI JAMES		2088 ESTERO BLVD #3B		FORT MYERS BEACH	FL	33931	
FERGUS CHARLOTTE TR		2088 ESTERO BLVD #3C		FORT MYERS BEACH	FL	33931	
JACKSON JOHN K TR		1400 N 100 E		HARTFORD CITY	IN	47348	
MIZEL WILLIAM C & THERESA L		2088 ESTERO BLVD UNIT 4B		FORT MYERS BEACH	FL	33931	
DUNDEE NICHOLAS J & LINDA M		2088 ESTERO BLVD #3F		FORT MYERS BEACH	FL	33931	
SURF SONG CARNEY LLC		2809 GREAT NORTHERN LOOP #100		MISSOULA	MT	59808	
HAPKIEWICZ ANNIS M TR		2088 ESTERO BLVD # 4A		FORT MYERS BEACH	FL	33931	
MIZEL WILLIAM C & THERESA L		2088 ESTERO BLVD 4B		FORT MYERS BEACH	FL	33931	
COURRIER DAWN LARAE		16005 25TH AVE N		PLYMOUTH	MN	55447	
RAVENSCROFT JEAN A TR		69525 CHRISTIANN CREEK DR		EDWARDSBURG	MI	49112	
KEITH THOMAS E & EILEEN M		5853 HACKER DR		WEST BEND	WI	53095	
THREE SISTERS MANAGEMENT		3340 WELLINGTON BLVD		CRAWFORDSVILLE	IN	47933	
MAZER BERNARD A & DIANNE M TR		W22157455 CAROL DRIVE		MUSKEGO	WI	53150	
WILLIAMS MARY J TR		11131 WOODS BAY LN		INDIANAPOLIS	IN	46236	
FRANTZ M RYAN & ERIKA E		5480 LARISSA PL		CARMEL	IN	46033	
FRIEDMAN JEFFREY &		2013 WILDERNESS TR		SPRINGFIELD	IL	62711	
DECONCINI CHRISTOPHER M TR		45281 RED PINE LOOP		PERHAM	MN	56573	
SCHOLTZ STEPHEN A		124 KINGSWAY CRESCENT		TORONTO	ON	M8X 2S2	CANADA
NELSON ROBERT A TR		1302 STANFIELD ST		SOUTH BEND	IN	46617	
STENSRUDE LARRY C TR		2088 ESTERO BLVD UNIT 5G		FORT MYERS BEACH	FL	33931	
LYONS KRISTIN E		2096 ESTERO BLVD #1		FORT MYERS BEACH	FL	33931	
RAGAN JOHN		5600 REVERE RUN		CANFIELD	OH	44406	
JONES FRANK TR		2010 46TH AVE #2		GREELEY	CO	80634	
SAVERY TIMOTHY LYDEN &		406 SW 30TH AVE		CAPE CORAL	FL	33991	

MOGLIA SANDRA		17 DIVISION ST W APT 2		GREENWICH	CT	6830
DUNFEE ALLEN MARK & SUSAN M		402 SW 30TH AVE		CAPE CORAL	FL	33991
PARILLA DAVID R TR		1335 SANTOS RD		FORT MYERS BEACH	FL	33931
MALOTT PATRICK T		7840 MELBOURNE RD		SAGINAW	MI	48604
BERMEL STEVEN		900 PARK AVE		MUSCATINE	IA	52761
LEINDECKER ROBERT JOHN		6961 WILLOW HWY		GRAND LEDGE	MI	48837
STRONG DANIEL		3610 BAYNARD DR		PUNTA GORDA	FL	33950
GABRIEL RUSTIE L +		6961 WILLOW HWY		GRAND LEDGE	MI	48837
LOFFRENO CHRISTIAN P		17916 GREY HERON CT		FORT MYERS BEACH	FL	33931
LOFFRENO CHRISTIAN P		17916 GREY HERON CT		FORT MYERS BEACH	FL	33931
LOFFRENO CHRISTIAN P		17916 GREY HERON CT		FORT MYERS BEACH	FL	33931
2000 ESTERO BOULEVARD	CORE HOTELS & RESORTS LLC	DIAMONDHEAD ISLAND BCH RESORT	2000 ESTERO BLVD	FORT MYERS BEACH	FL	33931

2201 ESTERO LLC
8360 SW 112TH ST
MIAMI FL 33156

2201 ESTERO LLC
8360 SW 112 ST
MIAMI FL 33156

2201 ESTERO LLC
8360 SW 112 ST
MIAMI FL 33156

BROWN LENNDA JOE TR
16210 LARSEN AVE
GOWEN MI 49326

JMP&W LLC
7906 ARIEL WAY
MCLEAN VA 22102

KOSTER RODNEY & THERESE
880 3RD ST
FORT MYERS BEACH FL 33931

MATTHEWS JOHN MORRIS
221 S ADAMS ST
WEST CHESTER PA 19382

FERRARO KIM A +
800 BENJAMIN FRANKLIN DR #208
SARASOTA FL 34236

TOLLETTE JEFFREY R &
1959 135TH AVE NW
ANDOVER MN 55304

B + B CASH GROCERY STORES INC
PO BOX 1808 #78
TAMPA FL 33601

BC MASTERPIECE LLC
12601 LAS OLAS LANE # 123
FORT MYERS FL 33919

BIRKART HANS +
12601 LAS OLAS LN #123
FORT MYERS FL 33919

DEWESE BRUCE R +
14685 WESTON RD
WESTON OH 43569

WHITE SWAN INVESTMENTS LLC
148 BAYLOR AVE
HILLSDALE NJ 07642

COULTER BEAU & TRACY R
760 STONEGATE PASS
COLGATE WI 53017

1249 ESTERO ADVENTURES LLC
290 BAHIA VIA
FORT MYERS BEACH FL 33931

DYE GARY A & LOIS +
S53 W31115 OLD VILLAGE RD
MUKWONAGO WI 53149

DEWEY KEITH CARTER & AMANDA
118 FAIRWEATHER LN
FORT MYERS BEACH FL 33931

MAIER SIMEON E II
1999 92ND ST
CALEDONIA MI 49316

WOAD LLC
1999 92ND ST
CALEDONIA MI 49316

WD RETREAT LTD
330 LOUISIANA AVE
PERRYSBURG OH 43551

WD RETREAT LTD
330 LOUISIANA AVE
PERRYSBURG OH 43551

KATTA DAN II LLC
5040 SE BENT WOOD DR
STUART FL 34997

CHITTENDEN DALE R & JOANN TR
15925 138TH AVE
SPRING LAKE MI 49456

WOLFPACK PROPERTIES LLC
567 SIMBURY ST
COLUMBUS OH 43228

WOLFPACK PROPERTIES LLC
567 SIMBURY ST
COLUMBUS OH 43228

NANKO RAYMOND S
919 WEST JACKSON ST
MUNCIE IN 47305

YANKE RONALD
328 BUCKLIN ST
LA SALLE IL 61301

YANKE RONALD
328 BUCKLIN ST
LA SALLE IL 61301

THOMAS E SWANBECK PA
2450 ESTERO BLVD
FORT MYERS BEACH FL 33931

YANKE RONALD
328 BUCKLIN ST
LA SALLE IL 61301

EMPIRE HOLDING CORP TR
PO BOX 19492
INDIANAPOLIS IN 46219

EMPIRE HOLDING CORP TR
RAINBOW REALTY GROUP INC
6104 E 21ST ST
INDIANAPOLIS IN 46219

FRENCH EDWIN T III
PO BOX 22538
INDIANAPOLIS IN 46222

FRENCH EDWIN T III
PO BOX 22538
INDIANAPOLIS IN 46222

COASTAL COTTAGES LLC
6850 W SOUTH LAKE GAGE DR
ANGOLA IN 46703

COASTAL COTTAGES LLC
6850 W SOUTH LAKE GAGE DR
ANGOLA IN 46703

TEZAK HELEN C TR
50 CHAPEL ST #4
FORT MYERS BEACH FL 33931

GOLDBERG GENNIE M TR
11793 ROYAL TEE CT
CAPE CORAL FL 33991

FMB COTTAGE LLC
2440 COTTAGE AVE
FORT MYERS BEACH FL 33931

BONFIGLI ANDREW & SUSAN
2434 COTTAGE AVE
FORT MYERS BEACH FL 33931

PAISLEY LLC
414 MARKET ST
IOWA CITY IA 52245

MCLAUGHLIN SAMUEL R &
4700 EDEN PARK DR
ZANESVILLE OH 43701

SCHLICHTE EDITH
61 MANGO ST
FORT MYERS BEACH FL 33931

CHAPEL BY THE SEA
PO BOX 2997
FORT MYERS BEACH FL 33932

GERSTENHABER RAM TR
BEACH CONNECTION
2401 ESTERO BLVD
FORT MYERS BEACH FL 33931

CZULEWICZ MARYLU TR
4281 ORANGE RIVER LOOP RD
FORT MYERS FL 33905

BOREK TINA D
1605 PENNSAUKEN ST
CINNAMINSON NJ 08077

MANGO STREET LLC
126 MANGO ST
FORT MYERS BEACH FL 33931

PAOLERCIO WILLIAM
2367 JIM HENRY RD
DANDRIDGE TN 37725

MERIDIAN ENTERPRISES II LLC
2248 OLD STATE RD
BEAUFORT MO 63013

BURNS PROPERTY MANAGEMENT LLC
536 SONOMA DR
BOLINGBROOK IL 60490

ROTH ALLAN T & RHONDA K
12232 JAY CIR NW
COON RAPIDS MN 55448

STALTER RICHARD
169 CHAPEL ST
FORT MYERS BEACH FL 33931

YANKE RONALD
328 BUCKLIN ST
LA SALLE IL 61301

MEEHAN PATRICIA LYNN
293 ELM ST W
SUDBURY ON P3C 1V6
CANADA

BIG MARLIN PROPERTIES LLC
4704 VINCENNES BLVD
CAPE CORAL FL 33904

PFÄFFINGER HEDWIG TR
JAMES SCHULTZ
1030 SPINDLE HILL RD
WOLCOTT CT 06716

RYAN JAMES
139 CHAPEL ST
FORT MYERS BEACH FL 33931

CHAPEL BY THE SEA
PO BOX 2997
FORT MYERS BEACH FL 33932

1249 ESTERO ADVENTURES LLC
290 BAHIA VIA
FORT MYERS BEACH FL 33931

1249 ESTERO ADVENTURES LLC
290 BAHIA VIA
FORT MYERS BEACH FL 33931

1249 ESTERO ADVENTURES LLC
290 BAHIA VIA
FORT MYERS BEACH FL 33931

BESSEY JAMES D
2 BARTLETT RD
NANTUCKET MA 02554

TOMMAR INC
9616 ROUND LAKE BLVD
WHITE LAKE MI 48386

SOTO JESUS +
PO BOX 366265
BONITA SPRINGS FL 34136

WICKETT LLOYD A &
5647 SHADDELEE LN W
FORT MYERS FL 33919

WICKETT LLOYD A &
5647 SHADDELEE LN W
FORT MYERS FL 33919

ROTH ALLAN
12232 JAY CIRCLE
COON RAPIDS MN 55448

ROTH ALLAN T
12232 JAY CIRCLE
COON RAPIDS MN 55448

SEA BREEZE ESTATES CONDO ASSN
325 W LOCUST LN
KENNETT SQUARE PA 19348

71 MANGO LLC
15440 CATALPA COVE LANE
FORT MYERS FL 33908

71 MANGO LLC
15440 CATALPA COVE LN
FORT MYERS FL 33908

NEPTUNE INN CONDO ASSN INC
BLUE VISTA CAPITAL LLC
PO BOX 508
RICHMOND IL 60071

PALMA FRED JR & RHONDA +
139 S PARK BLVD
GLEN ELLYN IL 60137

MAUGANS ALICE B
12890 SPENCER STREET
FORT MYERS FL 33908

MCMILLAN MICHAEL
150 PEARL ST
FORT MYERS BEACH FL 33931

MORIONDO LARRY E TR
15482 LAWRENCE 2130
MOUNT VERNON MO 65712

LANGLEY COLIN M TR
130 PEARL ST
FORT MYERS BEACH FL 33931

LANGLEY COLIN M & DIONE C TR
130 PEARL ST
FORT MYERS BEACH FL 33931

HORKAN CHAD M TR
1189 FOUR WINDS WAY
HARTLAND WI 53029

PAREDERO CLEMENTE & MARY L
140 PEARL ST
FORT MYERS BEACH FL 33931

NEAF JAMES C
125 PEARL ST
FORT MYERS BEACH FL 33931

2085 ESTERO LLC
2001 ESTERO BLVD
FORT MYERS BEACH FL 33931

WILLIAMS JENNILEE R +
1913 SE 12TH ST
CAPE CORAL FL 33990

ERICKSON CELIA
131 PEARL ST
FORT MYERS BEACH FL 33931

MORLOCK WADE T &
10317 SE 28TH PL
BEAUX ARTS WA 98004

BUICE NANCY HURD TR
15174 PORTSIDE DR
FORT MYERS FL 33908

PEARL STREET PROPERTY HOLDINGS
PO BOX 2611
FORT MYERS BEACH FL 33931

JENKINS WAYNE +
829 NORWEST RD STE 421
KINGSTON ON K7P 2N3
CANADA

DIAMONDHEAD BEACH RESORT LLC
2000 ESTERO BLVD
FORT MYERS BEACH FL 33931

2001 ESTERO LLC
400 BAYLAND RD
FORT MYERS BEACH FL 33931

NIESE LYNNE A
13781 RD X
LEIPSIC OH 45856

SURFUS JOHN D
PO BOX 2415
FORT MYERS BEACH FL 33932

ALFARO-MALDONADO LINDA
121 DELMAR AVE
FORT MYERS BEACH FL 33931

127 DELMAR LLC
7449 CEDAR RIDGE DR
PORTLAND MI 48875

FRIEDRICH CHARLES DAVID +
114 FAIRBANKS ST
SANTA CRUZ CA 95060

DELMAR BROTHERS LLC
135 DELMAR AVE
FORT MYERS BEACH FL 33931

MARTIN RICHARD E &
11034 E KRAMER RD
BOWLING GREEN OH 43402

BAISCH GAYLE LYNN +
1443 CLARET CT
FORT MYERS FL 33919

CBD LLC
414 E MARKET ST
IOWA CITY IA 52245

SURF SONG CONDO ASSOC INC
2088 ESTERO BLVD UNIT 2H
FORT MYERS BEACH FL 33931

POLYNESIAN VACATION VILLAS
2096 ESTERO BLVD
FORT MYERS BEACH FL 33931

CHG NEPTUNE ACQUISITIONS LLC
MARK A DAMANTE
150 E BROAD ST STE 800
COLUMBUS OH 43215

BENNETT ROBERT W
5889 WATSON RD
EAU CLAIRE MI 49111

R DOUGLAS HOVENDEN TRUST +
2088 ESTERO BLVD #2A
FORT MYERS BEACH FL 33931

JOHNSON ROGER A TR
2088 ESTERO BLVD APT 2B
FORT MYERS BEACH FL 33931

KAUFMAN CHRISTINE V TR
26442 BRICK LN
BONITA SPRINGS FL 34134

HILL DOUGLAS E & KAYLA K
43 ONONDAGA ST
SKANEATELES NY 13152

HAMILTON ROGER A & JANE M
580 WRENCROFT CT
LEBANON OH 45036

OLIVER KENT D & JO-ANN A
18900 NALLE RD
NORTH FORT MYERS FL 33917

MENDENHALL MURRAY J III &
10407 WOODLAND RIDGE WEST
FORT WAYNE IN 46804

RAUSHEL JAN R TR
103 SOUTH DR
AITKIN MN 56431

WALCHLI JAMES
2088 ESTERO BLVD #3B
FORT MYERS BEACH FL 33931

FERGUS CHARLOTTE TR
2088 ESTERO BLVD #3C
FORT MYERS BEACH FL 33931

JACKSON JOHN K TR
1400 N 100 E
HARTFORD CITY IN 47348

MIZEL WILLIAM C & THERESA L
2088 ESTERO BLVD UNIT 4B
FORT MYERS BEACH FL 33931

DUNDEE NICHOLAS J & LINDA M
2088 ESTERO BLVD #3F
FORT MYERS BEACH FL 33931

SURF SONG CARNEY LLC
2809 GREAT NORTHERN LOOP #100
MISSOULA MT 59808

HAPKIEWICZ ANNIS M TR
2088 ESTERO BLVD # 4A
FORT MYERS BEACH FL 33931

MIZEL WILLIAM C & THERESA L
2088 ESTERO BLVD 4B
FORT MYERS BEACH FL 33931

COURRIER DAWN LARAE
16005 25TH AVE N
PLYMOUTH MN 55447

RAVENSCROFT JEAN A TR
69525 CHRISTIANN CREEK DR
EDWARDSBURG MI 49112

KEITH THOMAS E & EILEEN M
5853 HACKER DR
WEST BEND WI 53095

THREE SISTERS MANAGEMENT
3340 WELLINGTON BLVD
CRAWFORDSVILLE IN 47933

MAZER BERNARD A & DIANNE M TR
W221S7455 CAROL DRIVE
MUSKEGO WI 53150

WILLIAMS MARY J TR
11131 WOODS BAY LN
INDIANAPOLIS IN 46236

FRANTZ M RYAN & ERIKA E
5480 LARISSA PL
CARMEL IN 46033

FRIEDMAN JEFFREY &
2013 WILDERNESS TR
SPRINGFIELD IL 62711

DECONCINI CHRISTOPHER M TR
45281 RED PINE LOOP
PERHAM MN 56573

SCHOLTZ STEPHEN A
124 KINGSWAY CRESCENT
TORONTO ON M8X 2S2
CANADA

NELSON ROBERT A TR
1302 STANFIELD ST
SOUTH BEND IN 46617

STENSRUDE LARRY C TR
2088 ESTERO BLVD UNIT 5G
FORT MYERS BEACH FL 33931

LYONS KRISTIN E
2096 ESTERO BLVD #1
FORT MYERS BEACH FL 33931

RAGAN JOHN
5600 REVERE RUN
CANFIELD OH 44406

JONES FRANK TR
2010 46TH AVE #2
GREELEY CO 80634

SAVERY TIMOTHY LYDEN &
406 SW 30TH AVE
CAPE CORAL FL 33991

MOGLIA SANDRA
17 DIVISION ST W APT 2
GREENWICH CT 06830

DUNFEE ALLEN MARK & SUSAN M
402 SW 30TH AVE
CAPE CORAL FL 33991

PARILLA DAVID R TR
1335 SANTOS RD
FORT MYERS BEACH FL 33931

MALOTT PATRICK T
7840 MELBOURNE RD
SAGINAW MI 48604

BERMEL STEVEN
900 PARK AVE
MUSCATINE IA 52761

LEINDECKER ROBERT JOHN
6961 WILLOW HWY
GRAND LEDGE MI 48837

STRONG DANIEL
3610 BAYNARD DR
PUNTA GORDA FL 33950

GABRIEL RUSTIE L +
6961 WILLOW HWY
GRAND LEDGE MI 48837

LOFFRENO CHRISTIAN P
17916 GREY HERON CT
FORT MYERS BEACH FL 33931

LOFFRENO CHRISTIAN P
17916 GREY HERON CT
FORT MYERS BEACH FL 33931

LOFFRENO CHRISTIAN P
17916 GREY HERON CT
FORT MYERS BEACH FL 33931

2000 ESTERO BOULEVARD
CORE HOTELS & RESORTS LLC
DIAMONDHEAD ISLAND BCH RESORT
2000 ESTERO BLVD
FORT MYERS BEACH FL 33931

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: The Neptune Resort PD Rezone
Authorized Applicant: CHG Neptune Acquisitions, LLC
STRAP Number(s): 19-46-24-W3-0430N.0001, 19-46-24-W3-0110A.0010;
19-46-24-W3-04300.00CE

Current Property Status: Damaged/Vacant
Current Zoning: CR
Future Land Use Map (FLUM) Category: Boulevard
Platted Overlay? ☐ yes, ☐ no FLUM Density Range: 6 dwelling units per acre

Requested Action:

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

PART I Narrative Statements

A. Comprehensive Plan Amendments (check one)

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

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.

Southeast of the intersection of Delmar Ave and Estero Blvd.

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.

G. Administrative amendments to approved Master Concept Plan

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.

N/A

PART 2 Submittal Requirements

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

Required Items

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

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

TRAFFIC IMPACT STATEMENT

FOR

NEPTUNE RESORT REZONING

(PROJECT NO. F2308.31)

PREPARED BY:
TR Transportation Consultants, Inc.
Certificate of Authorization Number: 27003
2726 Oak Ridge Court, Suite 503
Fort Myers, Florida 33901-9356
(239) 278-3090

September 17, 2023

CONTENTS

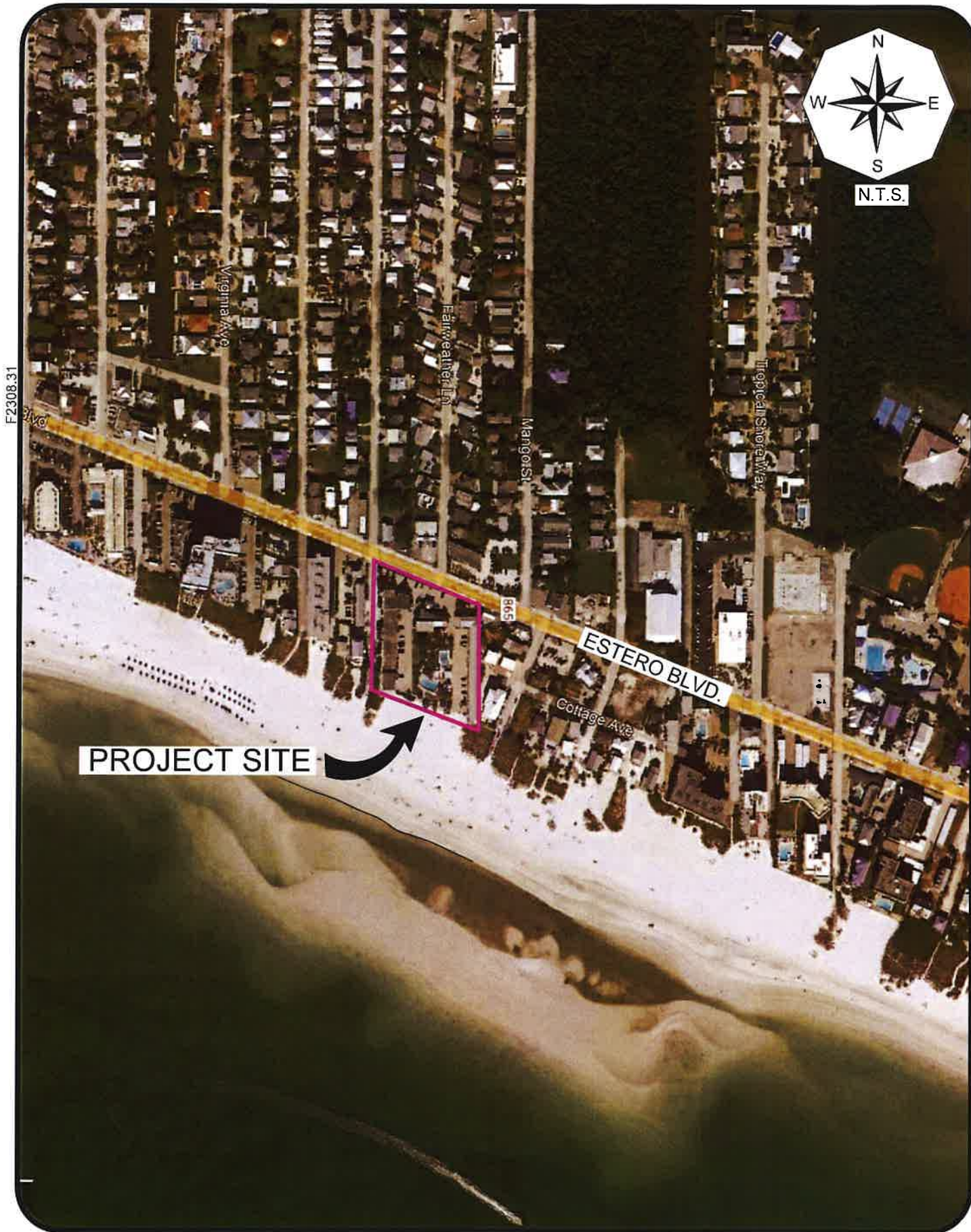
- I. INTRODUCTION
- II. EXISTING CONDITIONS
- III. PROPOSED ZONING
- IV. TRIP GENERATION
- V. TRIP DISTRIBUTION
- VI. LEVEL OF SERVICE ANALYSIS
- VII. CONCLUSION

I. INTRODUCTION

TR Transportation Consultants, Inc. has conducted a traffic impact statement to fulfill requirements set forth by the Town of Fort Myers Beach for projects seeking a zoning amendment approval. The subject site is located along the Gulf side of Estero Boulevard just to the south of Delmar Avenue in the Town of Fort Myers Beach in Lee County, Florida. **Figure 1** illustrates the approximate location of the subject site.

The analysis in this report will determine the impacts of rezoning approximately 2.3 acres from Commercial Resort (CR) to a Commercial Planned Development (CPD) zoning. The zoning will permit the Resort to be reconstructed after being heavily damaged in Hurricane Ian to include up to 140 hotel rooms, a restaurant and Tiki bar and other amenities on-site to support the Resort Hotel use.

The transportation related impacts of the proposed application will be evaluated based on the estimated build-out year of the project and the impacts the proposed development will have on the surrounding roadway infrastructure. Access to the subject site will continue to be provided to Estero Boulevard.



II. EXISTING CONDITIONS

The Neptune Resort is located on the Gulf side of Estero Boulevard. Prior to Hurricane Ian, the Resort contained a total of 71 rooms and was originally developed in the 1960's. The site is bordered by Del Mar Avenue on the west, Estero Boulevard on the north, residential uses to the east and the Gulf of Mexico to the south.

Estero Boulevard is a two-lane undivided Arterial roadway that borders the subject site. Estero Boulevard has a posted speed limit of 25 mph and is under the jurisdiction of the Lee County Department of Transportation. Estero Boulevard from Center Street to Big Carlos Pass has been designated as a "Constrained Roadway" by the Lee County Board of County Commissioners by Lee Plan Objective 37.2 and Policy 37.2.1, which indicates that due to scenic, historic, environmental, aesthetic, and right-of-way characteristics and considerations, a reduced peak hour Level of Service will be accepted on these roadways. A copy of Table 2(a) from the Lee Plan highlighting Estero Boulevard as well as the San Carlos Boulevard Bridge over Matanzas Pass as "Constrained Facilities" is included in the Appendix of this report for reference.

III. PROPOSED ZONING

The proposed request would amend the zoning from Commercial Resort (CR) to a Commercial Planned Development (CPD) on the 2.3 acre site to permit the site to be redeveloped with a Resort Hotel with a restaurant and associated amenities. Access to the site will continue to be provided to Estero Boulevard. **Table 1** summarizes the land uses that could be considered in the zoning application being requested to generate external vehicle trips.

Table 1
Neptune Resort Zoning Amendment
Land Uses

Use	Proposed
Resort Hotel	140 Rooms
Restaurants/Bar	6,000 Sq. Ft.

The floor area of the restaurant includes outdoor seating area

IV. TRIP GENERATION

The trip generation for the proposed uses within the development were determined by referencing the Institute of Transportation Engineer's (ITE) report, titled ***Trip Generation***, 11th Edition. Land Use Code 330 (Resort Hotel) was utilized for the trip generation purposes of the hotel rooms. Land Use Code 932 (High Turn-Over Sit-Down Restaurant) was utilized for trip generation of the restaurant use on-site. Trips were generated for the restaurant use since it will be open to the Public. It is anticipated that a certain number of restaurant guests will be the guests of the Resort, thus reducing the overall external trip generation of the restaurant use. However, for this analysis, it was assumed that there were no reductions due to this interaction to ensure a "worst case" analysis of the transportation related impacts. There will certainly be an interaction that will cause a reduction in the overall parking demand for these uses, which will be discussed under separate cover as part of this application. The trip generation equations for these land uses are included in the Appendix of this report for reference. **Table 2** outlines the anticipated weekday AM and PM peak hour trip generation based on these land use categories.

Table 2
Neptune Resort Zoning Amendment
Trip Generation

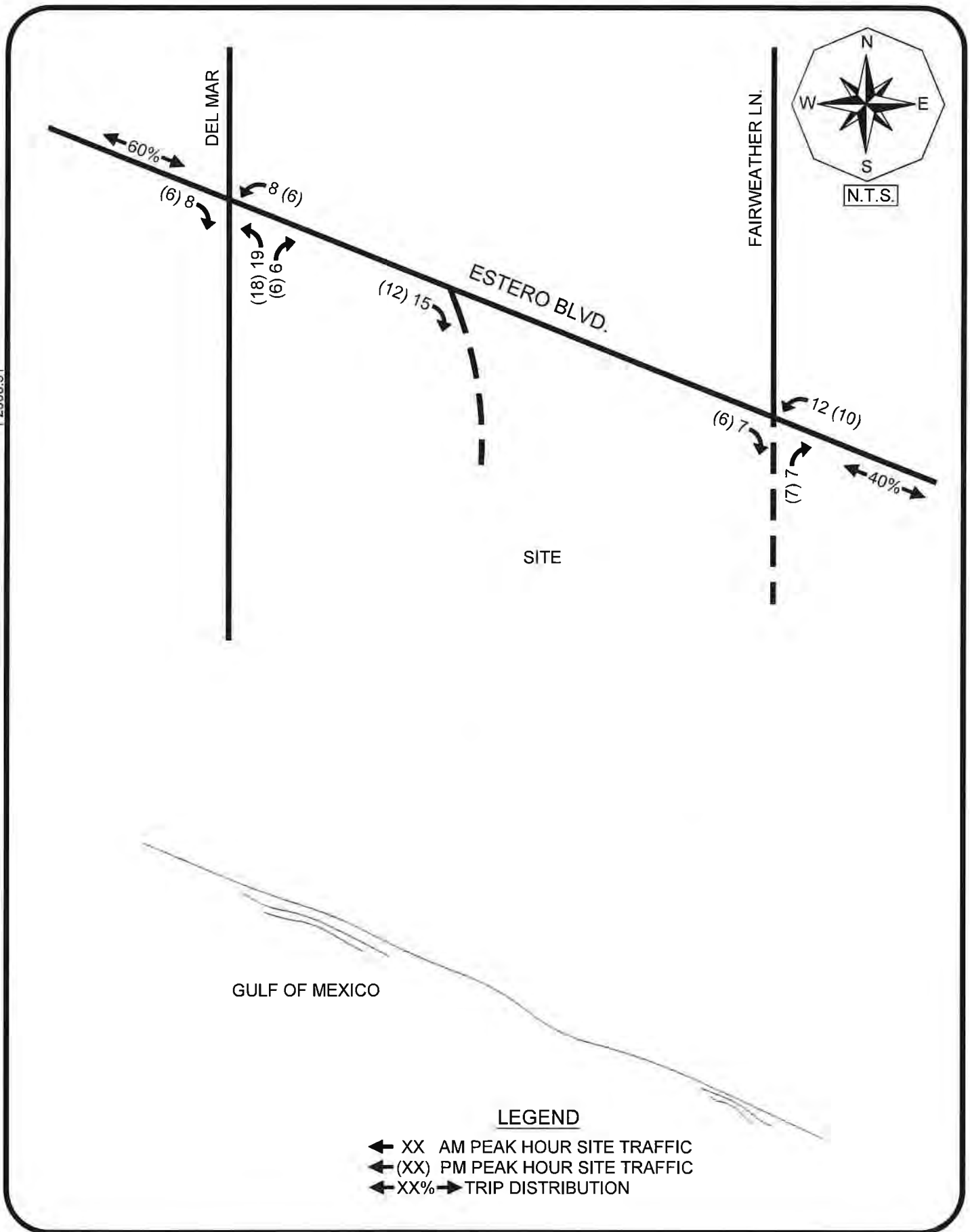
Land Use	Weekday AM Peak Hour			Weekday PM Peak Hour			Daily (2-way)
	In	Out	Total	In	Out	Total	
Resort Hotel (140 Rooms)	18	7	25	7	10	17	n/a
Restaurant (6,000 Sq. Ft.)	32	25	57	33	21	54	643
Total Trips	50	32	82	40	31	71	643

V. TRIP DISTRIBUTION

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

In order to determine which roadway segments surrounding the site will be significantly impacted, **Table 1A**, contained in the Appendix, was created. This table indicates which roadway links will experience a significant impact as a result of the added development traffic. Significant impact is defined as any roadway projected to experience greater than 10% of the Peak Hour – Peak Direction Level of Service “C” volumes.

The Level of Service Threshold volumes for each roadway link were taken from the Lee County Generalized Peak Hour Directional Service Volume table. This table is included in the Appendix of this report for reference. Based on the information contained within Table 1A, no roadway segment is shown to experience a significant impact due to the addition of the project traffic.

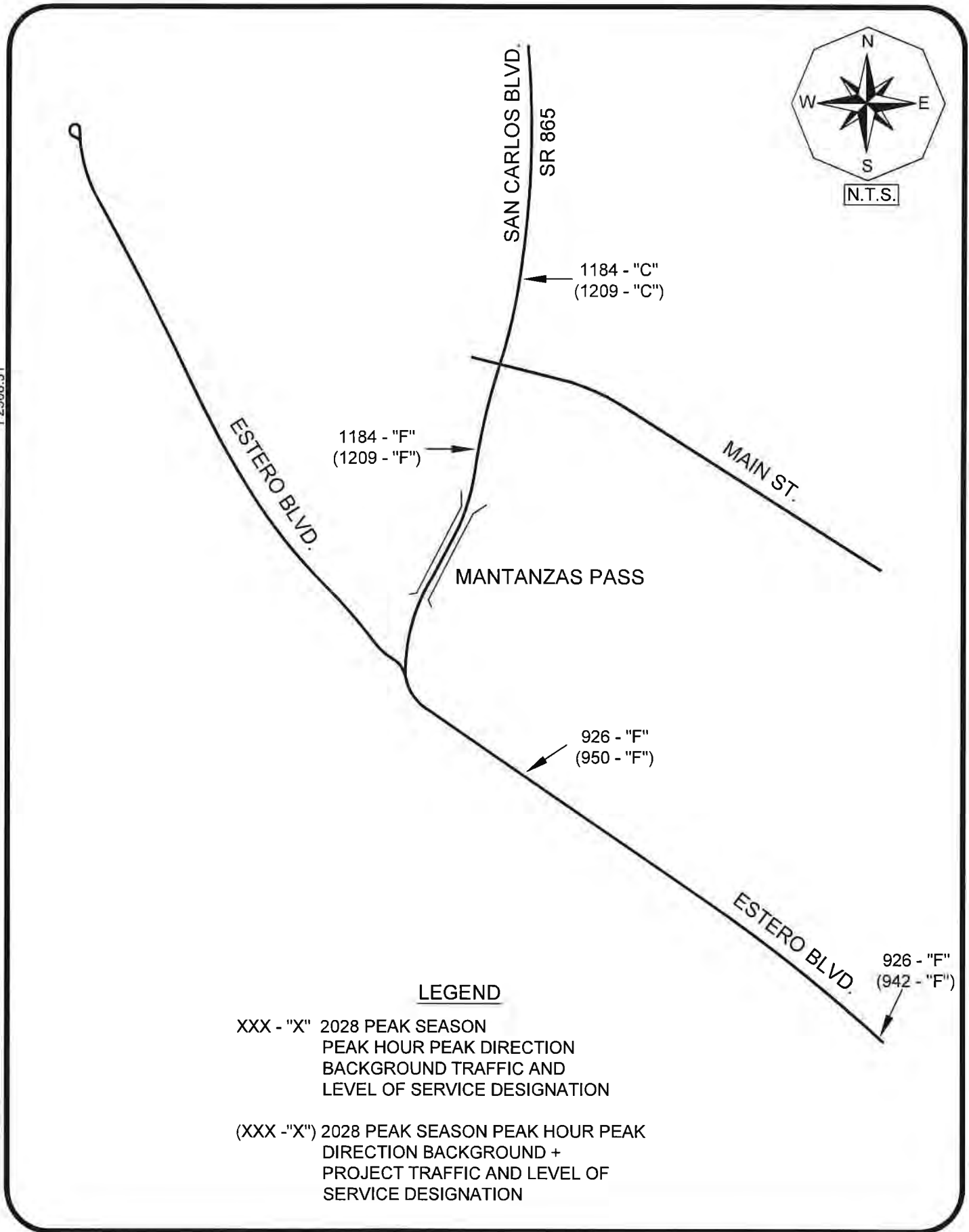


VI. LEVEL OF SERVICE ANALYSIS

The future Level of Service analysis was based on the development build-out horizon, which was selected as the year 2028. Based on this horizon year analysis, the surrounding roadway network was analyzed under 2028 traffic conditions. Even though historical growth patterns have illustrated that there has been very little traffic increase on Estero Boulevard in the past eight (8) years, a growth rate of 2% per year, compounded annually, was applied to the existing traffic conditions for the traffic volume reported by Lee County for Estero Boulevard. The existing traffic data for Estero Boulevard was obtained from the Lee County 2022 *Lee County Public Facilities Level of Service and Concurrency Report*. This data was collected pre-Hurricane Ian.

Table 2A in the Appendix of the report indicates the methodology utilized to obtain the year 2028 build-out traffic volumes as well as the growth rate utilized for each roadway segment analyzed. The data obtained from the 2022 Lee County resource is attached to the Appendix of this report for reference.

Figure 3 indicates the year 2028 peak hour – peak direction traffic volumes and Level of Service for the various roadway links within the study area. Noted on Figure 3 is the peak hour – peak direction volume and Level of Service of each link should no development occur on the subject site and the peak hour – peak direction volume and Level of Service for the weekday A.M and P.M. peak hours with the development traffic added to the roadways. Figure 3 is derived from Table 2A contained in the Appendix.



It should be noted that Estero Boulevard west of San Carlos Boulevard as well as the Matanzas Bridge has been designated as a “Constrained Roadway” by the Lee County Board of County Commissioners pursuant to Lee Plan Policy 37.2.2 and Table 2(a). As expected, during peak season, Estero Boulevard adjacent to the site and San Carlos Boulevard over the Matanzas Pass Bridge are shown to operate at LOS “F” prior to any project trips being added to these segments.

The Lee County Department of Transportation has recently completed pedestrian and transit stop improvements to Estero Boulevard along the segment of Estero Boulevard adjacent to the site and FDOT has recently released the construction project to begin improvements to San Carlos Boulevard from Buttonwood Drive to Estero Boulevard that will create two travel lanes over Matanzas Bridge and redesign the intersection of San Carlos Boulevard and Estero Boulevard, signaling the intersection and better accommodating pedestrian movements through this intersection. This project is scheduled to begin construction in the Spring of 2024.

Although not reflected in the trip generation calculation is the desire of the Resort as well to encourage guests to arrive by Shuttle and car service from the local airports. The hotel will encourage airport shuttle service and participate in any ferry service that may become available on the island. The location of the site is also within walking distance of Times Square, which will encourage guests to visit these areas on foot and not travel by vehicle. The site will also be designed with on-site bicycle parking as well as golf cart parking spaces to encourage other modes of transportation, which is consistent with the Town of Fort Myers Beach Comprehensive Plan.

VII. CONCLUSION

The proposed zoning amendment of the Neptune Resort to permit the development of up to 140 Resort Hotel rooms along with a restaurant ancillary uses that will be open to the public will not place an undue burden on the adjacent roadway network. The Level of Service information for Estero Boulevard shows that this roadway is already over capacity during season based on data collected prior to Hurricane Ian. It will take some time for the Beach to rebuild and re-establish the population and traffic levels that existed in the peak season prior to Hurricane Ian.

The Resort hotel is requesting to increase the number of rooms from the previously existing 71 rooms prior to Hurricane Ian to 140 rooms and allow for the additional amenities such as the restaurant and Tiki Bar to enhance the property and meet today's consumers expectations that will provide multiple benefits to the Town and its residents. On-site bicycle spaces and golf cart parking spaces will encourage guests to use alternative modes of transportation once on-site. Airport shuttle service will also be encouraged by the Management of the Resort, thus reducing the overall transportation related impacts of the use on the island roads.

APPENDIX

TABLES 1A & 2A

TABLE 1A
PEAK DIRECTION PROJECT TRAFFIC VS. 10% LOS C LINK VOLUMES
NEPTUNE RESORT REZONING

TOTAL AM PEAK HOUR PROJECT TRAFFIC =		82 VPH	IN=	50	OUT=	32						
TOTAL PM PEAK HOUR PROJECT TRAFFIC =		71 VPH	IN=	40	OUT=	31						
<u>ROADWAY</u>	<u>SEGMENT</u>	<u>ROADWAY</u>		<u>LOS A</u>	<u>LOS B</u>	<u>LOS C</u>	<u>LOS D</u>	<u>LOS E</u>	<u>PERCENT</u>			
		<u>CLASS</u>	<u>VOLUME</u>	<u>VOLUME</u>	<u>VOLUME</u>	<u>VOLUME</u>	<u>VOLUME</u>	<u>VOLUME</u>	<u>TRAFFIC</u>	<u>TRAFFIC</u>	<u>PROJECT</u>	<u>PROJ/</u>
Estero Blvd.	W. of Site	2LN	0	0	330	710	780	60%	30	9.1%		
	E. of Site	2LN	0	0	330	710	780	40%	20	6.1%		
Matanzas Pass Bridge San Carlos Blvd.	N. of Estero Blvd.	2LU	0	0	330	710	780	50%	25	7.6%		
	N. of Main St.	4LN	0	250	1,840	1,960	1,960	50%	25	1.4%		

* Level of Service thresholds were obtained from Lee County Generalized Peak Hour Directional Service Volume Table (April 2016)

TABLE 2A
LEE COUNTY TRAFFIC COUNTS AND CALCULATIONS
NEPTUNE RESORT REZONING

		Site #		K-Factor		D-Factor		I-Factor			
TOTAL PROJECT TRAFFIC AM =		82	VPH	IN =	50	OUT=	32	126008	0.090	0.537	0.083
TOTAL PROJECT TRAFFIC PM =		71	VPH	IN=	40	OUT=	31	126044	0.090	0.539	0.083
				2022		2028		2028		2028	
				PK HR		PK HR PK SEASON		PERCENT		BCKGRND	
				ANNUAL		PEAK DIRECTION		PROJECT		+ AM PROJ	
				RATE ¹		LOS		TRAFFIC		LOS	
				GROWTH		VOLUME		TRAFFIC		VOLUME	
				ADT		PEAK DIR. ²		AM PROJ		+ PM PROJ	
				ADT		ADT		TRAFFIC		TRAFFIC	
				ADT		ADT		ADT		ADT	
				ADT		ADT		ADT		ADT	
				ADT		ADT		ADT		ADT	
				ADT		ADT		ADT		ADT	
				ADT		ADT		ADT		ADT	
				ADT		ADT		ADT		ADT	
				ADT		ADT		ADT		ADT	
				ADT		ADT		ADT		ADT	
				ADT		ADT		ADT		ADT	
				ADT		ADT		ADT		ADT	
				ADT		ADT		ADT		ADT	
				ADT		ADT		ADT		ADT	
				ADT		ADT		ADT		ADT	
				ADT		ADT		ADT		ADT	
				ADT		ADT		ADT		ADT	
				ADT		ADT		ADT		ADT	
				ADT		ADT		ADT		ADT	
				ADT		ADT		ADT		ADT	
				ADT		ADT		ADT		ADT	
				ADT		ADT		ADT		ADT	
				ADT		ADT		ADT		ADT	
				ADT		ADT		ADT		ADT	
				ADT		ADT		ADT		ADT	
				ADT		ADT		ADT		ADT	
				ADT		ADT		ADT		ADT	
				ADT		ADT		ADT		ADT	
				ADT		ADT		ADT		ADT	
				ADT		ADT		ADT		ADT	
				ADT		ADT		ADT		ADT	
				ADT		ADT		ADT		ADT	
				ADT		ADT		ADT		ADT	
				ADT		ADT		ADT		ADT	
				ADT		ADT		ADT		ADT	
				ADT		ADT		ADT		ADT	
				ADT		ADT		ADT		ADT	
				ADT		ADT		ADT		ADT	
				ADT		ADT		ADT		ADT	
				ADT		ADT		ADT		ADT	
				ADT		ADT		ADT		ADT	
				ADT		ADT		ADT		ADT	
				ADT		ADT		ADT		ADT	
				ADT		ADT		ADT		ADT	
				ADT		ADT		ADT		ADT	
				ADT		ADT		ADT		ADT	
				ADT		ADT		ADT		ADT	
				ADT		ADT		ADT		ADT	
				ADT		ADT		ADT		ADT	
				ADT		ADT		ADT		ADT	
				ADT		ADT		ADT		ADT	
				ADT		ADT		ADT		ADT	
				ADT		ADT		ADT		ADT	
				ADT		ADT		ADT		ADT	
				ADT		ADT		ADT		ADT	
				ADT		ADT		ADT		ADT	
				ADT		ADT		ADT		ADT	
				ADT		ADT		ADT		ADT	
				ADT		ADT		ADT		ADT	
				ADT		ADT		ADT		ADT	
				ADT		ADT		ADT		ADT	
				ADT		ADT		ADT		ADT	
				ADT		ADT		ADT		ADT	
				ADT		ADT		ADT		ADT	
				ADT		ADT		ADT		ADT	
				ADT		ADT		ADT		ADT	
				ADT		ADT		ADT		ADT	
				ADT		ADT		ADT		ADT	
				ADT		ADT		ADT		ADT	
				ADT		ADT		ADT		ADT	
				ADT		ADT		ADT		ADT	
				ADT		ADT		ADT		ADT	
				ADT		ADT		ADT		ADT	
				ADT		ADT		ADT		ADT	
				ADT		ADT		ADT		ADT	
				ADT		ADT		ADT		ADT	
				ADT		ADT					

**LEE COUNTY PUBLIC FACILITIES
LEVEL OF SERVICE AND
CONCURRENCY REPORT**

Table 21 b): Link-Level Service Volumes and LOS Table

Table 21 b) 2 of 7

LEE COUNTY ROAD LINK VOLUMES (County- and State-Maintained Roadways)														
Link No.	NAME	ROADWAY LINK		F. Class	ROAD TYPE	PERFORMANCE STANDARD		2021 100TH HIGHEST HOUR			FUTURE FORECAST (2026)			Notes
		FROM	TO			LOS	DIRECTIONAL CAPACITY	LOS	VOL	V/C	LOS	VOL	V/C	
04800	CEMETERY RD	BUCKINGHAM RD	HIGGINS AVE	Maj. Col	2LN	E	860	C	308	0.36	C	323	0.38	
04900	CHAMBERLIN PKWY	AIRPORT ENT	DANIELS PKWY	Maj. Col	4LN	E	1,790	C	105	0.06	C	150	0.08	Port Authority maintained
05000	COCONUT RD	WEST END	VIA VENETTO BLVD	Maj. Col	2LN	E	860	C	268	0.31	C	420	0.49	Estero maintains to east
05100	COLLEGE PKWY	MCGREGOR BLVD	WINKLER RD	P. Art	6LD	E	2,980	D	2,292	0.77	D	2,409	0.81	*
05200	COLLEGE PKWY	WINKLER RD	WHISKEY CREEK DR	P. Art	6LD	E	2,980	D	2,059	0.69	D	2,164	0.73	
05300	COLLEGE PKWY	WHISKEY CREEK DR	SUMMERLIN RD	P. Art	6LD	E	2,980	D	2,059	0.69	D	2,164	0.73	
05400	COLLEGE PKWY	SUMMERLIN RD	US 41	P. Art	6LD	E	2,980	D	1,898	0.64	D	1,995	0.67	
05500	COLONIAL BLVD	MCGREGOR BLVD	SUMMERLIN RD	P. Art	6LD	E	2,840	F	3,049	1.07	F	3,204	1.13	*
05600	COLONIAL BLVD	SUMMERLIN RD	US 41	P. Art	6LD	E	2,840	D	2,650	0.93	D	2,785	0.98	
06200	COLONIAL BLVD	DYNASTY DR	SR 82	P. Art	6LD	D	3,040	B	2,070	0.68	C	2,175	0.72	*
06300	COLUMBUS BLVD	SR 82	MILWAUKEE BLVD	Maj. Col	2LN	E	860	C	100	0.12	C	105	0.12	old count
06400	CONSTITUTION BLVD	US 41	CONSTITUTION CIR	Maj. Col	2LN	E	860	C	217	0.25	C	245	0.28	old count projection(2010)
06500	CORBETT RD	SR 78 (PINE ISLAND RD)	LITTLETON RD	Maj. Col	2LN	E	860	G	22	0.03	C	226	0.26	old count, added VA clinic(2009)
06600	CORKSCREW RD	US 41	THREE OAKS PKWY	P. Art	4LD	E	1,900	C	1,047	0.55	C	1,312	0.69	Galleria at Corkscrew
06700	CORKSCREW RD	THREE OAKS PKWY	W OF I-75	P. Art	4LD	E	1,900	F	2,129	1.12	F	2,368	1.25	Estero Crossing
06800	CORKSCREW RD	E OF I-75	BEN HILL GRIFFIN BLVD	P. Art	4LD	E	1,900	C	1,069	0.56	C	1,281	0.67	
06900	CORKSCREW RD	BEN HILL GRIFFIN BLVD	ALICO RD	P. Art	4LD	E	1,960	C	1,186	0.61	C	1,398	0.71	
07000	CORKSCREW RD	ALICO RD	COUNTY LINE	P. Art	2LN	E	1,140	C	464	0.41	F	1,244	1.09	EEPCO Study, The Place
07100	COUNTRY LAKES BLVD	LUCKETT RD	TICE ST	Maj. Col	2LN	E	860	C	143	0.17	C	293	0.34	old count projection(2010)
07200	CRYSTAL DR	US 41	METRO PKWY	Maj. Col	2LN	E	860	C	360	0.42	C	379	0.44	
07300	CRYSTAL DR	METRO PKWY	PLANTATION RD	Maj. Col	2LN	E	860	C	242	0.28	C	254	0.30	
07400	CYPRESS LAKE DR	MCGREGOR BLVD	SOUTH POINT BLVD	P. Art	4LD	E	1,940	D	1,129	0.58	D	1,186	0.61	
07500	CYPRESS LAKE DR	SOUTH POINT BLVD	WINKLER RD	P. Art	4LD	E	1,940	D	1,419	0.73	D	1,491	0.77	
07600	CYPRESS LAKE DR	WINKLER RD	SUMMERLIN RD	P. Art	4LD	E	1,940	D	1,419	0.73	D	1,491	0.77	
07700	CYPRESS LAKE DR	SUMMERLIN RD	US 41	P. Art	6LD	E	2,940	D	2,085	0.71	D	2,191	0.75	
07800	DANIELS PKWY	US 41	METRO PKWY	Controlled xs	6LD	E	2,680	D	2,288	0.85	D	2,405	0.90	
07900	DANIELS PKWY	METRO PKWY	SIX MILE PKWY	Controlled xs	6LD	E	2,680	D	2,109	0.79	E	2,520	0.94	Constrained
08000	DANIELS PKWY	SIX MILE PKWY	PALOMINO LN	Controlled xs	6LD	E	3,040	E	2,985	0.98	F	3,256	1.07	Constrained
08100	DANIELS PKWY	PALOMINO LN	I-75	Controlled xs	6LD	E	3,040	E	2,985	0.98	F	3,137	1.03	Constrained
08200	DANIELS PKWY	I-75	TREELINE AVE	Controlled xs	6LD	E	3,260	B	2,996	0.92	B	3,149	0.97	
08300	DANIELS PKWY	TREELINE AVE	CHAMBERLIN PKWY	Controlled xs	6LD	E	3,260	B	2,996	0.92	B	3,149	0.97	
08400	DANIELS PKWY	CHAMBERLIN PKWY	GATEWAY BLVD	Controlled xs	6LD	E	3,260	B	2,765	0.85	B	2,906	0.89	
08500	DANIELS PKWY	GATEWAY BLVD	SR 82	Controlled xs	4LD	E	2,160	F	2,163	1.00	F	2,307	1.07	SKY Walk *
08600	DANLEY DR	US 41	METRO PKWY	Maj. Col	2LN	E	860	C	255	0.30	C	286	0.33	
08700	DAVIS RD	MCGREGOR BLVD	IONA RD	Maj. Col	2LN	E	860	C	15	0.02	C	29	0.03	old count projection(2010)
08800	DEL PRADO BLVD	CAPE CORAL PKWY	SE 46TH ST	P. Art	6LD	E	2,660	C	1,404	0.53	C	1,586	0.60	old count projection(2009)
08900	DEL PRADO BLVD	SE 46TH ST	CORONADO PKWY	P. Art	6LD	E	2,660	C	1,404	0.53	C	1,586	0.60	old count projection(2009)
09000	DEL PRADO BLVD	CORONADO PKWY	CORNWALLIS PKWY	P. Art	6LD	E	2,660	D	1,869	0.70	D	1,964	0.74	
09100	DEL PRADO BLVD	CORNWALLIS PKWY	CORAL POINT DR	P. Art	6LD	E	2,660	D	2,565	0.96	F	2,696	1.01	
09200	DEL PRADO BLVD	CORAL POINT DR	HANCOCK B. PKWY	P. Art	6LD	E	2,800	D	1,997	0.71	D	2,098	0.75	
09300	DEL PRADO BLVD	HANCOCK B. PKWY	SR 78	P. Art	6LD	E	2,800	C	1,642	0.59	C	1,725	0.62	*
09400	DEL PRADO BLVD	US 41	SLATER RD	M. Art	2LN	E	860	C	489	0.57	D	742	0.86	Crane Landing
09700	EAST 21ST ST	JOEL BLVD	GRANT AVE	Min. Col	2LN	E	860	C	31	0.04	C	33	0.04	*
09800	ESTERO BLVD	BIG CARLOS PASS BRIDGE	PESCADORA AVE	M. Art	2LN	E	726	A	356	0.49	A	374	0.52	Constrained*
09900	ESTERO BLVD	PESCADORA AVE	VOORHIS ST	M. Art	2LN	E	726	B	602	0.83	C	633	0.87	Constrained*
10000	ESTERO BLVD	VOORHIS ST	TROPICAL SHORES WAY	M. Art	2LN	E	726	B	602	0.83	C	633	0.87	Constrained*
10100	ESTERO BLVD	TROPICAL SHORES WAY	CENTER ST	M. Art	2LN	E	671	F	716	1.07	F	779	1.16	Constrained, old count(2010)
00007	ESTERO PKWY	US 41	THREE OAKS PKWY	P. Art	4LD	E	2,000	B	861	0.43	B	1,154	0.58	Not County Maintd

County-Maintained Collector Roadway - Unincorporated Lee County

County-Maintained Collector Roadway - Incorporated Lee County

County-Maintained Arterial Roadway - Unincorporated Lee County

County-Maintained Arterial Roadway - Incorporated Lee County

State-Maintained Arterial Roadway - Unincorporated Lee County

County Maintained Controlled Access Arterial Facility

County Maintained Expressway

Table 21 b): Link-Level Service Volumes and LOS Table

Table 21 b) 5 of 7

LEE COUNTY ROAD LINK VOLUMES (County- and State-Maintained Roadways)														
Link No.	NAME	ROADWAY LINK		F. Class	ROAD TYPE	PERFORMANCE STANDARD		2021 100TH HIGHEST HOUR			FUTURE FORECAST (2026)			Notes
		FROM	TO			LOS	DIRECTIONAL CAPACITY	LOS	VOL	V/C	LOS	VOL	V/C	
19400	ORANGE RIVER BLVD	STALEY RD	BUCKINGHAM RD	Maj. Col	2LN	E	1,000	D	477	0.48	D	511	0.51	
19500	ORIOLE RD	SAN CARLOS BLVD	ALICO RD	Maj. Col	2LN	E	860	C	129	0.15	C	136	0.16	
19600	ORTIZ AVE	COLONIAL BLVD	SR 82	Controlled xs	2LN	E	900	B	716	0.80	B	753	0.84	
19700	ORTIZ AVE	SR 82	LUCKETT RD	P. Art	2LN	E	900	B	745	0.83	B	784	0.87	4 Ln design & ROW
19800	ORTIZ AVE	LUCKETT RD	SR 80	P. Art	2LN	E	900	B	309	0.34	B	325	0.36	4 Ln design & ROW
19900	PALM BEACH BLVD (SR 8)	PROSPECT AVE	ORTIZ AVE	State	4LD	D	2,100	C	1,089	0.52	C	1,240	0.59	
20000	PALM BEACH BLVD (SR 8)	ORTIZ AVE	I-75	State	6LD	D	3,171	C	1,242	0.39	C	1,391	0.44	
20100	PALM BEACH BLVD (SR 8)	I-75	SR 31	State	6LD	D	3,171	C	1,616	0.51	C	2,001	0.63	
20200	PALM BEACH BLVD (SR 8)	SR 31	BUCKINGHAM RD	State	4LD	D	2,100	D	2,043	0.97	F	2,495	1.19	
20300	PALM BEACH BLVD (SR 8)	BUCKINGHAM RD	WERNER DR	State	4LD	D	3,280	B	1,426	0.43	C	1,802	0.55	
20330	PALM BEACH BLVD (SR 8)	WERNER DR	JOEL BLVD	State	4LD	C	2,210	B	1,179	0.53	C	1,531	0.69	
20400	PALM BEACH BLVD (SR 8)	JOEL BLVD	HENDRY CO. LINE	State	4LD	C	2,210	B	1,053	0.48	B	1,343	0.61	
20500	PALOMINO LN	DANIELS PKWY	PENZANCE BLVD	Min. Col	2LN	E	860	C	380	0.44	C	403	0.47	
20600	PARK MEADOWS DR	SUMMERLIN RD	US 41	Maj. Col	2LN	E	860	C	205	0.24	C	216	0.25	
20800	PENZANCE BLVD	RANCHETTE RD	SIX MILE PKWY	Maj. Col	2LN	E	860	C	148	0.17	C	160	0.19	
20900	PINE ISLAND RD	STRINGFELLOW RD	BURNT STORE RD	P. Art	2LN	E	950	E	594	0.63	E	644	0.68	Constrained
21400	PINE ISLAND RD (SR 78)	CITY LIMITS E OF BARRETT RD	US 41	State	4LD	D	2,100	C	1,821	0.87	F	2,171	1.08	
21500	PINE ISLAND RD (SR 78)	US 41	BUS 41	State	4LD	D	2,100	C	1,590	0.76	C	1,754	0.84	
21600	PINE RIDGE RD	SAN CARLOS BLVD	SUMMERLIN RD	Maj. Col	2LN	E	860	C	515	0.60	D	587	0.68	*
21700	PINE RIDGE RD	SUMMERLIN RD	GLADIOLUS DR	Maj. Col	2LN	E	860	C	245	0.28	C	405	0.47	Heritage Isle*
21800	PINE RIDGE RD	GLADIOLUS DR	MCGREGOR BLVD	Maj. Col	2LN	E	860	C	245	0.28	C	257	0.30	
21900	PLANTATION RD	SIX MILE PKWY	DANIELS PKWY	M. Art	2LN	E	860	C	267	0.31	C	369	0.43	Intermed Park
22000	PLANTATION RD	DANIELS PKWY	IDLEWILD ST	M. Art	2LN	E	860	D	692	0.80	D	728	0.85	FDOT Metro Pkwy 6-laning
22050	PLANTATION RD	IDLEWILD ST	COLONIAL BLVD	M. Art	4LN	E	1,790	C	687	0.38	C	722	0.40	
22100	PONDELLA RD	SR 78	ORANGE GROVE BLVD	P. Art	4LD	E	1,890	B	1,012	0.54	B	1,063	0.56	*
22200	PONDELLA RD	ORANGE GROVE BLVD	US 41	P. Art	4LD	E	1,890	B	1,405	0.74	B	1,480	0.78	
22300	PONDELLA RD	US 41	BUS 41	P. Art	4LD	E	1,890	B	1,052	0.56	B	1,105	0.58	
22400	PRITCHETT PKWY	SR 78	RICH RD	Maj. Col	2LN	E	860	C	73	0.08	C	541	0.63	old count, Stoneybrook North(2009)
22500	RANCHETTE RD	PENZANCE BLVD	IDLEWILD ST	Maj. Col	2LN	E	860	C	93	0.11	C	98	0.11	
22600	RICH RD	SLATER RD	PRITCHETT PKWY	Maj. Col	2LN	E	860	C	55	0.06	C	62	0.07	old count projection(2009)
22700	RICHMOND AVE	LEELAND HEIGHTS	E 12TH ST	Maj. Col	2LN	E	860	C	82	0.10	C	94	0.11	
22800	RICHMOND AVE	E 12TH ST	GREENBRIAR BLVD	Maj. Col	2LN	E	860	C	82	0.10	C	86	0.10	
23230	SAN CARLOS BLVD	US 41	THREE OAKS PKWY	Maj. Col	2LN	E	860	C	481	0.47	C	422	0.49	*
23000	SAN CARLOS BLVD (SR 86)	MANTANZAS PASS B.	MAIN ST	State	2LD	D	970	F	1,051	1.08	F	1,176	1.21	Constrained
23100	SAN CARLOS BLVD (SR 86)	MAIN ST	SUMMERLIN RD	State	4LD	D	2,100	C	1,051	0.50	C	1,176	0.56	PD&E Study
23180	SAN CARLOS BLVD (SR 86)	SUMMERLIN RD	KELLY RD	State	2LD	D	970	C	772	0.80	C	795	0.82	
23200	SAN CARLOS BLVD (SR 86)	KELLY RD	GLADIOLUS DR	State	4LD	D	2,100	C	772	0.37	C	795	0.38	
23260	SANIBEL BLVD	US 41	LEE RD	Maj. Col	2LN	E	860	C	489	0.57	C	514	0.60	
23300	SANIBEL CAUSEWAY	SANIBEL SHORELINE	TOLL PLAZA	P. Art	2LN	E	1,140	E	987	0.87	E	1,037	0.91	
23400	SHELL POINT BLVD	MCGREGOR BLVD	PALM ACRES	Maj. Col	2LN	E	860	C	231	0.27	C	243	0.28	*
23600	SIX MILE CYPRESS	METRO PKWY	DANIELS PKWY	Controlled xs	4LD	E	2,000	B	1,371	0.69	B	1,441	0.72	Unincorporated LC
23700	SIX MILE CYPRESS	DANIELS PKWY	WINKLER EXT.	Controlled xs	4LD	E	1,900	B	951	0.50	B	1,154	0.61	Unincorporated LC
23800	SIX MILE CYPRESS	WINKLER EXT.	CHALLENGER BLVD	Controlled xs	4LD	E	1,900	B	1,061	0.56	B	1,115	0.59	Incorporated LC
23900	SIX MILE CYPRESS	CHALLENGER BLVD	COLONIAL BLVD	Controlled xs	6LD	E	2,860	A	1,061	0.37	A	1,115	0.39	Incorporated LC
23500	SIX MILE PKWY (SR 739)	US 41	METRO PKWY	State	4LD	D	2,100	C	1,941	0.92	F	2,243	1.07	
24000	SLATER RD	SR 78	NALLE GRADE RD	M. Art	2LN	E	1,010	C	376	0.37	C	395	0.39	*
24100	SOUTH POINTE BLVD	CYPRESS LAKE DR	COLLEGE PKWY	Maj. Col	2LD	E	910	D	602	0.66	D	633	0.70	*
24200	SR 31 (ARCADIA RD)	SR 80	SR 78	State	2LN	D	970	C	763	0.79	F	989	1.02	PD&E/SER Study

County-Maintained Collector Roadway - Unincorporated Lee County

County-Maintained Collector Roadway - Incorporated Lee County

County-Maintained Arterial Roadway - Unincorporated Lee County

County-Maintained Arterial Roadway - Incorporated Lee County

State-Maintained Arterial Roadway - Unincorporated Lee County

County Maintained Controlled Access Arterial Facility

County Maintained Expressway

**LEE COUNTY GENERALIZED PEAK
HOUR DIRECTIONAL SERVICE
VOLUMES**

Lee County
Generalized Peak Hour Directional Service Volumes
Urbanized Areas

April 2016

c:\input5

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

TRAFFIC DATA
FDOT FLORIDA TRAFFIC ONLINE

FLORIDA DEPARTMENT OF TRANSPORTATION
TRANSPORTATION STATISTICS OFFICE
2022 HISTORICAL AADT REPORT

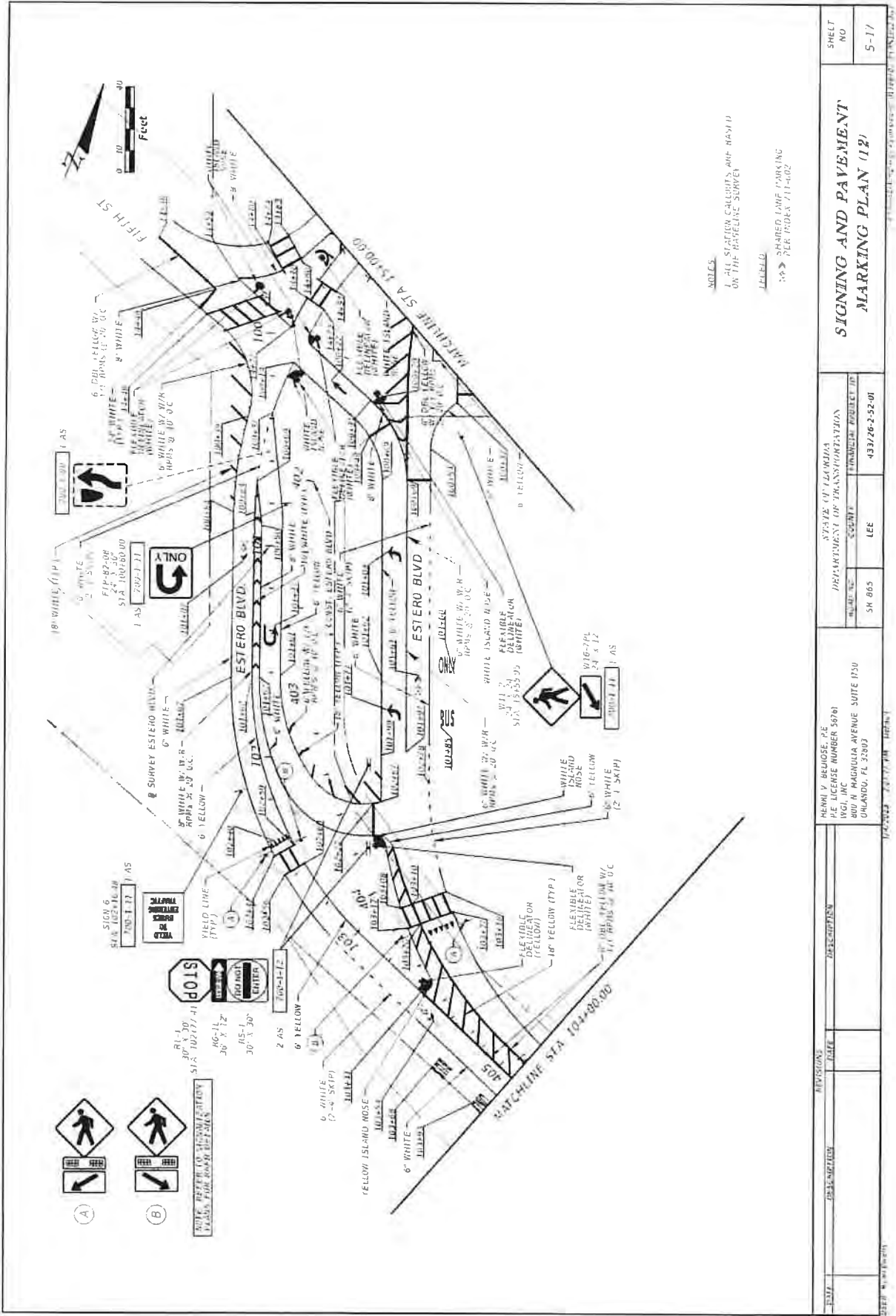
COUNTY: 13 - MANATEE

SITE: 5061 - SR789/LONGBOAT KEY, SW OF BINNACLE POINT DR

YEAR	AADT	DIRECTION 1	DIRECTION 2	*K FACTOR	D FACTOR	T FACTOR
2022	9900 C	N 4900	S 5000	9.00	57.20	5.00
2021	10600 C	N 5300	S 5300	9.00	60.50	3.70
2020	10800 E	N 0	S 0	9.00	59.30	4.00
2019	10500 C	N 0	S 0	9.00	59.60	5.20
2018	10200 C	N 5100	S 5100	9.00	53.20	4.70
2017	9700 C	N 4800	S 4900	9.00	52.70	5.30
2016	8300 F	N 4200	S 4100	9.00	52.90	5.30
2015	8300 C	N 4200	S 4100	9.00	52.90	5.30
2014	7400 C	N 3700	S 3700	9.00	53.30	5.20
2013	8600 F	N 4300	S 4300	9.00	53.50	3.60
2012	8600 C	N 4300	S 4300	9.00	53.90	3.60
2011	7500 F	N 3800	S 3700	9.00	54.50	6.80
2010	7500 C	N 3800	S 3700	10.78	55.28	6.80
2009	9200 C	N 4600	S 4600	11.40	53.60	4.00
2008	8000 C	N 4000	S 4000	12.25	52.91	7.30
2007	8500 C	N 4300	S 4200	12.15	51.63	5.80

AADT FLAGS: C = COMPUTED; E = MANUAL ESTIMATE; F = FIRST YEAR ESTIMATE
S = SECOND YEAR ESTIMATE; T = THIRD YEAR ESTIMATE; R = FOURTH YEAR ESTIMATE
V = FIFTH YEAR ESTIMATE; 6 = SIXTH YEAR ESTIMATE; X = UNKNOWN
*K FACTOR: STARTING WITH YEAR 2011 IS STANDARDK, PRIOR YEARS ARE K30 VALUES

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



FDOT WORK PROGRAM
SR 865 – SAN CARLOS BLVD.

Selection Criteria	
District 01 Lee County Item Number:433726-2	2024-2029 AD Category:Highways

This site is maintained by the Office of Work Program and Budget, located at 605 Suwannee Street, MS 21, Tallahassee, Florida 32399.

Application Home: Work Program
Office Home: Office of Work Program and Budget

**LEE COUNTY COMPREHENSIVE
PLAN
TABLE 2(a)**

TABLE 2(a)
CONSTRAINED STATE AND COUNTY ROADS

ROADWAY	SEGMENT	MAINTENANCE RESPONSIBILITY	CONSTRAINED CONDITIONS
Captiva Road	Blind Pass/ South Seas Plantation	County	ROW, Scenic, Aesthetic, Environmental
Daniels Parkway	Metro Parkway/ I-75	County	ROW
Estero Boulevard	Center Street/ Big Carlos Pass	County	ROW, Scenic, Aesthetic
Hickory Boulevard	Big Carlos Pass/ Bonita Beach Road	County	Scenic, Aesthetic, Environmental
McGregor Boulevard (SR 867)	Colonial Boulevard/ College Parkway	State	ROW, Scenic, Aesthetic, Historic, Environmental
Pine Island Road (Matlacha)	Shoreview Drive/ Little Pine Island	County	ROW, Scenic, Aesthetic, Historic, Environmental
San Carlos Boulevard (SR 865) (Matanzas Bridge)	Center Street/ Main Street	State	ROW, Scenic, Aesthetic, Environmental
US 41	South of Daniels Road/ North Airport Road	State	ROW
Gulf Boulevard	Boca Grande	County	Scenic, Aesthetic, Historic, Environmental
Stringfellow Road	8th Avenue/ Main Street	County	Environmental

TRIP GENERATION EQUATIONS

High-Turnover (Sit-Down) Restaurant (932)

Vehicle Trip Ends vs: 1000 Sq. Ft. GFA

On a: Weekday

Setting/Location: General Urban/Suburban

Number of Studies: 50

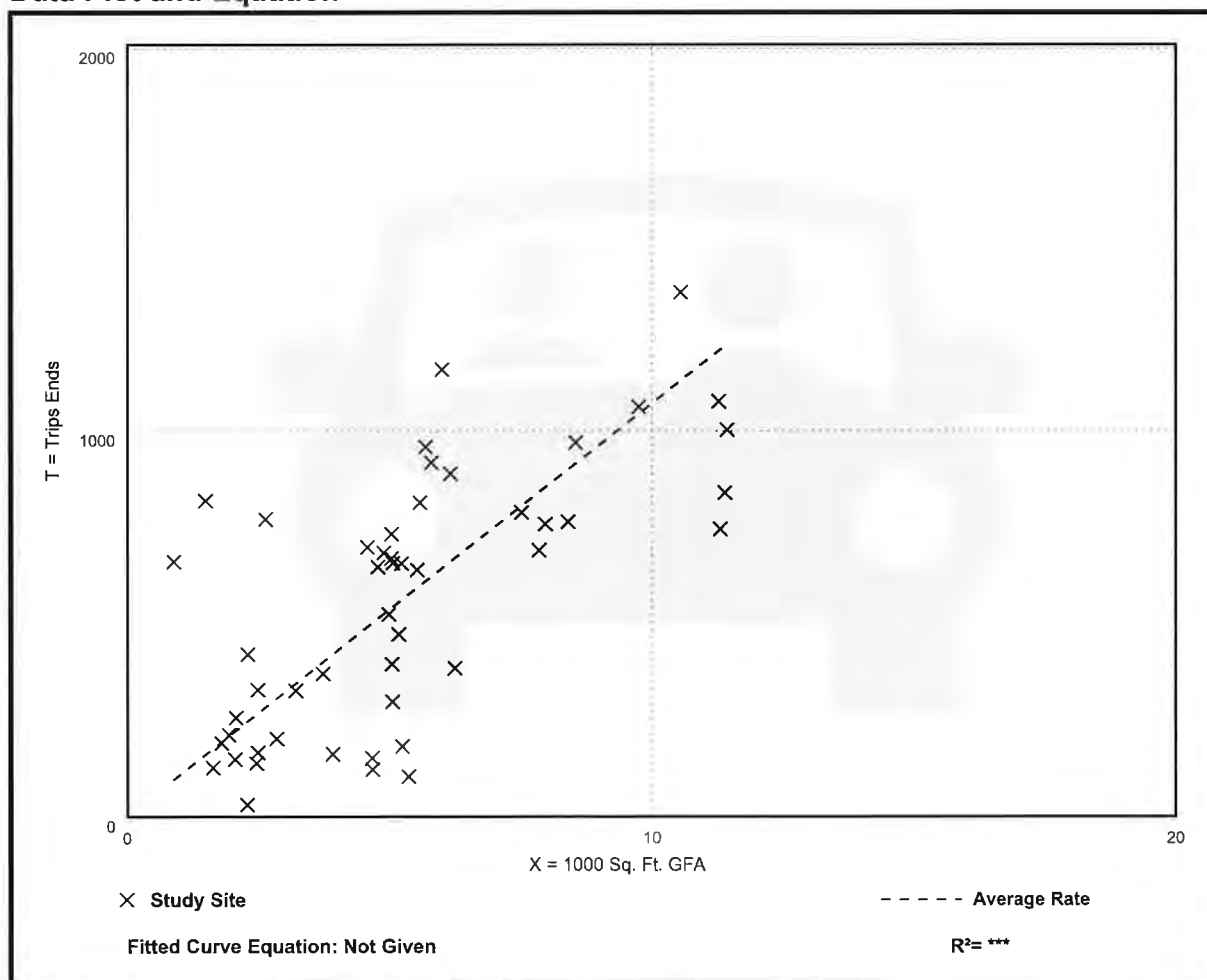
Avg. 1000 Sq. Ft. GFA: 5

Directional Distribution: 50% entering, 50% exiting

Vehicle Trip Generation per 1000 Sq. Ft. GFA

Average Rate	Range of Rates	Standard Deviation
107.20	13.04 - 742.41	66.72

Data Plot and Equation



High-Turnover (Sit-Down) Restaurant (932)

Vehicle Trip Ends vs: 1000 Sq. Ft. GFA

On a: Weekday,

Peak Hour of Adjacent Street Traffic,

One Hour Between 7 and 9 a.m.

Setting/Location: General Urban/Suburban

Number of Studies: 37

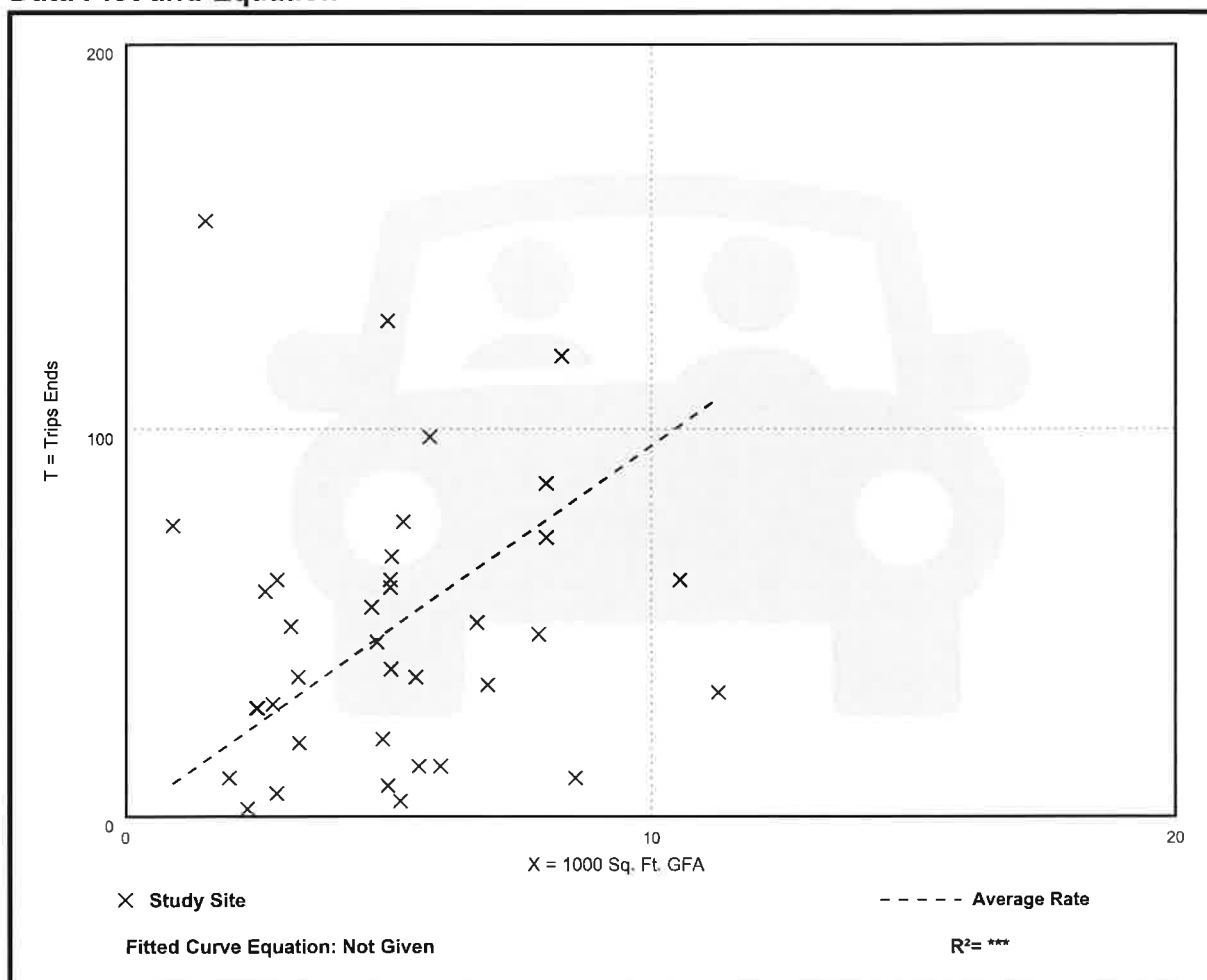
Avg. 1000 Sq. Ft. GFA: 5

Directional Distribution: 55% entering, 45% exiting

Vehicle Trip Generation per 1000 Sq. Ft. GFA

Average Rate	Range of Rates	Standard Deviation
9.57	0.76 - 102.39	11.61

Data Plot and Equation



High-Turnover (Sit-Down) Restaurant (932)

Vehicle Trip Ends vs: 1000 Sq. Ft. GFA

On a: Weekday,

Peak Hour of Adjacent Street Traffic,

One Hour Between 4 and 6 p.m.

Setting/Location: General Urban/Suburban

Number of Studies: 104

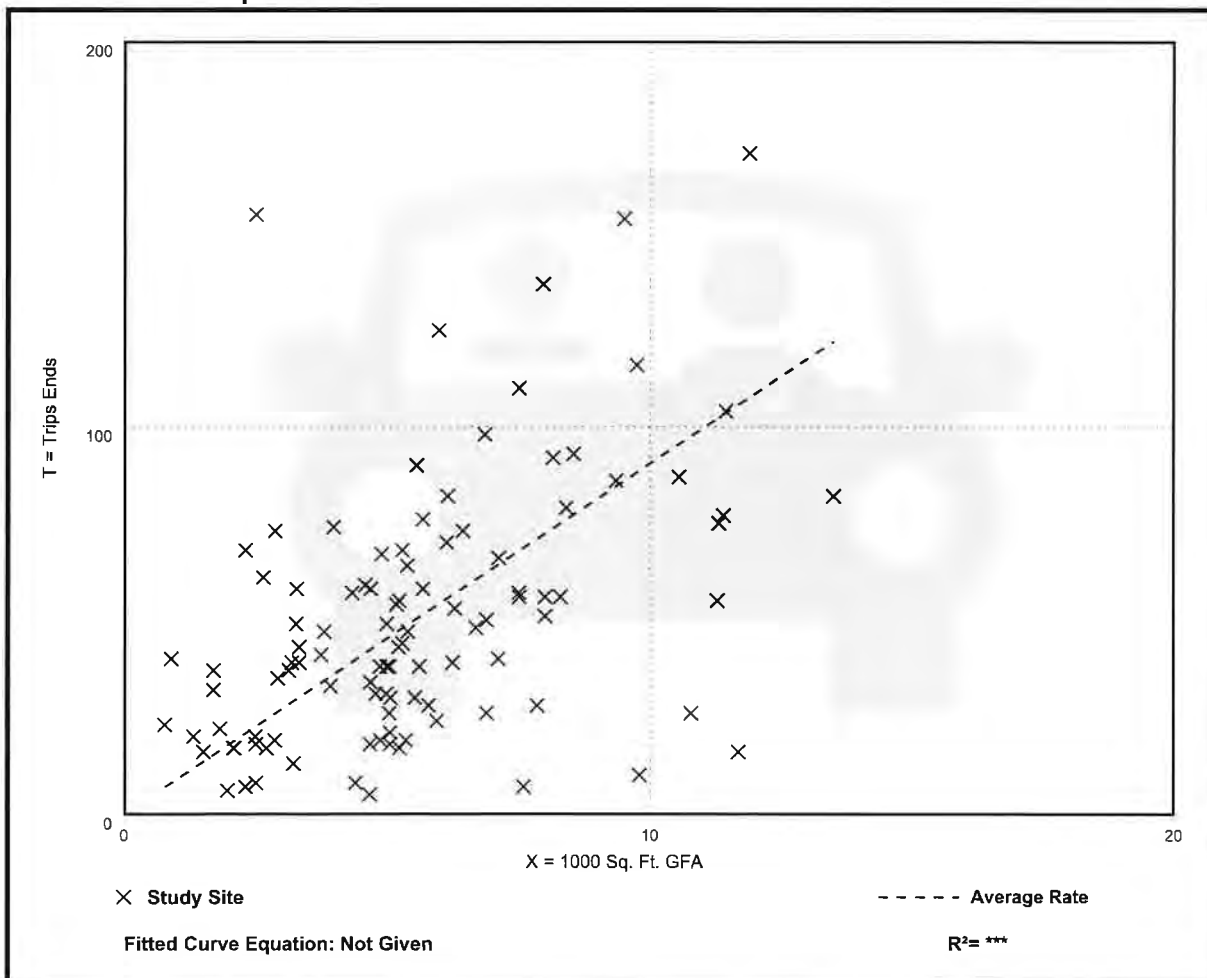
Avg. 1000 Sq. Ft. GFA: 6

Directional Distribution: 61% entering, 39% exiting

Vehicle Trip Generation per 1000 Sq. Ft. GFA

Average Rate	Range of Rates	Standard Deviation
9.05	0.92 - 62.00	6.18

Data Plot and Equation



Resort Hotel (330)

Vehicle Trip Ends vs: Rooms

On a: Weekday,

Peak Hour of Adjacent Street Traffic,

One Hour Between 7 and 9 a.m.

Setting/Location: General Urban/Suburban

Number of Studies: 6

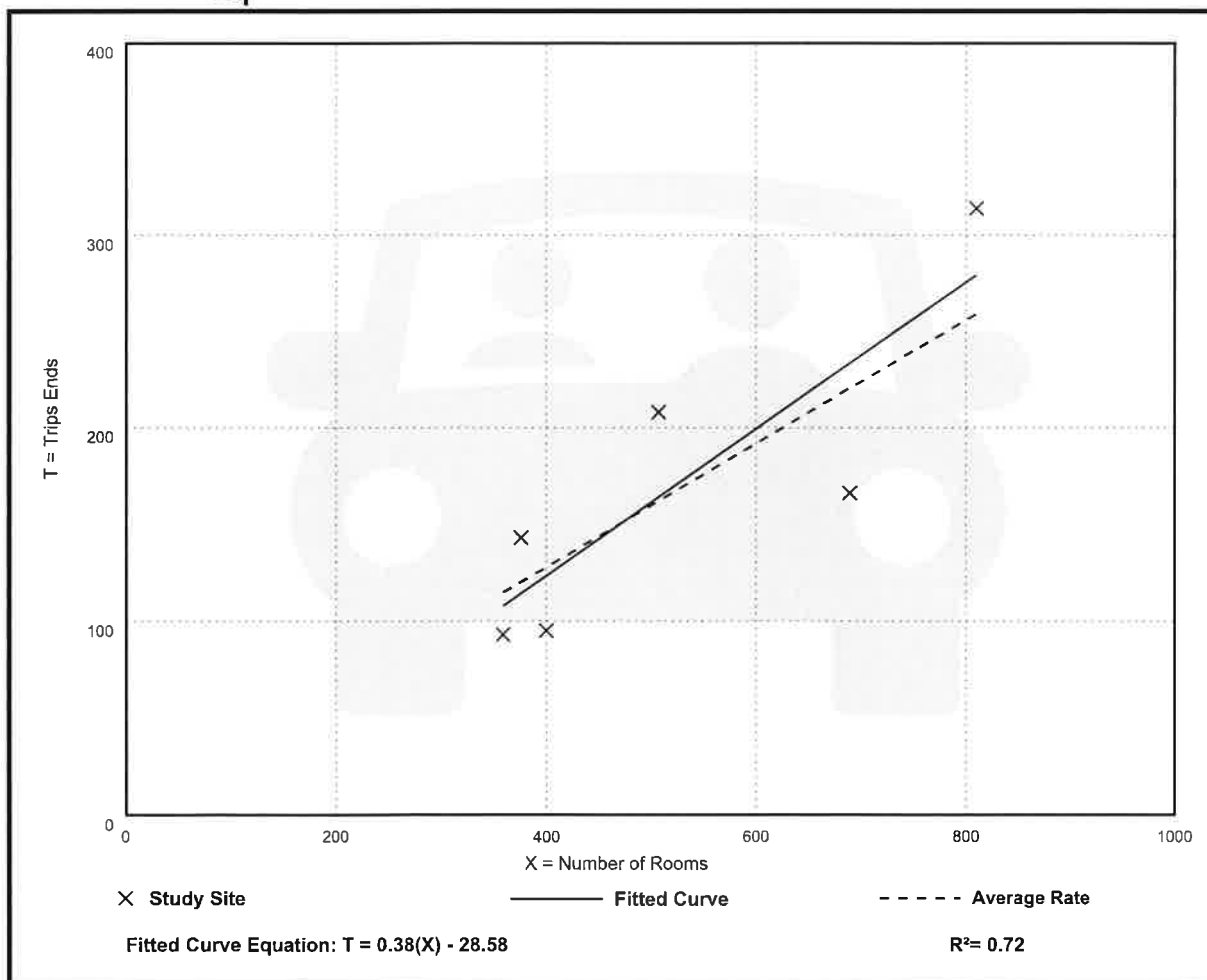
Avg. Num. of Rooms: 524

Directional Distribution: 72% entering, 28% exiting

Vehicle Trip Generation per Room

Average Rate	Range of Rates	Standard Deviation
0.32	0.24 - 0.41	0.08

Data Plot and Equation



Resort Hotel (330)

Vehicle Trip Ends vs: Rooms

On a: **Weekday,**

Peak Hour of Adjacent Street Traffic,

One Hour Between 4 and 6 p.m.

Setting/Location: General Urban/Suburban

Number of Studies: 9

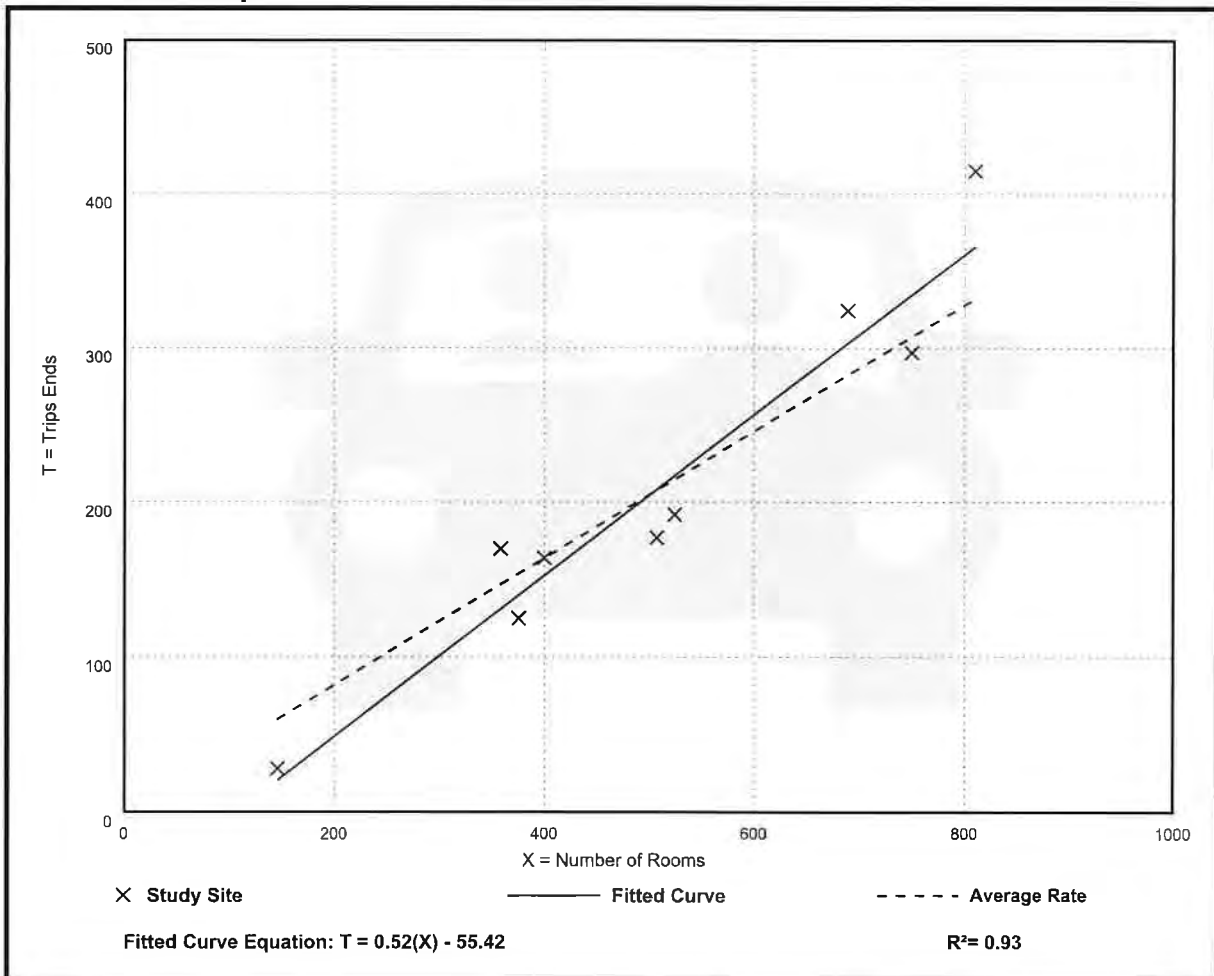
Avg. Num. of Rooms: 507

Directional Distribution: 43% entering, 57% exiting

Vehicle Trip Generation per Room

Average Rate	Range of Rates	Standard Deviation
0.41	0.19 - 0.51	0.08

Data Plot and Equation



**NEPTUNE
BEACH RESORT
REDEVELOPMENT**

**August 8th, 2023
5:00 - 6:30 p.m. at
DiamondHead
2000 Estero Blvd, FMB**

Join us!

**Meet the ownership and
redevelopment team.
See & discuss the proposed resort.**



MEMO

To: The Neptune Resort Team
From: Laura Tefft
cc:
Date: August 9, 2023
Subject: Summary of Questions from the Chamber of Commerce/Realtor Meeting

Please find below a summary of the questions which were posed by audience members during the Fort Myers Beach Chamber of Commerce/Realtor meeting which took place on August 8, 2023. I have provided a few of the replies in *italics*.

1. Do you have the anticipated seating county for the ballroom and restaurant?
2. Where will the public parking be located?
3. Are you willing to participate in a transit system with other local hotels to bring guests to your hotel?
4. Loved the new plan but will you be using the photo of the old Neptune Inn somewhere in the hotel?
5. Will there be rooms to accommodate larger families?
6. Will there be incentives for locals for both hotel and restaurant?
7. Only see steps at the rear of the building. Will there be handicap access at the rear of the building?
8. Does this project as presented today fit into the current LDC?
9. Do we have a list of public benefits that The Neptune Resort is proposing to provide?
10. Will slides of the renderings presented be available on a website?
11. What is the acreage of the site?
12. Workforce questions
 - a. How many employees do you anticipate?
 - b. What is the parking plan for employees?
13. When is cleanup of the site anticipated?
14. What are the plans for recruiting of workforce?
15. Suggestions presented- Beach School, start and ending times around school schedule.
16. Will there be timeshare units?



Sign-In Sheet

Public Information Meeting: The Neptune Resort
August 8, 2023 - 5:00pm

	Name	Street Address	City & Zip Code	Phone #	Email
1	MIKE MILLER	1290 Bahia Via	FMB	614-361-1982	MIKE@IDEAL-INVSTMENTS.COM
2	NEIL HOPWOOD	2000 ESTERO BLVD	FMB	239-765-7654	dhrcm@sunsetream.com
3	Bill Waichulis	275 Estero Blvd	33931	239-872-5914	Baichulis@Berkin.com
4	BEV & RICHARD LARSON	P.O. Box 4002 - FMB 7 and 16976 - 160 SAN CARLOS BLVD #288 Fort Myers, FL 33908	33932	239-281-7290	Bev1314@aol.com
5			33908		
6	Marie & Dan Hamulta	4300 Harbor Lane	33903	443-255-8475	info@nauticaltiki.com
7	ED RYAN		33913		
8	Danielle Rambur		33913		drambur@johnrowood.com
9	KAREN WOODSON	820 310 St	33931	612-802-8349	Kwoodson820@gmail.com
10	Tom & Karen Swambeck	4753 Estero Blvd #1103	33931	239-292-6285	Karen@TeamSwambeck.com
11	Annie Meehan	4745 Estero Blvd	33931	952-994-8356	Annie@AnnieMeehan.com
12	JACKI LISZAK	FMB chamber		954-415-2233	Jacki@FMBchamber.com
13	ERIKA ZSAK	FMB Chamber	33931	239-454-7500	ERIKA@FMBChamber.com
14	KAT KLAR	FMB REALTY	33931	561-346-6616	Kklar43@gmail.com
15	John Richard	FMB		239-565-9554	TWR2370@gmail.com
16	Melissa Allers	5485 Avenida Pescadora	33931	710-329-5435	zelanek@hotmail.com
17	David Cesaro	1170 Estero Blvd.	33931		David.Cesaro@T&E Hospitality.com
18	Jane Plummer	340 Fairweather	33931	239-851-9565	jhpreefer@aol.com
19	Dawn Miller	290 Bahia Via	33931	614-578-2588	hmm.bailey@gmail.com
20	JANE SHARPE	17811 SAN CARLOS BLVD	33981	239-400-7819	office@lucydesignsco.com
21					
22					
23					
24					
25					



THE NEPTUNE RESORT REDEVELOPMENT PLAN

PRESENTED TO:

THE FORT MYERS BEACH CHAMBER OF COMMERCE & ROYAL PALM COAST REALTOR ASSOCIATION

THE NEPTUNE RESORT



INTRODUCTIONS

Continental Hospitality Group

- Columbus, OH / hotel developer and owner of 15 high-quality lodging properties

Springboard Hospitality

- Los Angeles, CA operator of 43 desirable, eclectic, mostly independently-owned and non-branded hotels and resorts in the lower 48 states and Hawaii

Meyers & Associates

- Columbus, OH / architecture and interior design with specializations in a wide variety of hospitality projects, golf clubs, and high-end residential

The Neighborhood Company

- Fort Myers, FL / land planning and design

ABOUT THE NEPTUNE RESORT

- Built in the 1960s as a motor inn
- Large guestrooms encouraged families and weeklong stays
- Spacious outdoor amenity core with two pools, grills, and social gathering and activity zones
- Beloved for decades by significant repeat clientele looking for a relaxing, intimate, and quiet place to enjoy Fort Myers Beach, an unrivaled sunset, and the many dining and entertainment options on the island
- Common guest feedback:
 - **Positive:** the location, beautiful sunsets, multiple swimming pools, spacious amenity area, large guestrooms with kitchenettes, and family-friendly vibe
 - **Negative:** the rooms were quite dull in design; very outdated functionally with low ceilings, guestrooms didn't maximize views, not many balconies, and no elevators; and, no food and beverage on site.

OUR PROPERTY HISTORY & RECOVERY EFFORT

Our Property History

- Purchased in September 2021
- We purchased the property given our regard for the island, strong guest loyalty and consistent property performance
- Our intent was long-term ownership of the property and to maintain it well, not redevelop or expand the hotel
- The Hurricane has forced us to redevelop

Post-Storm Recovery Effort

- We are in front of you today after what has been a long journey in the aftermath of Hurricane Ian – to appropriately address many key factors in our redevelopment plan: associates, insurance, financial stakeholders, FEMA and other site requirements, community benefits, and local and macro market conditions
- The reality is that the Neptune can't be repaired or rebuilt as it was and it can't be in this situation again
- The Property will need to be built to FEMA and local codes and address project economic feasibility concerns to enable a financeable and insurable property that is successful for the community and property stakeholders for many decades to come

THE NEPTUNE RESORT FEASIBILITY

- We have spent much of the last 8 months trying to generate a plan to reconstruct the Neptune of 60 years to be a better version of itself: a very high-quality, approachable, and welcoming resort with a neighborhood feel and public amenities – that Fort Myers Beach residents and visitors alike will enjoy for the **next 60 years**
- However, the storm created a feasibility problem
- The redevelopment plan attempts to address feasibility with focus on the following critical ideas:
 1. The needs and wants of our previously loyal guests as well as prospective customers
 2. Provide community benefits such as more expansive view corridors, a neighborhood restaurant and bar, a new pedestrian beach access point, improved parking and traffic mitigation, and higher tax revenues
 3. Lasting quality and architecture to contribute to the uniqueness of Fort Myers Beach
 4. Adequate revenue sources necessary to attract capital to invest in the redevelopment. This revenue is a function of the number of guestrooms, amenity spaces, and F&B outlets programmed into the project
- We hope you like the plan and thank you for your support



The Neptune Resort

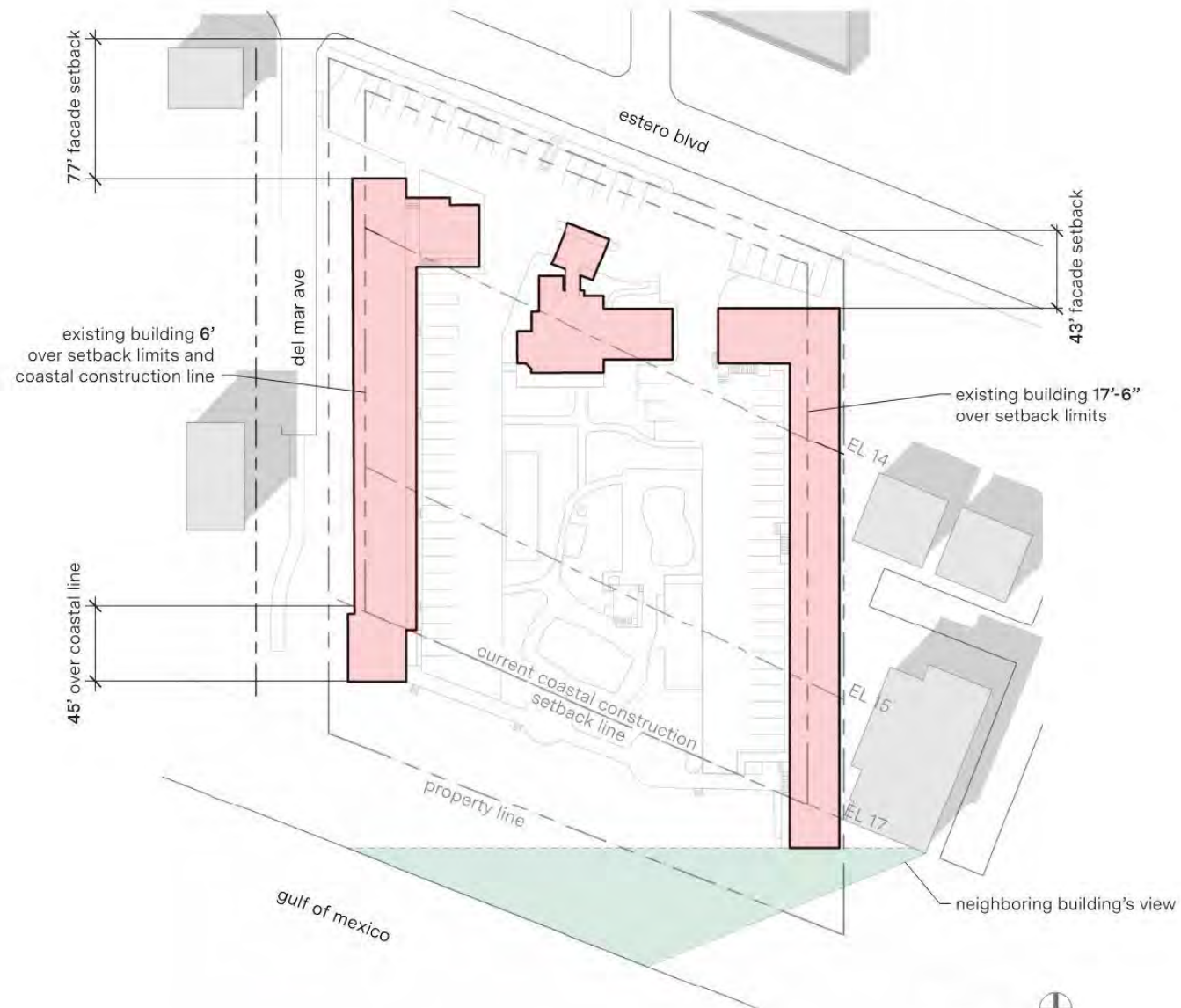
Fort Myers Beach, Florida

Community Presentation

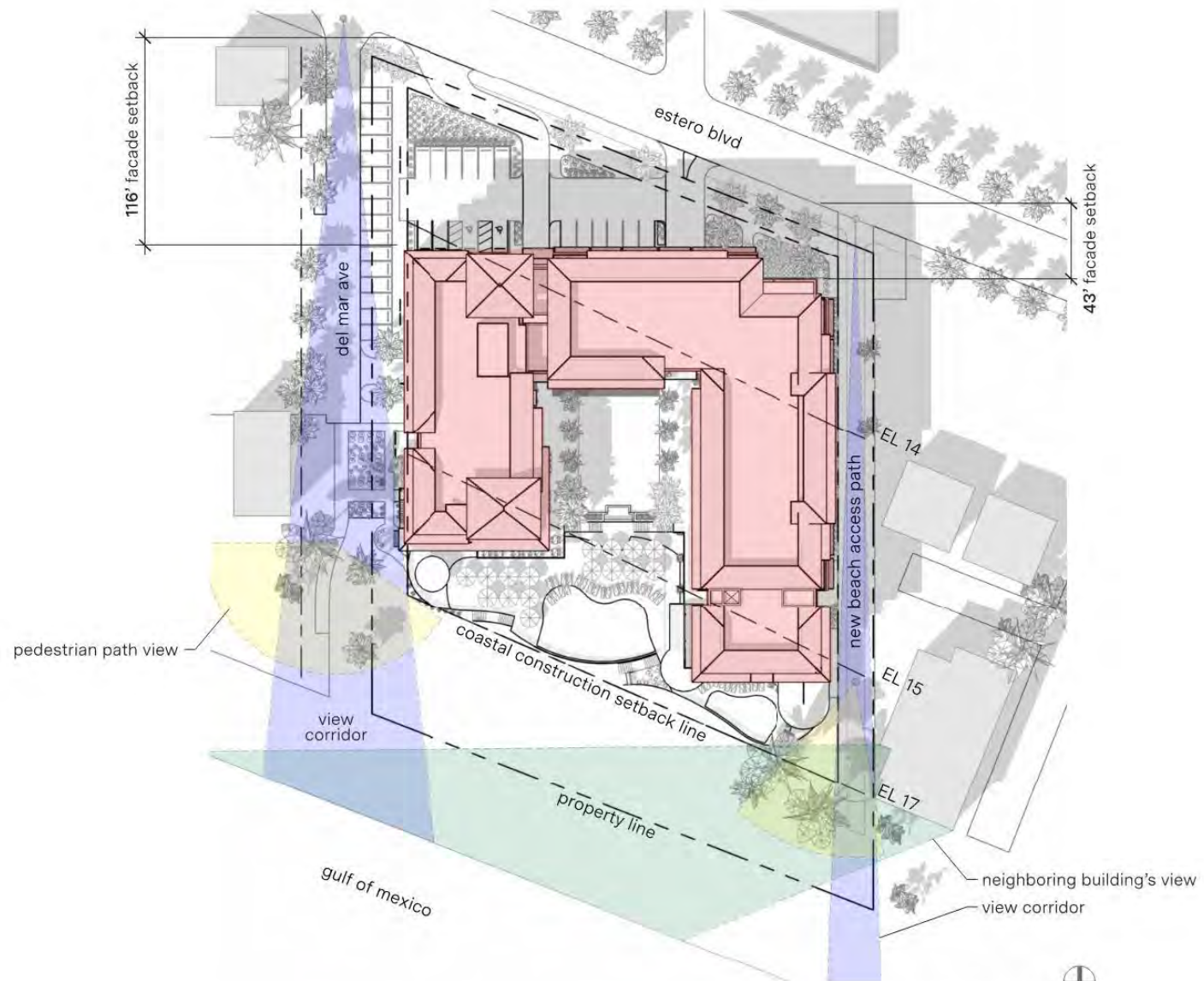
August 8, 2023







Site Plan - Existing



Site Plan - Proposed

Site & Context

Site Influences:

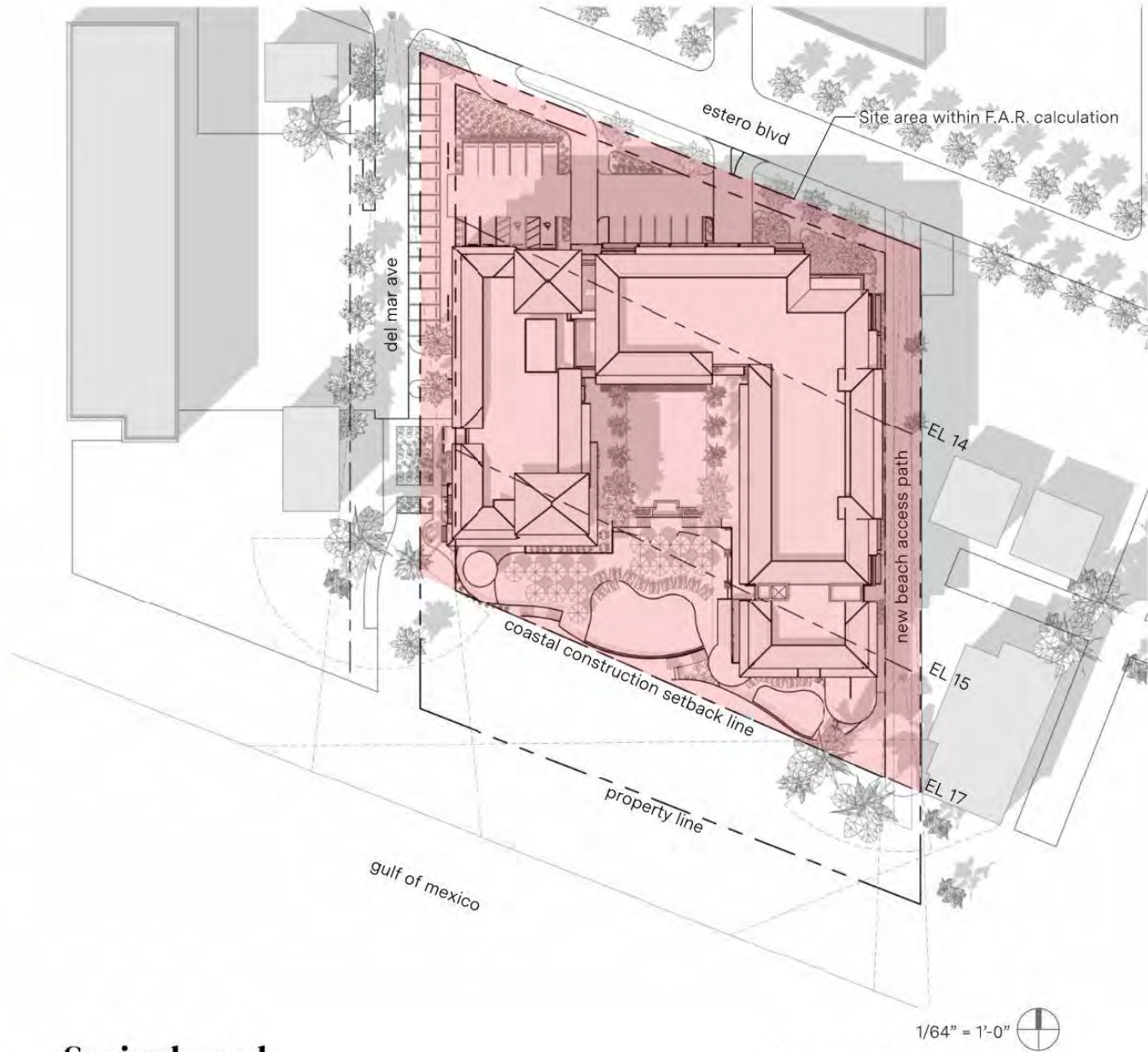
- Adjacent structures and preservation of views
- View corridor at Del Mar Ave.
- Flood zone elevations
- Setbacks & coastal construction line



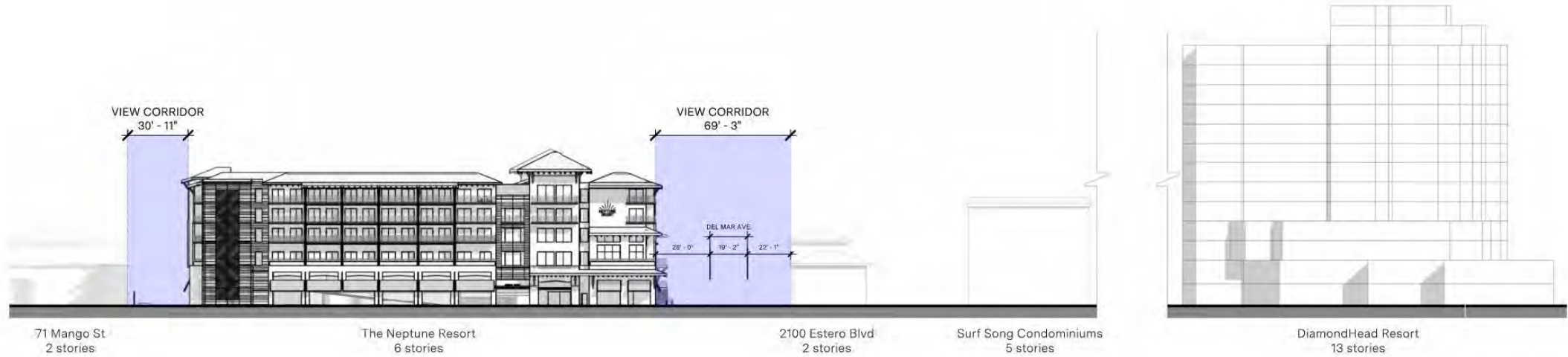
west context buildings



east context building



THE NEPTUNE RESORT | Site Plan



Estero Blvd Site Elevation

4 Stories (Over 2 parking levels)	±57'-6" Main Roof Height (Above BFE + 3' Freeboard)	1.48 F.A.R. Value (Excludes parking areas)
164 Onsite Parking Spaces	16 Public Parking Spaces (on Del Mar Ave)	140 Guestrooms





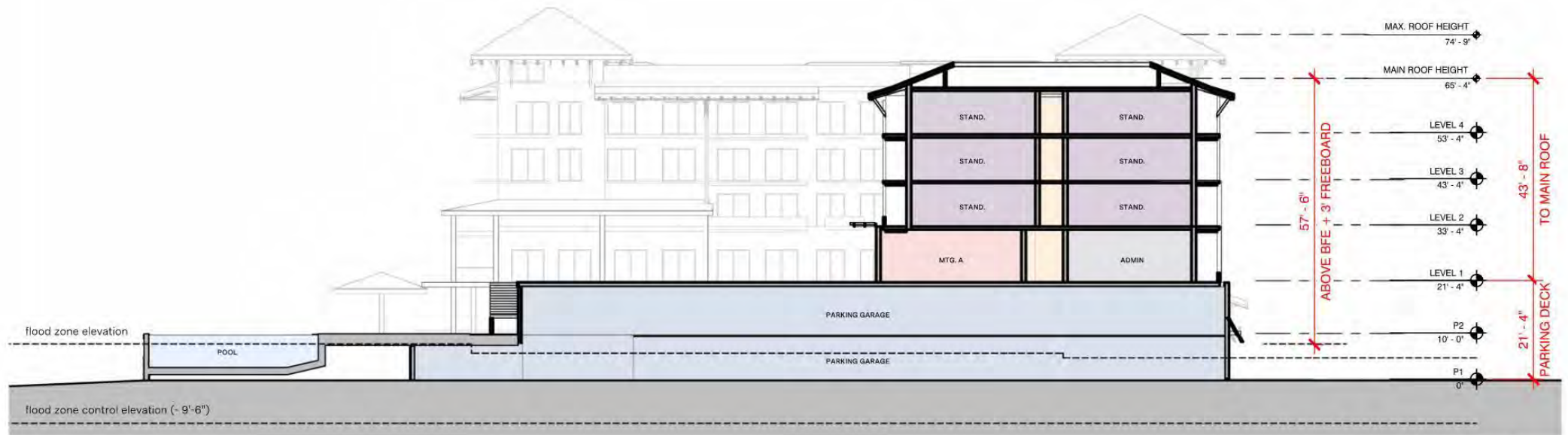
1/32" = 1'-0" 





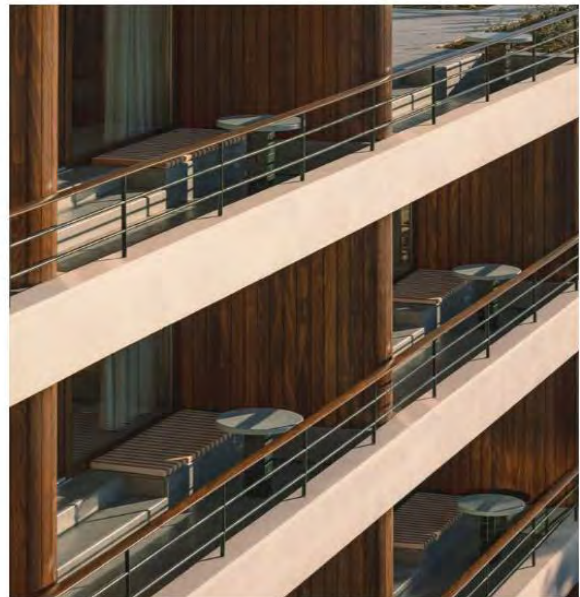
1/32" = 1'-0"





North-South Building Section

























Return original or certificated
document to: Town of Fort Myers
Beach
Department of Community
Services 2525 Estero Blvd
Fort Myers Beach, FL 33931

(above area for recording information)

TEMPORARY BEACH ACCESS, RESTORATION AND MANAGEMENT EASEMENT

THIS TEMPORARY BEACH ACCESS, RESTORATION AND MANAGEMENT EASEMENT (the "Easement") is given this 31st day of July, 20, by CHG Neptune Acquisitions, LLC, an Ohio limited liability company ("Grantor"), whose mailing address is 150 East Broad Street, Suite 800, Columbus, Ohio 43215, to the Town of Fort Myers Beach ("Grantee"). As used herein, the term "Grantor" shall include all heirs, successors, and assigns of the Grantor, and all subsequent owners of the "Property" (as hereinafter defined) and the term "Grantee" shall include any successor or assignee of Grantee.

W I T N E S S E T H

WHEREAS, Grantor is the owner of certain lands situated in Lee County, Florida, and more specifically described in Exhibit "A" attached hereto and incorporated herein (the "Property"); and

WHEREAS, Grantor has agreed to grant and convey to Grantee, a non-exclusive temporary access easement over, upon, and across a portion of the Property for the specific and limited purposes set forth herein more specifically described in Exhibit "B" attached hereto and incorporated herein (the "Easement Land").

NOW, THEREFORE, in consideration of the sum of one dollar (\$1.00) provided to Grantor and the mutual covenants, promises, terms and conditions set forth herein, the adequacy and receipt of which are hereby acknowledged, Grantor hereby voluntarily grants, creates, conveys, and establishes an Easement for and in favor of Grantee for the limited purposes set forth herein, which shall run with the land and be binding upon the Grantor. The scope, nature, and character of this Easement shall be as follows:

1. Recitals. The recitals herein are true and correct and incorporated into and made a part of this Easement.

2. Purpose. It is the purpose of this Easement to grant a non-exclusive temporary easement over, on, upon, and across the Easement Land for the limited purposes of:

- a. Vehicular and pedestrian ingress and egress to and from certain real property and related appurtenances in the vicinity of the Property that is related to constructing, preserving, patrolling, operating, maintaining, repairing, rehabilitating, and replacing the beach and dune system and other erosion control and storm damage reduction measures.
- b. Depositing sand, accomplishing any alterations of contours on said land, constructing berms and dunes, planting and maintaining dune vegetation, nourishing and renourishing periodically, for moving, temporarily storing and removing equipment and supplies, erecting temporary structures (as used herein, "temporary structures" does not include buildings of any kind), and performing any work necessary and incident to the construction, periodic renourishment, maintenance, and implementation of the Grantee's beach renourishment plan or hurricane recovery project.
- c. Facilitating preservation of dunes and vegetation.
- d. Removing debris and obstructions within the limits of the easement.
- e. Further reserving to the Grantor, its successors and assigns all such rights and privileges as may be used and enjoyed without interfering or abridging the rights and easements hereby acquired; subject however to existing easements for public utilities and pipelines.

Such sand, dune, and berm work specified in this Section 2 to be completed by Grantee within the Easement Land and Additional Land shall collectively be referred to as "Grantee's Sand Work" and shall be constructed in conformance with the plans and specifications set forth on Exhibit D attached hereto and incorporated herein.

If the property in Exhibit "C" attached hereto and incorporated herein is not owned by Grantor, this Easement shall be interpreted to mean that the Grantor grants a temporary easement applicable to whatever interest the Grantor may possess in such property.

Access by Grantee to the Easement Land and the Additional Land shall be through the public street adjacent to the Property known as Delmar Avenue.

3. Limitations. None of the Easement rights granted hereunder are intended to be a dedication or gift to or for the public, nor give the Grantee the right to prohibit or restrict the Grantor and its successors and assigns from using and enjoying the portion of the land described in Exhibit "A" for recreational purposes in compliance with applicable federal, state, county and Town laws, ordinances, rules, and regulations.

4. Grantee's Liability. Grantee's liability is limited as provided in § 704.06(10), Fla. Stat. and § 768.28, Fla. Stat. Nothing herein shall constitute a waiver by Grantee of its sovereign immunity or the provisions of § 768.28, Fla. Stat. Additionally, Grantee shall not be responsible for any costs or liabilities related to the operation, upkeep, or maintenance of

this Easement.

5. Duration. This Easement shall be for a fixed period and shall automatically terminate June 1, 2038, without the necessity of any further instrument of record.

6. Modification. This Easement may be amended, altered, released, or revoked only by written agreement between the parties hereto or their heirs, assigns or successors-in-interest, which shall be filed in the public records in Lee County, Florida.

7. Title Warranties. Grantor warrants that Grantor has good and indefeasible fee simple title to and possession of the Easement Land and that it has good and lawful right to grant this Easement. Grantor represents that execution and delivery of this Easement and performance of its obligations pursuant to this Easement will not violate any agreement, instrument, order, judgment, decree, permit, approval, license, law, regulation, or ordinance to which Grantor is a party or by which Grantor or Grantor's assets or the Property is bound, or which otherwise affects the Property. Grantor shall indemnify, defend, and hold Grantee and its successors and assigns harmless from and against all claims, damages, liabilities, losses, costs, and expenses, including, without limitation, reasonable attorneys' fees arising from a breach of the representations, warranties, guarantees or covenants of Grantor contained in this Easement.

8. Authority. The undersigned person executing this Easement on behalf of Grantor represents and certifies that he or she is authorized to execute and deliver this Easement; that Grantor has full capacity to convey the Easement and other rights herein; and that all necessary action for the making of such conveyance has occurred. The undersigned person executing this Agreement on behalf of Grantee represents and certifies that he or she is authorized to execute and deliver this Easement; and that all necessary action for the execution of this Easement has occurred.

9. Notices. All notices, demands and requests required or permitted to be given under this Easement must be in writing and addressed to the appropriate Party at the appropriate address as set forth below and shall be deemed given and received (i) when hand delivered to the intended recipient, by any means; (ii) three (3) business days after the same is deposited in the United States mails, with adequate postage prepaid, and sent by registered or certified mail, with return receipt requested; (iii) one (1) business day after the same is deposited with an overnight courier service of national or international reputation having a delivery area encompassing the address of the intended recipient, with the delivery charges prepaid; or (iv) when received via electronic mail at the intended recipient's email address set forth below (provided such email delivery and receipt is confirmed via return receipt of the noticing Party). The initial addresses of the Parties shall be:

If to Grantor:

CHG Neptune Acquisitions, LLC
150 East Broad Street, Suite 800
Columbus, Ohio 43215
Attn: Adam D. Valente

Email: avalente@continental-realestate.com

With a copy to:

CHG Neptune Acquisitions, LLC
150 East Broad Street, Suite 800
Columbus, Ohio 43215
Attn: Mark A. Damante
Email: mdamante@continental-realestate.com

If to Grantee:

Town of Fort Myers
Beach 2525 Estero
Blvd.
Fort Myers Beach, FL
33931 Attn: Town
Manager
Email: townmanager@fmbgov.com

A Party may change its address, intended recipient party or email address by notice given in accordance with this Section.

10. Amendment and Termination. This Easement may only be amended or terminated by a written agreement signed by the Parties.

11. Counterparts. This Easement may be executed in counterparts, each of which when executed shall be deemed an original, and all of which together shall constitute one instrument.

12. Enforcement; Attorneys' Fees. If any Party is required to commence any action or proceeding against the other to enforce or interpret the provisions hereof, the prevailing Party in such action shall be awarded, in addition to any amounts or relief otherwise awarded, all reasonable costs incurred in connection therewith, including reasonable attorneys' fees.

13. Severability. If any provision in this Agreement is held invalid, illegal, or unenforceable in any jurisdiction, the validity, legality, and enforceability of the remaining provisions of this Agreement shall not be impaired thereby.

14. Governing Law and Recordation. This Agreement shall be governed by the laws of the State of Florida.

15. Interpretation. Nothing contained herein is to be construed as creating a joint venture or partnership between Grantee and Grantor. Furthermore, it is acknowledged that each party had the opportunity to consult with counsel in the preparation of and contributed equally to the terms and conditions of this Easement and, accordingly, the rule that an

instrument shall be interpreted strictly against the party preparing same shall not apply herein due to the joint contributions of both Parties.

16. Headings. The Section headings are included only for convenience and shall not be construed to modify or affect the covenants, terms, or provisions of any Section.

17. No Third-Party Rights. Nothing contained in this Easement shall create a contractual relationship with or duties, obligations or causes of action in favor of any third party.

18. Remedies Cumulative. The rights and remedies given in this Easement and by law to a non-defaulting party shall be deemed cumulative, and the exercise of one of such remedies shall not operate to bar the exercise of any other rights and remedies reserved to a non-defaulting party under the provisions of this Easement or given to a non-defaulting party by law.

19. No Waiver. One or more waivers of the breach of any provision of this Easement by either Party shall not be construed as a waiver of a subsequent breach of the same or any other provision, nor shall any delay or omission by a non-defaulting party to seek a remedy for any breach of this Easement or to exercise the rights accruing to a non-defaulting party of its remedies and rights with respect to such breach.

20. WAIVER OF JURY TRIAL. EACH PARTY WAIVES ALL RIGHTS TO ANY TRIAL BY JURY IN ALL LITIGATION RELATING TO OR ARISING OUT OF THIS EASEMENT.

21. Miscellaneous.

a. The Parties hereto covenant and agree that they will from time to time, upon the request of another Party, and without further consideration, execute, acknowledge, and deliver in proper form any further instruments, and take such other actions, as such Party may reasonably require to conduct the intent of this Easement.

b. This Easement is the final expression of the complete and exclusive agreement between the Parties with respect to the subject matter hereof.

c. As soon as reasonably practicable after the execution and acknowledgment hereof, the Parties shall cause this Easement to be recorded in the Official Records of Lee County, Florida.

[Remainder of Page Intentionally Left Blank, Signature Page to Follow]

IN WITNESS WHEREOF, this Easement is entered into as of the date first set forth above.

GRANTOR:

CHG NEPTUNE ACQUISITIONS, LLC,
an Ohio limited liability company

By: [Signature]
Name: Mark A. Damante
Title: Vice President

WITNESSES:

[Signature]
Name: Matthew Bernhole
[Signature]
Name: Nannette C. Buel

STATE OF OHIO)
)
COUNTY OF FRANKLIN) ss.

The foregoing instrument was acknowledged before me this 31st day of July, 2023, by Mark A. Damante, Vice President of CHG Neptune Acquisitions, LLC, who is personally known to me.



NANNETTE C. BUEL
Notary Public, State of Ohio
My Commission Expires 10-07-24

[Signature]
Print or Stamp Name: Nannette C. Buel
Notary Public, State of Ohio at Large
Commission No.: _____
My Commission Expires: 10-07-24

GRANTEE:

WITNESSES:

Town of Fort Myers Beach, a Florida
municipal corporation

Name: _____

By: _____

Name: _____

Title: _____

Name: _____

STATE OF FLORIDA

)

)

ss.

COUNTY OF LEE

)

The foregoing instrument was acknowledged before me this ____ day of _____ 20____, by _____ as _____ of the Town of Fort Myers, Beach, who (check one) ☐ is personally known to me or ☐ produced a valid _____ driver's license as identification.

Print or Stamp Name: _____

Notary Public, State of Florida at Large

Commission No.: _____

My Commission Expires: _____

EXHIBIT A

PROPERTY

Block "A" and "B", in that certain Subdivision known as BEACH ESTATES, according to the map or plat thereof on file and recorded in the Public Records of Lee County, Florida, in Plat Book 6, Page 68 together with that portion of the street or alley lying between said blocks vacated by order of the Board of County Commissioners of Lee County, Florida, together with all of Block "A", together with the vacated alley that formerly separated Lots 1 and 2 from Lot 3 all being in that certain subdivision known as W.W.WATSON'S SUBDIVISION, according to the map or plat thereof on file and recorded in the office of the Clerk of the Circuit Court of Lee County, Florida, in Plat Book 5 at Page 67.

AND

All Units and Fractional Interests in The Neptune, a Condominium, together with an undivided interest in the common elements, according to the Declaration of Condominium thereof recorded in Clerk's Number 2007000193360, as amended from time to time, of the Public Records of Lee County, Florida.

LESS AND EXCEPT THE FOLLOWING:

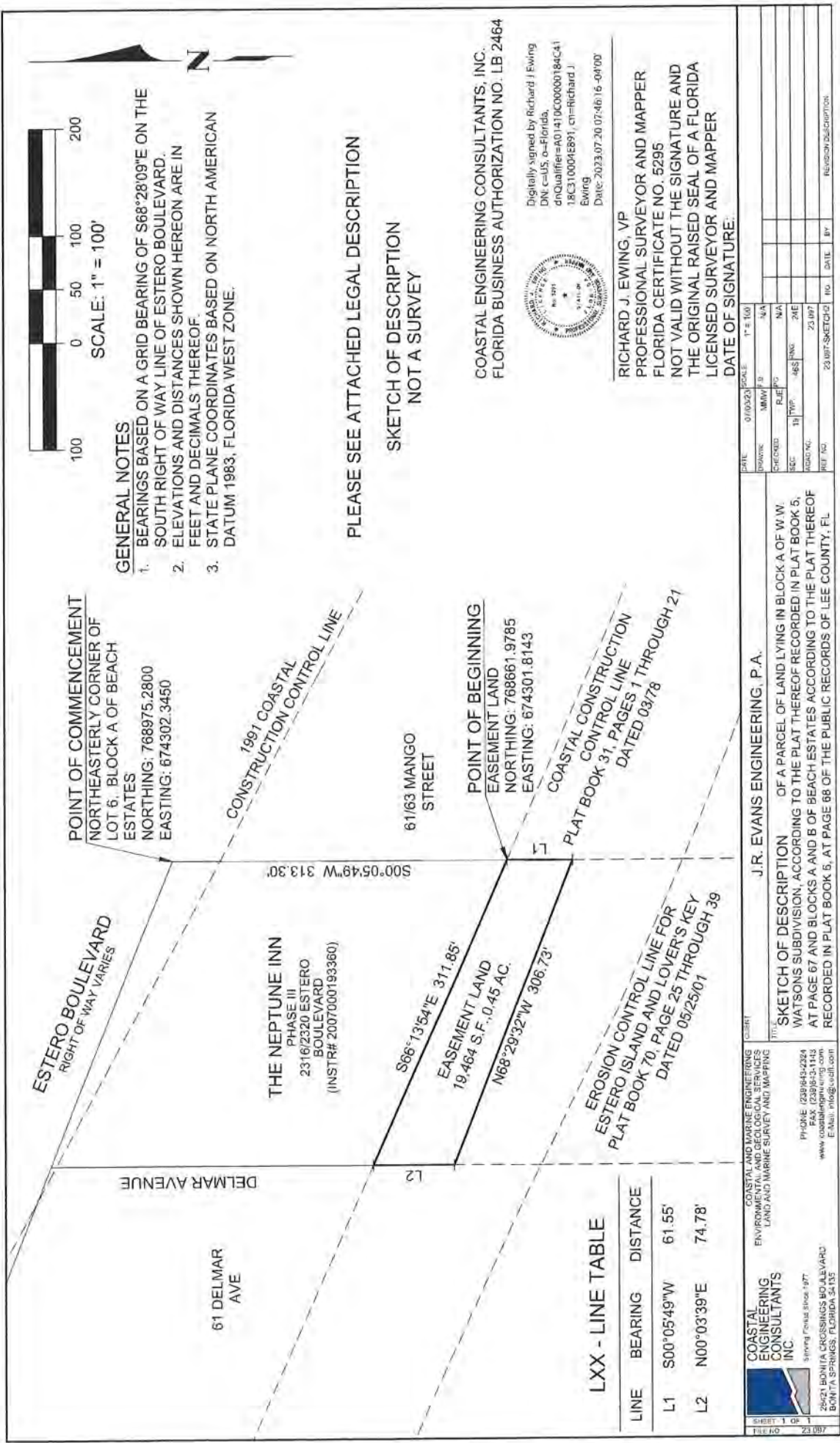
Unit 109N, Fractional Interest 9, The Neptune, a Condominium, together with an undivided interest in the common elements, according to the Declaration of Condominium thereof recorded in Instrument Number 2007000193360, as amended from time to time, of the Public Records of Lee County, Florida.

Unit 115N, Fractional Interest 9, The Neptune, a Condominium, together with an undivided interest in the common elements, according to the Declaration of Condominium thereof recorded in Instrument Number 2007000193360, as amended from time to time, of the Public Records of Lee County, Florida.

EXHIBIT B
EASEMENT LAND

(See attached)

Exhibit B
Easement Land



GENERAL NOTES

1. BEARINGS BASED ON A GRID BEARING OF S68°28'09"E ON THE SOUTH RIGHT OF WAY LINE OF ESTERO BOULEVARD.
2. ELEVATIONS AND DISTANCES SHOWN HEREON ARE IN FEET AND DECIMALS THEREOF.
3. STATE PLANE COORDINATES BASED ON NORTH AMERICAN DATUM 1983, FLORIDA WEST ZONE.

PLEASE SEE ATTACHED LEGAL DESCRIPTION

SKETCH OF DESCRIPTION
NOT A SURVEY



Digitally signed by Richard J. Ewing
DN: c=US, o=Florida,
dnQualifier=A01410C00000184C41
18C310004E891, cn=Richard J.
Ewing
Date: 2023.07.20 07:46:16 -04'00'

RICHARD J. EWING, VP
PROFESSIONAL SURVEYOR AND MAPPER
FLORIDA CERTIFICATE NO. 5295
NOT VALID WITHOUT THE SIGNATURE AND
THE ORIGINAL RAISED SEAL OF A FLORIDA
LICENSED SURVEYOR AND MAPPER

LXX - LINE TABLE

LINE	BEARING	DISTANCE
L1	S00°05'49"W	61.55'
L2	N00°03'39"E	74.78'

DATE	01/03/23	SCALE	1" = 100'
DRAWING	MMW/JP	DATE	01/03/23
CHECKED	RJE/JP	DATE	01/03/23
SEC	13	TWP	46S
ADJACENT	2316/2320	DATE	01/03/23
REF	NO	DATE	01/03/23
BY	JP	DATE	01/03/23
DESCRIPTION	SKETCH OF DESCRIPTION OF A PARCEL OF LAND LYING IN BLOCK A OF W W WATSON'S SUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 5, AT PAGE 67 AND BLOCKS A AND B OF BEACH ESTATES ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 5, AT PAGE 68 OF THE PUBLIC RECORDS OF LEE COUNTY, FL		

Exhibit B
Easement Land



Coastal and Marine Engineering
Environmental and Geological Services
Land and Marine Survey and Mapping
Website: www.coastalengineering.com

EASEMENT LAND

LEGAL DESCRIPTION

A PARCEL OF LAND LYING IN BLOCK A OF W.W. WATSONS SUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 5, AT PAGE 67 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, AND BLOCKS A AND B OF BEACH ESTATES ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 6, AT PAGE 68 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEASTERLY CORNER OF LOT 6, BLOCK A OF SAID BEACH ESTATES, RUN S00°05'49"W ALONG THE EASTERLY LINE OF SAID BEACH ESTATES FOR A DISTANCE OF 313.30 FEET TO THE "FORMER" 1978 LEE COUNTY COASTAL CONSTRUCTION CONTROL LINE AS RECORDED IN PLAT BOOK 31, PAGES 1 THROUGH 21 OF SAID PUBLIC RECORDS AND THE POINT OF BEGINNING;

THENCE CONTINUE S00°05'49"W FOR A DISTANCE OF 61.55 FEET TO THE SOUTHEASTERLY CORNER OF LOT 1, BLOCK A OF SAID BEACH ESTATES;

THENCE N68°29'32"W ALONG THE SOUTHEASTERLY LINE OF SAID BEACH ESTATES AND THE SOUTHERLY LINE OF SAID W.W. WATSONS SUBDIVISION FOR A DISTANCE OF 306.73 FEET TO THE SOUTHWESTERLY CORNER OF LOT 1, BLOCK A, OF SAID W.W. WATSONS SUBDIVISION;

THENCE N00°03'39"E ALONG THE WESTERLY LINE OF SAID W.W. WATSONS SUBDIVISION FOR A DISTANCE OF 74.78 FEET TO SAID CONSTRUCTION CONTROL LINE;

THENCE ALONG SAID LINE S66°13'54"E FOR A DISTANCE OF 311.85 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBES AN AREA OF APPROXIMATELY 19,464 SQUARE FEET OR 0.45 ACRES OF LAND.

BEARINGS BASED ON FLORIDA STATE PLANE COORDINATE SYSTEM, FLORIDA WEST ZONE.

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



Digitally signed by Richard J Ewing
DN: c=US, o=Florida,
dnQualifier=A01410C0000184C411
8C310004E891, cn=Richard J Ewing,
Date: 2023.07.20 07:48:28 -04'00'

RICHARD J. EWING, V.P.
PROFESSIONAL SURVEYOR AND MAPPER
FLORIDA CERTIFICATE NO. 5295
NOT VALID WITHOUT THE SIGNATURE AND
THE ORIGINAL RAISED SEAL OF A FLORIDA
LICENSED SURVEYOR AND MAPPER
DATE OF SIGNATURE:

28421 Bonita Crossings Blvd., Bonita Springs, FL 34135
70726 Phone (239) 643-2324 • Fax (239) 643-1143

1211 North Range Ave., Suite E, Denham Springs, LA
Phone (225) 523-7403

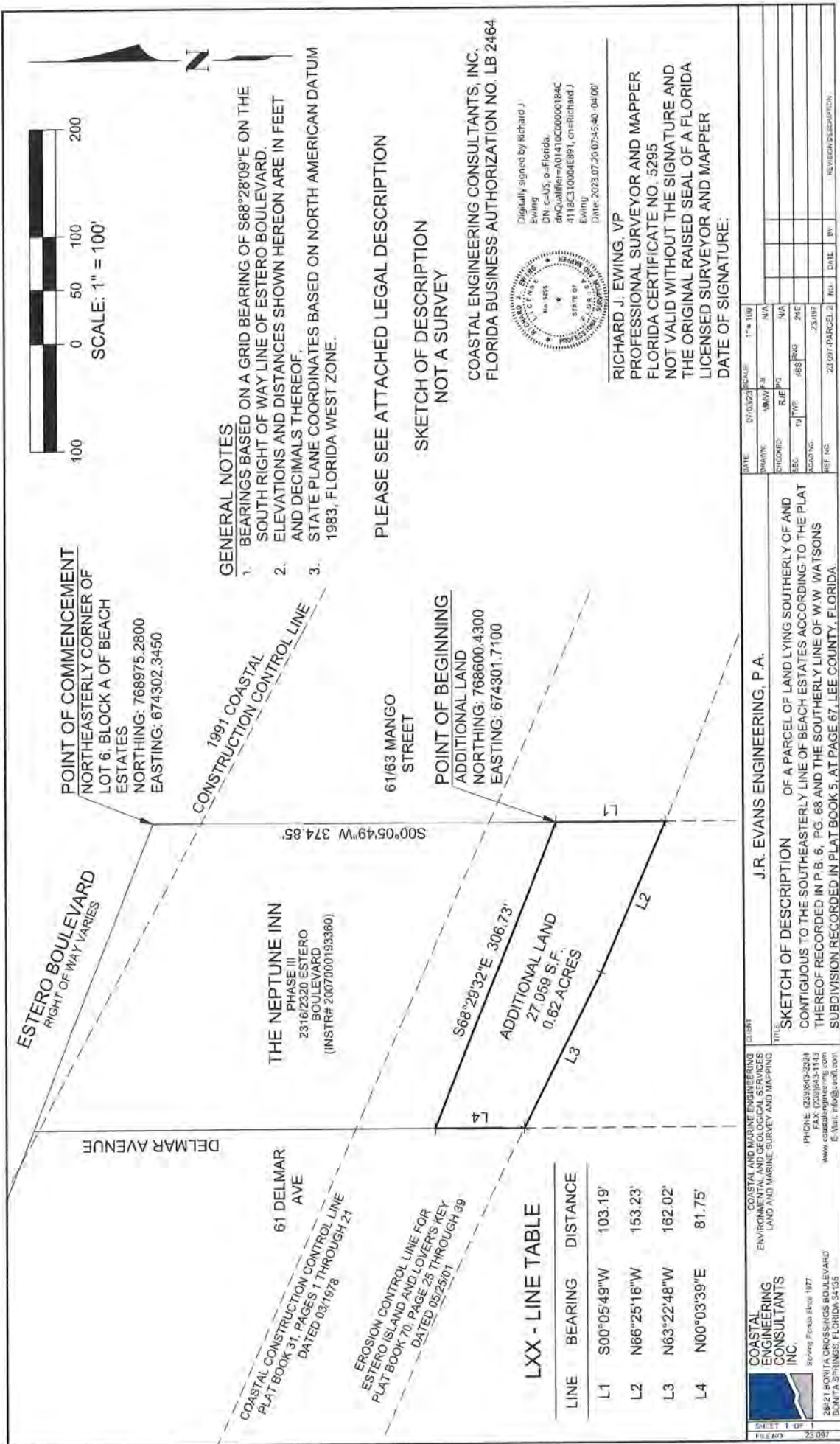
E-mail: info@cecill.com

SERVING COASTAL COMMUNITIES SINCE 1977

EXHIBIT C
ADDITIONAL LAND

(See attached)

Exhibit C
Additional Land





ADDITIONAL LAND

LEGAL DESCRIPTION

A PARCEL OF LAND LYING SOUTHERLY OF AND CONTIGUOUS TO THE SOUTHEASTERLY LINE OF BEACH ESTATES ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 6, AT PAGE 68 AND THE SOUTHERLY LINE OF W.W. WATSONS SUBDIVISION ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 5, AT PAGE 67, ALL OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEASTERLY CORNER OF LOT 6, BLOCK A OF SAID BEACH ESTATES, RUN S00°05'49"W ALONG THE EASTERLY LINE OF SAID BEACH ESTATES FOR A DISTANCE OF 374.85 FEET TO THE SOUTHEASTERLY CORNER OF LOT 1, BLOCK A OF SAID BEACH ESTATES AND THE POINT OF BEGINNING;

THENCE CONTINUE S00°05'49"W FOR A DISTANCE OF 103.19 FEET TO THE ESTERO ISLAND AND LOVERS KEY EROSION CONTROL LINE AS RECORDED IN PLAT BOOK 70, PAGES 25 THROUGH 39 OF SAID PUBLIC RECORDS;

THENCE ALONG SAID EROSION CONTROL LINE N66°25'16"W FOR A DISTANCE OF 153.23 FEET;

THENCE N63°22'48"W FOR A DISTANCE OF 162.02 FEET TO THE SOUTHERLY EXTENSION OF THE WESTERLY LINE OF BLOCK A SAID W.W. WATSONS SUBDIVISION;

THENCE ALONG SAID LINE N00°03'39"E FOR A DISTANCE OF 81.75 FEET TO THE SOUTHWESTERLY CORNER OF LOT 1, BLOCK A OF SAID W.W. WATSONS SUBDIVISION;

THENCE S68°29'32"E ALONG THE SOUTHEASTERLY LINE OF SAID BEACH ESTATES AND THE SOUTHERLY LINE OF SAID W.W. WATSONS SUBDIVISION FOR A DISTANCE OF 306.73 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBES AN AREA OF APPROXIMATELY 27,059 SQUARE FEET OR 0.62 ACRES OF LAND.

BEARINGS BASED ON FLORIDA STATE PLANE COORDINATE SYSTEM, FLORIDA WEST ZONE.

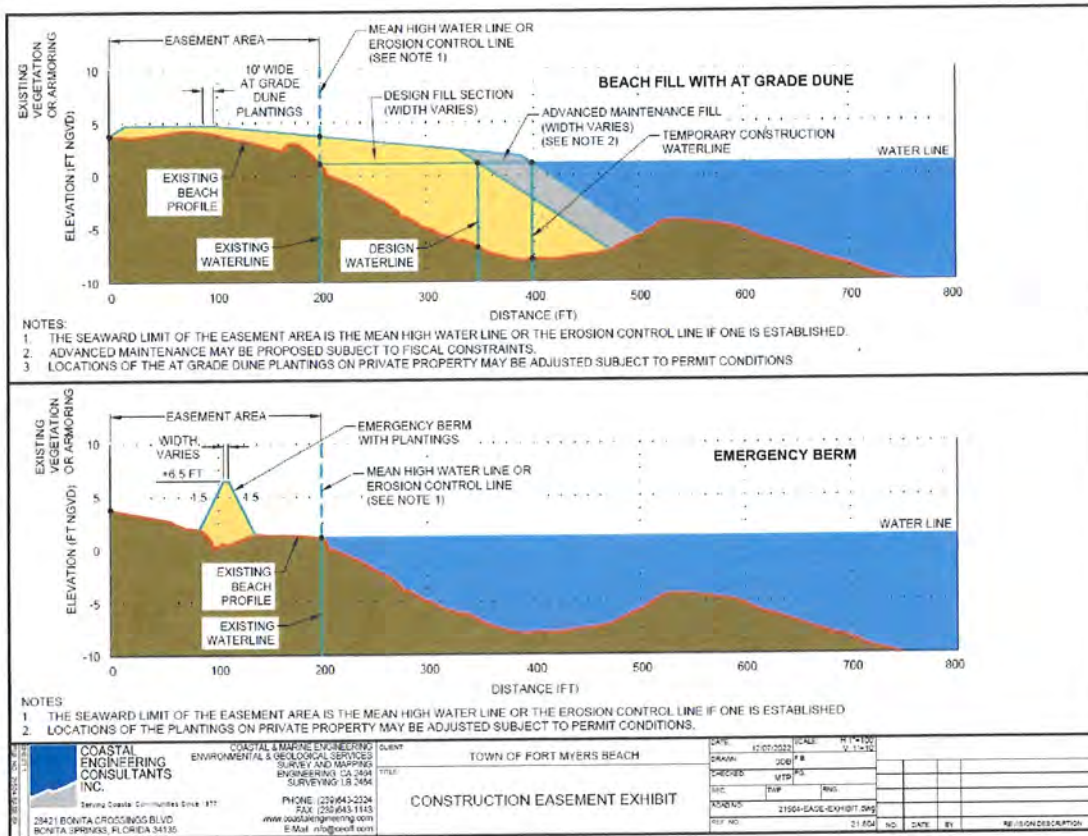
COASTAL ENGINEERING CONSULTANTS, INC.
FLORIDA BUSINESS AUTHORIZATION NO. LB 2464



Digitally signed by Richard J Ewing
DN: c=US, o=Florida,
ou=Qualifier=A01410C00000184C411
8C310004E891, cn=Richard J Ewing
Date: 2023.07.20 07:47:23 -04'00'

RICHARD J. EWING, V.P.
PROFESSIONAL SURVEYOR AND MAPPER
FLORIDA CERTIFICATE NO. 5295
NOT VALID WITHOUT THE SIGNATURE AND
THE ORIGINAL RAISED SEAL OF A FLORIDA
LICENSED SURVEYOR AND MAPPER
DATE OF SIGNATURE:

EXHIBIT D **GRANTEE'S SAND WORK**



1. **Request:**

Meeting Date: December 16, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/APPROVING WITH CONDITIONS/ DENYING VARIANCE 20240100, REQUESTING VARIANCES FROM LDC TABLE 34-3 OF 1) 7.3 FEET FROM THE STREET SETBACK FOR A FRONT SETBACK OF 17.7 FEET, 2) A VARIANCE OF 3 FEET FROM THE WEST SIDE SETBACK FOR A SIDE SETBACK OF 4 FEET 6 INCHES FOR THE MECHANICAL EQUIPMENT AND 3) A VARIANCE OF 12.1% FROM THE BUILDING COVERAGE FOR A BUILDING COVERAGE OF 52.1% TO BUILD A NEW SINGLE FAMILY STRUCTURE IN THE RM ZONING DISTRICT, FOR THE PROPERTY LOCATED AT 51 PEARL STREET, FORT MYERS BEACH, FLORIDA; AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

The Town Council approves or denies variance requests.

What the action accomplishes:

Approval of the variances allows for the construction of a new single-family residence with reduced setbacks and increased building coverage.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Eli Lee, Planner, Judith Frankel,
Principal Planner

5. **Background:**

Penelope Porter, the owner and applicant for 51 Pearl Street, is requesting three variances from the Town's Land Development Code (LDC) Table 34-3 which requires a single-family home in the RM zoning district to provide a minimum street setback of 25 feet from the front property line, 7.5 feet from the side property lines and a maximum lot coverage of 40%. The applicant is requesting: 1) a variance of 7.3 feet from the street setback for a front setback of 17.7 feet; 2) a variance of 3 feet from the side setback for a side setback of 4 feet 6 inches for the mechanical equipment; and 3) a variance of 12.1% from the building coverage for a building coverage of 52.1% to build a new single-family structure. The subject property is a beachfront lot adjacent to Pearl Street and is accessible via a driveway easement. LDC Sec 34-2 defines a street as a public or private thoroughfare which affords vehicle access to the principal means of ingress or egress to a lot. For purposes of measuring the street setback, LDC Sec 34-2 defines street setback as the setback extending across the front of a lot measured from the edge of an existing street right-of-way or street easement.

The applicant has updated their requests that were originally presented to the LPA on August 23rd. The applicant has removed the balcony on the west portion of the structure, the proposed structure is now 17.7 feet from the front property line instead of 12 feet, and the building coverage decreased from 55.11% to 52.1%.

This variance request was heard by the LPA on August 23rd, 2024. The LPA voted to deny the application.

Attachments:

1. Res 24-XX- 51 Pearl_PDF
2. Staff Report
3. Exhibit A- Completed Application

4. Exhibit B- LPA AND TC VAR postcard 51 PEARL ST (2)
5. Exhibit C- Proposed Site Plan_51 Pearl St
6. Exhibit D: Property Survey
7. ADDED 12.13.24: 01 - Narrative Statements

Financial Impact:

unknown

6. Alternative Action

Approve with conditions.

7. Management Recommendations:

Deny

8. Recommended Approval:

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

Created/Initiated - 11/25/2024
Approved - 11/25/2024
Approved - 11/25/2024
Approved - 12/3/2024
Approved - 12/5/2024
Final Approval - 12/5/2024

**TOWN COUNCIL
RESOLUTION NUMBER 24-XX**

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/PROVING WITH CONDITIONS/ DENYING VARIANCE 20240100, REQUESTING VARIANCES FROM LDC TABLE 34-3 OF 1) 7.3 FEET FROM THE STREET SETBACK FOR A FRONT SETBACK OF 17.7 FEET, 2) A VARIANCE OF 3 FEET FROM THE WEST SIDE SETBACK FOR A SIDE SETBACK OF 4 FEET 6 INCHES FOR THE MECHANICAL EQUIPMENT AND 3) A VARIANCE OF 12.1% FROM THE BUILDING COVERAGE FOR A BUILDING COVERAGE OF 52.1% TO BUILD A NEW SINGLE FAMILY STRUCTURE IN THE RM ZONING DISTRICT, FOR THE PROPERTY LOCATED AT 51 PEARL STREET, FORT MYERS BEACH, FLORIDA; 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, 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, Penelope Porter (“Applicant”) is the owner(s) of the property located at 51 Pearl Street (Property), and is requesting variances from LDC Table 34-3 of 7.3 feet from the street setback for a front setback of 17.7 feet, a variance of 3 feet from the west side setback for a side setback of 4 feet 6 inches for the mechanical equipment and a variance of 12.1% from the building coverage for a building coverage of 52.1% to build a new single-family structure in the RM zoning district; and

WHEREAS, the STRAP number for the subject property is 19-46-24-W4-00445.0000; and

WHEREAS, the Property is located in the “Boulevard” and “Recreation” Future Land Use of the Comprehensive Plan and the “Residential” and “Multifamily” zoning districts 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 23, 2024, and at said hearing the LPA gave full and complete consideration to the request of Applicant, recommendations of staff, the documents in the file, and the testimony of all interested persons, as required by Section 34-87 of the LDC. The LPA found that the request is not consistent with the comprehensive plan and the requirements of the LDC and by roll call voted 6 to 1 to recommend denial of the variances; and

WHEREAS, on December 16, 2024, the Town Council held a duly noticed public hearing to fully consider the request of the Applicant, the recommendations of Town staff and the LPA, the documents in the record, and testimony of all interested persons as required by 34-87 of the LDC; and

WHEREAS, the Town Council determined it is in the best interest of the Town to **approve/ approve with conditions/ deny the request**.

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

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

Section 2. The Town Council determines the Applicant **did/ did not** meet its burden of proof that the requested Variances **do/ do not** meet the requirements of the Town Comprehensive Plan and LDC and **approving/ approving with conditions/ denying** the Variances is in the best interest of the Town. Therefore, based upon the recommendations, testimony, and evidence presented by the Applicant, Town staff, interested parties and public, the Town Council **APPROVES/ APPROVES WITH CONDITIONS/ DENIES** a request for variances from LDC 34-3 of 7.3 feet from the street setback for a front setback of 17.7 feet, a variance of 3 feet from the west side setback for a side setback of 4 feet 6 inches for the mechanical equipment and a variance of 12.1% from the building coverage for a building coverage of 52.1% to build a new single-family structure in the RM zoning district.

Section 3. In **approving/ approving with conditions/ denying** the Variance, the Town Council makes the following findings and conclusions in accordance with the requirements of Section 34-87 of the LDC:

- A. There **are/ are not** exceptional or extraordinary conditions or circumstances that are inherent to the property in question, and the request **is/ is not** for de minimis variances under circumstances or conditions where rigid compliance is not essential to protect public policy.
- B. The conditions justifying approval of the variances **are/ are not** the result of actions of the Applicant taken after the adoption of the regulation in question.
- C. The variances **are/ are not** the minimum variances that will relieve the Applicant of an unreasonable burden caused by the application of the regulation to the Property.
- D. The granting of the variances **will/ will not** be injurious to the neighborhood or otherwise detrimental to the public welfare.
- E. The conditions or circumstances on the Property **are/ are not** of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.

Section 4. If the Town Council approves the requested variances, the following conditions of approval are imposed on the Applicant and the Property:

- A. Approval of these variances does not give the Applicant an undeniable right to permit approval. Development of the Property must comply with all applicable requirements of the Fort Myers Beach Comprehensive Plan and LDC in effect at the time of permit approval, except as specifically modified herein.
- B. Property owner must adhere to the Neighborhood flooding ordinance for drainage and 67% maximum impervious requirements.
- C. The variance shall only apply to the single-family home as shown on the provided site plan. Demolition or substantial damage to the residential structure shall render the variances to be null and void.
- D. No portions of the structure shall extend past the 1978 Lee County Line (CCCL).

Section 5. This resolution shall be effective upon adoption by the Town Council.

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

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

ADOPTED this ____ day of ____ 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, Town Attorney

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

EXHIBIT A: Proposed Site Plan



Town of Fort Myers Beach
COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT

TYPE OF CASE: Variance

CASE NUMBER: VAR20240100

CASE NAME: 51 Pearl St; requesting a variance from Table 34-3 Dimensional Regulations in Conventional Zoning Districts for the street and side setbacks and building coverage in the RM zoning district.

LPA

HEARING DATE: August 23, 2024, at 9 AM

TOWN COUNCIL

HEARING DATE: December 16, 2024, at 9 AM

STAFF

RECOMMENDATION: DENIAL

**PREPARED/
SUBMITTED BY:** Eli Lee, Planner

I. APPLICATION SUMMARY

Applicant/Owner: The Neighborhood Company/Jenkins Wayne & Penelope Porter

Request: The applicant is requesting: 1) a variance of 7.3 feet from the street setback for a front setback of 17.7 feet, 2) a variance of 3 feet from the side setback for a side setback of 4 feet 6 inches for the mechanical equipment and 3) a variance of 12.1% from the building coverage for a building coverage of 52.1% to build a new single-family structure.

Subject property: See attached site plan

Physical Address: 51 Pearl St

STRAP #: 19-46-24-W4-00445.0000

FLU: Boulevard

Zoning: Residential Multi-family (RM)

Adjacent zoning and land uses:

North:	RESIDENTIAL CONSERVATION (RC) Multi-Family
South:	ENVIRONMENTALLY CRITICAL (EC) Recreation
East:	RESIDENTIAL CONSERVATION (RC) Single-Family Residence/Multi-Family
West:	DOWNTOWN Hotel/Recreation

II. BACKGROUND AND ANALYSIS

Background:

Penelope Porter, the owner and applicant for 51 Pearl Street, is requesting three variances from the Town's Land Development Code (LDC) Table 34-3 which requires a single-family home in the RM zoning district to provide a minimum street setback of 25 feet from the front property line, 7.5 feet from the side property lines and a maximum lot coverage of 40%. The applicant is requesting: 1) a variance of 7.3 feet from the street setback for a front setback of 17.7 feet; 2) a variance of 3 feet from the side setback for a side setback of 4 feet 6 inches for the mechanical equipment; and 3) a variance of 12.1% from the building coverage for a building coverage of 52.1% to build a new single-family structure.

The subject property is a beachfront lot adjacent to Pearl Street and is accessible via a driveway easement. LDC Sec 34-2 defines street as a public or private thoroughfare which affords vehicle access to the principal means of ingress or egress to a lot. For purposes of measuring the street setback, LDC Sec 34-2 defines street setback as the setback extending across the front of a lot measured from the edge of an existing street right-of-way or street easement.

The applicant has updated their requests that were originally presented to the LPA on August 23rd. The applicant has removed the balcony on the west portion of the structure, the proposed structure is now 17.7 feet from the front property line instead of 12 feet, and the building coverage decreased from 55.11% to 52.1%.

Analysis:

The first variance request is for the single-family home to be constructed 17.7 feet from the front property line. The property owner/applicant understood that since the subject property faces an easement and not a street ROW, the street setback should not apply. However, this is not in-line with the LDC definition of a street as noted above. The reduced setback would allow the home to gain more square footage and outdoor space, thus increasing the massing of the structure.

The second request is for the mechanical equipment located on the west portion of the structure to encroach 3 feet into the required 7.5-foot side setback. The placement of the mechanical equipment on the west side of the structure will be away from the neighbor on the east reducing the potential for nuisance noise to impact the neighbor.

The third request is to exceed the maximum building coverage by 12.1% to accommodate additional living space.

Neighborhood Compatibility:

The subject property is part of an existing residential neighborhood. It appears that the previous structure was a single-family home that did not meet the current required setbacks prior to Hurricane Ian.

The site abuts the Diamondhead Resort parking lot, therefore placement of mechanical equipment on that side of the lot would be unlikely to disturb any resort guests.

The other neighboring property of 41 Pearl Street has a single-family home constructed in 2009.

Findings and Conclusions:

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

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

The subject property is a beachfront lot that is off Pearl Street and is accessible via a driveway easement. The lot varies in width from approximately 50 feet to 54 feet. The buildable (landward of the 1978 CCCL) lot depth varies from approximately 58 to 80 feet. The lot contains a sufficient area to construct a home. The applicant is opting to rebuild a home that is substantially larger than what existed previously and what is allowed by right. The request is not for a de minimis variance. The Town Council should determine whether “*rigid compliance is not essential to protect public policy*” in this case.

- b. *That the conditions justifying the variance **are**/are not the result of actions of the applicant taken after the adoption of the regulation in question.*

The conditions justifying the variance are the result of the Applicant's design choices. The applicant has chosen to design a new residence that is not in compliance with the street setbacks, side setbacks, or building lot coverage set forth by Table 34-3 of the LDC. In an earlier meeting with the property owner, staff has recommended the property owner to apply for administrative setback variances, known as the "cottage" code but the applicant chose not to pursue that option.

- c. *That the variance granted is/**is not** the minimum variance that will relieve that applicant of an unreasonable burden caused by the application of the regulation in question to this property.*

The design of the home could be smaller to be compatible with the dimensions of the lot. The need for this variance is a result of a design choice and is subjective in nature.

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

The proposed location of the single-family residence being 17.7 feet from the front property line will be closer to the easement than the neighboring property to the east and the plane of the homes would not match. Views could also be negatively affected.

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

The granting of a variance for the mechanical equipment in the setback will not be injurious to the neighborhood or otherwise detrimental to the public welfare. The proposed location of the mechanical equipment is on the west side of the single-family structure, which faces a parking lot and does not abut the neighboring single-family residence to the east.

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

The increase in building coverage would cause the home to have more square footage under roof, which would create more massing of the structure, however the site would not exceed the maximum 67% impervious as required in code sec. 6-14.

- e. *That the conditions or circumstances on the specific piece of property for which the variance is sought are/**are not** of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.*

The conditions or circumstances on this specific property for which a variance is sought are not general in nature and do not warrant a code change.

III. RECOMMENDATION

Staff has reviewed the request for a variance *from LDC Table 34-3 which requires that a lot in the RM zoning district have minimum 25-foot street setback, 7.5-foot side setback, and 40% maximum building coverage* and found that the variance request does not meet the requirements set forth in sec. 34-87.

Therefore, staff recommends **Denial** of VAR20240100, a variance of 7.3 feet from the street setback for a front setback of 17.7 feet, a variance of 3 feet from the west side setback for a side setback of 4 feet 6 inches for the mechanical equipment and another variance of 12.1% from the building coverage for a building coverage of 52.1% to build a new single-family structure.

At the LPA hearing held on August 23, 2024, LPA member John McLean made a motion and seconded by LPA member Jim Dunlap to recommend denial for all three variances citing the reasons in the staff report. The vote was 6 to 1, with LPA member Jane Plummer recommending approval. The applicant has updated their requests that were originally presented to LPA on August 23rd, which has been reflected throughout the staff report.

IV. CONDITIONS FOR APPROVAL

If the Town's LPA recommends approval for the variance, town's staff recommends the following conditions of approval.

- 1) Approval of these variances does not give the Applicant an undeniable right to permit approval. Development 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) Property owner must ensure that they adhere to the Neighborhood flooding ordinance for drainage and 67% maximum impervious requirements.
- 3) The variance shall only apply to the single-family home as shown on the provided site plan. Demolition or substantial damage to the residential structure shall render the variances to be null and void.
- 4) No portions of the structure shall extend past the 1978 Lee County Line (CCCL).

V. EXHIBITS

- A. Complete application
- B. Postcards
- C. Proposed site plan
- D. Property Survey



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: 51 Pearl Street Fort Myers Beach FL 33931
STRAP Number: 194624W4004450000
Applicant: Penelope Porter Phone: 613 561 1340
Contact Name: Penelope Porter Phone: _____
Email: penelopejporter@gmail.com Fax: _____
Current Zoning District: RC
Future Land Use Map (FLUM) Category: _____
FLUM Density Range: _____ Platted Overlay: ☐ YES ☐ NO

ACTION REQUESTED

- ☐ Special Exception
☒ Variance
☐ Conventional Rezoning
☐ Planned Development ☐ Commercial ☐ Residential
☐ Master Concept Plan Extension
☐ Appeal of Administrative Action
☐ Vacation of Platted Right-of-way and Easement
☐ Other - cite LDC Section: _____

SUPPLEMENTAL FORM REQUIRED

PH-A
PH-B
PH-C
PH-D
PH-E
PH-F
PH-G
attach on separate sheet

PART I - General Information

A. Applicant*: Penelope Porter Phone: 613-561-1340
**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: Suite 421 829 Norwest Rd Kingston Ontario K7P2
Email: penelopejporter@gmail.com Fax: _____
Contact Name: Penelope Porter Phone: 613-561-1340



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: N/A Phone: _____
Address: _____
Email: _____ Fax: _____

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

Name: N/A Phone: _____
Address: _____
Email: _____ Fax: _____

Name: N/A Phone: _____
Address: _____
Email: _____ Fax: _____

PART II – Nature of Request

Requested Action (each request requires a separate application)

- ☐ Special Exception
- ☒ Variance from LDC Section 34 - 3
- ☐ Conventional Rezoning from _____ to _____
- ☐ Planned Development
- ☐ Rezoning from _____ to ☐ Commercial PD ☐ Residential PD
- ☐ Amendment. List the project number: _____
- ☐ Extension/reinstatement of Master Concept Plan. List project number: _____



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

☐ Appeal of Administrative Action

☐ Vacation

☐ Right-of-Way

☐ Easement

☐ Other. Please Explain: _____

PART III - Waivers

Please indicate any specific submittal items that have been waived by the Director for the request. Attach a copy of the signed approval as Exhibit 3-1. (Use additional sheets if necessary)

Code Section: _____ Description: _____

Code Section: _____ Description: _____

Code Section: _____ Description: _____

PART IV - Property Ownership (Single Owner)

☒ Single Owner (individual or husband and wife)

Name: Penelope Porter

Phone: _____

Mailing Address: Suite 421 829 Norwest Rd Kingston On K7P2N3

Email: penelopejporter@gmail.com

Fax: _____

AFFIDAVIT

APPLICATION IS SIGNED BY AN INDIVIDUAL OWNER OR APPLICANT

I, Penelope Porter 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;

4/30/2021

Town of Fort Myers Beach 2525 Estero Blvd Fort Myers Beach, Florida 33931
Phone: 239-765-0202 zoningpermits@fmbgov.com Fax: 239-765-0909

Page 3 of 11



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

Penelope Porter

Printed Name

STATE OF Florida COUNTY OF Lee

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

presence OR _____ online notarization, this 3rd day of April, 2024, by

Penelope Porter, ☐ who is personally known to me OR ☒ who has produced

Passport as identification.



ASHLEY SHEPARD
Commission # HH 253125
Expires April 14, 2026

Notary Public Signature

PART V

Property Ownership (Multiple Owners)

☐ Multiple Owners (including corporation, partnership, trust, association, condominium, timeshare, or subdivision)

- ☐ Complete Disclosure of Interest Form (see below)
- ☐ Attach list of property owners as Exhibit 5-1
- ☐ Attach map showing property owners interests as Exhibit 5-2 (for multiple parcels)
- ☐ For condominiums and timeshares see Explanatory Notes Part V - Exhibit 5-3
- ☐ Letter of Opinion - Exhibit 5-4

DISCLOSURE OF OWNERSHIP INTEREST

If the property is owned in fee simple by an INDIVIDUAL, tenancy by the entirety, tenancy in common, or joint tenancy, list all parties with an ownership interest as well as the percentage of such interest.

Name and Address

Percentage Ownership



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

If the property is owned by a CORPORATION, list the officers and stockholders and the percentage of stock owned by each.

Name, Address and Office

Percentage of Stock

_____	_____
_____	_____
_____	_____
_____	_____

If the property is in the name of a TRUSTEE, list the beneficiaries of the trust with percentage of interest.

Name and Address

Percentage of Interest

_____	_____
_____	_____
_____	_____
_____	_____

If the property is in the name of a GENERAL PARTNERSHIP OR LIMITED PARTNERSHIP, list the names of the general and limited partners.

Name and Address

Percentage of Ownership

_____	_____
_____	_____
_____	_____
_____	_____

If there is a CONTRACT FOR PURCHASE, whether contingent on this application or not, and whether a Corporation, Trustee, or Partnership, list the names of the contract purchasers below, including the officers, stockholders, beneficiaries, or partners.

Name, Address and Office

Percentage of Stock

_____	_____
_____	_____
_____	_____
_____	_____



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

Date of Contract: _____

If any contingency clause or contract terms involve additional parties, list all individuals or officers, if a corporation, partnership, or trust.

Name	Address
_____	_____
_____	_____
_____	_____
_____	_____

For any changes of ownership or changes in contracts for purchase subsequent to the date of the application, but prior to the date of final certificate of compliance, a supplemental disclosure of interest must be filed.

The above is a full disclosure of all parties of interest in this application, to the best of my knowledge and belief.

_____ Signature	_____ Printed Name
--------------------	-----------------------

AFFIDAVIT

APPLICATION IS SIGNED BY A CORPORATION, LIMITED LIABILITY COMPANY (L.L.C.), LIMITED COMPANY (L.C.), PARTNERSHIP, LIMITED PARTNERSHIP, OR TRUSTEE

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

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



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

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

Signature

Title

Typed or Printed Name

Date

STATE OF _____ COUNTY OF _____

The foregoing instrument was certified and subscribed before me by means of ____ physical presence OR ☐ online notarization, this ____ day of _____, 20____, by _____, ☐ who is personally known to me OR ☐ who has produced _____ as identification.

Seal

Notary Public Signature

PART VI- Property Information

A. Legal Description:

STRAP: 19-46-24-w4-00445-0000

Property Address: 51 Pearl Street Fort Myers Beach FL 33931

Is the subject property within a platted subdivision recorded in the official Plat Books of Lee County?

☒ No. Attach a legible copy of the legal description as Exhibit 6-1.

☐ Yes. Property identified in subdivision: _____

Book: _____ Page: _____ Unit: _____ Block: _____ Lot(s): _____

B. Boundary Survey:

☒ Attach a Boundary Survey of the property meeting the minimum standards of Chapter 61G17-6 of the Florida Administrative Code. A Boundary Survey must bear the raised seal and original signature of a Professional Surveyor and Mapper licensed to practice Surveying and Mapping by the State of Florida. Attach and label as Exhibit 6-2.



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

C. Property Dimensions:

Width (please provide an average width if irregular in shape) 50 feet
Depth (please provide an average width if irregular in shape) 152 feet
Frontage on street: 50 feet. Frontage on waterbody: 50 feet
Total land area: 7600 ☐ acres ☐ square feet

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

West from Sky Bridge to Pearl Street South. Property is between Surf Song Condo
and Diamond Head Hotel

☒ Attach Area Location Map as Exhibit 6-3

E. Property Restrictions (check applicable):

- ☐ There are no deed restrictions and/or covenants on the subject property.
☐ A list of deed restrictions and/or covenants affecting the subject property is attached as Exhibit 6-4.
☐ A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 6-5.

F. Surrounding Property Owners (these items can be obtained from the Lee County Property Appraiser):

- ☒ Attach a list of surrounding property owners within 500 feet as Exhibit 6-6.
☒ Attach a map showing the surrounding property owners as Exhibit 6-7.
☒ Provide Staff with two (2) sets of surrounding property owner mailing labels.

G. Future Land Use Category (see Future Land Use Map):

- | | |
|--|--|
| ☐ Low Density | ☐ Marina |
| ☐ Mixed Residential | ☐ Recreation |
| ☐ Boulevard | ☐ Wetlands |
| ☐ Pedestrian Commercial | ☐ Platted Overlay |



Case # _____

Date Received: _____

Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

Supplement PH-B

Additional Required Information for a Variance Application

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

Case Number:
Project Name: PORTER
Authorized Applicant: PORTER, PENELOPE
LeePA STRAP Number: 194624W4004450000

Current Property Status: Vacant Lot	
Current Zoning: RC	
Future Land Use Map (FLUM) Category:	
Comp Plan Density:	Platted Overlay? ☐ Yes ☐ No

Variance is requested from:

LDC Section Number

Title of Section or Subsection

Table 34-3 Dimensional
Front yard setback
Side yard encroachment West side only
Lot coverage increase

Complete the narrative statements below for EACH variance requested.

PART I
Narrative Statements

Request for variance from **34-3** (LDC Section number)

Explain the specific regulation contained in this section from which relief is sought:
Front Yard Set back relief. The property zoning currently requires a 25 foot front yard set back.
I am requesting a variance of 13 feet so that it be reduced to 12 feet. The front yard does not front on a street
it fronts on a driveway easement and a parking lot
The west side yard relief is being sought to allow for air conditioning units to
hang on the new structure side wall below a three foot cantilevered deck, both the units and the deck would
protrude into the 7.5 setback by 3 feet and are above the BFE on the Diamond Head Side of
the property which is a parking lot, separated by a fence and stone wall.
The lot coverage relief sought is for an increase in lot coverage from 40% to 56%

Reasons for request

Explain why the variance is needed:
The variances are needed to allow for construction of a three storey single
family residence. The lot had a cottage on the property which was destroyed by
lan, The front yard, and lot coverage relief are needed in
order to construct a single family home. The buildable area of the lot is very small
and irregular shaped. The trapezoid angles make one side of the lot very narrow.
The request for the A/C units to hang on the west side (Diamond Head Parking Lot)
with a cantilever deck is in order to minimize the intrusion to the neighbour to the
east from the A/C noise and also protect the A/C units with
a cantilever deck above.

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

The property is one of two properties located between the Diamond Head Resort and the surf song Condominiums. The property is accessed by a Right of Way Easement from Pearl Street.

The front yard is accessed by the Right of Way which is beside a parking lot. The property does not front on a public road nor sidewalk

The side yard encroachment is on the Diamond Head property side and any noise created by the air conditioners would not impact the hotel guests due to the distance from the hotel. The encroachment is beside a parking lot which is separated from my property by a stone wall and fence.

Lot coverage has been calculated using only the area north of the CCL. The impervious coverage is significantly lower and more reflective of the actual lot.

The lot coverage increase has no effect on the surrounding properties

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

The property is one of two homes located between the surf song condominiums and the Diamond Head Hotel. The west side of the property looks out to a parking lot.

This property fronts on a private driveway easment which is accessed from Pearl street, the property frontage is not on a traveled street nor public access and the front of the property looks out onto a parking lot which abuts the driveway

The property is unique in that it abuts both the diamond head parking lot on the west side and the Surfsong parking lot on the north side.

The property buildable area is very small and oddly shaped, the west property line to the CCL is only 58 feet which makes it impracticable to design a structure with a 25 foot frontage. The lot coverage regulation is very confining in this case as only using the buildable area for the calculation rather than the entire lot size makes it very difficult to stay within the allowable percentage.

Explain how the property qualifies for a variance. Direct this explanation to the guidelines for decision-making in LDC Section 34-87.

There are special and exceptional circumstances of this property in respect to its location and buildable size. The variances sought are minor in nature, have no negative effect on neighbours nor municipal infrastructure.

The reducing of the front yard setback will have no negative effect on the public and given the unique circumstance of this property's location, rigid compliance is not required to protect public policy.

The 3 foot encroachment of a deck with AC units underneath into the 7.5 foot side yard setback has no impact on the public, the east side abuts a parking lot and any noise from the Air units would not affect the hotel due to the buffering of the parking lot and the distance from my property to actual hotel rooms.

I am requesting the minimum relief required.
Granting of the variances would neither be injurious to the neighbourhood nor detrimental to the public welfare.

The conditions and circumstances are unique to this property and are not general in nature to warrant an amendment to the regulation.



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
(Variances, Extensions, Satisfaction of Conditions)**

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: December 16, 2024

ADDRESS: 51 Pearl St

APPLICANT: Penelope Porter

REQUEST: 1) a variance of 7.3 feet from the street setback for a front setback of 17.7 feet, 2) a variance of 3 feet from the side setback for a side setback of 4 feet 6 inches for the mechanical equipment and 3) a variance of 12.1% from the building coverage for a building coverage of 52.1% to build a new single-family structure.

TOWN CONTACT: JUDITH FRANKEL JFRANKEL@FMBGOV.COM

You may appear in person, through counsel, or through an authorized agent, and provide testimony, legal argument, or other evidence. At the public hearing(s), the request and related materials will be reviewed and a recommendation made. If a person decides to appeal any decision made, he or she will need a record of the proceedings, and may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. Transcripts of the proceedings are not provided by the Town. Copies of the application and staff report are available for viewing at Fort Myers Beach Town Hall. Call 239-765-0202 for more information. Town Hall is open between the hours of 8:30 AM and 4:30 PM. Reasonable accommodations will be made in accordance with the Americans with Disabilities Act. If you need reasonable accommodation, contact Town Hall at 239-765-0202.



Town of Fort Myers Beach
Community Development Services - Planning Division
2731 Oak St,
Fort Myers Beach, FL 33931

**NOTICE TO PROPERTY OWNERS WITHIN 500 FEET
(Variances, Extensions, Satisfaction of Conditions)**

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: December 16, 2024

ADDRESS: 51 Pearl St

APPLICANT: Penelope Porter

REQUEST: 1) a variance of 7.3 feet from the street setback for a front setback of 17.7 feet, 2) a variance of 3 feet from the side setback for a side setback of 4 feet 6 inches for the mechanical equipment, and 3) a variance of 12.1% from the building coverage for a building coverage of 52.1% to build a new single-family structure.

TOWN CONTACT: JUDITH FRANKEL JFRANKEL@FMBGOV.COM

You may appear in person, through counsel, or through an authorized agent, and provide testimony, legal argument, or other evidence. At the public hearing(s), the request and related materials will be reviewed and a recommendation made. If a person decides to appeal any decision made, he or she will need a record of the proceedings, and may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. Transcripts of the proceedings are not provided by the Town. Copies of the application and staff report are available for viewing at Fort Myers Beach Town Hall. Call 239-765-0202 for more information. Town Hall is open between the hours of 8:30 AM and 4:30 PM. Reasonable accommodations will be made in accordance with the Americans with Disabilities Act. If you need reasonable accommodation, contact Town Hall at 239-765-0202.



Town of Fort Myers Beach
Community Development Services - Planning Division
2731 Oak St,
Fort Myers Beach, FL 33931

**NOTICE TO PROPERTY OWNERS WITHIN 500 FEET
(Variances, Extensions, Satisfaction of Conditions)**

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: December 16, 2024

ADDRESS: 51 Pearl St

APPLICANT: Penelope Porter

REQUEST: 1) a variance of 7.3 feet from the street setback for a front setback of 17.7 feet, 2) a variance of 3 feet from the side setback for a side setback of 4 feet 6 inches for the mechanical equipment and 3) a variance of 12.1% from the building coverage for a building coverage of 52.1% to build a new single-family structure.

TOWN CONTACT: JUDITH FRANKEL JFRANKEL@FMBGOV.COM

You may appear in person, through counsel, or through an authorized agent, and provide testimony, legal argument, or other evidence. At the public hearing(s), the request and related materials will be reviewed and a recommendation made. If a person decides to appeal any decision made, he or she will need a record of the proceedings, and may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. Transcripts of the proceedings are not provided by the Town. Copies of the application and staff report are available for viewing at Fort Myers Beach Town Hall. Call 239-765-0202 for more information. Town Hall is open between the hours of 8:30 AM and 4:30 PM. Reasonable accommodations will be made in accordance with the Americans with Disabilities Act. If you need reasonable accommodation, contact Town Hall at 239-765-0202.



Town of Fort Myers Beach
Community Development Services - Planning Division
2731 Oak St,
Fort Myers Beach, FL 33931

**NOTICE TO PROPERTY OWNERS WITHIN 500 FEET
(Variances, Extensions, Satisfaction of Conditions)**

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: December 16, 2024

ADDRESS: 51 Pearl St

APPLICANT: Penelope Porter

REQUEST: 1) a variance of 7.3 feet from the street setback for a front setback of 17.7 feet, 2) a variance of 3 feet from the side setback for a side setback of 4 feet 6 inches for the mechanical equipment, and 3) a variance of 12.1% from the building coverage for a building coverage of 52.1% to build a new single-family structure.

TOWN CONTACT: JUDITH FRANKEL JFRANKEL@FMBGOV.COM

You may appear in person, through counsel, or through an authorized agent, and provide testimony, legal argument, or other evidence. At the public hearing(s), the request and related materials will be reviewed and a recommendation made. If a person decides to appeal any decision made, he or she will need a record of the proceedings, and may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. Transcripts of the proceedings are not provided by the Town. Copies of the application and staff report are available for viewing at Fort Myers Beach Town Hall. Call 239-765-0202 for more information. Town Hall is open between the hours of 8:30 AM and 4:30 PM. Reasonable accommodations will be made in accordance with the Americans with Disabilities Act. If you need reasonable accommodation, contact Town Hall at 239-765-0202.

Town of Fort Myers Beach
2525 Estero Blvd,
Fort Myers Beach, FL 33931

Town of Fort Myers Beach
2525 Estero Blvd,
Fort Myers Beach, FL 33931

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»«Next Record»

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»«Next Record»

Town of Fort Myers Beach
2525 Estero Blvd,
Fort Myers Beach, FL 33931

Town of Fort Myers Beach
2525 Estero Blvd,
Fort Myers Beach, FL 33931

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»«Next Record»

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»

A NEW HOME FOR:
THE PORTER FAMILY

51 PEARL ST.
FORT MYERS BEACH, FL

CONSULTANT:

ALBERT DAMBROSE
AR93689

PRELIMINARY
REVIEW SET

NOT FOR
CONSTRUCTION

DATE ISSUED: 15 NOV 2024

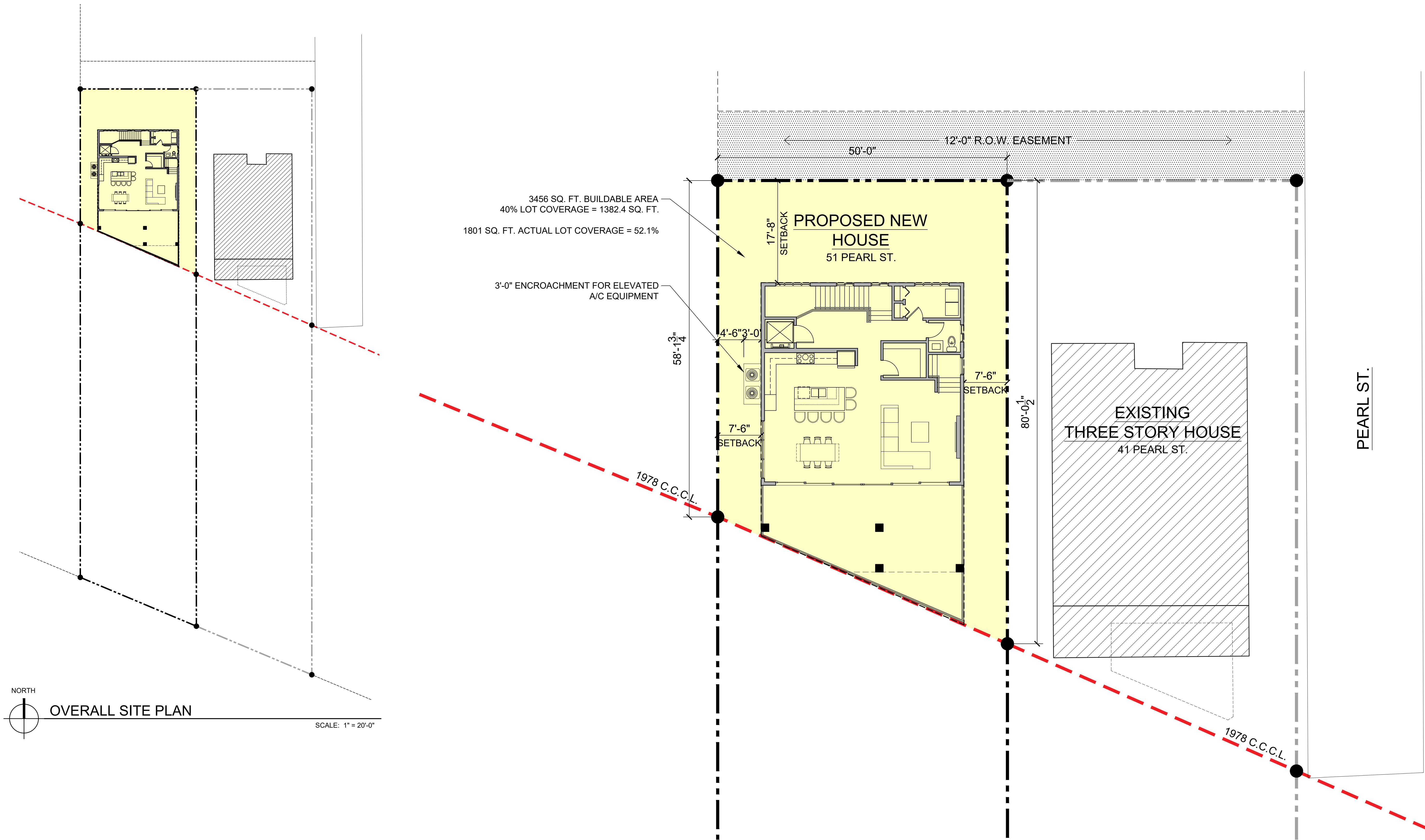
REVISIONS:

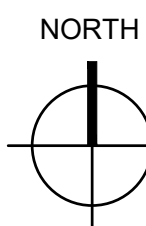
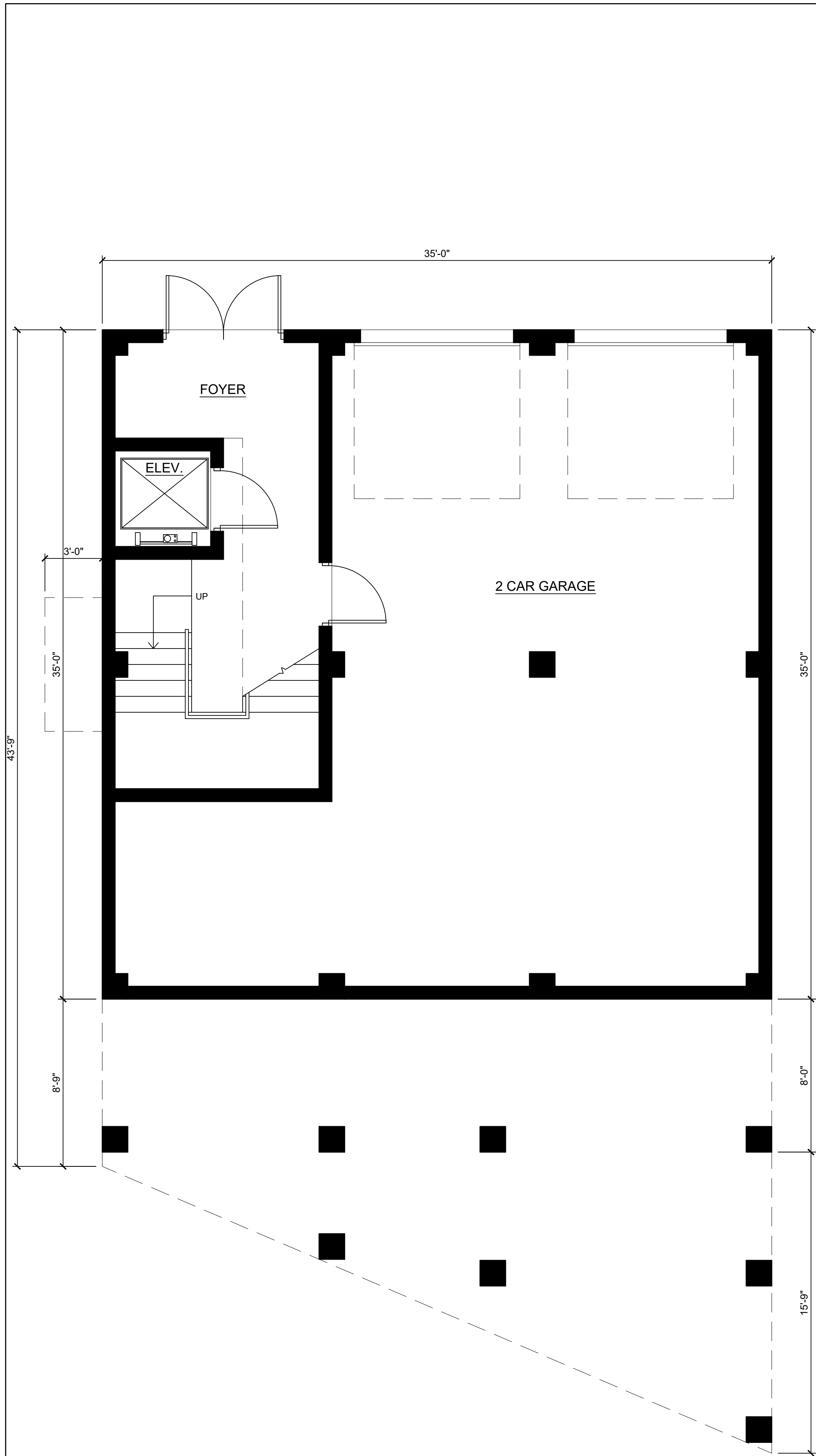
SHEET

D1

OF

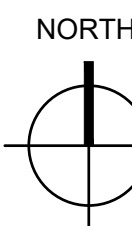
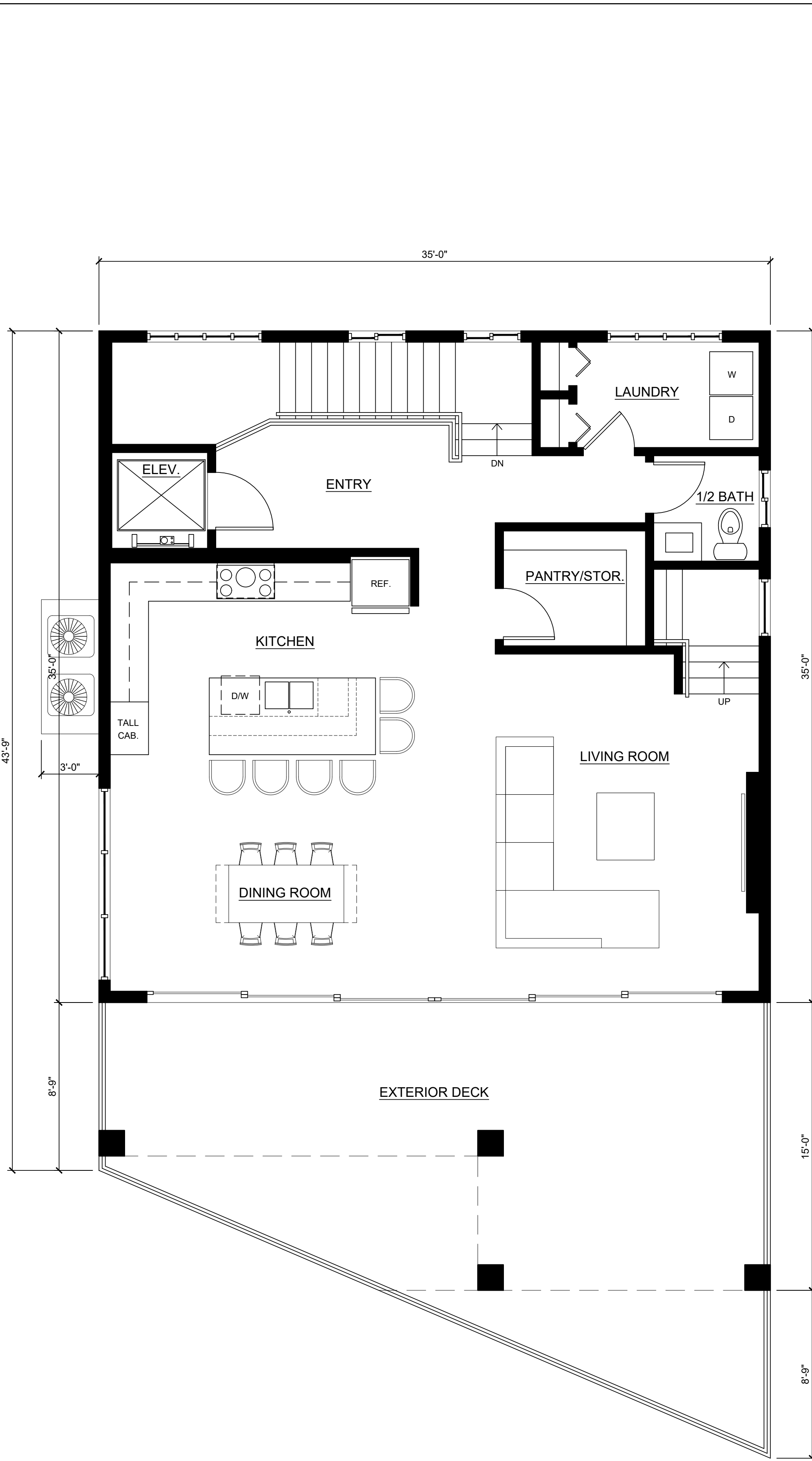
2





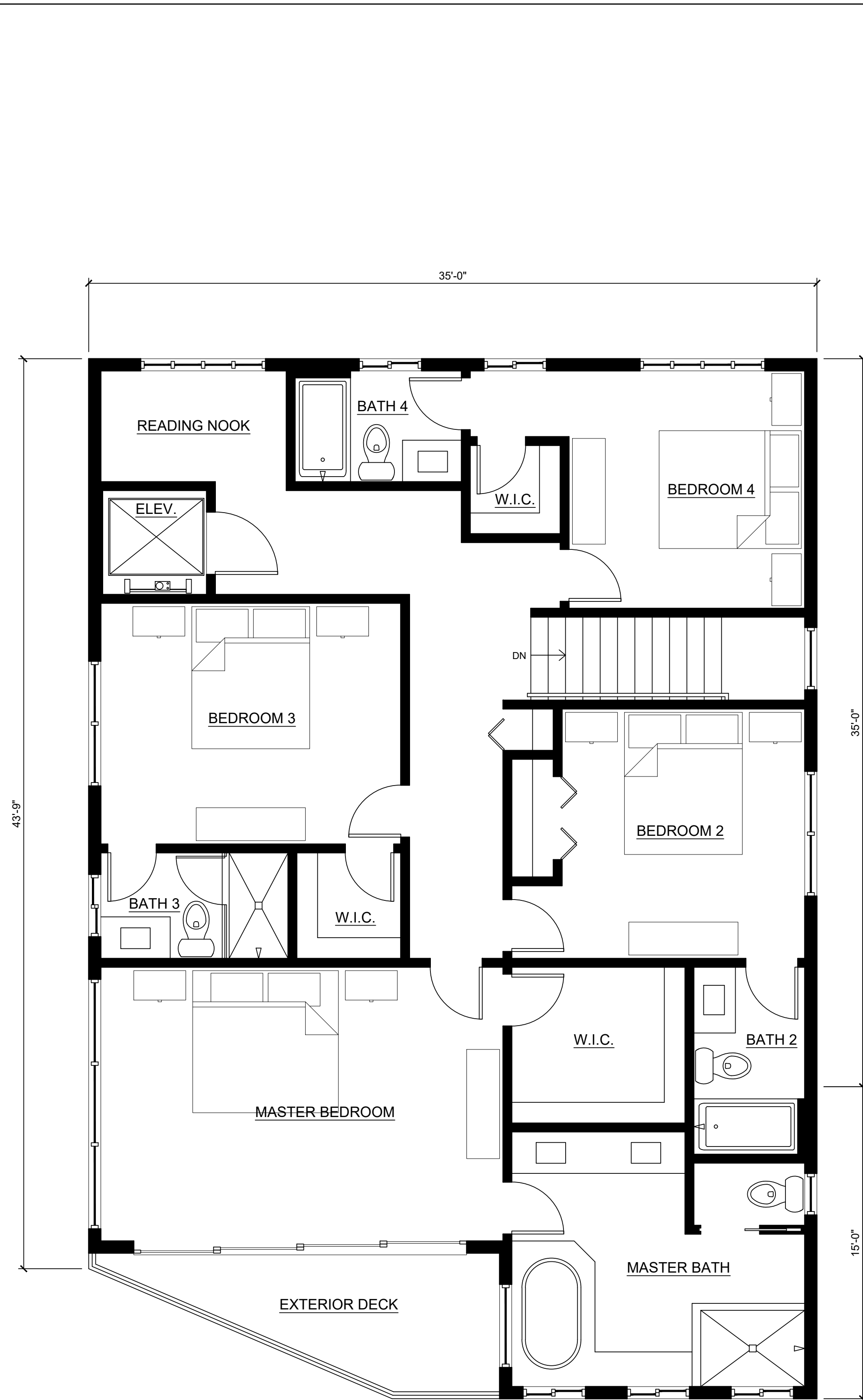
FIRST FLOOR SCHEMATIC PLAN

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



SECOND FLOOR SCHEMATIC PLAN

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



THIRD FLOOR SCHEMATIC PLAN

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

AREA ANALYSIS

FIRST FLOOR GARAGE/ENTRY FOYER ENCLOSED	1225 S.F.
SECOND FLOOR LIVING AREA (UNDER AIR)	1225 S.F.
THIRD FLOOR LIVING AREA (UNDER AIR)	1612 S.F.
SECOND FLOOR REAR OUTSIDE DECK	569 S.F.
THIRD FLOOR REAR OUTSIDE DECK	93 S.F.
TOTAL AREA (UNDER AIR)	2837 S.F.

A NEW HOME FOR:
THE PORTER FAMILY

51 PEARL ST.
FORT MYERS BEACH, FL

CONSULTANT:

ALBERT DAMBROSE
AR93689

PRELIMINARY
REVIEW SET

NOT FOR
CONSTRUCTION

DATE ISSUED: 15 NOV 2024

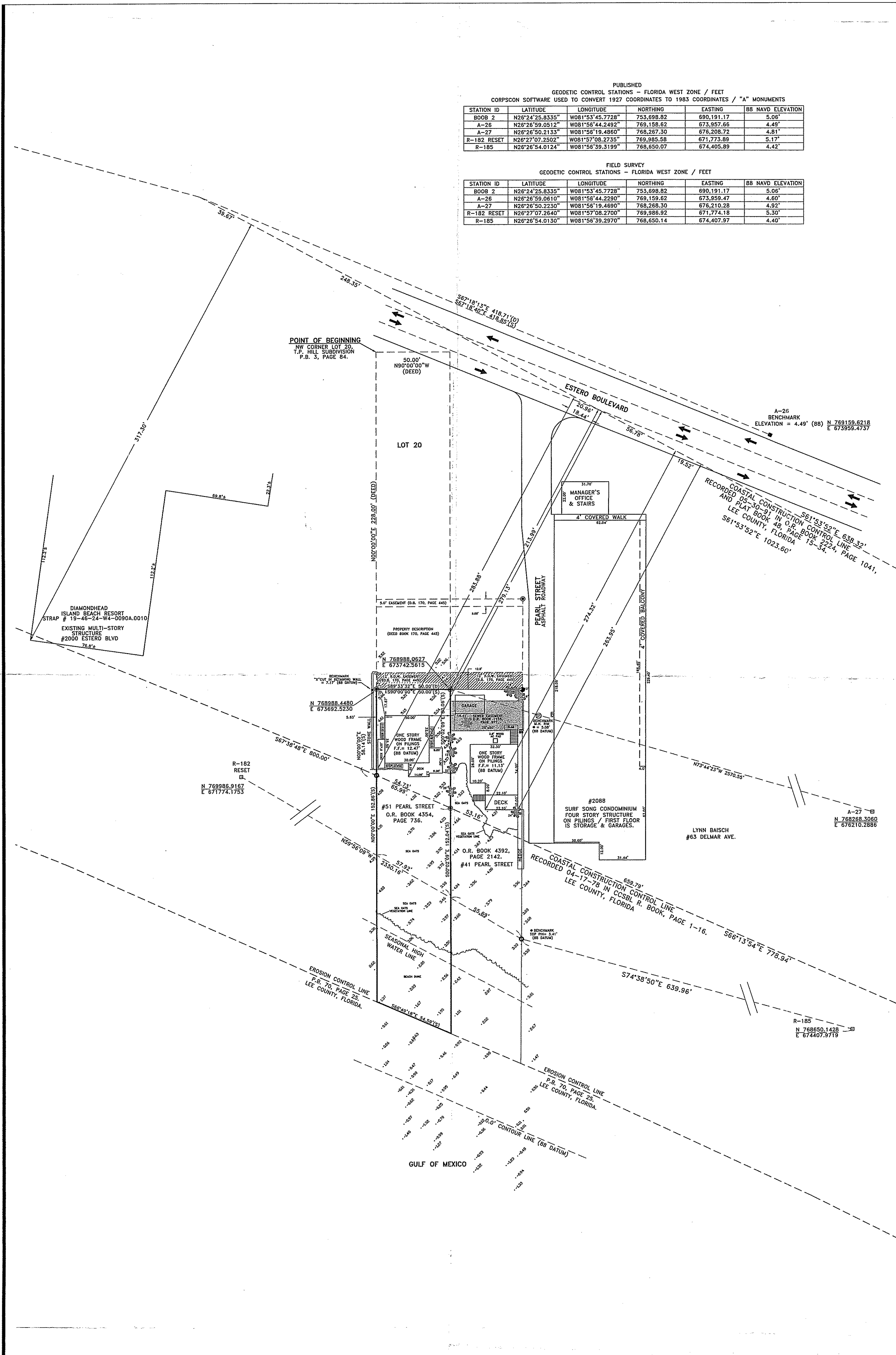
REVISIONS:

SHEET

D2

OF

2

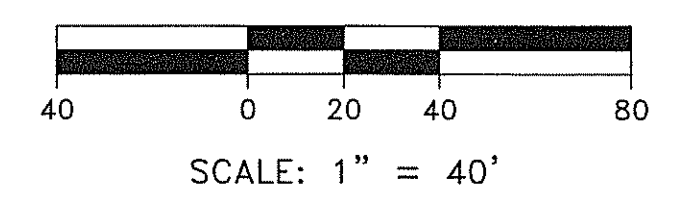


PUBLISHED GEODETIC CONTROL STATIONS - FLORIDA WEST ZONE / FEET CORPSON SOFTWARE USED TO CONVERT 1927 COORDINATES TO 1983 COORDINATES / "A" MONUMENTS					
STATION ID	LATITUDE	LONGITUDE	NORTHING	EASTING	88 NAVD ELEVATION
BOOK 2	N26°24'25.8335"	W081°53'45.7728"	753,699.82	690,191.17	5.06
A-26	N26°24'25.8335"	W081°53'45.7728"	753,699.82	690,191.17	5.06
A-27	N26°24'25.8335"	W081°53'45.7728"	753,699.82	690,191.17	5.06
A-182 RESET	N26°27'07.2640"	W081°57'08.2700"	769,986.92	671,774.18	5.30
R-185	N26°26'54.0130"	W081°56'39.2970"	766,650.14	674,407.97	4.40

FIELD SURVEY GEODETIC CONTROL STATIONS - FLORIDA WEST ZONE / FEET					
STATION ID	LATITUDE	LONGITUDE	NORTHING	EASTING	88 NAVD ELEVATION
BOOK 2	N26°24'25.8335"	W081°53'45.7728"	753,699.82	690,191.17	5.06
A-26	N26°24'25.8335"	W081°53'45.7728"	753,699.82	690,191.17	5.06
A-27	N26°24'25.8335"	W081°53'45.7728"	753,699.82	690,191.17	5.06
A-182 RESET	N26°27'07.2640"	W081°57'08.2700"	769,986.92	671,774.18	5.30
R-185	N26°26'54.0130"	W081°56'39.2970"	766,650.14	674,407.97	4.40

LEGEND

- SURVEY
- DESCRIPTION
- FOUND IRON PIN
- FOUND CONCRETE MONUMENT
- RIGHT OF WAY
- OVERHEAD ELECTRIC LINES
- EDGE OF PAVEMENT
- PUBLIC UTILITY EASEMENT
- DRAINAGE EASEMENT
- WATER MANHOLE
- FIRE HYDRANT
- UNITED TELEPHONE SERVICE BOX
- SEWER MANHOLE
- SEWER SERVICE
- CATCH BASIN
- GATE VALVE
- WOOD POWER POLE
- GUY WIRE ANCHOR
- BARBED WIRE FENCE
- OFFICIAL RECORD
- RIGHT OF WAY
- TELEPHONE BOX
- PERMANENT REFERENCE MONUMENT
- POINT OF BEGINNING
- POINT OF COMMENCEMENT
- LIGHTPOLE
- TRANSFORMER PAD
- CABLEVISION SERVICE BOX
- GASLINE MARKER
- SQUARE
- CONCRETE MONUMENT
- FOUND
- CORNER
- FLOOR ELEVATION
- INFORMATION
- PALM TREE (SIZE AS NOTED)



GENERAL NOTES:

- BEARINGS BASED ON STATE PLANE COORDINATES, FLORIDA WEST ZONE. GEODETIC CONTROL STATION "BOOK 2", ELEVATION = 6.22' (1929 N.G.V.D.) NAD 83 (1999) / 26°24'25.8342 (N), 81°53'45.7729 (W) ELEVATION = 5.06' (1988 N.A.V.D.)
- SUBJECT TO EASEMENTS, RESTRICTIONS, AND RESERVATIONS OF RECORD.
- ALL DISTANCES ARE IN FEET AND DECIMALS THEREOF.
- VALID TO DATE OF SURVEY, NOT DATE OF SIGNATURE.
- Δ = PK NAIL & DISC STAMPED AS NOTED.
- = SET 5/8" IRON PIN AND CAP - "CEC LB 2464".
- = FOUND 5/8" PIN - NO CAP.
- SUBJECT PROPERTY LIES WITHIN FLOOD ZONE "A12", ELEVATION 14.00', AS PER FLOOD INSURANCE RATE MAP (F.I.R.M.) 125124 0429 D, DATED 09-20-1996. (1929 N.G.V.D.)
- UNDERGROUND IMPROVEMENTS, UTILITIES AND/OR FOUNDATIONS WERE NOT LOCATED UNLESS OTHERWISE NOTED.
- PARCELS CONTAINS 0.25± ACRES OF LAND, MORE OR LESS.
- DATE OF LAST FIELD WORK 01-25-06.
- NO SEARCH OF PUBLIC RECORDS WAS MADE BY THIS OFFICE FOR ERRORS AND/OR OMISSIONS OF SAID DESCRIPTION.
- ELEVATIONS BASED ON DNR MONUMENT A-26 & BOOB2 (SEE NOTE #1) ELEVATION = 5.76, 1929 N.G.V.D. (NATIONAL GEODETIC VERTICAL DATUM). ELEVATION = 4.49, 1988 N.A.V.D. (NORTH AMERICAN VERTICAL DATUM).
- = FOUND 4" BRASS DISC
- = FOUND CONCRETE MONUMENT & 4" DISC
- = FOUND 5/8" PIN - STAMPED "DENI & ASSOC."
- EXISTING TOPOGRAPHY IN 1988 N.A.V.D.

SEASONAL HIGH WATER LINE:

SHW = MHW+(1.5xMR) = 3.1 FEET
WHERE MHW = 0.27 FT 1988 NAVD
AND MR = 1.89
INFORMATION TAKEN FROM LABINS MHW INTERACTIVE MAP
<http://data.labins.org/imf3/IMHW3/imfStyle2.jsp>
MHW = MEAN HIGH WATER
MR = MIDRANGE TIDE READING
DATUM USED = 1988 NAVD

LEGAL DESCRIPTION

OFFICIAL RECORD BOOK 4354, PAGE 736.

BEGINNING AT THE NORTHWEST CORNER OF LOT #20 OF T.P. HILL'S SUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 3 AT PAGE 84, PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE SOUTH ALONG THE WEST BOUNDARY OF SAID LOT #20 A DISTANCE OF 228 FEET TO THE POINT OF BEGINNING; THENCE EAST AT AN ANGLE OF 90 DEGREES WITH A WEST BOUNDARY OF SAID LOT #20, A DISTANCE OF 50 FEET; THENCE SOUTH PARALLEL WITH THE WEST BOUNDARY OF SAID LOT #20 TO THE SOUTH BOUNDARY THEREOF; THENCE WESTERLY ALONG THE SOUTH BOUNDARY OF SAID LOT #20 TO A POINT IN THE WEST LINE OF LOT #20 SOUTH OF THE POINT OF BEGINNING; THENCE NORTH TO THE POINT OF BEGINNING TOGETHER WITH ALL RIPARIAN RIGHTS THEREUNTO BELONGING, AND THE EASEMENT FOR RIGHT OF WAY PURPOSES RESERVE BY THE PARTY OF THE FIRST PART IN A DEED TO JAMES CITY WOODSON DATED JUNE 13, 1946, RECORDED IN DEED BOOK 170 AT PAGE 445, PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

STRAP # 19-46-24-W4-00445.0000

SAID PARCEL CONTAINING 0.25 ACRES OF LAND, MORE OR LESS.

SUBJECT TO EASEMENTS, RESTRICTIONS AND RESERVATIONS OF RECORD.

I HEREBY CERTIFY THAT THIS SURVEY MEETS THE MINIMUM TECHNICAL REQUIREMENTS AS SET FORTH IN CHAPTER 61G17, F.A.C. (MINIMUM TECHNICAL STANDARDS)

GEODETIC INFORMATION USED WAS TAKEN FROM LEE COUNTY, FLORIDA, DNR GPS NETWORK 1990-1992, CREATED BY DENI ASSOCIATES.

GPS UNIT USED - LEICA 500 RTK GPS UNIT WITH A VERTICAL TOLERANCE OF 0.10±

CERTIFICATIONS:

MR. TOM RONNKVIST

COASTAL-ENGINEERING CONSULTANTS, INC.
FLORIDA BUSINESS AUTHORIZATION NO. LB 2464
MR. DANA L. WORLEY, P.S.M.
PROFESSIONAL SURVEYOR AND MAPPER
FLORIDA CERTIFICATE NO. 5651
NOT VALID WITHOUT THE SIGNATURE AND
THE ORIGINAL RAISED SEAL OF A FLORIDA
LICENSED SURVEYOR AND MAPPER
DATE OF FIELD SURVEY: 01-25-06
DATE OF SIGNATURE: 02-02-06

DATE: 01-30-06	SCALE: 1" = 40'	CLIENT: TOM RONNKVIST	TITLE: TOPOGRAPHIC SURVEY OF LANDS LOCATED IN SECTION 19, TOWNSHIP 46 SOUTH, RANGE 24 EAST, LEE COUNTY, FLORIDA. (STRAP 19-46-24-W4-00445.0000)
DRAWN: DLW	F.B. LC542 & LC572	CHECKED: DLW	SEC. 19 TWP. 46S R. 24E
ACAD NO. 06.009	REF. NO. 06.009.dwg	DATE	BY
FILE NO.:	06.009		

COASTAL-ENGINEERING CONSULTANTS, INC.
A GECI GROUP COMPANY
Serving Florida Since 1977
3106 SOUTH HORSESHOE DRIVE
NAPLES, FLORIDA 34104



**51 Pearl Street
Variance Request**

REQUEST NARRATIVE

REQUEST & BACKGROUND

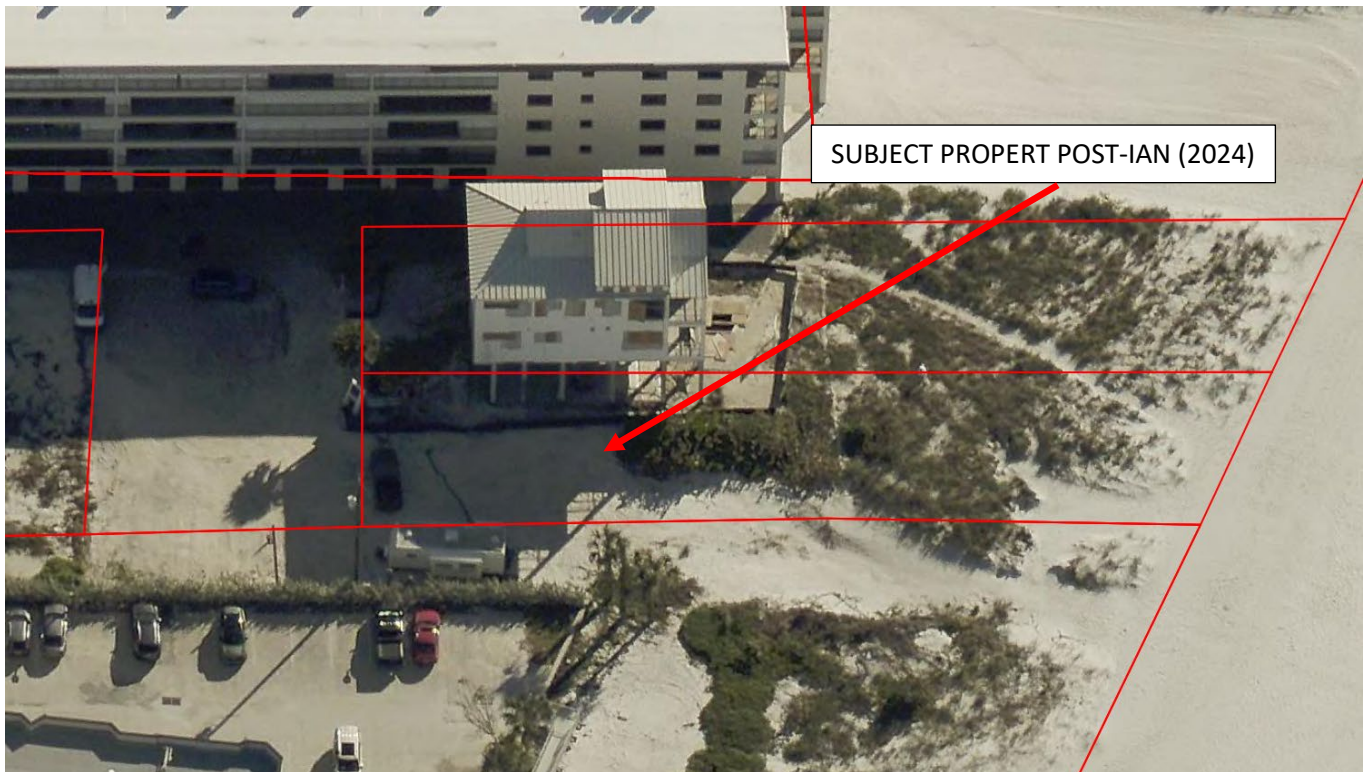
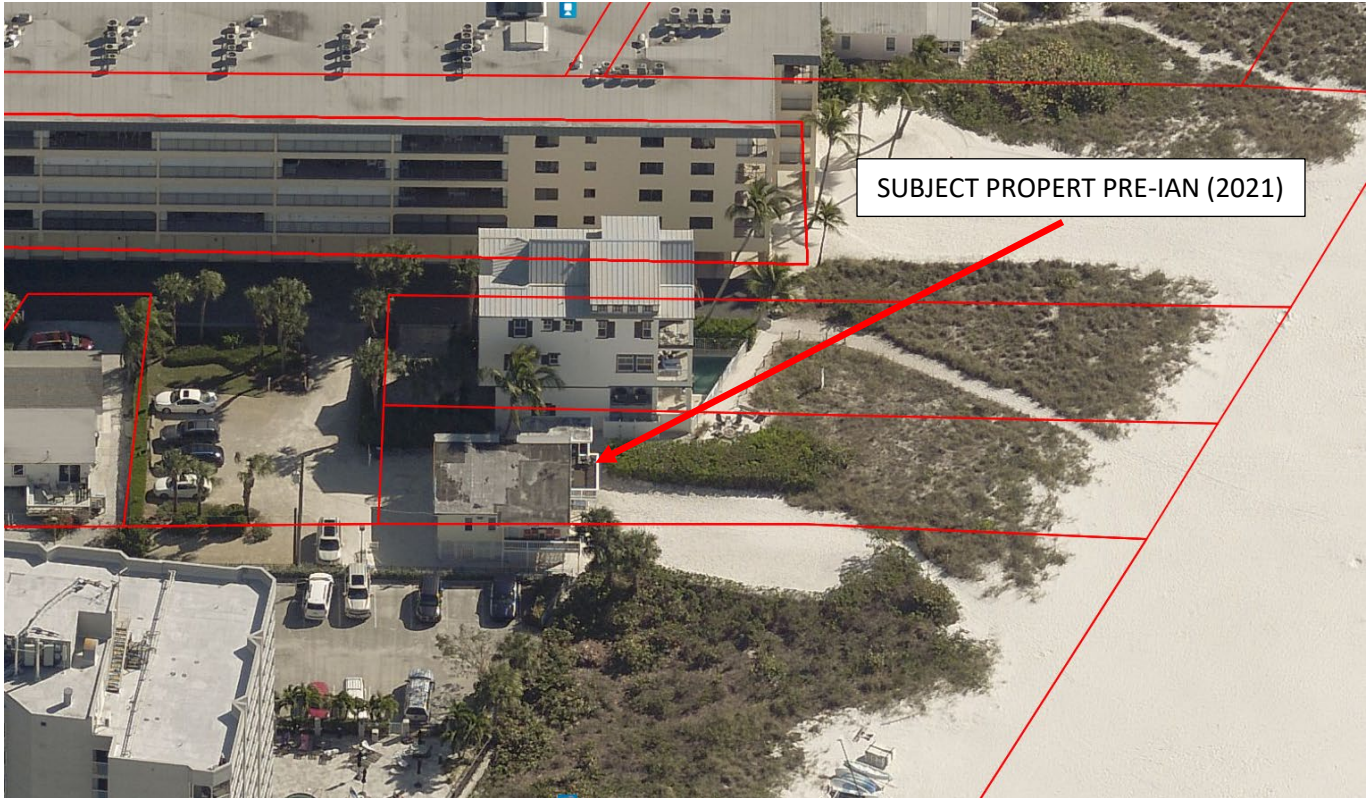
The Neighborhood Company, on behalf of Penelope Porter, request three variances for the proposed redevelopment of a single-family residence at 51 Pearl Street, Fort Myers Beach, FL, 33931. The variance application seeks relief from the following requirements in Land Development Code (LDC) Table 34-3 Dimensional Regulations in Conventional Zoning Districts for Residential Multi-Family (RM) zoning:

- Minimum street setback of 25 feet from the front property line
- Minimum side yard setback of 7.5 feet from the west property line
- Maximum lot coverage of 40%

The subject property consists of ±0.22 acres and is identified as STRAP #19-46-24-W4-00445.0000. Access to the property is through a private driveway easement. The property has a Future Land Use designation of Boulevard and is within the RM zoning designation. The property was previously developed with a single-story cottage, which was built in 1942.

The original construction and subsequent additions/modifications since 1942 were consistent with development standards of the time. The current Coastal Construction Control Line (CCCL) did not exist at the time the original structure was built. Both the lot and structure became legally non-conforming due to changing regulations; the destruction of the original cottage as a result of Hurricane Ian created the need to rebuild and request these variances.

In response to concerns heard at the August 23, 2024 Local Planning Agency (LPA) meeting, the request for encroachment into the street setback was reduced from 13 feet to 7.3 feet and is now no greater than the setback of the original structure on the property. Additionally, the west side yard encroachment is now limited to the air conditioning units and the overall lot coverage was reduced.



Source: Lee County Property Appraiser



PROPOSED REDEVELOPMENT

The applicant proposes redeveloping the subject property with a new single-family residence and accessory pool. The rebuilt residence will consist of a two-story single-family residence over parking and storage. The property is approximately 50' wide and 232' deep, but the buildable area is reduced to 3,492 square feet because of the location of the 1978 CCCL. The proposed residence is a total of 2,837 square feet (under air).

NARRATIVE STATEMENTS

The following information is provided to address the narrative statement requests contained within the Supplement Form PH-B, Additional Required Information for a Variance Application. The directions contained within the application are presented as bold and underlined, with responses below. Although the three variances are for a unified project, the evaluation criteria are addressed for each variance separately and there will be some redundancy as a result.

Variance #1 Request

Request for variance from Table 34-3, which requires a minimum street setback of 25 feet. Explain the specific regulation contained in this section from which relief is sought.

Table 34-3 requires a minimum street setback of 25 feet from the front property line. The requested variance is to reduce the street setback by 7.3 feet for a front setback of 17.7 feet. As mentioned previously, the requested encroachment has been reduced in response to comments heard at the August 23, 2024 LPA meeting. Relief from the front setback is now no greater than the previous structure, which was legally built under different development standards, and will allow a reasonably-sized single-family home to be built within the property's small buildable area.

Reasons for request. Explain why the variance is needed:

Hurricane Ian caused catastrophic damage to the subject property, completely destroying the original 1942 cottage. Under LDC Sec. 34-3238 (Post-disaster buildback), the applicant could rebuild a single-family home at approximately 1,419 square feet, which was the gross living area of the original structure. However, comparison of the subject property to other similarly sized Gulf lots shows that the typical beachfront home is between 2,500 and 3,800 square feet. The chart below shows the gross living area of homes on lots between 0.15 and 0.29 acres, all of which are restricted in some way by the 1978 CCCL.



	Gross Living Area (SF)	Lot Size (acres)
51 Pearl St. (subject lot)	±2,837 (proposed)	0.22
61 Alva Dr.	3,825	0.22
41 Pearl St.	3,096	0.24
2672 Estero Blvd.	3,080	0.22
70 Avenue E	2,706	0.29
61 Del Mar Ave.	2,537	0.15

Source: Lee County Property Appraiser

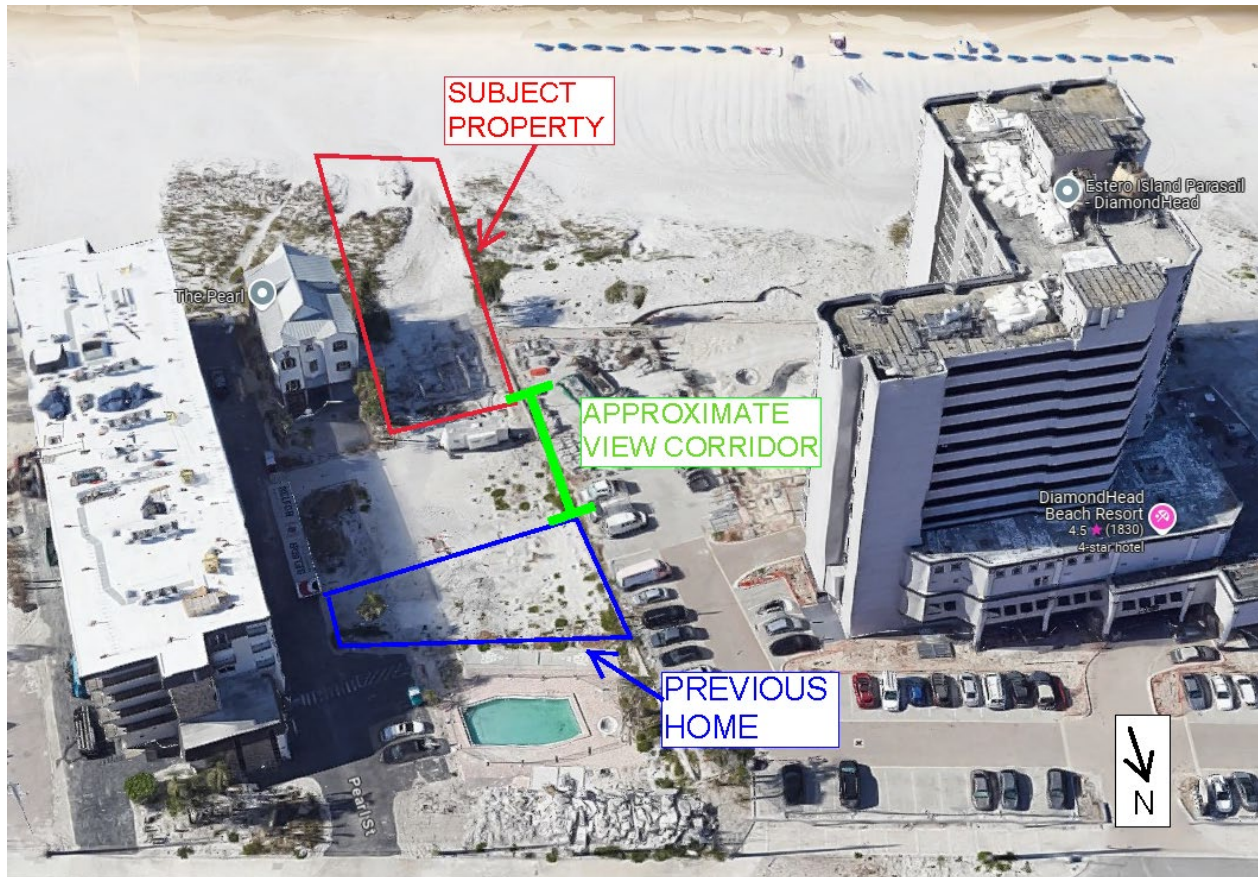
The CCCL reduces the lot depth from approximately 232 feet to 74 feet on the west property line and 95 feet on the east property line, effectively creating a substandard lot. The buildable area of 3,492 square feet is less than half the required 7,500 square feet required in the RM zoning district. In addition, the irregular shape of the buildable area makes it impractical to design a structure that fits within the required 25-foot frontage.

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

The subject property is one of two lots situated between the Surf Song Condominiums and the DiamondHead Hotel. The proposed front yard encroachment abuts a private driveway easement and the Surf Song parking lot. This encroachment will have no impact on the view corridor of Surf Song residents to the east, as it will be the same as the home that previously existed on the site. Additionally, the front yard setback variance will not have any impact on the existing access easement or Surf Song's parking area. All parking associated with 51 Pearl St. will be provided on the subject property. Ample parking space will be provided as driveway and under-building parking.

The image below identifies the approximate parcel location in red. In the context of the surrounding multi-family and hotel development, the proposed single-family home will not be out of character for the neighborhood. Regarding the concern that some Surf Song residents had about a potentially blocked view corridor, it should be noted that the view corridor will largely be the same as pre-lan conditions, with the exception of the structure adding two additional stories as permitted within the underlying zoning. The blue outline identifies the location of a previously existing home, which will likely be redeveloped. The potential future view corridor, identified in yellow, will be the same as pre-lan conditions.

The proposed residence will be an attractive, high-quality home that will adhere to modern standards, including stormwater retention regulations not applicable to older structures, creating a more resilient structure.



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

As mentioned previously, the 1978 CCCL significantly reduces the buildable area of the property – so much so that the buildable area is effectively a substandard lot per the minimum area for the zoning district. The irregular shape of the buildable area makes it difficult to design a structure that fits within the required setbacks while also fiscally practical in comparison to the high cost of beachfront lots. As demonstrated above, the typical beachfront home is significantly larger than the property's original cottage structure.

Explain how the property qualifies for a variance. Direct this explanation to the guidelines for decision-making in LDC Section 34-87. The guidelines for decision-making regarding a request for a variance are as follows:

- (1) Whether there are exceptional or extraordinary conditions or circumstances that are inherent to the property in question, or whether the request is for a de minimis variance under circumstances or conditions where rigid compliance is not necessary to protect public policy;

Yes, there are extraordinary circumstances resulting from the destruction caused by Hurricane Ian



and the irregular shape/size of the buildable area as a result of the CCCL. Additionally, the request is for a de minimis variance of approximately 7.3 feet from the front setback in order to build a reasonably-sized home. The granting of this variance will not cause harm to the surrounding properties and rigid compliance is not necessary to protect public policy.

(2) Whether the exceptional or extraordinary conditions justifying the variance are or are not the result of actions of the applicant taken after the adoption of the regulation in question;

The subject lot existed as far back as 1942 and was split from a corner lot within the TP Hills platted subdivision sometime around 1942. The adoption of the 1978 CCCL severely restricted the developable area of the lot, reducing the depth by more than half and creating a more exaggerated trapezoidal shape which makes designing a structure within the setbacks significantly more difficult. These conditions are beyond the control of the homeowners and are not a result of their actions.

(3) Whether the requested variance is the minimum variance to relieve the applicant of an unreasonable burden caused by the application of the regulation in question;

The requested variance is the minimum variance that will allow the homeowners to proceed with their current home design and site configuration. As described previously, the front yard encroachment has been reduced to be no greater than the previous structure.

(4) Whether granting the variance would be injurious to the neighborhood or otherwise detrimental to the public welfare; and

The granting of this variances would not be injurious to the neighborhood or otherwise detrimental to the public welfare. The proposed residence will be consistent with other existing beachfront residences and throughout Fort Myers Beach, as the existing residences were constructed at various times and have varying setbacks.

(5) Whether the conditions or circumstances of the specific piece of property or the intended use of the property for which the variance is sought are of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.

The conditions and circumstances surrounding this property for which the variance is sought are specific to this site and situation. It would not be reasonable or practical to amend the regulation in question as there are many properties throughout the island which benefit from this regulation.



Variance #2 Request

Request for variance from Table 34-3, which requires a side setback of 7.5 feet from property lines. Explain the specific regulation contained in this section from which relief is sought.

Table 34-3 requires a minimum side setback of 7.5 feet from the side property lines. The requested variance is to reduce the west side setback by 3 feet for a side setback of 4.5 feet. Relief from the west side setback will allow for air conditioning units to be placed away from the nearest neighbors and elevated; the air conditioning units will protrude into the setback by 3 feet. In response to comments heard at the August 23, 2024 LPA hearing, the cantilevered deck on the west side of the structure was removed from the final design.

Reasons for request. Explain why the variance is needed:

Hurricane Ian caused catastrophic damage to the subject property, completely destroying the original 1942 cottage. Under LDC Sec. 34-3238 (Post-disaster buildback), the applicant could rebuild a single-family home at approximately 1,419 square feet, which was the gross living area of the original structure. However, comparison of the subject property to other similarly sized Gulf lots shows that the typical beachfront home is between 2,500 and 3,800 square feet. The chart below shows the gross living area of homes on lots between 0.15 and 0.29 acres, all of which are restricted in some way by the 1978 CCCL.

	Gross Living Area (SF)	Lot Size (acres)
51 Pearl St. (subject lot)	±2,837 (proposed)	0.22
61 Alva Dr.	3,825	0.22
41 Pearl St.	3,096	0.24
2672 Estero Blvd.	3,080	0.22
70 Avenue E	2,706	0.29
61 Del Mar Ave.	2,537	0.15

Source: Lee County Property Appraiser

The CCCL reduces the lot depth from approximately 232 feet to 74 feet on the west property line and 95 feet on the east property line, effectively creating a substandard lot. The buildable area of 3,492 square feet is less than half the required 7,500 square feet required in the RM zoning district. In addition, the irregular shape of the buildable area makes it difficult to design a structure that fits within the required 7.5-foot side setbacks.

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

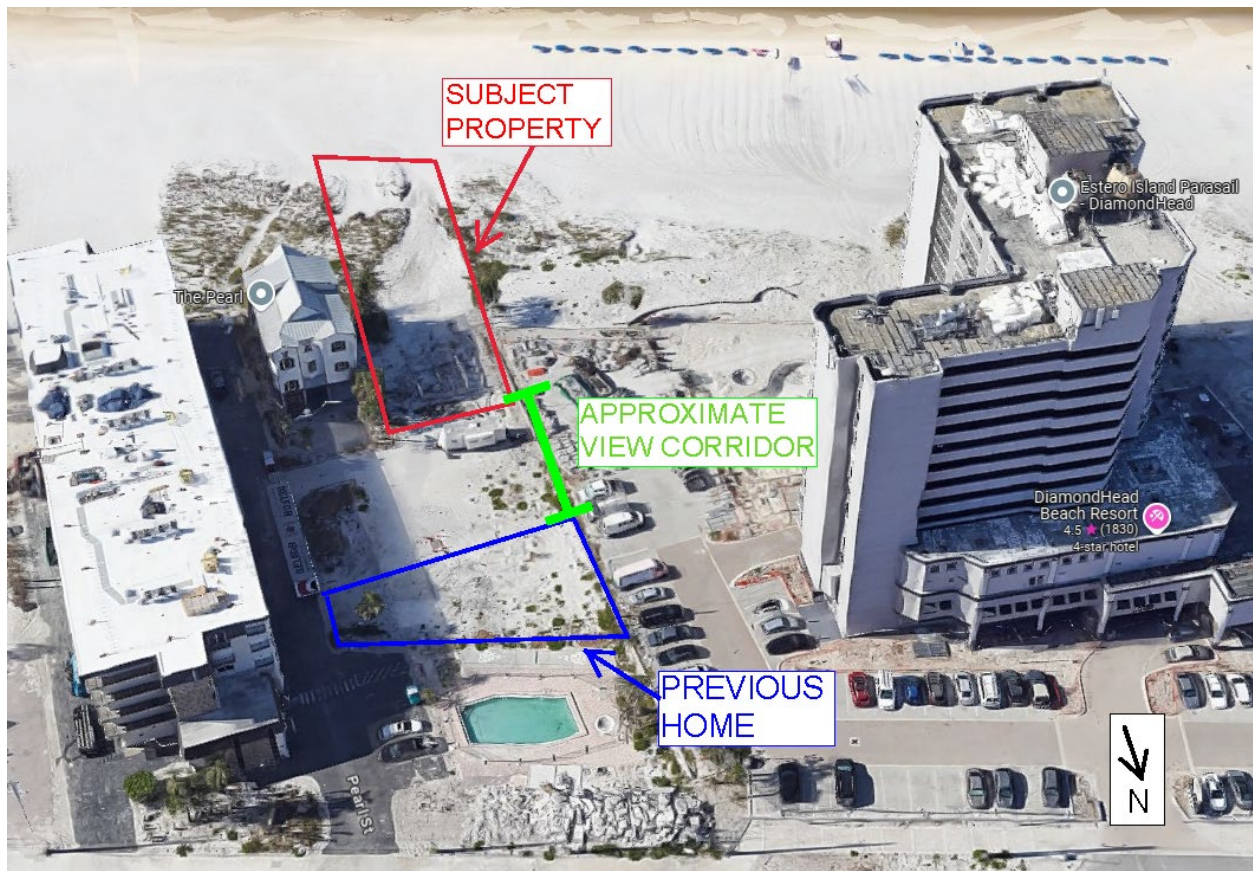
The subject property is one of two lots situated between the Surf Song Condominiums and the DiamondHead Hotel. The proposed side yard encroachment abuts the DiamondHead parking lot, which is



buffered by a wall and fence, and will therefore have no impact on hotel guests. The distance from actual hotel units will also mitigate any noise created by the air conditioning units that will encroach into the setback.

The image below identifies the approximate parcel location in red. In the context of the surrounding multi-family and hotel development, the proposed single-family home will not be out of character for the neighborhood. Regarding the concern that some Surf Song residents had about a potentially blocked view corridor, it should be noted that the view corridor will largely be the same as pre-lan conditions, with the exception of the structure adding two additional stories as permitted within the underlying zoning. The blue outline identifies the location of a previously existing home, which will likely be redeveloped. The potential future view corridor, identified in yellow, will be the same as pre-lan conditions.

The proposed residence will be an attractive, high-quality home that will adhere to modern standards, including stormwater retention regulations not applicable to older structures, creating a more resilient structure.



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

As mentioned previously, the 1978 CCCL significantly reduces the buildable area of the property – so much



so that the buildable area is effectively a substandard lot per the minimum area for the zoning district. The irregular shape of the buildable area makes it difficult to design a structure that fits within the required setbacks while also fiscally practical in comparison to the high cost of beachfront lots. As demonstrated above, the typical beachfront home is significantly larger than the property's original cottage structure.

Explain how the property qualifies for a variance. Direct this explanation to the guidelines for decision-making in LDC Section 34-87. The guidelines for decision-making regarding a request for a variance are as follows:

- (1) Whether there are exceptional or extraordinary conditions or circumstances that are inherent to the property in question, or whether the request is for a de minimis variance under circumstances or conditions where rigid compliance is not necessary to protect public policy;**

Yes, there are extraordinary circumstances resulting from the destruction caused by Hurricane Ian and the irregular shape/size of the buildable area as a result of the CCCL. Additionally, the request is for a de minimis variance of 3 feet from the west side setback. The granting of this variance will not cause harm to the surrounding properties and rigid compliance is not necessary to protect public policy.

- (2) Whether the exceptional or extraordinary conditions justifying the variance are or are not the result of actions of the applicant taken after the adoption of the regulation in question;**

The subject lot existed as far back as 1942 and was split from a corner lot within the TP Hills platted subdivision sometime around 1942. The adoption of the 1978 CCCL severely restricted the developable area of the lot, reducing the depth by more than half and creating a more exaggerated trapezoidal shape which makes designing a structure within the setbacks significantly more difficult. These conditions are beyond the control of the homeowners and are not a result of their actions.

- (3) Whether the requested variance is the minimum variance to relieve the applicant of an unreasonable burden caused by the application of the regulation in question;**

The requested variance is the minimum variance that will allow the homeowners to proceed with their current home design and site configuration. As described previously, the side yard setback encroachment is only to accommodate air conditioner units and will result in their placement away from neighboring units.

- (4) Whether granting the variance would be injurious to the neighborhood or otherwise detrimental to the public welfare; and**

The granting of these variances would not be injurious to the neighborhood or otherwise detrimental to the public welfare. The proposed residence will be consistent with other existing beachfront residences and throughout Fort Myers Beach, as the existing residences were constructed at various times and have varying setbacks.



(5) Whether the conditions or circumstances of the specific piece of property or the intended use of the property for which the variance is sought are of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.

The conditions and circumstances surrounding this property for which the variance is sought are specific to this site and situation. It would not be reasonable or practical to amend the regulation in question as there are many properties throughout the island which benefit from this regulation.

Variance #3 Request

Request for variance from Table 34-3, which permits a maximum lot coverage of 40% in the RM zoning district. Explain the specific regulation contained in this section from which relief is sought.

Table 34-3 allow a maximum lot coverage of 40%. The requested variance is to increase the lot coverage by 12.1% for a total lot coverage of 52.1%. In response to comments heard at the August 23, 2024 LPA hearing, the total lot coverage was reduced from 55.1% to 52.1%. The code requires that lot coverage be calculated based on the lot area landward of the 1978 CCCL, which significantly decreases the lot area used in the calculation for this property. Relief from lot coverage will allow for the development of a reasonably-sized single-family home.

Reasons for request. Explain why the variance is needed:

Hurricane Ian caused catastrophic damage to the subject property, completely destroying the original 1942 cottage. Under LDC Sec. 34-3238 (Post-disaster buildback), the applicant could rebuild a single-family home at approximately 1,419 square feet, which was the gross living area of the original structure. However, comparison of the subject property to other similarly sized Gulf lots shows that the typical beachfront home is between 2,500 and 3,800 square feet. The chart below shows the gross living area of homes on lots between 0.15 and 0.29 acres, all of which are restricted in some way by the 1978 CCCL.

	Gross Living Area (SF)	Lot Size (acres)
51 Pearl St. (subject lot)	±2,837 (proposed)	0.22
61 Alva Dr.	3,825	0.22
41 Pearl St.	3,096	0.24
2672 Estero Blvd.	3,080	0.22
70 Avenue E	2,706	0.29
61 Del Mar Ave.	2,537	0.15

Source: Lee County Property Appraiser

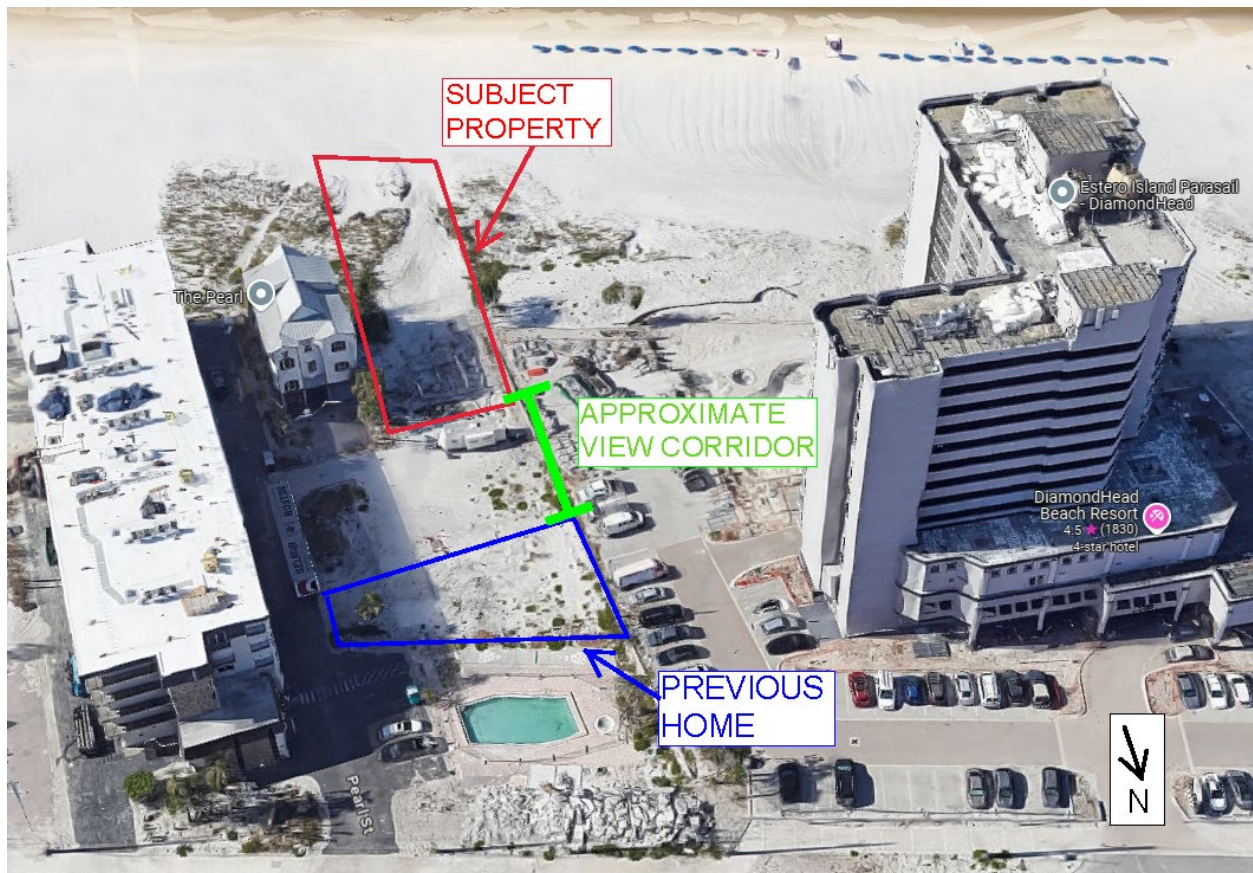
The CCCL reduces the lot depth from approximately 232 feet to 74 feet on the west property line and 95 feet on the east property line, effectively creating a substandard lot. The buildable area of 3,492 square feet is less than half the required 7,500 square feet required in the RM zoning district. If not for the changing CCCL and the inability to use the entire lot for the lot coverage calculations, this variance would not be needed. If the entire lot were used for this calculation, the lot coverage would only be 18.8%.



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

The subject property is one of two lots situated between the Surf Song Condominiums and the DiamondHead Hotel. The image below identifies the approximate parcel location in red. In the context of the surrounding multi-family and hotel development, the proposed single-family home will not be out of character for the neighborhood. Regarding the concern that some Surf Song residents had about a potentially blocked view corridor, it should be noted that the view corridor will largely be the same as pre-lan conditions, with the exception of the structure adding two additional stories as permitted within the underlying zoning. The blue outline identifies the location of a previously existing home, which will likely be redeveloped. The potential future view corridor, identified in yellow, will be the same as pre-lan conditions.

The proposed residence will be an attractive, high-quality home that will adhere to modern standards, including stormwater retention regulations not applicable to older structures, creating a more resilient structure.



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



As mentioned previously, the 1978 CCCL significantly reduces the buildable area of the property – so much so that the buildable area is effectively a substandard lot per the minimum area for the zoning district. The irregular shape of the buildable area makes it difficult to design a structure that fits within the required setbacks while also fiscally practical in comparison to the high cost of beachfront lots. As demonstrated above, the typical beachfront home is significantly larger than the property's original cottage structure.

Explain how the property qualifies for a variance. Direct this explanation to the guidelines for decision-making in LDC Section 34-87. The guidelines for decision-making regarding a request for a variance are as follows:

- (1) Whether there are exceptional or extraordinary conditions or circumstances that are inherent to the property in question, or whether the request is for a de minimis variance under circumstances or conditions where rigid compliance is not necessary to protect public policy;**

Yes, there are extraordinary circumstances resulting from the destruction caused by Hurricane Ian and the irregular shape/size of the buildable area as a result of the CCCL. Additionally, the request is for a de minimis variance of 12.1% from the lot coverage maximum. The granting of this variance will not cause harm to the surrounding properties and rigid compliance is not necessary to protect public policy.

- (2) Whether the exceptional or extraordinary conditions justifying the variance are or are not the result of actions of the applicant taken after the adoption of the regulation in question;**

The subject lot existed as far back as 1942 and was split from a corner lot within the TP Hills platted subdivision sometime around 1942. The adoption of the 1978 CCCL severely restricted the developable area of the lot, reducing the depth by more than half and creating a more exaggerated trapezoidal shape which makes designing a structure within the maximum lot coverage significantly more difficult. These conditions are beyond the control of the homeowners and are not a result of their actions.

- (3) Whether the requested variance is the minimum variance to relieve the applicant of an unreasonable burden caused by the application of the regulation in question;**

The requested variance is the minimum variance that will allow the homeowners to proceed with their current home design and site configuration. As described previously, the variance for lot coverage would not be needed if the entire lot area were used in the calculation, rather than just the area landward of the CCCL.

- (4) Whether granting the variance would be injurious to the neighborhood or otherwise detrimental to the public welfare; and**

The granting of these variances would not be injurious to the neighborhood or otherwise detrimental to the public welfare. The proposed residence will be consistent with other existing beachfront



residences and throughout Fort Myers Beach, as the existing residences were constructed at various times and have varying setbacks.

(5) Whether the conditions or circumstances of the specific piece of property or the intended use of the property for which the variance is sought are of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.

The conditions and circumstances surrounding this property for which the variance is sought are specific to this site and situation. It would not be reasonable or practical to amend the regulation in question as there are many properties throughout the island which benefit from this regulation.

1. **Request:**

Meeting Date: December 16, 2024

APPROVAL OF AN INTERLOCAL AGREEMENT BETWEEN THE TOWN OF FORT MYERS BEACH, FLORIDA, AND LEE COUNTY PROPERTY APPRAISER FOR THE COLLECTION OF NON-AD VALOREM ASSESSMENTS RELATED TO DEMOLITION COSTS OF UNSAFE BUILDINGS.

Why the action is necessary:

Approval of this interlocal agreement between the Town and Lee County Property Appraiser is necessary to ensure the Town can recover any costs associated with demolition of unsafe structures, including but not limited to the costs of the review of the property owners' appeals, by placing special non-ad valorem assessments on the tax rolls of the affected property owners, beginning with the 2024 tax year.

What the action accomplishes:

This interlocal agreement creates a contractual relationship between the Town and Lee County Property Appraiser, as required under Section 197.3632, Florida Statutes, which would allow the Town to collect any demolition related costs by placing them on the tax rolls of the affected property owners as special non-ad valorem assessments.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Interlocal Agreement

4. **Submitter of Information:**

Nancy Stuparich, Town
Attorney

5. **Background:**

The Florida Interlocal Cooperation Act of 1969, Section 163.01, Florida Statutes, encourages and empowers local governments to cooperate with one another on matters of mutual interest and advantage, and to provide for interlocal agreements between local governments on matters of mutual interest. Both parties to this proposed Interlocal Agreement are public agencies within the meaning of Chapter 163, Florida Statutes.

On November 18, 2024, the Town adopted Resolution 2024-251, which provides for the collection of unpaid non-ad valorem assessments associated with demolition of unsafe structures (the "Assessments"), on the property owners' tax bills, to be paid at the same time as ad valorem taxes are paid as authorized and set forth in Chapter 197, Florida Statutes. The Town wishes to levy non-ad valorem assessments associated with demolition of such unsafe structures on the 2025 Lee County tax roll and thereafter. To do that, the Town must enter into a written agreement with Lee County Tax Collector and Property Appraiser for the collection of non-ad valorem assessments and reimbursement of necessary administrative costs incurred in implementing the uniform method of collection, as provided in Chapter 197, Florida Statutes before January 10, 2025. The Town has already approved an Interlocal Agreement with the Tax Collector on December 3, 2024.

Attachments:

1. NS Uniform Collection Interlocal Agreement
2. Property Appraiser ILA FMB SIGNATURE PAGE

Financial Impact:

Benefit to the Town in recovering the costs associated with demolition of unsafe structure and the review of the property owners' appeals.

6. **Alternative Action**

7. **Management Recommendations:**

Approve this interlocal agreement.

8. **Recommended Approval:**

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

Created/Initiated - 12/6/2024
Approved - 12/8/2024
Approved - 12/9/2024
Final Approval - 12/9/2024

UNIFORM COLLECTION INTERLOCAL AGREEMENT

This Agreement, made and entered into this _____ day of December, 2025 (“Agreement”), by and between the Town of Fort Myers Beach, Florida, (“Local Government”), and **Matthew Caldwell, Lee County Property Appraiser**, a constitutional officers of the State of Florida, whose address is 2480 Thompson Street, Fort Myers, Florida 33901-3074

1. Section 197.3632, Florida Statutes, authorizes non-ad valorem special assessments of Local Governments may be collected using the “Uniform Method” provided in that section. Pursuant to that opinion, the Property Appraiser and the Local Government shall enter into an agreement providing for reimbursement to the Property Appraiser of administration costs, including costs of inception and maintenance, incurred as a result of such inclusion.
2. Pursuant to section 197.3632(3)(b), the Property Appraiser agrees to provide in compatible electronic medium (1) the legal description of the property within the boundaries described by the resolution adopted by the Local Government, (2) the names and addresses of the owners of such property, and (3) the property identification numbers of such property contained in the ad valorem tax roll submitted to the Department of Revenue.
3. The parties herein agree that commencing with the 2025 assessment roll, the Property Appraiser will include on the assessment rolls such special assessments as are certified to him by the the Town of Fort Myers Beach, Florida.
4. This agreement shall continue from year to year unless cancelled by either party by giving written notice prior to January 1 of the year that the agreement shall stand terminated.
5. Local Government shall comply with all relevant requirements of Chapter 197, Florida Statutes, and all related Florida Administrative Code rules relating to, but not limited to, compliance with advertising and notices required for the use of the Uniform Method provided in 197.3632.
6. Local Government shall use its best efforts in furnishing the Property Appraiser with up-to-date data concerning its boundaries, proposed assessments and other information as requested from time to time by the Property Appraiser. The Property Appraiser shall, using the information provided by the Local Government, place the non ad valorem special assessments, as made from time to time and certified to him, on properties within the assessment district boundaries. The assessments shall, as far as practicable, be uniform (e.g. one uniform assessment for maintenance, etc.) to facilitate the making of the assessments by the mass data techniques utilized by the Property Appraiser.
7. The Property Appraiser shall be reimbursed for all necessary administrative costs incurred, including but not limited to the costs of personnel, forms, supplies, data processing, computer equipment, postage and programming. The parties agree the administrative costs shall be reimbursed at the rate of \$1 per parcel as identified by STRAP number for each year in which such assessments are placed on the tax rolls. Local Government shall pay Property Appraiser within forty five days of receipt of invoice from Property Appraiser.

8. If the actual costs of performing the services under this Agreement exceed the compensation provided for in Paragraph 7, the amount of compensation shall be the actual costs of performing the services under the Agreement.

9. The parties agree to consult and cooperate with one another as necessary for the efficient and timely delivery of the information to be provided in Paragraphs 2 and 6.

10. In performing the services provided in this agreement, the Property Appraiser shall not in any way, express or implied, directly or indirectly, be responsible for proposing, imposing, certifying or levying any non-ad valorem special assessment or determining whether any such any non-ad valorem special assessment is authorized, constitutional, legal or valid. Local Government is solely responsible to levy the assessments, certify its roll and to insure ~~they~~ all assessments are authorized, constitutional, legal and valid.

11. Local Government shall be responsible for all changes and adjustments to the non-ad valorem special assessments and will provide all such changes or adjustments to the Property Appraiser. All questions regarding any assessments will be handled by Local Government and Property Appraiser will refer all communications and questions regarding the assessments to Local Government.

12. To the extent permitted by law, Local Government shall indemnify, defend and hold harmless the Property Appraiser against any claims, judgments, expenses, liabilities and, including attorney's fees, arising from Local Government's actions or omissions regarding the imposition, levy, roll preparation and certification of the assessments.

13. Information provided by the Property Appraiser may contain information that is confidential and exempt from disclosure under Chapter 119, Fla. Stat., Florida's Public Records Law. Local Government shall familiarize its staff with the applicable statutory provisions and rules governing the Public Records Law and the applicable exemptions and provisions regarding confidentiality. Local Government shall comply with the Public Records Law and all applicable exemptions and provisions regarding confidentiality.

EXECUTED on the date first above written.

Matthew H Caldwell
Lee County Property Appraiser

Signature Follows on Next Page

the Town of Fort Myers Beach, Florida

LOCAL GOVERNMENT SIGNATURE PAGE

TOWN OF FORT MYERS BEACH
a Florida municipal corporation

Dan Allers, Mayor

ATTEST:

TOWN OF FORT MYERS BEACH
a Florida municipal corporation

Amy Baker, Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

Vose Law Firm, Town Attorney

1. **Request:**

Meeting Date: December 16, 2024

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA ADOPTING A RESOLUTION TO REVOKE AND RECIND EMERGENCY TEMPORARY PLACEMENT PERMITS AS PROVIDED AND AUTHORIZED IN SECTION 2 OF ORDINANCE 24-4 OF THE TOWN OF FORT MYERS BEACH, WHICH CLARIFIED ORDINANCE 23-05 RELATED TO TEMPORARY PLACEMENT PERMITS, IN FURTHERANCE AND IN SATISFACTION OF DIRECTION CONTAINED IN A LETTER DATED NOVEMBER 21, 2024 FROM THE FEDERAL EMERGENCY MANAGEMENT AGENCY ("FEMA") MANDATING REMOVAL OF NONCOMPLIANT STRUCTURES THAT WERE INCORRECTLY PERMITTED IN THE SPECIAL FLOOD HAZARD AREA, IN ORDER TO COMPLY WITH MINIMUM FLOODPLAIN STANDARDS AND THE REQUIREMENTS OF THE NATIONAL FLOOD INSURANCE PROGRAM; AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

Compliance with the flood plain ordinance

What the action accomplishes:

Compliance

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Andy Hyatt, Town Manager

5. **Background:**

Paragraph 2 of Ordinance 24-04 clarifies that all temporary placement permits are temporary in nature and subject to revocation under certain circumstances. More specifically, Paragraph 2 states:

Unless other [provided in this Ordinance or in a Resolution that is adopted hereinafter by the town council, any governmental, residential (manufactured home, mobile home, motor home, recreational vehicle, or other temporary residential dwelling) or moveable commercial use shall be removed from the site 1) no later than 30 (days) after issuance of a certificate of occupancy or certificate of use associated with an approved permit; 2) at the time of the expiration of the ETPP as provided herein or as provided in a resolution; or 3) at the time of expiration of any local or date declaration of emergency or law, whichever is earlier. (Emphasis added).

This Resolution terminates all temporary placement permits and any emergency temporary placement permits in accordance with Paragraph 2 of Ordinance 24-182.

Attachments:

1. ADDED 12.13.24: 24-296, Final Resolution for Revocation of Emergency Tempory Placement Permits
2. FEMA letter dated 11.21.24
3. 24-04, Emergency Temporary Uses Signed
4. 24-182, Resolution to implement FEMA letter Signed

Financial Impact:

6. **Alternative Action**

Approve

7. **Management Recommendations:**

8. **Recommended Approval:**

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

Created/Initiated - 12/10/2024
Approved - 12/10/2024
Approved - 12/10/2024
Final Approval - 12/10/2024

RESOLUTION NUMBER 24-296

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA ADOPTING A RESOLUTION TO REVOKE AND RECIND EMERGENCY TEMPORARY PLACEMENT PERMITS AS PROVIDED AND AUTHORIZED IN SECTION 2 OF ORDINANCE 24-4 OF THE TOWN OF FORT MYERS BEACH, WHICH CLARIFIED ORDINANCE 23-05 RELATED TO TEMPORARY PLACEMENT PERMITS, IN FURTHERANCE AND IN SATISFACTION OF DIRECTION CONTAINED IN A LETTER DATED NOVEMBER 21, 2024 FROM THE FEDERAL EMERGENCY MANAGEMENT AGENCY (“FEMA”) MANDATING REMOVAL OF NONCOMPLIANT STRUCTURES THAT WERE INCORRECTLY PERMITTED IN THE SPECIAL FLOOD HAZARD AREA, IN ORDER TO COMPLY WITH MINIMUM FLOODPLAIN STANDARDS AND THE REQUIREMENTS OF THE NATIONAL FLOOD INSURANCE PROGRAM; 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, on September 28, 2022, Hurricane Ian made landfall north of the Town causing historical property damage and loss of life; and

WHEREAS, the Town Council recognized that recovery from a devastating natural disaster such as Hurricane Ian, created an immediate need for temporary housing, governmental services, and commercial uses for the Town’s residents and adopted Ordinance 23-05 on May 15, 2023 to provide a temporary relief and the placement of certain structures in the Special Flood Hazard Area; and

WHEREAS, on May 6, 2024 the Town Council adopted Ordinance 24-04 amending and restating Ordinance 23-05 to clarify its intent at the time of adoption and to continue to provide temporary assistance to residents and to aid in the Town’s redevelopment efforts by the emergency temporary placement of structures governmental, residential (manufactured homes, mobile homes, motor homes, recreational vehicles, or other temporary residential dwellings) or moveable

commercial use; and

WHEREAS, both ordinances provided that permits issued under either Ordinance would be issued in increments of 6 months and would not exceed 18 months without demonstration of a hardship to the Town Manager; and

WHEREAS, Section 2 of Ordinance 24-04 further clarified that the Town Council intended permitted uses to be temporary in nature, and thereby subject to revocation and rescission at a future date under certain circumstances. More specifically, Paragraph 2 of Ordinance 24-04 identified several circumstances in which these temporary permitted uses required removal:

Unless otherwise provided in this Ordinance or in a Resolution that is adopted hereinafter by the town council, any governmental, residential (manufactured home, mobile home, motor home, recreational vehicle, or other temporary residential dwelling) or moveable commercial use shall be removed from the site 1) no later than 30 (days) after issuance of a certificate of occupancy or certificate of use associated with an approved permit; 2) at the time of the expiration of the ETPP as provided herein or as provided in a resolution; or 3) at the time of expiration of any local or date declaration of emergency or law, whichever is earlier. (Emphasis added).

WHEREAS, Section 2 of Ordinance 24-04(xi) also provided that the issued permit could be revoked for “noncompliance with applicable federal law/regulation, state law and town code”; and

WHEREAS, the number of outstanding temporary permits approved by the Town has decreased as a result of additional hurricanes impacting the Town subsequent to Hurricane Ian, the permitted rebuilding of destroyed properties; and the voluntary removal of the temporary permitted uses; and

WHEREAS, on July 19, 2024 and September 3, 2024, the Town was notified by the Federal Emergency Management Administration (“FEMA”) that the Town would be placed on permanent probation from participation in the National Flood Insurance Program if it allowed structures needed for these temporary uses to continue subsequent to November 18, 2024 in the Special Flood Hazard Area; and

WHEREAS, Section 6-494 of the Town of Fort Myers Beach Land Development Code defines the Special Flood Hazard Area as “[a]n area in the floodplain subject to a one- percent or greater chance of flooding in any given year. Special flood hazard areas are shown on FIRMs as Zone A, AO, A1-A30, AE, A99, AH, V1-V30, VE or V. [Also defined in FBC, B Section 202.]”, which in effect encompasses the entirety of the Town; and

WHEREAS, despite efforts by the Town Council to extend the November 18, 2024 FEMA deadline, the Town was notified by letter on November 21, 2024, that the Town was placed on probation with the National Flood Insurance Program effective November 18, 2024 in part due to its failure to “[r]emove noncompliant structures that were incorrectly permitted and should not have been placed in the Special Flood Hazard Area”; and

WHEREAS, in order to comply with minimum floodplain standards and the requirements of the National Flood Insurance Program, the Town must now revoke and rescind emergency temporary placement permits which allow noncompliant structures in the Special Flood Hazard Area; and

WHEREAS, the definition of a “structure” for floodplain management purposes pursuant to 44 CFR Part 59.1 includes “any walled and roofed building, manufactured home or travel trailer without wheels,” and

WHEREAS, the definition of a “manufactured home” for floodplain management purposes pursuant to 44 CFR 59.1 is “a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term “manufactured home” does not include a “recreational vehicle”; and

WHEREAS, adoption of this Resolution is in the best interest of the residents of the Town as a step towards removal of its probationary status in the National Flood Insurance Program and compliance with its floodplain regulations.

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 are made a specific part of this Resolution.

Section 2. All emergency temporary placement permits for “noncompliant structures that were incorrectly permitted and should not have been placed in the Special Flood Hazard Area” are hereby revoked and rescinded.

Section 3. The Town Manager is directed and authorized to immediately take the following actions to implement this Resolution:

1. Provide formal Notice to holders of any emergency temporary placement permit by certified mail, posting on the property and any other known method for notification that:
 - a) the permit is revoked and rescinded as of December 16, 2024; and
 - b) the permit holder may appeal this revocation action pursuant to Section 34-86 of the Code of Ordinances as stated in Section 4 of Ordinance 24-04, or by any other lawful means; and
 - c) the contact information for a member of the Town staff, who can answer questions and provide more information.

The Notice shall also include a copy of this Resolution and FEMA’s letter of November 21, 2024.

2. Initiate or continue any needed code enforcement action against permit holders who fail to immediately begin removal of noncompliant structures.

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 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	_____
Karen Woodson, Council Member	_____
Scott Safford, Council Member	_____
John R. King, Council Member	_____

APPROVED AND ADOPTED this ____ day of _____ 2024, by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

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



FEMA

November 21, 2024

Andy Hyatt, Manager
Town of Fort Myers Beach
2731 Oak Street
Fort Myers Beach, FL 33931

Re: National Flood Insurance Program Participation

Dear Mr. Hyatt:

Once again, I'd like to thank you and your staff for the long hours and hard work during the last several months to correct the Town of Fort Myers Beach's issues regarding the National Flood Insurance Program (NFIP). Our teams have made great progress in helping ensure the city and their residents are more resilient and prepared for future storms.

On July 19, 2024, the Town received a letter from this office indicating the potential of being placed in probationary status with the NFIP if certain conditions were not met. These conditions consisted of five action items to be completed by November 18, 2024.

These action items were:

1. Develop and submit a plan that includes actions and timelines to address all identified program deficiencies and violations to the maximum extent possible.
2. Assess all floodplain development from Hurricane Ian in the Special Flood Hazard Area, ensuring that permits for all repairs, construction and development were obtained consistent with local floodplain management regulations.
3. Provide documentation that demonstrates your community is leveraging its code enforcement process to address new and existing code cases for all structures not confirmed as compliant.
4. Put a process in place to ensure substantial damage compliance for future events.
5. Remove noncompliant structures that were incorrectly permitted and should not have been placed in the Special Flood Hazard Area.

We appreciate that the Town of Fort Myers Beach accomplished the first and fourth action items by submitting a plan to address deficiencies and establishing a process to ensure substantial damage compliance for future events.

However, our teams have identified additional work that needs to occur for items 2, 3 and 5.

The crosswalk assessment tool created has not been completed by town officials which prevents both items 2 and 3 from being completed. For the 5th item, the town also did not remove non-compliant structures that were incorrectly permitted and should not have been placed in the Special Flood Hazard Area.

We acknowledge the work invested by you and your team has resulted in some improvements to meet minimum floodplain management standards. However, because of the outstanding compliance issues remaining, **the Town will be placed on probation with the National Flood Insurance Program effective November 18, 2024.**

During this probationary period, flood insurance coverage will remain available within the Town of Fort Myers Beach; however, a \$50 surcharge will be added to the premium of each new and renewed flood insurance policy sold within the community. Probation will remain in effect until all remaining program deficiencies and violations have been corrected to the maximum extent possible. Effective April 1, 2025, the town will be retrograded to a Class 10 in the Community Ratings System and policy premium discounts will not be applied to new or renewing policies. The Town is not eligible to reapply to the Community Rating System for a higher-class rating until the Town's probationary period is concluded, the Town is in full compliance with the minimum requirements of the National Flood Insurance Program, and at least two years has passed since the Town was placed in probationary status.

I am committed and I've instructed my staff that we will continue to provide technical assistance to Fort Myers Beach to meet the required program standards and potentially end probation as soon as practicable.

If you have any questions or at any time need technical assistance to address these issues, please contact FEMA Region 4 Office, Jacky Bell, Mitigation Division Director, at jacky.bell@fema.dhs.gov or 404-273-4710.

Sincerely,



Robert D. Samaan
Regional Administrator

cc:

Jason Hunter, Region Floodplain Management & Insurance Branch Chief
Jillian Kraynak, Florida NFIP State Coordinator

ORDINANCE 24-04

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

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

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

WHEREAS, the Town recognizes that recovery and redevelopment of the Town, following a natural disaster, such as Hurricane Ian creates a need for temporary uses in areas that were not damaged in order to provide goods and services to the public

WHEREAS, the Town adopted Ordinance 23-05 following Hurricane Ian and desires to revise the Ordinance in order to clarify its intent at the time of adoption, facilitate continued recovery and have more detailed regulations in place in the event of a future natural disaster or emergency; and

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on April 9, 2024, at time which the LPA gave full and complete consideration of the request, recommendations by staff, the documents in the record, and the testimony of all interested persons, and the LPA voted 6 to 0, to recommend approval of this Ordinance; and

WHEREAS, on April 15, 2024, the Town Council held a first reading of the proposed Ordinance and gave full and complete consideration to the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons to amend and restate Ordinance 23-05 as provided herein; and

WHEREAS, a Business Impact Estimate was prepared and posted on the Town' website on the 18th day of April 2024, as required by Section 166.041(4), Florida Statutes; and

WHEREAS, an advertisement of the public hearing for adoption of the Ordinance was published in The News-Press on the 18th day of April 2024, which is 10 days prior to the second reading of the proposed Ordinance as required by Section 166.041; and

WHEREAS, on the 6th day of May 2024, the Town Council held a second reading of the Ordinance; at which time the Town Council gave full and complete consideration to the recommendations of staff and the LPA, and the testimony of all interested persons; and

WHEREAS, the Town finds that it is in the best interests of the health, safety, and welfare of the Town's business owners, residents, and visitors to allow for the temporary use of property in certain zoning districts for residential, commercial and governmental purposes.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AS FOLLOWS: ¹

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

Section 2. The Town Council determines that adoption of the following regulations is in the best interests of the health, safety, and welfare of the Town's business owners, residents, and visitors, which regulations shall be amended and restated as follows:

**~~Temporary Placement of Emergency Uses, Manufactured Homes, Mobile Homes, Motor Homes, Recreational Vehicles
Other Temporary Residential Dwelling or Temporary
Moveable Commercial Units~~**

- ~~(1) — An emergency governmental use, manufactured home, mobile home, motor home, recreational vehicle, or other temporary unit, may be permitted on a limited basis by the issuance of a temporary placement permit (TPP) by the Town.~~
- ~~(2) — Unless otherwise provided in this Ordinance, an emergency governmental use, manufactured home, mobile home, motor home, recreational vehicle, or other temporary unit shall be removed from the site within thirty (30) days after issuance of a certificate of occupancy or certificate of use associated with the approved permit, or at the time of the expiration of the TPP, whichever is earlier. TPP shall not be used for the purpose of placing and operating a Short Term Rental.~~

^{1/} Additions to existing text are shown by underline, changes to existing text on second reading are shown by double underline, and deletions are shown as strikethrough.

~~A. A TPP may be granted as indicated below:~~

- ~~(i) Within any Commercial or Institutional Zoning District, a TPP may be issued for the purpose of providing an emergency governmental use to provide an essential governmental service adversely impacted due to adverse weather or other acts of God.~~
- ~~(ii) Within any Commercial, Institutional or Residential Zoning District, a TPP may be issued for the purposes of placing a manufactured home, mobile home, motor home, recreational vehicle, or other temporary unit for displaced owner-occupants or tenants if their existing living unit(s) has/have become uninhabitable due to adverse weather damage or other acts of God. Habitability of the existing residential unit(s) shall be determined by an inspection by the City building official, Florida certified building inspector, architect, or engineer, and subject to the following requirements and restrictions:~~
 - ~~(a) No more than one (1) manufactured home, mobile home, motor home, recreational vehicle, or other temporary unit shall be allowed per living unit, for single family and two-family homes. Additional units may only be allowed with approval of a waiver by the Town Council.~~
 - ~~(b) The TPP shall only be allowed while the damaged living unit is uninhabitable and in the process of repair or a replacement living unit is in the process of being constructed.~~
 - ~~(c) Placement of a manufactured home, mobile home, motor home, recreational vehicle, or other temporary unit on a site must meet all State requirements for tie downs. Mobile homes shall be installed by a licensed mobile home contractor and~~

~~in accordance with requirements of Florida Statutes and the Florida Building Code.~~

~~(d) Only verified residents of Fort Myers Beach may be granted a TPP.~~

~~(iii) The TPP shall be issued in increments of six (6) months by review of the Town and shall not be issued for a period exceeding eighteen (18) months from the date of this ordinance adoption. The Town may, however, grant extensions to a TPP permit exceeding eighteen (18) months if a TPP permit holder demonstrates that a significant hardship exists. The Town Manager or designee shall decide if a hardship exists based upon evidence provided by the permit holder that they have exercised all due diligence in obtaining permits either for repair or replacement of the affected structure. The Town Manager may consider whether the applicant has had difficulties in completing insurance claims, obtaining an architect or engineer, obtaining construction materials, or obtaining a contractor, and if relevant, whether they have had difficulty in obtaining grants or loans to assist in repair or replacement of the affected structure.~~

~~(iv) The holder of the TPP shall apply for a building permit for the damaged or destroyed dwelling unit no later than six (6) months after the date of this ordinance adoption. The Town Manager or designee may, however, grant extensions to this deadline requirement based upon evidence provided by the property owner that they have exercised all due diligence in obtaining permits either for repair or replacement of the affected structure. The Town Manager may consider whether the applicant has had difficulties in completing insurance claims, obtaining an architect or engineer, obtaining construction materials, or obtaining a contractor, and if relevant, whether they have had difficulty in~~

~~obtaining grants or loans to assist in repair or replacement of the affected structure.~~

~~(v) Noncompliance may result in revocation of the TPP.~~

~~(vi) The occupants of the manufactured home, mobile home, motor home, recreational vehicle, or other temporary residential unit must comply with all mandatory hurricane evacuation requirements. Failure to do so may result in the revocation of the TPP.~~

~~3. Submission Requirements:~~

~~A. A completed TPP application; and~~

~~B. Map or other documentation indicating the proposed location of the manufactured home, mobile home, motor home, recreational vehicle, or other temporary residential unit; and~~

~~C. State Department of Health, State Department of Environmental Protection, and Town permit(s) authorizing the connection of the manufactured home, mobile home, motor home, recreational vehicle, or other temporary residential unit to an on-site or existing community wastewater treatment system.~~

~~4. An appeal of any decision made under this Ordinance may be made pursuant to the provisions found in Section 34-86 of the Town's Land Development Code.~~

Temporary Governmental, Residential (Manufactured Homes, Mobile Homes, Motor Homes, Recreational Vehicles Other Temporary Residential Dwelling) or Moveable Commercial Uses following Natural Disasters or Other Emergencies

(1) Governmental, residential (manufactured home, mobile home, motor home, recreational vehicle, or other temporary unit), or moveable commercial uses may be permitted on a limited basis upon adoption of a Resolution by the Town Council announcing the availability of

emergency temporary placement permits (ETPP's) following a natural disaster or other emergency and submission of an application.

- (2) Unless otherwise provided in this Ordinance or in a Resolution that is adopted hereafter by the town council, any governmental, residential (manufactured home, mobile home, motor home, recreational vehicle, or other temporary residential dwelling) or moveable commercial use shall be removed from the site 1) no later than thirty (30) days after issuance of a certificate of occupancy or certificate of use associated with an approved permit; 2) at the time of the expiration of the ETPP as provided herein or as provided in a resolution; or 3) at the time of expiration of any local or state declaration of emergency or law, whichever is earlier. The ETPP shall not be used for the purpose of short-term commercial or residential rental for new businesses or tenants, who did not otherwise have a business or residence in the town prior to the natural disaster or emergency.

A. An ETPP may be granted as indicated below:

- (vii) **Governmental Use.** Within any Commercial or Institutional Zoning District, an ETPP may be issued for the purpose of providing an emergency governmental use to provide an essential governmental services or aid to the public impacted due to a natural disaster, or emergency, or other acts of God.
- (viii) **Residential Use.** Within any Commercial, Institutional or Residential Zoning District, an ETPP may be issued for the purposes of placing a manufactured home, mobile home, motor home, recreational vehicle, or other temporary unit for displaced owner-occupants or tenants if their existing living unit(s) has/have become uninhabitable due to adverse weather damage or other acts of God. Habitability of the existing residential unit(s) shall be determined by an inspection by the City building official, Florida certified building inspector, architect, or engineer, and subject to the following requirements and restrictions:

- (e) No more than one (1) manufactured home, mobile home, motor home, recreational vehicle, or other temporary unit shall be allowed per living unit, for single family and two-family homes. Additional units may only be allowed with approval of a waiver by the Town Council.
- (f) The ETPP shall only be allowed while the damaged living unit is uninhabitable and in the process of repair or a replacement living unit is in the process of being constructed.
- (g) Placement of a manufactured home, mobile home, motor home, recreational vehicle, or other temporary unit on a site must meet all State requirements for tie-downs. Mobile homes shall be installed by a licensed mobile home contractor and in accordance with requirements of Florida Statutes and the Florida Building Code.
- (h) Only verified residents of Fort Myers Beach may be granted an ETPP.
- (ix) **Commercial Uses.** Within Commercial zoning districts, a ETPP may be issued to an owner or lessee of the property to operate a business that was existing on the property prior to the natural disaster or emergency or a similar new business. A new business or change in use dissimilar to the use that was in existence prior to the natural disaster or emergency, by an owner or lessee of the property, is not eligible for an ETPP.
 - 1. A permit applicant for a commercial use must have a Lee County Tax-ID.
 - 2. Vehicles and structures placed on commercial lots must be setback by no less

than the width of the vehicle/structure (i.e. track width) and may not protrude into the right-of-way.

3. Food Service Kitchens are permitted on their brick-and-mortar commercial site that is zoned for that type of activity.

4. Structures which are not on wheels must be tied-down on a stabilized surface or secured with appropriate helical piles, or other method to resist hydro-dynamic forces.

5. Vehicles must be on wheels and be able to quickly disconnect utility connections and be towed by a light utility vehicle.

6. No more than one commercial use may occur on the property unless more than one use existed on the property prior to the natural disaster or emergency.

- (x) **Review Period/Extension.** All approved ETPPs shall be issued in increments of six (6) months subject to review by the Town and shall not be issued for a period exceeding eighteen (18) months from the date of this ordinance adoption. The Town may, however, grant extensions to a ETPP permit exceeding eighteen (18) months if a ETPP permit holder demonstrates that a significant hardship exists. The Town Manager or designee shall decide if a hardship exists based upon evidence provided by the permit holder that they have exercised all due diligence in obtaining permits either for repair or replacement of the affected structure. The Town Manager may consider whether the applicant has had difficulties in completing insurance claims, obtaining an architect or engineer, obtaining construction materials, or obtaining a contractor, and if relevant, whether they have had difficulty in obtaining grants or loans to assist in repair or replacement of the affected structure, other

identified extenuating circumstances, or state of emergency extension or state law.

(xi)

Noncompliance. Noncompliance with regulations contained herein, or any other applicable federal law/regulations, state law or town code may result in revocation of the ETPP, including but not limited to noise, debris removal, fire safety, lighting, parking in the right-of-way etc. Any requested deviation of a requirement contained in the existing town code shall require approval by the town council occupants of any manufactured home, mobile home, motor home, recreational vehicle, or other temporary residential unit and owners and lessees of commercial properties must comply with all mandatory federal, state and local hurricane evacuation requirements. Failure to do so may result in the revocation of the ETPP or code enforcement action.

3. Submission Requirements:

- A. A completed ETPP application providing details of the specific desired temporary use and specifications; and
- B. Map or other documentation indicating the proposed location of the manufactured home, mobile home, motor home, recreational vehicle, or other temporary residential unit or commercial use; and
- C. State Department of Health, State Department of Environmental Protection, and Town permit(s) authorizing the connection of the manufactured home, mobile home, motor home, recreational vehicle, or other temporary residential unit or commercial structure to an on-site or existing community wastewater treatment system and power source. Commercial structures must obtain a Trade permit from the Building Department

4. An ETPP may include additional conditions of approval unique to the request. An appeal of any administrative

decision made under this Ordinance may be made pursuant to the provisions found in Section 34-86 of the Town's Land Development Code.

5. This ordinance shall apply to ETPPs issued subsequent to the date of its adoption.

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

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

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

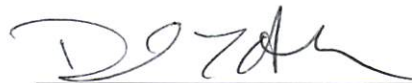
Section 6. This Ordinance shall become effective upon adoption by the Town Council.

The foregoing Ordinance was adopted by the Town Council upon a motion by Mayor Allers and seconded Council Member Woodson, and upon being put to a roll call 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 May 2024, by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH



Dan Allers, Mayor

ATTEST:


Amy Baker, Town Clerk

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


Vose Law Firm, Town Attorney

This Ordinance was filed in the Office of the Town Clerk on this 3 day of June, 2024.

RESOLUTION NUMBER 24-182

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA, DIRECTING THE TOWN MANAGER TO IMPLEMENT ALL REQUIREMENTS SET FORTH IN A LETTER DATED JULY 19, 2024, FROM THE FEDERAL EMERGENCY MANAGEMENT AGENCY (“FEMA”); 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, on September 28, 2022, Hurricane Ian made landfall north of the Town causing historical property damage and loss of life; and

WHEREAS, FEMA has been working in conjunction with the Town for the last two (2) years on recovery efforts from Hurricane Ian, and has, on July 19, 2024, sent the Town a letter outlining requirements for the Town to maintain its class rating in the National Flood Insurance Program; and

WHEREAS, adoption of this Resolution is in the best interest of the residents of the Town and promotes its health, safety and welfare.

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

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

Section 2. The Town Manager is directed and authorized to take any and all actions to implement the requirements contained in the letter from FEMA dated July 19, 2024, a copy of which is attached as Exhibit “A”.

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 Mayor Allers and seconded by Council Member Woodson, and upon being put to a roll call vote, the result was as follows:

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

APPROVED AND ADOPTED this 9th day of September 2024, by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers
Dan Allers (Sep 19, 2024 16:13 EDT)

Dan Allers, Mayor

ATTEST:

Amy Baker

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 Stuparich
Nancy Stuparich (Sep 18, 2024 17:12 EDT)

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 11th day of September 2024.



Town of Fort Myers Beach Post-Disaster Compliance Status Update Report

FEMA remains committed to helping communities take appropriate remediation actions to remain in good standing with the National Flood Insurance Program (NFIP) and participate in the Community Rating System (CRS).

The Town of Fort Myers Beach was granted 60 days (June 10, 2024), to submit to FEMA any new information related to the deficiencies and substantive violations detailed in FEMA's April 8, 2024 Findings Report. The April 8, 2024 Findings Report supported an initial decision by FEMA to retrograde the Town of Fort Myers Beach to a CRS class 10 community. In the Findings Report, FEMA also found program deficiencies and violations within the Town of Fort Myers Beach, which will serve as a basis for the current enforcement action and needed remediation.

During the 60-day review period, the Town of Fort Myers Beach provided FEMA permit documentation for 105 sites. FEMA reviewed the submitted documentation, for the 105 sites as well as the Town of Fort Myers Beach's Narrative and supporting documentation.

After careful review of Town of Fort Myers Beach's submittal, FEMA finds that program deficiencies and substantive violations remain. Unfortunately, due to the deficiencies, the Town of Fort Myers Beach is being notified that they have until November 18, 2024 to address these deficiencies, or the Town will be placed on probation from the NFIP:

LIST OF PROGRAM DEFICIENCIES

Program Deficiencies are a defect in a community's floodplain management regulations or administrative procedures that impairs effective implementation of floodplain management regulations of the standards in 44 CFR 60.3; 60.4; 60.6; and NFIP Community Compliance Program Guidance, P-1022 (July 2016) in section 3.2.

- Failure of the community's "commitment to recognize and duly evaluate flood, mudslide (i.e., mudflow) and/or flood-related erosion hazards in all official actions in the areas having special flood, mudslide (i.e., mudflow) and/or flood-related erosion hazards and to take such other official action reasonably necessary to carry out the objectives of the program;" 44 CFR 59.22(8) and LDC CH 6, Art IV, Div 1, Sec 6-403(8).
- Failure to require permits for all proposed construction and development in the SFHA. 44 CFR 60.3(b)(1); 44 CFR 60.3(c)(1); 44 CFR 60.3(e)(1); FBC R101.2.1; FBC EB701.3; FBC 105.1; LDC CH 6, Art IV, Div 3, Sec 6-427; and LDC CH 6, Art IV, Div 6, Sec 6-461.
- Failure to maintain permit records for development, new construction, or substantial improvements in the SFHA. 44 CFR 59.22(a)(9)(iii); 44 CFR 60.3(b)(5)(iii); and 44 CFR 60.3(e)(2)(ii).
- Failure to make substantial improvement (SI) and substantial damage (SD) ("SI/SD") determinations and calculations for all proposed construction and development in the SFHA. 44 CFR 60.3(b)(1); 44 CFR 60.3(c)(1); 44 CFR 60.3(e)(1); LDC CH 6, Art IV, Div 3, Sec 6.428(1); and FEMA Substantial Improvement / Substantial Damage Desk Reference, P-758 (May 2010) ("SI/SD Desk Reference") in section 5.2.

- Failure to maintain SI/SD determination records for all proposed construction and development in the SFHA. 44 CFR 59.22(a)(9)(iii); 44 CFR 60.3(b)(5)(iii); 44 CFR 60.3(e)(2)(ii); and SI/SD Desk Reference in sections 4.2 and 7.7.
- Failure to keep records of permits, certifications, and variance actions. 44 CFR 59.22(a)(9)(iii).
- Failure to establish SI/SD procedures for administering and documenting determinations of SI/SD. LDC CH6, Art IV, Div 3, Sec 6.428(1) and FEMA Substantial Improvement / Substantial Damage Desk Reference, P-758 (May 2010) ("SI/SD Desk Reference") in sections 4.1, 4.3, & 7.1.
- Failure in permitting system, which allowed the use of "temporary" non-compliant structures (Including shipping container and trailers/food trucks). LDC CH 6, Art IV, Div, 4, Sec 6.443 (3)&(4), LDC CH 6, Art IV, Div 6, and LDC CH 6, Art IV, Div 6, Sec 6-462, Sec 6.463, and LDC CH 6, Art IV Div 10, Sec 6-501.
- [REDACTED]
- [REDACTED]

1. Program deficiencies

Serious program deficiencies in a community's administrative and enforcement process and procedures are those that have resulted or could result in substantive violations that increase potential flood damages or stages in the community. The following deficiencies represent gaps in the Town's administrative process that restrict the ability to meet the minimum standards for participation.

Permitting of non-compliant structures/shipping containers/

Inconsistent Market Value	Missing Repair Permits (Known Damage (IA/Insurance)	Missing Detailed Cost Info	Low & Inadequate Labor Costs	Permits Issued Without Total Repair Costs	Failed To Capture Complete Scope of Work	After the Fact Permits	After the Fact Notice of Violation
1	51	76	8	62	65	16	25

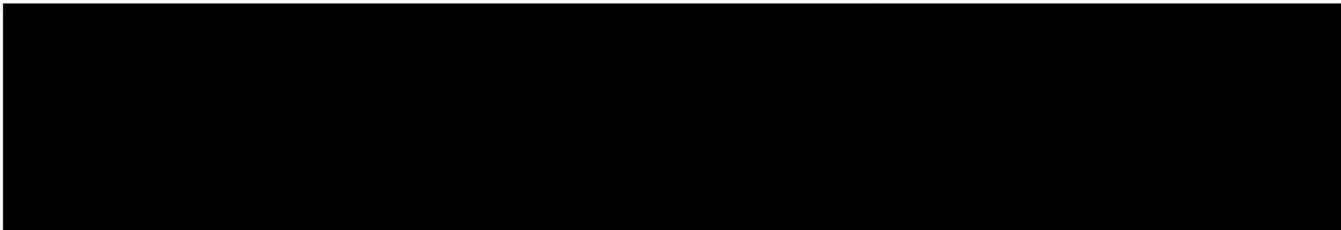
2. List of properties determined to be substantially damaged:

The Town of Fort Myers Beach has submitted to FEMA a list of properties that Town of Fort Myers Beach deemed substantially damaged since the disaster; there were 356 structures listed. What actions has the Town taken or plan to take to follow-up on those structures? Please provide FEMA with a status of each structure to indicate how substantial damage is being addressed.

3. Non-compliant development

- a. Non-compliant structures (containers) and temporary structures have been placed in the Coastal High Hazard Area (VE zone and coastal A zone). Please provide a plan to remove the structures or bring the non-compliant structures or non-compliant additions into compliance; and confirmation that the town has stopped issuing permits for this type of non-compliant development.

b. [REDACTED]



4. Data Dictionary (revised) – “Status” Column Meanings:

Additional Information Needed – Permit package needs additional information to be considered complete.

CAV Follow-Up – Not a Hurricane Ian issue but found a need for additional information during the next compliance follow-up with the community.

Code Enforcement Case – Community is currently processing as a code enforcement case and FEMA will accept and review case updates, follow-up permit information, and/or enforcement actions occurring prior to June 10, 2024. Actions occurring beyond that time will require future compliance engagement.

Complete – FEMA needs no further information regarding the specific address.

Future Compliance Engagement – Ian related activity. FEMA will follow-up on this site during the next compliance follow-up with the community.

5. Documentation on the Finding Report and Site list:

Attached to this document is a list of structures within the SFHA with violations, including the type of violation, status, and needed documentation.

Final Status (as of June 28, 2024)	Count
Additional Information Needed	21
CAV Follow-Up	2
Code Enforcement Case	16
Complete	32
Future Compliance Engagement	34
Grand Total	105



FEMA

National Flood Insurance Program

Privacy Act Notice

RE: Town of Fort Myers Beach, FL, **National Flood Insurance Program Data from the Federal Emergency Management Agency (FEMA)**

The Town of Fort Myers Beach, FL is receiving data from the Federal Emergency Management Agency's that is maintained in support of the National Flood Insurance Program (NFIP). Specifically, the Town of Fort Myers Beach, FL is receiving property addresses identified by FEMA as possible violations to the local floodplain management laws and regulations. The community shall use the data to verify, monitor, and resolve the possible violation. As an NFIP participating community, this information will assist the community to ensure compliance with the NFIP and maintain the availability of flood insurance. FEMA will send the information to you securely via email on a password-protected spreadsheet or pdf.

FEMA discloses this to you pursuant to the "routine use" provision of the Privacy Act of 1974, 5 U.S.C. § 552a(b)(3), specifically under Routine Uses G, I, M, N, O, R and T of the System of Records Notice (SORN), DHS/FEMA-003 - National Flood Insurance Program Files 79 FR 28747 (May 19, 2014). The SORN may be electronically viewed at <https://www.gpo.gov/fdsys/pkg/FR-2014-05-19/html/2014-11386.htm>.

The Town of Fort Myers Beach, FL does not have permission to release the provided information to third parties, including third party contractors and will only use the data for the stated purpose. Unauthorized disclosure of FEMA data will result in an immediate denial of access to the FEMA data. Pursuant to the Privacy Act, 5 U.S.C. § 552a(e)(10), please destroy or return said personally identifiable information (PII) to FEMA once you no longer have use for it. PII is information that can be used to identify, by itself, or in combination, individuals by direct or indirect means.

In the event of a privacy incident resulting from this sharing of FEMA PII, Town of Fort Myers Beach, FL shall immediately, but in no event later than twenty-four (24) hours from suspicion, discovery or notification of the suspected or confirmed privacy incident, notify the FEMA Privacy Officer at (202) 212-5100 or FEMA-Privacy@fema.dhs.gov. FEMA will investigate the incident pursuant to DHS standard procedures and will consult the Town of Fort Myers Beach, FL to diagnose, mitigate and manage the privacy incident.

The Town of Fort Myers Beach, FL will be responsible for carrying out all necessary measures to remedy the effects of the privacy incident.

By accepting the FEMA data, the Town of Fort Myers Beach, FL agrees that it shall bear all costs, losses and damages to the extent resulting from the City's breach of FEMA data. The Town of Fort Myers Beach, FL further agrees to release, defend, indemnify, and hold FEMA harmless for claims, losses, penalties and damages, and reasonable attorneys' fees and costs to the extent arising out of the Town of Fort Myers Beach, FL or its contractor's, negligence, unauthorized use or disclosure of FEMA PII and/or the Town of Fort Myers Beach, FL, or its contractor's, breach of its obligations under this sharing.

By accepting, receiving, downloading, or otherwise obtaining the routine use information or data discussed in this document, Town of Fort Myers Beach, FL understands, agrees, and accepts the terms of the use of the data as outlined in this document.

1. **Request:**

Meeting Date: December 16, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA, APPROVING GRANT AGREEMENT NUMBER D2125 WITH THE STATE OF FLORIDA, DEPARTMENT OF EMERGENCY MANAGEMENT IN THE AMOUNT OF \$7,547,805 FOR REVENUE REPLACEMENT; APPROVING A RELATED BUDGET ADJUSTMENT (#3); AUTHORIZING THE TOWN MANAGER TO SIGN ANY AND ALL NECESSARY DOCUMENTS TO ACQUIRE THE GRANT; AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

The action is necessary to authorize the Town Manager to sign the agreement, to authorize creation of a new fund, and to authorize the related budget adjustment.

What the action accomplishes:

The action authorizes the Town Manager to sign the agreement, the creation of a new fund, and the related budget adjustment.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Joe Onzick, Finance Director

5. **Background:**

The Town of Fort Myers Beach, Florida sustained significant revenue losses in Fiscal Years 2023 and 2024 and is projected to sustain additional losses in Fiscal Year 2025 as a result of the economic impact of the catastrophic damage of Hurricane Ian. As a result of lobbying efforts, the Town of Fort Myers Beach, Florida was awarded a grant by the Florida Legislature in the amount of \$7,547,805 under line 2699, Chapter 2024-231 Laws of Florida for "Fort Myers Beach – Revenue Loss". The grant agreement requires the Town Manager's signature.

A new "Revenue Replacement" fund will be created in which to deposit this unique and significant grant. It is proposed that the grant be used to replenish the "Bridge Loan Fund" for the the lost revenue it funded for Fiscal Years 2023 and 2024, as well as what it is projected to fund in Fiscal Year 2025. A budget adjustment reflecting this proposed use of the grant proceeds is included.

Attachments:

1. 24-284, Budget Amendment #3 - Revenue Replacement Grant
2. 24-284, Budget Amendment #3 - Revenue Replacement Grant - Attachment
3. 24-284 Exhibit A, Funding Agreement - Revenue Loss
4. 24-284 Exhibit A, Funding Agreement - Revenue Loss Attachment B

Financial Impact:

The Town has experienced or is projecting to experience the following losses of revenue:

\$3,085,209 in Fiscal Year 2023

\$2,427,312 in Fiscal Year 2024

\$2,893,912 in Fiscal Year 2025

\$8,406,433 total revenue loss experienced and/or projected that have been or will be reimbursed by the Bridge Loan Fund.

The grant is for \$7,547,805, and is intended to fund the revenue loss instead of the Bridge Loan. In other words, the grant will be used to reimburse the Bridge Loan Fund, and the proposed budget amendment indicates the plan for doing so. Please see the attachment for further details.

6. Alternative Action

The Town may choose not to authorize the grant, or may proposed a different use of the grant.

7. Management Recommendations:

Management recommends approval of this resolution.

8. Recommended Approval:

Jason Freeman, Deputy Town Clerk / Legislative Liaison

Joe Onzick, Finance Director

nancy stuparich, Town Attorney

Amy Baker, Town Clerk

Andy Hyatt, Town Manager

Created/Initiated - 11/22/2024

Approved - 11/22/2024

Approved - 12/3/2024

Approved - 12/5/2024

Final Approval - 12/5/2024

RESOLUTION NUMBER 24-284

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA, APPROVING GRANT AGREEMENT NUMBER D2125 WITH THE STATE OF FLORIDA, DEPARTMENT OF EMERGENCY MANAGEMENT IN THE AMOUNT OF \$7,547,805 FOR REVENUE REPLACEMENT; APPROVING A RELATED BUDGET ADJUSTMENT (#3); AUTHORIZING THE TOWN MANAGER TO SIGN ANY AND ALL NECESSARY DOCUMENTS TO ACQUIRE THE GRANT; 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 Town of Fort Myers Beach, Florida sustained significant revenue losses in Fiscal Years 2023 and 2024 and is projected to sustain additional losses in Fiscal Year 2025 as a result of the economic impact of the catastrophic damage of Hurricane Ian; and

WHEREAS, the Town of Fort Myers Beach, Florida was awarded a grant by the Florida Legislature in the amount of \$7,547,805 under line 2699, Chapter 2024-231 Laws of Florida for “Fort Myers Beach – Revenue Loss”, 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 23, 2024, the Town Council of the Town of Fort Myers Beach, following due public notice, adopted a final operating budget for fiscal year 2024-25, as set forth with greater specificity in Town Resolution 24-185; 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; and

WHEREAS, the Town finds that it is in the best interest of the residents of the Town to accept the grant award from the State of Florida, Department of Emergency Management for Revenue Replacement,

and approve Grant Agreement No. D2125; and

WHEREAS, the Town finds that in accordance with the purpose of the grant it is in the best interest of the residents of the Town to utilize the grant to fund the revenue losses in Fiscal Years 2023, 2024 and 2025 rather than the Bridge Loan, and to authorize the necessary adjustment to the Fiscal Year 2025 budget.

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 and accepts the \$7,547,805 grant awarded under line 2699, Chapter 2024-231 Laws of Florida for revenue replacement administered through the Florida Department of Emergency Management, and authorizes the Town Manager to execute Grant Agreement No. D2125, a copy of which is attached as Exhibit A.

Section 3. The Town Council hereby approves the creation of the “Revenue Replacement Grant” fund for purposes of tracking use of this significant and unique award.

Section 4. The Town Council further finds that the supplemental appropriation of funds is as provided in this Section consistent with the requirements of Section 11.05 (a) of Article XI of the Town Charter, and hereby approves, adopts and accepts the following amendment to the Fiscal Year 2025 budget:

Budget Adjustment #3

34.19.519.33447	Rev Replacement: State LAP Grant	\$7,547,805
34.19.519.59122	Rev Replacement: Tfr to Bridge Loan-FY23 Lost Rev	\$3,085,209
34.19.519.59122	Rev Replacement: Tfr to Bridge Loan-FY24 Lost Rev	\$2,427,312
34.19.519.59122	Rev Replacement: Tfr to Bridge Loan-FY25 Lost Rev	\$2,035,284
35.19.519.38126	Bridge Loan: Tfr from Rev Replacemnt-FY23 Lost Rev	\$3,085,209
35.19.519.80000	Bridge Loan: Add back to Reserve-FY23 Lost Rev	\$3,085,209
35.19.519.38126	Bridge Loan: Tfr from Rev Replacemnt-FY24 Lost Rev	\$2,427,312
35.19.519.80000	Bridge Loan: Add back to Reserve-FY24 Lost Rev	\$2,427,312
35.19.519.38126	Bridge Loan: Tfr from Rev Replacemnt-FY25 Lost Rev	\$2,035,284
35.19.519.80000	Bridge Loan: Add back to Reserve-FY25 Lost Rev	\$2,035,284

Section 5. This resolution is effective immediately upon adoption.

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

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

ADOPTED this 16th day of December 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 ____ day of December 2024.

**Resolution 24-284 “Authorizing Budget Adjustment #3 and Revenue Replacement Grant
Use of Revenue Replacement Grant to Fund Pay Off of Bridge Loan**

The following table indicates how the Bridge Loan Fund will have been used, and how the Revenue Replacement Fund will be used to reimburse the Bridge Loan Fund. It also shows the interest earned on the Bridge Loan Fund balance which will also help to repay the Bridge Loan.

	Revenue Replacement Fund	Bridge Loan Fund
Beginning Balance	\$7,547,805	\$11,900,000
FY23 Actual Lost Revenue		(3,085,209)
FY23 Revenue Replacement	(3,805,209)	3,805,209
Interest Earned		148,867
FY24 Preliminary Lost Revenue		(2,427,312)
FY24 Revenue Replacement	(2,427,312)	2,427,312
Interest Earned		548,748
FY25 Budgeted Lost Revenue		(2,893,912)
FY25 Revenue Replacement	(2,035,284)	2,035,284
Interest Earned YTD		36,318
Ending Balance	\$0	\$11,775,305
Bridge Loan Repayment Shortfall		\$124,695

The Bridge Loan Repayment Shortfall indicates the outstanding balance of the bridge loan remaining after the Revenue Replacement grant is fully expended to reimburse the Bridge Loan Fund. This demonstrates that by the end of FY25 we will have almost enough accumulated in the Bridge Loan Fund to repay the Bridge Loan. We can then keep the Bridge Loan balance in reserve to earn interest until the loan matures on May 1, 2033, at which point we can use it to repay the loan, unless the loan is forgiven before then. One of the benefits of having enough in reserve to pay off the Bridge Loan is that our non-ad valorem revenue would no longer be restricted for operations or emergency use, but could then be used for capital improvements.

We will continue to seek forgiveness of the Bridge Loan so that the principal balance may also be used for capital improvements or any other use the Town Council desires.

STATE-FUNDED LAP GRANT AGREEMENT

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

THIS AGREEMENT IS ENTERED INTO BASED ON THE FOLLOWING REPRESENTATIONS:

- A. The Recipient represents that it is fully qualified and eligible to receive these grant funds to provide the services identified herein; and
- B. The Division has received these grant funds from the State of Florida, and has the authority to subgrant these funds to the Recipient upon the terms and conditions below; and
- C. The Division has statutory authority to disburse the funds under this Agreement.

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

(1) **CONTACT**

a. Any and all notices or other communications made pursuant to this Agreement shall be in writing and shall be deemed given if delivered by certified mail or electronic mail to the parties at the following addresses. In accordance with section 215.971(2), Florida Statutes, the Division's Grant Manager shall be responsible for enforcing performance of this Agreement's terms and conditions and shall serve as the Division's liaison with the Recipient. As part of his/her duties, the Grant Manager for the Division shall:

- i. Monitor and document Recipient performance; and,
- ii. Review and document all deliverables for which the Recipient requests

payment.

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

Carly Miller, FPEM, FCCM
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399
Telephone: 850-559-7863
Email:

c. The name and address of the representative of the Recipient is:

Andrew Hyatt
2731 Oak Street
Fort Myers Beach, FL 33931
Telephone: (239)-313-0895
Email: andyhyatt@fmbgov.com

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

(2) TERMS AND CONDITIONS

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

(3) EXECUTION

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

(4) MODIFICATION

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

(5) PERIOD OF AGREEMENT

This Agreement shall begin upon execution by both parties and shall end upon the receipt of grant funds unless terminated earlier in accordance with the provisions of Paragraph (16) TERMINATION.

(6) FUNDING

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

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

(7) RECORDS

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

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

IF THE RECIPIENT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE RECIPIENT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT,

CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: (850) 815-4156, Records@em.myflorida.com, or 2555 Shumard Oak Boulevard, Tallahassee, FL 32399.

(8) LIABILITY

For purposes of this Agreement, Recipient agrees that it is not an employee or agent of the Division but is an independent contractor.

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

(9) REMEDIES

If either party is dissatisfied with the performance of this Agreement, they must first contact the other party using the contract information provided in paragraph 1. After having made a good faith effort to remedy the issue, the parties shall be entitled to exercise any right or remedy available to it either at law or in equity, subject to the choice of law and venue agreed herein.

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

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

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

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

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

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

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

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

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

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

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

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

(10) TERMINATION.

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

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

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

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

(11) ATTACHMENTS

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

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

c. This Agreement has the following attachments:

Exhibit 1 - Funding Sources

Attachment A – Proposed Budget and Scope of Work

Attachment B – Appropriation Project Request

(12) PAYMENTS

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

(13) REPAYMENTS

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

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

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

(14) MANDATED CONDITIONS

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

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

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

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

(15) LOBBYING PROHIBITION

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

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

(16) LEGAL AUTHORIZATION.

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

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

RECIPIENT:

By: _____

Name and Title: _____

Date: _____

FID# _____

STATE OF FLORIDA

DIVISION OF EMERGENCY MANAGEMENT

By: _____

Name and Title: Kevin **Guthrie, Director, or Authorized Representative.**

Date: _____

EXHIBIT – 1

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

Notice and Disclaimer

This grant is authorized by section 6, line 2699, chapter 2024-231, Laws of Florida, and governed by section 252.373, Florida Statutes (2024). This grant is not subject to section 120.57(3), Florida Statutes, nor is it a purchase of services or commodities as governed by chapter 287, Florida Statutes.

CONTRACTED LEGAL SERVICES	
FROM ADMINISTRATIVE TRUST FUND . . .	500,000
2699 SPECIAL CATEGORIES	
GRANTS AND AIDS - EMERGENCY MANAGEMENT PROGRAMS	
FROM GENERAL REVENUE FUND	19,281,235
FROM EMERGENCY MANAGEMENT PREPAREDNESS AND ASSISTANCE TRUST FUND	7,481,265
From the funds in Specific Appropriation 2699, \$19,281,235 of nonrecurring funds from the General Revenue Fund shall be allocated as follows:	
First Responders to Disasters - Global Empowerment	
Mission (HF 2850) (SF 1973).....	500,000
Florida Severe Weather Mesonet (HF 1733) (SF 3031).....	738,000
Fort Myers Beach - Revenue Loss (HF 3094) (SF 3067).....	7,547,805
Hurricane Preparedness and Resilience - Jefferson County (HF 1629) (SF 3707).....	325,430
Sanibel - Operating Revenue Recovery Hurricane Ian (HF 3162) (SF 3551).....	9,920,000
Village of Key Biscayne - Emergency Management Planning, Training and Exercise (HF 1645) (SF 1611).....	250,000

ATTACHMENT A

Proposed Budget and Scope of Work

I. PROPOSED BUDGET

Category	Anticipated Expenditure Amount
Loss of Revenue	\$7,547,805.00
Total Expenditures	\$7,547,805.00

II. BACKGROUND

This grant is authorized by section 6, line 2699, chapter 2024-231, Laws of Florida, and governed by section 252.373, Florida Statutes (2024) for the mitigation of revenue losses and operating deficits.

Loss of Revenue

The Town of Fort Myers Beach experienced a loss of revenue due to major Hurricane Ian and is awarded a one-time payment of \$7,547,805.00

III. SCOPE OF WORK

Funds have been allocated to the Recipient for loss of revenue due to major Hurricane Ian. Funds shall be utilized in accordance with local, state and federal procurement regulations, if applicable. Funds may be used for Recipient employee compensation and benefits only if deficiencies in Recipient employee compensation and benefits were due to a loss of revenue caused by Hurricanes Ian.

IV. FINANCIAL CONSEQUENCES

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

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

Attachment B
Appropriation Project Request
Fort Myers Beach – Revenue Loss

The Florida House of Representatives
Appropriations Project Request - Fiscal Year 2024-25
For projects meeting the definition of House Rule 5.14

1. Title of Project: Fort Myers Beach - Revenue Loss
2. Date of Submission: 11/14/2023
3. House Member Sponsor: Adam Botana

4. Details of Amount Requested:

- a. Has funding been provided in a previous state budget for this activity? No
b. What is the most recent fiscal year the project was funded?
c. Were the funds provided in the most recent fiscal year subsequently vetoed?
d. Complete the following Project Request Worksheet to develop your request.

FY:	Input Prior Year Appropriation for this project for FY 2023-24 (If appropriated in 2023-24 enter the appropriated amount, even if vetoed.)			Develop New Funds Request for FY 2024-25 (Requests for additional RECURRING funds are prohibited.)		
Column:	A	B	C	D	E	F
Funds Description:	Recurring Funds	Nonrecurring Funds	Total Funds Appropriated	Recurring Base Budget	Additional Nonrecurring Request	TOTAL Nonrecurring plus Recurring Base Funds
Input Amounts:					7,547,805	7,547,805

- e. Provide the total cost of the project for FY 2024-25 from all sources of funding (Enter "0" if amount is zero):

Type of Funding	Amount	Percent of Total	Are the other sources of funds guaranteed in writing?
1. Amount Requested from the State in this Appropriations Project Request	7,547,805	100.0%	N/A
2. Federal	0	0.0%	No
3. State (Excluding the requested Total Amount in #4d, Column F)	0	0.0%	No
4. Local	0	0.0%	No

The Florida House of Representatives
Appropriations Project Request - Fiscal Year 2024-25
For projects meeting the definition of House Rule 5.14

5. Other	0	0.0%	No
TOTAL	7,547,805	100%	

5. Is this a multi-year project requiring funding from the state for more than one year?

No

6. Which is the most appropriate state agency to place an appropriation for the issue requested? Department of Revenue

a. Has the appropriate state agency for administering the funding, if the request were appropriated, been contacted? Yes

b. Describe penalties for failing to meet deliverables or performance measures which the agency should provide in its contract to administer the funding if appropriated.

Notice of failure to perform with a 60 day notice to make corrections, if performance measures are still not met then to withhold further payment until performance measures are met.

7. Requester:

a. Name: Andrew Hyatt

b. Organization: Town of Fort Myers Beach

c. Email: andyhyatt@fmbgov.com

d. Phone #: (239)313-0895

8. Contact for questions about specific technical or financial details about the project.

a. Name: Jason Freeman

b. Organization: Town of Fort Myers Beach

c. Email: jasonf@fmbgov.com

d. Phone #: (239)266-4673

9. Registered lobbyist working to secure funding for this project.

a. Name: Ronald L. Book

b. Firm: Ronald L. Book PA

c. Email: ron@rlbookpa.com

d. Phone #: (305)935-1866

10. Organization or Name of entity receiving funds:

The Florida House of Representatives
Appropriations Project Request - Fiscal Year 2024-25
For projects meeting the definition of House Rule 5.14

- a. Name: Town of Fort Myers Beach
- b. County (County where funds are to be expended): Lee
- c. Service Area (Counties being served by the service(s) provided with funding): Lee

11. What type of organization is the entity that will receive the funds?

- ☐ For Profit
- ☐ Non Profit 501(c)(3)
- ☐ Non Profit 501(c) (4)
- ☒ Local Government
- ☐ School District
- ☐ State Agency
- ☐ University or College
- ☐ Other (Please describe)

12. What is the specific purpose or goal that will be achieved by the funds being requested?

Hurricane Ian devastating impacts severely affected both properties, businesses and the vibrant Town of Fort Myers Beach. Therefore, the towns tax revenue has suffered a substantially and is projected to remain unstable for the foreseeable future. The town's revenue has plummeted by 42.4%.the town is requesting state funding to replace property tax revenue, which would support the town's ability to sustain operations and effectively rebuilding post disaster.

13. Provide specific details on how funds will be spent. (Select all that apply)

Spending Category	Description	Amount Requested (Should equal 4d, Col. E) Enter "0" if request is zero for the category
Administrative Costs:		
☐ a. Executive Director/Project Head Salary and Benefits		
☐ b. Other Salary and Benefits		
☐ c. Expense/Equipment/Travel/Supplies/Other		
☐ d. Consultants/Contracted Services/Study		

The Florida House of Representatives
Appropriations Project Request - Fiscal Year 2024-25
For projects meeting the definition of House Rule 5.14

Operational Costs:		
☐ e. Salaries and Benefits		
☒ f. Expenses/Equipment/Travel/Supplies/Other	General governmental services	7,547,805
☐ g. Consultants/Contracted Services/Study		
Fixed Capital Construction/Major Renovation:		
☐ h. Construction/Renovation/Land/Planning Engineering		
TOTAL		7,547,805

14. For Fixed Capital Costs requested in Question 13, what type of ownership will the facility be under when complete?

- ☐ For Profit
- ☐ Non Profit 501(c) (3)
- ☐ Non Profit 501(c) (4)
- ☐ Local Government
- ☐ School District
- ☐ State Agency
- ☐ University or College
- ☐ Other (Please describe)

15. Is the project request an information technology project?

No

16. Is there any documented show of support for the requested project in the community including public hearings, letters of support, major organizational backing, or other expressions of support?

Yes

a. Please Describe:

Council meeting 1/9/2023 support and funding needed to request funding for revenue loss due to Hurricane Ian.

The Florida House of Representatives
Appropriations Project Request - Fiscal Year 2024-25
For projects meeting the definition of House Rule 5.14

17. Has the need for the funds been documented by a study, completed by an independent 3rd party, for the area to be served?

No

18. Will the requested funds be used directly for services to citizens?

Yes

a. What are the activities and services that will be provided to meet the purpose of the funds?

Continuation of governmental services will be provided to the residents and tourists to the island. Funds will stabilize the local economy and provide.

b. Describe the direct services to be provided to the citizens by the funding requested.

Continuation of governmental services will be provided to the residents and tourists to the island. Funds will stabilize the local economy and provide revenue to rebuild the community post hurricanes Ian, Nicole and Idalia.

c. Describe the target population to be served (i.e., "the majority of the funds requested will serve these target populations or groups"). Select all that apply to the target population:

- ☐ Elderly persons
- ☐ Persons with poor mental health
- ☐ Persons with poor physical health
- ☐ Jobless persons
- ☐ Economically disadvantaged persons
- ☐ At-risk youth
- ☐ Homeless
- ☐ Developmentally disabled
- ☐ Physically disabled
- ☐ Drug users (in health services)
- ☐ Preschool students
- ☐ Grade school students
- ☐ High school students
- ☐ University/college students
- ☐ Currently or formerly incarcerated persons
- ☐ Drug offenders (in criminal Justice)
- ☐ Victims of crime
- ☒ General (The majority of the funds will benefit no specific group)

The Florida House of Representatives

Appropriations Project Request - Fiscal Year 2024-25

For projects meeting the definition of House Rule 5.14

☐ Other (Please describe)

d. How many in the target population are expected to be served?

- ☐ < 25
- ☐ 25-50
- ☐ 51-100
- ☐ 101-200
- ☐ 201-400
- ☐ 401-800
- ☒ >800

19. What benefits or outcomes will be realized by the expenditure of funds requested? (Select each Benefit/Outcome that applies)

Benefit or Outcome	Provide a specific measure of the benefit or outcome	Describe the method for measuring level of benefit or outcome
☐ Improve physical health		
☐ Improve mental health		
☐ Enrich cultural experience		
☐ Improve agricultural production/promotion/education		
☐ Improve quality of education		
☐ Enhance/preserve/improve environmental or fish and wildlife quality		
☒ Protect the general public from harm (environmental, criminal, etc.)	The continuation of governmental services and town hall will allow residents access to quickly receive assistance with permitting, rebuild and government assistance which has been	This will be measured by the economic stability of the Town of Fort Myers Beach and the ability to keep services ongoing.

The Florida House of Representatives
Appropriations Project Request - Fiscal Year 2024-25
For projects meeting the definition of House Rule 5.14

	impacted due to hurricane Ian.	
☒ Improve transportation conditions	The continuation of governmental services and town hall will allow residents access to quickly receive assistance with permitting, rebuild and government assistance which has been impacted due to hurricane Ian.	By monitoring traffic congestion and protection of critical assets.
☒ Increase or improve economic activity	The continuation of governmental services and town hall will allow residents access to quickly receive assistance with permitting, rebuild and government assistance which has been impacted due to hurricane Ian.	This will be measured by the economic stability of the Town of Fort Myers Beach and the ability to keep services going.
☒ Increase tourism	The economic stability will allow for the town to support tourists and residents to return, park, and enjoy the beach.	By capturing the total number of residents and tourist that are able to return to the island post storm.
☐ Create specific immediate job opportunities		
☒ Enhance specific individual's economic self sufficiency	Funds will support the towns ability to expand and hire additional staffing for the town.	Outcome can be measured by the number of staffing maintained or increased.
☐ Reduce recidivism		
☐ Reduce substance abuse		

The Florida House of Representatives
Appropriations Project Request - Fiscal Year 2024-25
For projects meeting the definition of House Rule 5.14

☐ Divert from Criminal/Juvenile justice system		
☐ Improve wastewater management		
☐ Improve stormwater management		
☐ Improve groundwater quality		
☐ Improve drinking water quality		
☐ Improve surface water quality		
☐ Other (Please describe):		

1. **Request:**

Meeting Date: December 16, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AUTHORIZING THE USE OF \$932,573 OF REMAINING UNALLOCATED AMERICAN RESCUE PLAN ACT (ARPA) FUNDS, AND RELATED BUDGET ADJUSTMENT (#4); AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

The action is necessary to honor Resolution 23-83 on August 7, 2023, which authorized the American Rescue Plan Act (ARPA) Funds to be considered as a source of funding for any allowable government services and/or infrastructure expense, subject to final approval by Town Council.

What the action accomplishes:

This action provides final approval and a formal commitment by Town Council to utilize the unallocated ARPA Funds for specific purposes.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Andy Hyatt, Town Manager

5. **Background:**

The Town received a total of \$3,553,056 of American Rescue Plan (ARPA) funding that is required to be obligated by December 31, 2024 and fully expended by December 31. Thus far, the Town has expended and/or obligated \$2,620,983 for the following purposes:

2024 Budget	Transfer Out to General Fund To Balance Budget	\$831,598
2024 Budget	Tidal Basin - Critical Infrastructure	\$41,352
2024 Budget	Tidal Basin - Recovery & Resilience Planning	\$12,164
2024 Budget	Tidal Basin - Multi-Family Housing	\$4,896
2024 Budget	Tidal Basin - Hurricane Nicole	\$7,645
2024 Budget	Temp Town Hall Expense	\$28,125
Res 24-51	Bay Oaks Campus Redevelopment Matching Grant	\$1,000,000
Res 24-126	Unreimbursed Vctor Expense	\$411,481
Res 24-151	Duckbill Outfall Expense	\$104,929
Res 24-248	Strategic Plan due Jun 2025	\$115,972
Res 24-248	Strategic Plan due Jan 2026	\$62,821

Total ARPA Funds Formally Obligated	\$2,620,983
-------------------------------------	-------------

Therefore, \$932,573 remains to be obligated before December 31, 2024. This resolution obligates the remaining funds. (See financial impact for details.)

Attachments:

1. ADDED 12.13.24 AMENDED 24-289, Authorizing Budget Adjustment #4 - Allocation of Remaining ARPA Funds rev 2

Financial Impact:

There is a total of \$932,573 of unallocated ARPA Funds remaining that must be committed and obligated by December 31, 2024. Town staff is recommending that these unallocated ARPA

Funds be allocated for the following purposes:

Palm Trees for Times Square - \$47,500
Combination Jet/Vac Truck for Stormwater Drain Cleanout - \$648,531
Mound House Walkway Lighting - \$13,586
Coastal Engineering - Canal Debris Assessment - \$28,842
DRMP STA05 - Bay Oaks Rec Center Campus Plans - \$55,650
2025 Ford E-Series Cutaway Truck - \$66,464
Landscaping for North Tower (Required by Homeland Security) - \$72,000

Budget Adjustment #4 in the attached resolution reflects these authorized uses of ARPA Funds.

Since it is imperative that all authorized ARPA expenditures be under contract by December 31, 2024, and since there is a possibility that the contract for the Bay Oaks Recreational Campus Redevelopment Project to which \$1,000,000 of ARPA funds have been allocated, it is in the best interest of the Town to have an alternative list of projects which already have signed contracts in place to which ARPA Funds may be allocated. For that reason, in the event the contract for the Bay Oaks Recreational Campus Redevelopment project is not signed by December 31, 2024, the following list of projects related to the renovation of the new town hall and purchase of adjacent property (that otherwise would be funded by insurance proceeds) are proposed to be funded by the \$1,000,000 of ARPA funds instead:

Balance of 7-11 Property not covered by state grant - \$720,323
Elevator Repairs - \$139,553
Exterior Painting - \$57,017
Interior Painting - \$49,050
Carpeting - \$29,382
Stairwell painting - \$4,675

Total cost of above alternate projects - \$1,000,000

6. **Alternative Action**

Town Council may propose alternative uses of the remaining unallocated ARPA Funds.

7. **Management Recommendations:**

Staff recommends that Town Council approve these recommendations

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 - 12/5/2024
Approved - 12/5/2024
Approved - 12/8/2024
Approved - 12/9/2024
Final Approval - 12/9/2024

RESOLUTION NUMBER 24-289

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AUTHORIZING THE USE OF \$932,573 OF REMAINING UNALLOCATED AMERICAN RESCUE PLAN ACT (ARPA) FUNDS, AND RELATED BUDGET ADJUSTMENT (#4); AND PROVIDING FOR AN EFFECTIVE DATE.

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

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

WHEREAS, 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, the Town received a total of \$3,553,056 in ARPA funding in two tranches; and

WHEREAS, the Final Rule adopted by the Secretary of the Treasury allows ARPA Funds to be obligated to fund government services and infrastructure expenses; and

WHEREAS, the Town approved Resolution 23-83 on August 7, 2023, authorizing the American Rescue Plan Act (ARPA) Funds to be considered as a source of funding for any allowable government services and/or infrastructure expense, subject to final approval by Town Council; and

WHEREAS, according to the Final Rule, Government Services includes Health Services, including investments in parks and recreation to promote improved health outcomes; and

WHEREAS, according to the Final Rule the funds available for the provision of government services generally may be used to meet the non-federal cost-share or matching requirements of other federal programs; and

WHEREAS, in accordance with the above allowable uses the Town has already authorized the following allocations of ARPA Funds through resolutions as well as the budget process:

ARPA Beginning Balance		3,553,556
2024 Budget	Transfer Out to General Fund To Balance Budget	831,598
2024 Budget	Tidal Basin - Critical Infrastructure	41,352
2024 Budget	Tidal Basin - Recovery & Resilience Planning	16,228
2024 Budget	Tidal Basin – Multi-Family Housing	832
2024 Budget	Tidal Basin - Hurricane Nicole	7,645
2024 Budget	Temp Town Hall Expense	28,125
Res 24-51	BORC Redevelopment Matching Grant	1,000,000
Res 24-126	Unreimbursed Vctor Expense	411,481
Res 24-151	Duckbill Outfall Expense	104,929
Res 24-248	Strategic Plan due Jun 2025	115,972
Res 24-248	Strategic Plan due Jan 2026	62,821
Total ARPA Funds Formally Obligated		2,620,983
ARPA Funds Available After Formally Obligated Uses		932,573

WHEREAS, \$932,573 of ARPA Funds remains to be obligated; and

WHEREAS, according to the Final Rule all eligible costs to be funded by ARPA Funds must be incurred (i.e., all ARPA funds must be obligated) by December 31, 2024, and all obligated funds must be fully expended by December 31, 2026; and

WHEREAS, a budget adjustment for the funding of the strategic plan was not included in Resolution 24-248 and therefore still needs to be made; and

WHEREAS, the Town has identified the following additional uses suitable for ARPA funding that may be obligated by December 31, 2024, and fully expended by December 31, 2026:

Palm Trees for Times Square	47,500
Combination Jet/Vac Truck for Stormwater Drain Cleanout	648,531
Mound House Walkway Lighting	13,586
Coastal Engineering - Canal Debris Assessment	28,842
DRMP STA05 - Bay Oaks Rec Center Campus Plans	55,650
Public Works Truck – 2025 Ford E-Series Cutaway	66,464
North Tower Landscaping Required by Development Code	72,000
Total Additional Items to Consider Charging to ARPA	932,573

WHEREAS, in the event a signed contract for the Bay Oaks Recreational Campus Matching Grant project is not obtained by December 31, 2024, it is in the best interest of the Town of Fort Myers Beach to have an alternate plan to allocate the \$1,000,000 of ARPA Funds; and

WHEREAS, other projects eligible for ARPA funding for which the Town already has signed contracts are those related to the renovation of the new town hall and purchase of adjacent property, which includes the following:

Balance of Purchase of 7-11 Property not covered by state grant	720,323
Elevator Repairs	139,553
Exterior Painting	57,017
Interior Painting	49,050
Carpeting	29,382
Stairwell Painting	4,675
Total Alternative Allocation of ARPA Funds	1,000,000

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

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

Section 2. The Town Council authorizes that the remaining unallocated \$932,573 of American Rescue Plan Act (ARPA) Funds be obligated for the following uses:

Palm Trees for Times Square	47,500
Combination Jet/Vac Truck for Stormwater Drain Cleanout	648,531
Mound House Walkway Lighting	13,586
Coastal Engineering - Canal Debris Assessment (FY24)	28,842
DRMP STA05 - Bay Oaks Rec Center Campus Plans	55,650
Public Works Truck – 2025 Ford E-Series Cutaway	66,464
North Tower Landscaping Required by Development Code	72,000
Total Additional Items to Consider Charging to ARPA	932,573

Section 3. The following adjustment to the Fiscal Year 2025 budget is hereby authorized for the above allocation of ARPA Funds as well as to include the budget adjustments of \$115,972 and \$62,821 that are necessary to fund the strategic plan that were not included in resolution #24-248:

60.10.511.54000	ARPA: Town Council-Strategic Plan Services	\$ 115,972
60.10.511.54000	ARPA: Town Council-Strategic Plan	\$ 62,821
60.32.541.54602	ARPA: Times Sq-Repair & Maint-Landscaping	\$ 47,500
60.80.538.64300	ARPA: Stormwater-Heavy Equipment	\$ 648,531
60.70.573.63330	ARPA: Mound House-Lighting Systems	\$ 13,586
60.33.543.59106	ARPA: Maritime-Tfr to Emergency Fund	\$ 28,842
60.50.572.53401	ARPA: Bay Oaks-Contracted Services	\$ 55,650

60.31.541.64020	ARPA: Public Works-Trucks & Vans	\$ 66,464
60.40.533.54602	ARPA: Water-Repair & Maint-Landscaping	\$ 72,000
60.19.519.60000	ARPA: Capital Outlay	(\$ 877,423)
60.19.519.38191	ARPA: Prior Year Carryover	\$ 233,943
13.33.543.38123	Emergency: Tfr from ARPA	\$ 28,842
13.33.543.80000	Emergency: Add to Reserve (Reimburse FY24)	\$ 28,842

Section 4. In the event a signed contract for the Bay Oaks Recreational Campus Matching Grant project is not obtained by December 31, 2024, the Town Council authorizes that the \$1,000,000 that had previously been allocated to the Bay Oaks Recreational Campus Matching Grant project by Resolution 24-51, be allocated to the following alternate projects instead:

Balance of Purchase of 7-11 Property not covered by state grant	720,323
Elevator Repairs	139,553
Exterior Painting	57,017
Interior Painting	49,050
Carpeting	29,382
Stairwell Painting (partial expense)	4,675
Total Alternative Allocation of ARPA Funds	1,000,000

Section 5. In the event a signed contract for the Bay Oaks Recreational Campus Matching Grant project is not obtained by December 31, 2024, the Town Council authorizes the following adjustment to the Fiscal Year 2025 budget in addition to the budget adjustment specified in Section 3 so as to reallocate the \$1,000,000 of ARPA Funds from the Bay Oaks Recreational Campus redevelopment to the new town hall renovation and purchase of adjacent land, and to fund the Bay Oaks Recreational Campus redevelopment with insurance proceeds in the Emergency Fund:

40.50.572.63500	Capital-Bay Oaks: Athletic Field	(\$1,000,000)
40.50.572.59119	Capital-Bay Oaks: Transfer to ARPA	\$1,000,000
60.29.519.38124	ARPA-Town Hall: Transfer from Capital	\$1,000,000
60.29.519.61000	ARPA-Town Hall: Land	\$ 720,323
60.29.519.62500	ARPA-Town Hall: Building Improvements	\$ 279,677
13.50.572.63500	Emergency Fund: Athletic Field	\$1,000,000
13.50.572.38191	Emergency Fund: Prior Year Carryover	\$1,000,000

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 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 16th day of December 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, Town Attorneys

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

1. **Request:**

Meeting Date: December 16, 2024

A RESOLUTION TO APPROVE AN ENGAGEMENT LETTER WITH GRAY ROBINSON, P.A. WITH ADDENDUM TO PROVIDE GOVERNMENT RELATIONS REPRESENTATION ON BEHALF OF THE TOWN ON FEDERAL ISSUES, INCLUDING BUT NOT LIMITED TO WORKING ON BEHALF OF THE TOWN TO RESOLVE OUTSTANDING ISSUES WITH THE FEDERAL EMERGENCY MANAGEMENT AGENCY ("FEMA") FOR \$7,500 PER MONTH FOR A MINIMUM OF 6 MONTHS; AUTHORIZING THE TOWN MANAGER TO SIGN ANY AND ALL NEEDED DOCUMENTS; AND PROVIDING AN EFFECTIVE DATE.

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Andy Hyatt, Town Manager

5. **Background:**

In view of recent events concerning responses received from the Federal Emergency Management Agency ("FEMA") the Town Manager has determined it is advisable that the Town engages the services of a respected and knowledgeable government relations firm to assist in resolution of FEMA issues as well as any other federal concerns that may arise during the period of representation. A copy of the proposed engagement letter with addendum is attached for review. The Town Manager has already been directed to take any and all necessary action to address current FEMA issues by Resolution 24-182. This request for approval of the engagement of the Gray Robinson firm is consistent with Resolution 24-182.

Attachments:

1. 24-294, Federal Lobbyist Agreement
2. Exhibit A - Town of Ft. Myers 2024 Eng Letter Gray Robinson (1)
3. GrayRobinson TFMB Standard Contract Addendum
4. 24-182, Resolution to implement FEMA letter Signed

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

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

Created/Initiated - 12/6/2024
Approved - 12/9/2024
Approved - 12/9/2024
Final Approval - 12/9/2024

RESOLUTION NUMBER 24-294

A RESOLUTION TO APPROVE AN ENGAGEMENT LETTER WITH GRAY ROBINSON, P.A. WITH ADDENDUM TO PROVIDE GOVERNMENT RELATIONS REPRESENTATION ON BEHALF OF THE TOWN ON FEDERAL ISSUES, INCLUDING BUT NOT LIMITED TO WORKING ON BEHALF OF THE TOWN TO RESOLVE OUTSTANDING ISSUES WITH THE FEDERAL EMERGENCY MANAGEMENT AGENCY ("FEMA") FOR \$7,500 PER MONTH FOR A MINIMUM OF 6 MONTHS; AUTHORIZING THE TOWN MANAGER TO SIGN ANY AND ALL NEEDED DOCUMENTS; AND PROVIDING AN EFFECTIVE DATE.

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

WHEREAS, Article X of the Town Charter of the Town of Fort Myers Beach 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 currently does not have a lobbying firm or contracted lobbying services for representation at the federal level; and

WHEREAS, the Town is in need of such lobbying services to assist in providing government representation for outstanding issues including but not limited to outstanding issues with the Federal Emergency Management Agency; and

WHEREAS, the GrayRobinson, P.A. has agreed to provide federal lobbying services to assist in providing government representation at the federal level for \$7,500 per month for a minimum period of six months; and

WHEREAS, the Town Council finds it is in the best interest of the residents of the Town to approve the engagement letter to provide federal lobbying representation on behalf of the Town.

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

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

Section 2. The Town Council hereby approves the Engagement letter with GrayRobinson, P.A. with addendum as attached and incorporated herein as Exhibit "A" and authorizes the Town Manager to sign any and all documents needed.

Section 3. That if any section, sentence, clause or phrase herein is held to be invalid by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Resolution. Town Council hereby adopts this Resolution, which shall be effective upon adoption by the Town Council.

Section 4. The Town Council hereby adopts this Resolution, which shall be effective upon adoption by the Town Council.

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 16th day of December 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 December 2024.

Robert Stuart Jr. | Robert.Stuart@gray-robinson.com

301 East Pine Street, Suite 1400, Orlando, Florida 32801 | T 407.843.8880 | F 407.244.5690

December 6, 2024

VIA EMAIL

Andy Hyatt, Town Manager

Town of Fort Myers Beach

2731 Oak St

Fort Myers Beach, FL 33931

Re: Federal Lobbying Services Engagement Letter

Dear Andy:

Thank you very much for your continued interest in GrayRobinson, P.A. ("GrayRobinson" or "the Firm"). We appreciate the opportunity to provide government relations representation to the Town of Fort Myers Beach ("you"). The Firm is committed to providing the highest level of service in furtherance of your goals. This letter will describe the terms under which that representation will occur, disclose the Firm's reporting responsibilities under the law, and summarize the nature of government consulting services as compared to legal services.

Firm Contacts for Your Representation

You have asked the Firm to represent the Town of Fort Myers Beach before the United States Government including the Congress, the Executive Branch and Administrative Agencies. The entire team of GrayRobinson's lobbyists will be available to advance your interests. However, in order to ensure that your needs are efficiently and fully addressed, Blair Hancock and I will be your primary contacts for federal representation. If either of us should ever be unavailable, I would encourage you to contact John Ariale, who will be working alongside us. I will remain your primary contacts and relationship manager with the Firm. We will utilize a team-based approach to make sure your needs are met in a coordinated manner.

Fees, Cost and Terms

In exchange for federal services, the Town of Fort Myers Beach has agreed to pay the Firm \$7,500 per month for a minimum period of six (6) months beginning upon the execution of this agreement, and on the first day of each month thereafter. Following the initial 6-month period, the engagement will continue on month to month basis unless cancelled by either party. All payments should be remitted to 301 East Pine Street #1400, Orlando, FL 32801 or via ACH transfer or other electronic transfer upon receipt of invoice. Documented, out-of-pocket costs directly attributable to the performance of our work will be billed in addition to a monthly retainer, and these costs may include travel and other expenses incurred on the Town of Fort Myers Beach's behalf. Both Town of Fort Myers Beach and the Firm have the right to terminate this contract with or without cause with thirty (30) days' notice given.

Lobbyist Registration

Federal law requires the Firm to register within 45 days of engaging in lobbying activity. Lobbyist registrations are effective when they are received by the Congress. Federal law requires that the fees and costs invoiced by the Firm for lobbying services are reportable on a quarterly basis to the U.S. Congress. Therefore, Town of Fort Myers Beach consents to the quarterly disclosure of compensation paid or owed to GrayRobinson for lobbying activity as required by Lobbying Disclosure Act (LDA). Such consent is granted so that the Firm may file the specified quarterly reports, disclosing only the information required by the LDA, and shall remain in effect as long as the Firm serves as the client's registered representative before the United States Government.

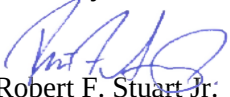
Confidentiality

In order to ensure the candor and trust in our relationship that forms the basis of effective representation, it is the policy of the Firm to keep strictly confidential all information about your interests and strategies. Because information is our

stock in trade and because advancing your interests may depend on it, we ask that you also keep confidential any information we may share with you regarding political strategy, insight, information, or analysis.

I believe the above reflects our understanding. If it does, please sign this agreement and return to me. I appreciate your attention to this matter and look forward to working with you. Please never hesitate to contact me if we can assist you in any way.

Sincerely,

A handwritten signature in blue ink, appearing to read "Robert F. Stuart Jr.", is written over the printed name.

Robert F. Stuart Jr.

For: Town of Fort Myers Beach

Date

TOWN OF FORT MYERS BEACH, FLORIDA
STANDARD CONTRACT ADDENDUM

THIS STANDARD CONTRACT ADDENDUM is made and entered into this 16th day of December 2024, by and between the TOWN OF FORT MYERS BEACH, a Florida municipality, hereinafter referred to as the “Town”, and GrayRobinson, P.A. hereinafter referred to as “Contractor”, concerning that certain agreement dated the 6th day of December, 2024 (“Agreement”).

WITNESSETH:

WHEREAS, Section 119.0701, Fla. Stat., requires that certain public agency contracts must include certain statutorily required provisions concerning the contractor’s compliance for Florida’s Public Records Act; and

WHEREAS, Section 768.28, Fla. Stat., sets forth certain mandatory limitations on indemnification and liability for Florida public agencies; and

WHEREAS, Florida law requires that public agency contracts be subject to non-appropriation and thereby contingent upon appropriation during the public agency’s statutorily mandated annual budget approval process; and

WHEREAS, Section 448.095, Fla. Stat., imposes certain obligations on public agencies with regard to the use of the E-Verify system by their contractors and subcontractors; and

WHEREAS, Section 287.133 and 287.135, Fla. Stat., provides restrictions on local governments contracting with companies that are on certain Scrutinized Companies lists or convicted vendor list; and

WHEREAS, additional terms consistent with Sections 282.3185(5) and (6) related to data management and Section 287.05701 related to social government and corporate activism are also added by virtue of this Addendum; and

WHEREAS, Section 286.101, Florida Statutes contains a list of “foreign countries of concern” including, the People’s Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People’s Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolás Maduro, or the Syrian Arab Republic, including any agency of or any other entity under significant control of such “foreign country of concern”. Any entity that does business with a state agency or political subdivision must disclose certain of their dealings with those “foreign countries of concern” to the Florida Department of Financial Services; and

WHEREAS, Section 787.06(13), Florida Statutes provides that when a contract is executed, renewed, or extended between a nongovernmental entity and a governmental entity, the nongovernmental entity must provide the governmental entity with an affidavit signed by an

officer or a representative of the nongovernmental entity under penalty of perjury attesting that the nongovernmental entity does not use coercion for labor or services as defined in such statute;

NOW, THEREFORE, in consideration of the covenants set forth herein, the parties agree to this addendum as follows:

1. Amendment. This Addendum hereby amends and supplements the terms of the Agreement. In the event of a conflict between the terms of the Agreement and terms of the Addendum, the terms of the Addendum shall prevail.

2. Public Records Compliance. Contractor agrees that, to the extent that it may "act on behalf" of the Town within the meaning of Section 119.0701(1)(a), Florida Statutes in providing its services under this Agreement, it shall:

- (a) Keep and maintain public records required by the public agency to perform the service.
- (b) Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the public agency.
- (d) Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the Town's custodian of public records, in a format that is compatible with the information technology systems of the Town.
- (e) Pursuant to Section 119.0701(2)(a), Fla. Stat., **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**TOWN HALL
2731 OAK STREET
FORT MYERS BEACH, FL. 33931**

3. Public Records Compliance Indemnification. Contractor agrees to indemnify and hold the Town harmless against any and all claims, damage awards, and causes of action arising from the contractor's failure to comply with the public records disclosure requirements of Section 119.07(1), Florida Statutes, or by contractor's failure to maintain public records that are exempt or confidential and exempt from the public records disclosure requirements, including, but not limited to, any third party claims or awards for attorneys' fees and costs arising therefrom. Contractor authorizes the public agency to seek declaratory, injunctive, or other appropriate relief against Contractor in Lee County Circuit Court on an expedited basis to enforce the requirements of this section.

4. Compliance/Consistency with Section 768.28, Fla. Stat. Any indemnification or agreement to defend or hold harmless by Town specified in the Agreement shall not be construed as a waiver of Town's sovereign immunity and shall be limited to such indemnification and liability limits consistent with the requirements of Section 768.28, Fla. Stat. and subject to the procedural requirements set forth therein. Any other purported indemnification by Town in the Agreement in derogation hereof shall be void and of no force or effect.

5. Non-appropriation. Town's performance and obligation to pay under this Agreement is contingent upon an appropriation during the Town's annual budget approval process. If funds are not appropriated for a fiscal year, then the Contractor shall be notified as soon as is practical by memorandum from the Town Manager or designee that funds have not been appropriated for continuation of the Agreement, and the Agreement shall expire at the end of the fiscal year for which funding has been appropriated. The termination of the Agreement at fiscal year end shall be without penalty or expense to the Town subject to the Town paying all invoices for services rendered during the period the Agreement was funded by appropriations.

6. E-Verify Compliance. By entering into this Agreement, the Contractor is obligated to comply with the provisions of Section 448.095, Florida Statutes "Employment Eligibility," as amended from time to time. This includes but is not limited to register with and use the E-Verify System to verify the work authorization status of all newly hired employees, and requiring all subcontractors to provide an affidavit to Contractor attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Contractor agrees to maintain a copy of such affidavit for the duration of this Agreement. Failure to comply with this paragraph will result in the termination of this Agreement as provided in Section 448.095, Florida Statutes, as amended and Contractor will not be awarded a public contract for at least one (1) year after the date on which the Agreement was terminated. Contractor will also be liable for any additional costs to the Town as a result of the termination of this Agreement in accordance with this paragraph. Contractor affirmatively states, under penalty of perjury, that in accordance with Section 448.095, Florida Statutes, Contractor is registered with and uses the E-Verify system to verify the work authorization status of all newly hired employees, that in accordance with such statute, Contractor requires from each of its subcontractors an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien, and that Contractor is otherwise in compliance with Sections 448.09 and 448.095, Florida Statutes.

7. Compliance/Consistency with Scrutinized Companies Provisions of Florida Statutes. Section 287.135(2)(a), Florida Statutes, prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services of any amount if, at the time of contracting or renewal, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to section 215.4725, Florida Statutes, or is engaged in a boycott of Israel. Section 287.135(2)(b), Florida Statutes, further prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services over one million dollars (\$1,000,000) if, at the time of contracting or renewal, the company is on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, both created pursuant to section 215.473, Florida Statutes, or the company is engaged in business operations in Cuba or Syria. Contractor hereby certifies that Contractor is not listed on any of the following: (i) the Scrutinized Companies that Boycott Israel List, (ii) Scrutinized Companies with Activities in Sudan List, or (iii) the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. Contractor further hereby certifies that Contractor is not engaged in a boycott of Israel or engaged in business operations in Cuba or Syria. Contractor understands that pursuant to section 287.135, Florida Statutes, the submission of a false certification may subject Contractor to civil penalties, attorney's fees, and/or costs. Contractor further understands that any contract with Town for goods or services of any amount may be terminated at the option of Town if Contractor (i) is found to have submitted a false certification, (ii) has been placed on the Scrutinized Companies that Boycott Israel List, or (iii) is engaged in a boycott of Israel. And, in addition to the foregoing, if the amount of the contract is one million dollars (\$1,000,000) or more, the contract may be terminated at the option of Town if the company is found to have submitted a false certification, has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has been engaged in business operations in Cuba or Syria.

8. Disclosure Requirements for "Foreign Countries of Concern." Contractor shall comply with the disclosure requirements set forth in Section 286.101(3)(a), Florida Statutes, which requires "Any entity that applies to a state agency or political subdivision for a grant or proposes having a contract value of \$100,000 or more shall disclose to the state agency or political subdivision any current or prior interest of, any contract with, or any grant or gift received from a "foreign country of concern" if such interest, contract, grant or gift received from a "foreign country of concern" if such interest, contract, grant or gift has a value of \$50,000 or more and such interest existed at any time or such contract, grant or gift was received or in force at any time during the previous five (5) years. Such disclosure shall contain the name and mailing address of the disclosing entity, the amount of the gift or the value of the interest disclosed, the applicable "foreign country of concern" and, if applicable the date of termination of the contract or interest, the date of receipt of the grant or gift and the name of the agent or controlled entity that is the source or interest holder. Within one (1) year before applying for any grant or proposing any contract, such entity must provide a copy of such disclosure to the Department of Financial Services". Pursuant to section 268.101(7), Florida Statutes: "In addition to any fine assessed under [section 286.101(7)(a), Florida Statutes], a final order determining a third or subsequent violation by an entity other than a state agency or political subdivision shall automatically disqualify the entity from eligibility for any grant or contract funded by a state agency or any political subdivision until such ineligibility is lifted by the Administration Commission for good cause."

9. Venue and Jurisdiction. Notwithstanding any of other provision to the contrary, this Agreement and the parties' actions under this Agreement shall be governed by and construed under the laws of the state of Florida, without reference to conflict of law principles. As a material condition of this Agreement, each Party hereby irrevocably and unconditionally consents to submit and does submit to the jurisdiction of the Circuit Court in and for Lee County, Florida for any actions, suits or proceedings arising out of or relating to this Agreement.

10. Attorneys' Fees and Costs. Notwithstanding any of other provision to the contrary, if litigation ensues regarding this Agreement, each party hereto shall bear its own attorneys' fees and costs.

11. Public Entities Crime or Convicted Vendor List. Contractor agrees and assumes a continuous duty to disclose to the Town if the Contractor or any of its affiliates as defined by Section 287.133(1)(a), Florida Statutes are placed on the Convicted Vendor List or the Antitrust Violator Vendor List maintained by the Florida Department of Management Services.

12. Data Management; Notice of Breach. Contractor shall cooperate with the Town and provide timely incident reporting, response activities/fact gathering, public and agency notification, severity level assessment, after-action reports, etc., which the Town must report in accordance with Sections 282.3185(5) & (6), Florida Statutes in the event of a data breach.

13. Environmental and Social Government and Corporate Activism. The Town has not given preference or requested documentation from the Contractor based on Contractor's social, political or ideological interest. Contractor agrees to similarly not request documentation or give preference to any subcontractor based on the subcontractor's social, political or ideological interests.

14. Taxes. The Town shall not be liable for any taxes and assessments imposed by a federal, state or local governmental agency to the extent that the Town is exempt from same by Florida law, including but not limited to any sales or use tax.

15. No coercion for labor or services. The Contractor swears under penalty of perjury that the Contractor does not use coercion for labor or services as defined as follows:

"Coercion" means:

1. Using or threatening to use physical force against any person;
2. Restraining, isolating, or confining or threatening to restrain, isolate, or confine any person without lawful authority and against her or his will;
3. Using lending or other credit methods to establish a debt by any person when labor or services are pledged as a security for the debt, if the value of the labor or services as reasonably assessed is not applied toward the liquidation of the debt, the length and nature of the labor or services are not respectively limited and defined;

4. Destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, or other immigration document, or any other actual or purported government identification document, of any person;
5. Causing or threatening to cause financial harm to any person;
6. Enticing or luring any person by fraud or deceit; or
7. Providing a controlled substance as outlined in Schedule I or Schedule II of Sec. 893.03, Fla. Stat. to any person for the purpose of exploitation of that person.

16. Additional Terms. Notwithstanding any of other provision to the contrary, the parties agree as follows:

A. None.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this instrument on the days and year indicated below and the signatories below to bind the parties set forth herein.

Under penalties of perjury, and pursuant to Sec. 92.525, Fla. Stat., Contractor declares that Contractor has read the foregoing Section 15 above and that the facts stated in it are true.

Contractor:

Print Name: _____

Title: _____

Company: _____

ATTEST:

Town of Fort Myers Beach

Amy Baker, Town Clerk

Andrew Hyatt, Town Manager

APPROVED AS TO FORM

Town Attorney

RESOLUTION NUMBER 24-182

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA, DIRECTING THE TOWN MANAGER TO IMPLEMENT ALL REQUIREMENTS SET FORTH IN A LETTER DATED JULY 19, 2024, FROM THE FEDERAL EMERGENCY MANAGEMENT AGENCY (“FEMA”); 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, on September 28, 2022, Hurricane Ian made landfall north of the Town causing historical property damage and loss of life; and

WHEREAS, FEMA has been working in conjunction with the Town for the last two (2) years on recovery efforts from Hurricane Ian, and has, on July 19, 2024, sent the Town a letter outlining requirements for the Town to maintain its class rating in the National Flood Insurance Program; and

WHEREAS, adoption of this Resolution is in the best interest of the residents of the Town and promotes its health, safety and welfare.

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

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

Section 2. The Town Manager is directed and authorized to take any and all actions to implement the requirements contained in the letter from FEMA dated July 19, 2024, a copy of which is attached as Exhibit “A”.

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 Mayor Allers and seconded by Council Member Woodson, and upon being put to a roll call vote, the result was as follows:

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

APPROVED AND ADOPTED this 9th day of September 2024, by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers
Dan Allers (Sep 19, 2024 16:13 EDT)

Dan Allers, Mayor

ATTEST:

Amy Baker

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 Stuparich
Nancy Stuparich (Sep 18, 2024 17:12 EDT)

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 11th day of September 2024.



Town of Fort Myers Beach Post-Disaster Compliance Status Update Report

FEMA remains committed to helping communities take appropriate remediation actions to remain in good standing with the National Flood Insurance Program (NFIP) and participate in the Community Rating System (CRS).

The Town of Fort Myers Beach was granted 60 days (June 10, 2024), to submit to FEMA any new information related to the deficiencies and substantive violations detailed in FEMA's April 8, 2024 Findings Report. The April 8, 2024 Findings Report supported an initial decision by FEMA to retrograde the Town of Fort Myers Beach to a CRS class 10 community. In the Findings Report, FEMA also found program deficiencies and violations within the Town of Fort Myers Beach, which will serve as a basis for the current enforcement action and needed remediation.

During the 60-day review period, the Town of Fort Myers Beach provided FEMA permit documentation for 105 sites. FEMA reviewed the submitted documentation, for the 105 sites as well as the Town of Fort Myers Beach's Narrative and supporting documentation.

After careful review of Town of Fort Myers Beach's submittal, FEMA finds that program deficiencies and substantive violations remain. Unfortunately, due to the deficiencies, the Town of Fort Myers Beach is being notified that they have until November 18, 2024 to address these deficiencies, or the Town will be placed on probation from the NFIP:

LIST OF PROGRAM DEFICIENCIES

Program Deficiencies are a defect in a community's floodplain management regulations or administrative procedures that impairs effective implementation of floodplain management regulations of the standards in 44 CFR 60.3; 60.4; 60.6; and NFIP Community Compliance Program Guidance, P-1022 (July 2016) in section 3.2.

- Failure of the community's "commitment to recognize and duly evaluate flood, mudslide (i.e., mudflow) and/or flood-related erosion hazards in all official actions in the areas having special flood, mudslide (i.e., mudflow) and/or flood-related erosion hazards and to take such other official action reasonably necessary to carry out the objectives of the program;" 44 CFR 59.22(8) and LDC CH 6, Art IV, Div 1, Sec 6-403(8).
- Failure to require permits for all proposed construction and development in the SFHA. 44 CFR 60.3(b)(1); 44 CFR 60.3(c)(1); 44 CFR 60.3(e)(1); FBC R101.2.1; FBC EB701.3; FBC 105.1; LDC CH 6, Art IV, Div 3, Sec 6-427; and LDC CH 6, Art IV, Div 6, Sec 6-461.
- Failure to maintain permit records for development, new construction, or substantial improvements in the SFHA. 44 CFR 59.22(a)(9)(iii); 44 CFR 60.3(b)(5)(iii); and 44 CFR 60.3(e)(2)(ii).
- Failure to make substantial improvement (SI) and substantial damage (SD) ("SI/SD") determinations and calculations for all proposed construction and development in the SFHA. 44 CFR 60.3(b)(1); 44 CFR 60.3(c)(1); 44 CFR 60.3(e)(1); LDC CH 6, Art IV, Div 3, Sec 6.428(1); and FEMA Substantial Improvement / Substantial Damage Desk Reference, P-758 (May 2010) ("SI/SD Desk Reference") in section 5.2.

- Failure to maintain SI/SD determination records for all proposed construction and development in the SFHA. 44 CFR 59.22(a)(9)(iii); 44 CFR 60.3(b)(5)(iii); 44 CFR 60.3(e)(2)(ii); and SI/SD Desk Reference in sections 4.2 and 7.7.
- Failure to keep records of permits, certifications, and variance actions. 44 CFR 59.22(a)(9)(iii).
- Failure to establish SI/SD procedures for administering and documenting determinations of SI/SD. LDC CH6, Art IV, Div 3, Sec 6.428(1) and FEMA Substantial Improvement / Substantial Damage Desk Reference, P-758 (May 2010) ("SI/SD Desk Reference") in sections 4.1, 4.3, & 7.1.
- Failure in permitting system, which allowed the use of "temporary" non-compliant structures (Including shipping container and trailers/food trucks). LDC CH 6, Art IV, Div, 4, Sec 6.443 (3)&(4), LDC CH 6, Art IV, Div 6, and LDC CH 6, Art IV, Div 6, Sec 6-462, Sec 6.463, and LDC CH 6, Art IV Div 10, Sec 6-501.
- [REDACTED]
- [REDACTED]

1. Program deficiencies

Serious program deficiencies in a community's administrative and enforcement process and procedures are those that have resulted or could result in substantive violations that increase potential flood damages or stages in the community. The following deficiencies represent gaps in the Town's administrative process that restrict the ability to meet the minimum standards for participation.

Permitting of non-compliant structures/shipping containers/

Inconsistent Market Value	Missing Repair Permits (Known Damage (IA/Insurance)	Missing Detailed Cost Info	Low & Inadequate Labor Costs	Permits Issued Without Total Repair Costs	Failed To Capture Complete Scope of Work	After the Fact Permits	After the Fact Notice of Violation
1	51	76	8	62	65	16	25

2. List of properties determined to be substantially damaged:

The Town of Fort Myers Beach has submitted to FEMA a list of properties that Town of Fort Myers Beach deemed substantially damaged since the disaster; there were 356 structures listed. What actions has the Town taken or plan to take to follow-up on those structures? Please provide FEMA with a status of each structure to indicate how substantial damage is being addressed.

3. Non-compliant development

- a. Non-compliant structures (containers) and temporary structures have been placed in the Coastal High Hazard Area (VE zone and coastal A zone). Please provide a plan to remove the structures or bring the non-compliant structures or non-compliant additions into compliance; and confirmation that the town has stopped issuing permits for this type of non-compliant development.

b. [REDACTED]



4. Data Dictionary (revised) – “Status” Column Meanings:

Additional Information Needed – Permit package needs additional information to be considered complete.

CAV Follow-Up – Not a Hurricane Ian issue but found a need for additional information during the next compliance follow-up with the community.

Code Enforcement Case – Community is currently processing as a code enforcement case and FEMA will accept and review case updates, follow-up permit information, and/or enforcement actions occurring prior to June 10, 2024. Actions occurring beyond that time will require future compliance engagement.

Complete – FEMA needs no further information regarding the specific address.

Future Compliance Engagement – Ian related activity. FEMA will follow-up on this site during the next compliance follow-up with the community.

5. Documentation on the Finding Report and Site list:

Attached to this document is a list of structures within the SFHA with violations, including the type of violation, status, and needed documentation.

Final Status (as of June 28, 2024)	Count
Additional Information Needed	21
CAV Follow-Up	2
Code Enforcement Case	16
Complete	32
Future Compliance Engagement	34
Grand Total	105



FEMA

National Flood Insurance Program

Privacy Act Notice

RE: Town of Fort Myers Beach, FL, **National Flood Insurance Program Data from the Federal Emergency Management Agency (FEMA)**

The Town of Fort Myers Beach, FL is receiving data from the Federal Emergency Management Agency's that is maintained in support of the National Flood Insurance Program (NFIP). Specifically, the Town of Fort Myers Beach, FL is receiving property addresses identified by FEMA as possible violations to the local floodplain management laws and regulations. The community shall use the data to verify, monitor, and resolve the possible violation. As an NFIP participating community, this information will assist the community to ensure compliance with the NFIP and maintain the availability of flood insurance. FEMA will send the information to you securely via email on a password-protected spreadsheet or pdf.

FEMA discloses this to you pursuant to the "routine use" provision of the Privacy Act of 1974, 5 U.S.C. § 552a(b)(3), specifically under Routine Uses G, I, M, N, O, R and T of the System of Records Notice (SORN), DHS/FEMA-003 - National Flood Insurance Program Files 79 FR 28747 (May 19, 2014). The SORN may be electronically viewed at <https://www.gpo.gov/fdsys/pkg/FR-2014-05-19/html/2014-11386.htm>.

The Town of Fort Myers Beach, FL does not have permission to release the provided information to third parties, including third party contractors and will only use the data for the stated purpose. Unauthorized disclosure of FEMA data will result in an immediate denial of access to the FEMA data. Pursuant to the Privacy Act, 5 U.S.C. § 552a(e)(10), please destroy or return said personally identifiable information (PII) to FEMA once you no longer have use for it. PII is information that can be used to identify, by itself, or in combination, individuals by direct or indirect means.

In the event of a privacy incident resulting from this sharing of FEMA PII, Town of Fort Myers Beach, FL shall immediately, but in no event later than twenty-four (24) hours from suspicion, discovery or notification of the suspected or confirmed privacy incident, notify the FEMA Privacy Officer at (202) 212-5100 or FEMA-Privacy@fema.dhs.gov. FEMA will investigate the incident pursuant to DHS standard procedures and will consult the Town of Fort Myers Beach, FL to diagnose, mitigate and manage the privacy incident.

The Town of Fort Myers Beach, FL will be responsible for carrying out all necessary measures to remedy the effects of the privacy incident.

By accepting the FEMA data, the Town of Fort Myers Beach, FL agrees that it shall bear all costs, losses and damages to the extent resulting from the City's breach of FEMA data. The Town of Fort Myers Beach, FL further agrees to release, defend, indemnify, and hold FEMA harmless for claims, losses, penalties and damages, and reasonable attorneys' fees and costs to the extent arising out of the Town of Fort Myers Beach, FL or its contractor's, negligence, unauthorized use or disclosure of FEMA PII and/or the Town of Fort Myers Beach, FL, or its contractor's, breach of its obligations under this sharing.

By accepting, receiving, downloading, or otherwise obtaining the routine use information or data discussed in this document, Town of Fort Myers Beach, FL understands, agrees, and accepts the terms of the use of the data as outlined in this document.

1. **Request:**

Meeting Date: December 16, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING THE PURCHASE OF A COMBINATION JET/VAC FROM GAPVAX, INC. AND AUTHORIZING THE TOWN MANAGER TO EXECUTE A PURCHASE ORDER IN THE AMOUNT NOT TO EXCEED \$656,232; AND PROVIDING FOR AN EFFECTIVE DATE

Why the action is necessary:

This action is necessary since the cost of the Jet/Vac truck is greater than \$75,000 and therefore requires Town Council approval.

What the action accomplishes:

This action authorizes the town manager to execute the purchase order for this specialized stormwater drain cleaning vehicle.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Andy Hyatt, Town Manager, Jeff Hauge, Community Services Director, Joe Onzick, Finance Director

5. **Background:**

Regularly clearing and cleaning the stormwater drains of any accumulation of sand and debris is vitally important to the maintenance of the Town's stormwater system and ensuring that it functions optimally. Acquiring its own Jet/Vac truck will provide the Town with the necessary equipment to do so. GapVax Incorporated provides such a vehicle, and has been awarded a contract by Sourcewell, and therefore if purchased using the Sourcewell contract, meets the Town's competitive procurement requirements.

Attachments:

1. NS24-292, Purchase of Combination Jet-Vac for Stormwater Drain Cleanout
2. Attachment A - GapVax Quote for Combination Jet-Vac
3. 24-292, GapVax Sourcewell Contract 101221

Financial Impact:

The cost of this specialized piece of equipment is \$656,231.73. \$639,995 is proposed to be charged to the ARPA Fund if the Town Council authorizes Resolution #24-289, and the remaining \$16,237 is proposed to be charged to the Stormwater Fund.

6. **Alternative Action**

The Town Council may reject this proposal

7. **Management Recommendations:**

Staff recommends that this vehicle be purchased.

8. **Recommended Approval:**

Joe Onzick, Finance Director

Created/Initiated - 12/5/2024

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

Approved - 12/5/2024
Approved - 12/8/2024
Approved - 12/9/2024
Final Approval - 12/9/2024

RESOLUTION NUMBER 24-292

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING THE PURCHASE OF A COMBINATION JET/VAC FROM GAPVAX, INC. AND AUTHORIZING THE TOWN MANAGER TO EXECUTE A PURCHASE ORDER IN THE AMOUNT NOT TO EXCEED \$656,232; AND PROVIDING FOR AN EFFECTIVE DATE.

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

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

WHEREAS, the Town of Fort Myers Beach is in need of equipment that can be used to regularly clear and clean its stormwater drain system to ensure that the system functions optimally; and

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

WHEREAS, Section 2-480(f) of the Town of Fort Myers Beach Code of Ordinances provides that when it is in the best interest of the Town of Fort Myers Beach, the Town of Fort Myers Beach may cooperatively purchase from any other government agency, which has competitively bid and awarded any contract for any product or service at the awarded price, if the original bid specifications and award allow it and if the other governmental agency's procurement complies with the Town of Fort Myers Beach's competitive bid policy; and

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

WHEREAS, GapVax, Inc., 575 Central Ave., Johnstown, PA 15902, executed Contract #101221-GPV with Sourcewell for the procurement of sewer cleaning and hydro excavation equipment, which will expire on November 29th, 2025; and

WHEREAS, the Fort Myers Beach Town Council finds that Contract No. 101221-GPV was competitively bid with procedural guarantees of fairness and competitiveness equivalent to those of the Town of Fort Myers Beach and the Contractor has to the Town's "piggyback" on the competitive pricing provided to Sourcewell in Contract 101221-GPV; and

WHEREAS, it is in the best interest of the residents of the Town of Fort Myers Beach to execute a Purchase Order with Contractor in the amount not to exceed \$656,232 for a Combination Jet/Vac vehicle containing similar terms and conditions as contained in Contract No. 101221-GPV; and

WHEREAS, it is being proposed in Resolution 24-289 that \$639,995 of the ARPA Funds be allocated for this purchase, with the remaining \$16,237 to be charged to the Stormwater Fund.

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

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

Section 2. The Town Council hereby approves the purchase order with Contractor for the Combination Jet/Vac vehicle in the amount not to exceed \$656,232 and authorizes the Town Manager or his designee to execute any documentation related to the purchase order, which is attached hereto as "Attachment A."

Section 3. The 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 16th day of December 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 December 2024.

SOURCEWELL CONTRACT NO. 101221-GPV

GapVax



PREPARED BY

GAPVAX, INC

Austen Everett - Aeverett@EvervacFL.com

PREPARED FOR

Jeff Hauge

Ft Myers Beach

2731 Oak St

Fort Myers Beach, FL 33931

QUOTE

GapVax



QUOTE ID

24xxx

UPDATED:

10/18/24

GapVax

2025 MC1312-3S3X COMBINATION JET/VAC

QUOTE ID: 24xxx

November 8, 2024



NOTE: THE GAPVAX MC UNIT MAY EXCEED FEDERAL BRIDGE ALLOWABLE WEIGHTS WHEN LOADED WITH WATER, OR DEBRIS, AND/OR BOTH WATER AND DEBRIS COMBINED. PLEASE CONSULT FACTORY.

OPTION DESCRIPTION		NOTES	QTY
CHASSIS OPTIONS			
CHA001	KENWORTH T480V (6 X 4) - 370 HP - 62,000 LB. GVWR - AUTO	MODEL YEAR 2025	1
	PACCAR PX-9 RATED FOR 370 HP	CONSULT FACTORY	
	ALLISON 6 SPEED AUTOMATIC	PRICES MAY VARY	
	20,000 LB FRONT AXLE		
	46,000 LB REAR AXLE		
DEBRIS BODY OPTIONS			
STD	12 USABLE YARD DEBRIS TANK MADE OF 3/16" ASTM A-572 GRADE 50 EXTEN STEEL		STANDARD
STD	FULL-OPENING REAR TAILGATE		STANDARD
STD	STAINLESS STEEL TAILGATE SEALING ROD		STANDARD
STD	FOUR HYDRAULIC REAR DOOR LOCKS		STANDARD
STD	DUAL TAILGATE LIFT CYLINDERS		STANDARD
STD	FRONT MOUNTED HOIST CYLINDER, POWER UP AND DOWN, 55,000 LB CAPACITY		STANDARD
STD	THREE TIE-OFF ANCHORS ON TOP OF BODY		STANDARD
STD	FIVE YEAR WARRANTY ON DEBRIS TANK AGAINST RUST THROUGH, DISTORTION AND CRACKS		STANDARD
STD	THREE TIE-OFF ANCHORS ON TOP OF THE BODY 6' APART		STANDARD
A1	DEBRIS BODY FLUSH OUT SYSTEM		1
A2A	DRAIN AT BOTTOM OF TAILGATE - 6" BRASS LEVER VALVE WITH 15' OF LAYFLAT HOSE	VALVE IS NOT 100% LEAK PROOF	1
A3-CS	FLOAT TYPE LIQUID LEVEL INDICATOR ON SIDE OF DEBRIS TANK		1
A12A	FILTER SCREEN FOR DRAIN VALVE (LONG BOX)	REQUIRES A2	1
A21	CURBSIDE LADDER TO PORT INSPECTION AREA		1
A22A	GALVANIZED BOLT ON TAILGATE SPLASH SHIELDS		1
A37A	UPGRADE BODY INLET CANNON TO 12" HX STYLE WITH 3" CLEANOUT		1
A44	PNEUMATIC TAILGATE PROP (IN ADDITION TO STANDARD TAILGATE PROP ROD)		1
WATER TANK OPTIONS			
STD	1300 GALLON WATER TANK MADE OF 3/16" 304 STAINLESS STEEL		STANDARD
STD	4" HIGH ANTI-SIPHON RING WITH (4) 2-1/2" HOLES		STANDARD
STD	WATER TANK LEVEL SIGHT TUBE ON CURBSIDE		STANDARD
STD	DRAIN VALVE AT BOTTOM OF WATER TANK		STANDARD
STD	3" FILL LINE WITH 2-1/2" FIRE HOSE CONNECTION CURBSIDE		STANDARD
STD	3" WATER STRAINER WITH STAINLESS STEEL SCREEN ON WATER TANK FILL LINE		STANDARD
STD	3" SUPPLY LINE TO WATER PUMP MOUNTED AT REAR HINGE PIN		STANDARD
STD	FIVE YEAR WARRANTY ON WATER TANK AGAINST RUST THROUGH, DISTORTION AND CRACKS		STANDARD
B23A	GALVANIZED BAFFLES IN THE WATER TANK		1
B30	UPGRADE TO BUTTERFLY VALVE IN 3" SUPPLY LINE		STANDARD

ATTACHMENT A

VACUUM SYSTEM OPTIONS		
STD	TRUE 8" DIAMETER VACUUM SYSTEM	STANDARD
STD	VACUUM PUMP DRIVEN VIA MID-SHIP MOUNTED SPLIT SHAFT TRANSFER CASE GEARBOX (PTO)	STANDARD
STD	NOISE & VIBRATION DAMPENING MOUNTS ON VACUUM PUMP AND TRANSFER CASE	STANDARD
STD	NOISE ATTENUATED VACUUM PUMP DISCHARGE SILENCER WITH RAIN CAP AND DRAIN	STANDARD
STD	24" CENTRIFUGAL CYCLONE SEPARATOR WITH 20" CHAMBER	STANDARD
STD	DUAL STAINLESS STEEL SHUTOFF FLOAT BALLS MOUNTED AT THE REAR OF DEBRIS TANK	STANDARD
STD	STAINLESS STEEL VEE-WIRE SAFETY SCREEN	STANDARD
STD	6" SAFETY VACUUM RELIEF	STANDARD
STD	PANIC SWITCH FUNCTION FOR VACUUM	STANDARD
C8	UPGRADE TO ROOTS TYPE VACUUM PUMP 4,500 CFM AND 18" HG (4) 18" Hg VACUUM RELIEF VALVES	1
C19	UPGRADE TO XL TRANSFER CASE 9-LITER ENGINE = UP TO 5300 CFM, REQUIRES OPTION C8	1
WATER SYSTEM OPTIONS		
STD	TRI-PLEX WATER PUMP SYSTEM	STANDARD
STD	AIR PURGE SYSTEM FOR PRIMARY CIRCUIT	STANDARD
STD	LOW POINT DRAIN VALVES ON WATER LINES	STANDARD
STD	WASHDOWN CIRCUIT WITH 50' X 1/2" HOSE, QUICK CONNECT, AND WASHDOWN HAND GUN HOSE REEL NOT INCLUDED	STANDARD
STD	WASHDOWN CIRCUIT(S) WILL INCLUDE A SAFETY FLOW RESTRICTOR (1/4" HOSE)	STANDARD
D25A	HOSE REEL FOR STANDARD WASHDOWN CIRCUIT, 100' X 1/2"	1
D3B	GENERAL MKS "2" SERIES WATER PUMP RATED AT 80 GPM @ 2500 PSI REQUIRES G2 OPERATING SYSTEM	1
D-GPVC	VIBRATION DAMPENING COUPLER - WATER PUMP	REQUIRED
D4	UPGRADE TO URACA MULTIFLOW VALVE	1
BOOM OPTIONS		
STD	8" FRONT MOUNTED TELESCOPING BOOM WITH 26' REACH AND 180 DEG. ROTATION	STANDARD
STD	180 DEGREE POWER ROTATION VIA WORM DRIVE	STANDARD
STD	DUAL 4" LIFT CYLINDERS	STANDARD
STD	CAB PROTECTION RACK	STANDARD
E6	REMOTE LUBE FOR BOOM LIFT AND ROTATION	1
HOSE REEL OPTIONS		
STD	FRONT FRAME MOUNTED HOSE REEL WITH 180 DEGREE ARTICULATION	STANDARD
STD	HOSE REEL RATED FOR 800' OF HOSE AND 3,000 PSI	STANDARD
STD	EXTERIOR HOSE EXPANSION RIBS	STANDARD
F1C	DIGITAL FOOTAGE COUNTER - SHAFT-MOUNTED	1
F16	DOUBLE ROLLER UPGRADE ON MANUAL LEVEL WIND	1
CONTROLS, GAUGES, ACCESSORIES OPTIONS		
STD	CAB-MOUNTED AIR SHIFT CONTROLS FOR BLOWER, HYDRAULICS, AND WATER PUMP	STANDARD
STD	CONTROL PANEL MOUNTED AT FRONT HOSE REEL	STANDARD
STD	OPERATOR CONTROL PANEL INCLUDES GAUGES FOR ENGINE, HYDRAULICS, VACUUM, AND WATER PUMP	STANDARD
STD	PANIC SWITCH TO RELIEVE WATER PRESSURE AND VACUUM ON FRONT PANEL AND CURB SIDE OF UNIT	STANDARD
G2B	G2B CONTROL SYSTEM WITH DM430 DISPLAY INCLUDES: WIRELESS NOT INCLUDED, SELECT OPTION G19 OR G21 BELOW	1
	LOW WATER SHUTDOWN PROTECTION	1
	HIGH WATER TEMPERATURE SHUTDOWN PROTECTION	1
	ENGINE OVERSPEED PROTECTION	1
	ON-SCREEN DIAGNOSTICS FOR WATER, PTO AND ENGINE LEVELS	1
G4A	HIGH DEBRIS LEVEL LIGHT & ALARM WIRED TO VACUUM RELIEF REQUIRES A3	1

ATTACHMENT A

G16	BOOM UP LIGHT		1
G21D	WIRELESS REMOTE WITH BOOM, VACUUM, FRONT HOSE REEL WATER ON/OFF, AND FRONT HOSE REEL IN/OUT (HOSE REEL ROTATE INCLUDED ONLY IF OPTION F6 IS SELECTED)		1
G21-TD	UPGRADE TO AARCOMM TRIDENT REMOTE	REQUIRES OPTION G21	1
G21-AWR	ADDITIONAL WIRELESS TRANSMITTER	REQUIRES OPTION G19 OR G21	1
LIGHTING			
STD	TRUCK-LITE LED RUNNING (MARKER) LIGHTS		STANDARD
STD	LED STOP/TAI/TURN LIGHT WITH POLISHED STAINLESS STEEL BOXES		STANDARD
H1B	TWO (2) LED STROBE BEACON LIGHT - FRONT (SAE CLASS-1 (SAE J595) COMPLIANT)	(WHELEN L10 OR EQUAL)	1
H2B	TWO (2) LED STROBE BEACON LIGHT - REAR (SAE CLASS-1 (SAE J595) COMPLIANT)	(WHELEN L10 OR EQUAL)	1
H5B	(2) BOOM WORK LIGHTS - HELLA LED WORK LIGHTS (PN: LHT022429)		1
H6B	(2) REAR WORK LIGHTS - HELLA LED WORK LIGHTS (PN: LHT022429)		1
H7BA	(2) SIDE WORK LIGHTS - HELLA LED WORK LIGHTS (PN: LHT022429) (1 PER SIDE)		1
H33	REAR ARROW LIGHT - LOW PROFILE LED (CA TITLE-13 COMPLIANT) TRAFFIC ADVISOR	(LHT022544, CODE 3 TORUS NARROWSTIK OR EQUAL)	1
STORAGE OPTIONS			
STD	25' FIRE HOSE BASKET		STANDARD
I6D-DS	STAINLESS STEEL, 30" WIDE X 24" TALL X 24" DEEP, MOUNTED ON THE DRIVER'S SIDE		1
I28C	60" TOOL BOX - STAINLESS STEEL, 60" WIDE X 24" HIGH X 24" DEEP, MOUNTED ON THE CURBSIDE	CONSULT ENGINEERING	1
I25C	TUNNEL TOOLBOX - STAINLESS STEEL, 30" HIGH X 24" WIDE X 50" DEEP	CONSULT ENGINEERING	1
I14	TRAFFIC CONE HOLDER ON DRIVER'S SIDE		1
I16A	WHEEL CHOCK HOLDER (PER SIDE) - DRIVER'S SIDE		1
I16B	WHEEL CHOCK HOLDER (PER SIDE) - CURBSIDE		1
I17A	NOZZLE RACK - SIX (6) NOZZLES, 1"		1
I20A	REAR DRAIN HOSE RACK FOR 6" LAYFLAT HOSE X 15' LONG		1
I22	UPGRADE TUBE TRAYS TO POLISHED STAINLESS STEEL		1
I26C	TWO BUMPER TOOL BOXES - STAINLESS STEEL, 16" HIGH X 12" WIDE X 18" DEEP WITH FOLD DOWN DOOR		1
CHASSIS OPTIONS			
STD	DOT LIGHTING / FENDERS / MUD FLAPS / TAILGATE SAFETY PROP, ICC LIGHTS		STANDARD
STD	REMOTE ACTUATED BODY SAFETY PROP		STANDARD
STD	70 GALLONS AW-46 HYDRAULIC OIL, LEVEL/TEMPERATURE GAUGE, SHUTOFF ON SUCTION		STANDARD
STD	REAR BUMPER, TRIANGLE KIT, FIRE EXTINGUISHER, BACKUP ALARM		STANDARD
STD	ALLISON 10-BOLT PTO UPGRADE		STANDARD
J000	MID-SHIP MOUNTED (SPLIT-SHAFT) TRANSFER CASE WITH TOP DISCONNECT		1
J001	MUST BE "OMSI" BRAND TRANSFER CASE		1
J0	FRONT BUMPER		1
J2	TRANSFER CASE OIL LEVEL SIGHT GLASS / FILL, MOUNTED ON DRIVER'S SIDE FRAME RAIL (PN: GAU006456)		1
J3	TOW HOOKS FRONT		1
J4B	TOW HOOKS REAR - FRAME MOUNTED		1
J12	METAL MUD FLAPS IN FRONT OF REAR TIRES		1
J18	REMOTE LUBE OF TAILGATE LIFT COMPONENTS AND TAILGATE LOCKS		1
J303	ADD HYDRAULIC OIL COOLER TO CIRCUIT		1
PAINT OPTIONS			
STD	PAINTED WITH PPG URETHANE PAINT		STANDARD
STD	PAINT BODY WHITE		STANDARD

ATTACHMENT A

STD	PAINT FRAME AND PARTS BLACK	STANDARD
STD	PAINT HOSE REEL AND BOOM BLACK	STANDARD
STD	FLEET FINISH	STANDARD
MISCELLANEOUS OPTIONS		
STD	25 FEET OF VACUUM TUBING (5) AND CLAMPS	STANDARD
STD	TIGER TAIL HOSE GUIDE	STANDARD
STD	TWO SEWER CLEANING NOZZLES	STANDARD
M3	FILL HOSE 25' X 2 1/2"	1
M5	LEADER HOSE 10' X 1"	1
M8G	1" PIRHANA SEWER HOSE - 2,500 PSI X 600 FT PLASTIC (ORANGE) (PN: HOS022393)	1
M12	MANHOLE LIFTING HOOK	1
M13	HYDRANT WRENCH	1
M29	ONE CAMERA - BACK-UP CAMERA SYSTEM WITH 7" COLOR MONITOR (RV-505A), INCLUDES DVR-916 REAR CAMERA	1

GapVax**PRICING SUMMARY**

PRICE OF BASE UNIT WITH OPTIONS:	\$	702,665.03
SOURCWEEL DISCOUNT:	\$	49,933.30
DELIVERY: (\$1,000.00 MINIMUM) @ \$4.00 PER MILE	\$	3,500.00
ESTIMATED SUBTOTAL:	\$	656,231.73
SALES TAX:	\$	-
FEDERAL EXCISE TAX (BODY):	\$	-
FEDERAL EXCISE TAX (CHASSIS):	\$	-
TOTAL PRICE (PER UNIT):	\$	656,231.73

ALL PRICES ARE IN US DOLLARS

ALL ORDERS ARE SUBJECT TO CURRENT PRICES IN EFFECT AT THE TIME OF ORDER ACKNOWLEDGMENT. PRICES AND SPECIFICATIONS ARE SUBJECT TO CHANGE WITHOUT NOTICE. PRICING DISCLAIMER: WHILE WE MAKE EVERY EFFORT TO MAINTAIN AND PRESERVE PRICING ACCURACY, ALL COST INCREASES INCURRED AFTER ORDER ACKNOWLEDGMENT FOR MAJOR COMPONENTS AND GOVERNMENT MANDATED REQUIREMENTS, TARIFFS, AND RAW MATERIAL SURCHARGES WILL BE PASSED THROUGH AND ADDED TO CUSTOMER INVOICES WITH OR WITHOUT NOTICE. ALTHOUGH THE INFORMATION ON THIS QUOTATION IS PRESENTED IN GOOD FAITH AND BELIEVED TO BE CORRECT AT THE TIME OF PRINTING, WE MAKE NO REPRESENTATIONS OR WARRANTIES AS TO THE COMPLETENESS OR ACCURACY OF THIS INFORMATION. WE RESERVE THE RIGHT TO CHANGE, DELETE, OR OTHERWISE MODIFY THE PRICING INFORMATION WHICH IS REPRESENTED HEREIN WITHOUT ANY PRIOR NOTICE. WE CAREFULLY CHECK PRICING SPECIFICATIONS, BUT OCCASIONALLY ERRORS CAN OCCUR, THEREFORE WE RESERVE THE RIGHT TO CHANGE SUCH PRICES WITHOUT NOTICE. WE DISCLAIM ALL LIABILITY FOR ANY ERRORS OR OMISSIONS IN THE MATERIALS. IN NO EVENT WILL WE BE RESPONSIBLE FOR ANY DAMAGES OF ANY NATURE WHATSOEVER FROM THE RELIANCE UPON INFORMATION FROM THESE MATERIALS. PLEASE CHECK YOUR ORDER TO CONFIRM YOUR PRICING INFORMATION

TERMS: 15% DOWN PAYMENT BALANCE DUE UPON COMPLETION. IN THE EVENT OF THE PURCHASERS DEFAULT AND THE TERMINATION OF THIS SALES PROPOSAL AGREEMENT PRIOR TO START OF PRODUCTION, 25% OF THE DOWN PAYMENT SHALL BE FORFEITED AND APPLIED TO GAPVAX, INC. AS PART OF ITS DAMAGES. ONCE PRODUCTION HAS COMMENCED ON THIS SALES PROPOSAL AGREEMENT, IN THE EVENT OF THE PURCHASERS CANCELLING THE SALES PROPOSAL AGREEMENT, OR FAILING TO ACCEPT DELIVERY, OR FAILING TO COMPLETE THE SALES PROPOSAL AGREEMENT, THE ENTIRE DEPOSIT SHALL BE FORFEITED TO GAPVAX, INC. BUT SUCH FORFEITURE SHALL NOT PREJUDICE ANY OTHER REMEDY WHICH GAPVAX, INC. MAY HAVE FOR BREACH OF ANY OF THE SALES PROPOSAL AGREEMENT. IN THE EVENT OF A COMPLETED UNIT NOT BEING FUNDED IN A PROMPT AND TIMELY MANNER, AN ADDITIONAL FEE WILL OCCUR TO COVER THE ADDITIONAL FLOOR PLAN EXPENSE. FEDERAL EXCISE TAX AND DELIVERY ARE LISTED. STATE SALES TAX IS NOT INCLUDED. STATE SALES TAX AND VEHICLE REGISTRATION IS THE RESPONSIBILITY OF THE PURCHASER. EXCLUDES ALL OTHER APPLICABLE TAXES, DUTIES, TARIFFS, BROKERAGE, OR DOCUMENTATION FEES. DELIVERY, IF COORDINATED BY GAPVAX, IS \$4.00 PER MILE, \$1,000.00 MINIMUM.

DELIVERY TERMS: TERMS OF DELIVERY SHALL BE F.O.B. SHIPPING POINT, JOHNSTOWN, PENNSYLVANIA, U.S.A. THIS PROPOSAL WILL REMAIN IN EFFECT FOR 30 DAYS, UNLESS CHANGED IN THE INTERIM UPON WRITTEN NOTICE FROM THE COMPANY. PLEASE RETURN ONE SIGNED COPY OF THIS PROPOSAL, AND ANY FUTURE CORRESPONDENCE TO: GAPVAX, INCORPORATED, 575 CENTRAL AVE., JOHNSTOWN, PA 15902. BY SIGNING THIS PROPOSAL, PURCHASER THEREBY EXPRESSES ACCEPTANCE OF EACH AND EVERY TERM AND CONDITION SET FORTH HEREIN. ANY PURCHASE ORDER OR ACKNOWLEDGMENT OFFERING TERMS INCONSISTENT WITH THE TERMS AND CONDITIONS HEREOF SHALL HAVE NO BINDING EFFECT WHATSOEVER ON GAPVAX INCORPORATED (THE "COMPANY") OR THE TERMS AND CONDITIONS HEREOF. THIS DOCUMENT AND THE OTHER DOCUMENTS SPECIFICALLY REFERRED TO AS BEING A PART HEREOF, CONSTITUTE THE ENTIRE CONTRACT ON THE SUBJECT MATTER, AND SHALL NOT BE MODIFIED EXCEPT IN WRITING SIGNED BY BOTH PARTIES. ASSIGNMENT MAY BE MADE ONLY WITH WRITTEN CONSENT OF THE OTHER PARTY.

SIGNATURE

DATE

Please return a signed copy to Aeverett@EvervacFL.com**Chassis and Demo Units are SUBJECT TO PRIOR SALE, a 15% deposit is required with signed proposal**QUOTE ID
24xxxLAST UPDATED:
10/18/24

ATTACHMENT A

GapVax Incorporated Terms and Conditions of Sale

1. **ORDERS.** All orders are subject to acceptance by an officer of GapVax Inc. Orders for products not regularly carried in stock or requiring special engineering or manufacture are in every case subject to approval by an officer of GapVax.
2. **PERFORMANCE.** GapVax Inc. shall not be liable for failure to complete the contract in accordance with its terms if failure is due to wars, strikes, fires, floods, accidents, delays in transportation or other causes beyond its reasonable control.
3. **EXPERIMENTAL WORK.** Work performed at customer's request such as sketches, drawings, design, testing, fabrication and materials shall be charged at current rates.
4. **SKETCHES, ENGINEERING DRAWINGS, MODELS** and all preparatory work created or furnished by GapVax Inc. shall remain its exclusive property; and no use of same shall be made, nor may ideas obtained therefrom be used, except with the consent of and on terms acceptable to GapVax Inc.
5. **CANCELLATION.** Orders regularly entered cannot be canceled except upon terms that will compensate GapVax Inc. for any loss or damage sustained.
6. **SHIPMENT.** All proposals are based on continuous and uninterrupted delivery of the order upon completion unless specifications distinctly state otherwise. In the event that an agreement is reached for GapVax Inc. to store completed items, they will be immediately invoiced to the customer and become due and payable. Storage shall be at the risk of the customer and GapVax Inc. shall be liable only for ordinary care of the property.
7. **CUSTOMER'S PROPERTY.** GapVax Inc. shall charge the customer at current rates, for handling and storing customer's property (e.g., truck chassis) held for more than thirty (30) days after notification of availability for shipment. All customer's property, or third party's property, that is stored by GapVax Inc. is at the customer's or other party's risk. GapVax is not liable for any loss or damage thereto caused by fire, water, corrosion, theft, negligence, or any cause beyond its reasonable control.
8. **PRICES.** All orders are subject to current prices in effect at the time of order acknowledgment. Prices and Specifications are Subject to Change Without Notice. **PRICING DISCLAIMER:** While we make every effort to maintain and preserve pricing accuracy, prices are subject to change without notice. Although the information on this quotation is presented in good faith and believed to be correct at the time of printing, we make no representations or warranties as to the completeness or accuracy of this information. We reserve the right to change, delete, or otherwise modify the pricing information which is represented herein without any prior notice. We carefully check pricing specifications, but occasionally errors can occur, therefore we reserve the right to change such prices without notice. We disclaim all liability for any errors or omissions in the materials. In no event will we be responsible for any damages of any nature whatsoever from the reliance upon information from these materials. Please check your order to confirm your pricing information.
9. **F.O.B. POINT.** Unless otherwise stated, all prices listed are F.O.B. point of manufacture.
10. **TAXES.** Unless specifically stated, prices listed do not include Federal, State, City or other excise occupation, sales, use or similar taxes which are extra and are to be added at rates in effect at time of shipment. If federal Excise Taxes are included or listed on the reverse side of this paper, they are stated at the rates and regulations in effect at the time this order is written and are subject to revision in accordance with rates and regulations in effect at time of shipment.
11. **PRODUCT IMPROVEMENT.** GapVax Inc. reserves the right to change manufacturing specifications and procedures without incurring any responsibility for modifying previously shipped products.
12. **MOUNTING PRICES.** Mounting prices assumes normal factory installation on a truck chassis suitable for the unit purchased. Relocation of batteries, gas tanks, mufflers, air tanks, etc. will be an additional charge, billed at the standard factory labor rate.
13. **WARRANTY.** GapVax Inc. warrants its products to be free from defects in material and workmanship, subject to the limitations and conditions set forth in its current published warranty but makes no warranty of merchantability or fitness for any particular purpose. GapVax Inc. does not assume liability for any loss of product, time or any direct, indirect, or consequential damage, losses or delay or any nature whatsoever. No warranty, express or implied, is made or authorized to be made and no obligation is assumed or authorized to be assumed with respect to products of GapVax Inc. other than that set forth in the current, published warranty. It is to be understood that the acceptance of this order is expressly conditioned upon your acceptance of GapVax Inc. standard written warranty for the products sold hereunder. GapVax Inc. hereby disclaims any responsibility or liability for any consequential losses, delays or downtime resulting from orders hereunder the use of its products. GapVax does not and will not warranty any tank coating or tank lining. PTO damage is not covered when the PTO protection system or low water shut down system is not selected / installed / and operational. GapVax does not and will not warranty any water system component(s) that show any sign or indication of ice or freeze damage.
14. This agreement shall be construed according to the laws of the State of Pennsylvania. Our failure at any time to exercise any right we may have under the agreement shall not constitute a waiver thereof nor prejudice our right to enforce same thereafter.
15. This order, including the above terms and conditions contains the complete and final agreement between the parties hereto and no other agreement in any way modifying any of said terms and conditions will be binding on us unless in writing and agreed to by authorized representative of this company.

**Solicitation Number: RFP #101221****CONTRACT**

This Contract is between Sourcewell, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479 (Sourcewell) and GapVax Inc., 575 Central Avenue, Johnstown, PA 15902 (Supplier).

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

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

1. TERM OF CONTRACT

- A. **EFFECTIVE DATE.** This Contract is effective upon the date of the final signature below.
- B. **EXPIRATION DATE AND EXTENSION.** This Contract expires November 29, 2025, unless it is cancelled sooner pursuant to Article 22. This Contract may be extended one additional year upon the request of Sourcewell and written agreement by Supplier.
- C. **SURVIVAL OF TERMS.** Notwithstanding any expiration or termination of this Contract, all payment obligations incurred prior to expiration or termination will survive, as will the following: Articles 11 through 14 survive the expiration or cancellation of this Contract. All rights will cease upon expiration or termination of this Contract.

2. EQUIPMENT, PRODUCTS, OR SERVICES

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

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

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

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

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

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

3. PRICING

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

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

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

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

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

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

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

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

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

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

4. PRODUCT AND PRICING CHANGE REQUESTS

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

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

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

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

5. PARTICIPATION, CONTRACT ACCESS, AND PARTICIPATING ENTITY REQUIREMENTS

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

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

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

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

6. PARTICIPATING ENTITY USE AND PURCHASING

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

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

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

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

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

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

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

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

7. CUSTOMER SERVICE

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

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

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

8. REPORT ON CONTRACT SALES ACTIVITY AND ADMINISTRATIVE FEE PAYMENT

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

The Report must contain the following fields:

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

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

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

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

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

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

9. AUTHORIZED REPRESENTATIVE

Sourcewell's Authorized Representative is its Chief Procurement Officer.

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

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

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

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

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

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

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

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

11. INDEMNITY AND HOLD HARMLESS

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

12. GOVERNMENT DATA PRACTICES

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

13. INTELLECTUAL PROPERTY, PUBLICITY, MARKETING, AND ENDORSEMENT

A. INTELLECTUAL PROPERTY

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

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

3. *Use; Quality Control.*

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

4. As applicable, Supplier agrees to indemnify and hold harmless Sourcewell and its Participating Entities against any and all suits, claims, judgments, and costs instituted or recovered against Sourcewell or Participating Entities by any person on account of the use of any Equipment or Products by Sourcewell or its Participating Entities supplied by Supplier in violation of applicable patent or copyright laws.

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

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

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

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

14. GOVERNING LAW, JURISDICTION, AND VENUE

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

15. FORCE MAJEURE

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

16. SEVERABILITY

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

17. PERFORMANCE, DEFAULT, AND REMEDIES

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

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

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

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

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

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

18. INSURANCE

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

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

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

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

Minimum limits:

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

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

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

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

Minimum Limits:

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

\$1,000,000 Personal and Advertising Injury

\$2,000,000 aggregate for Products-Completed operations

\$2,000,000 general aggregate

3. *Commercial Automobile Liability Insurance.* During the term of this Contract, Supplier will maintain insurance covering all owned, hired, and non-owned automobiles in limits of liability not less than indicated below. The coverage must be subject to terms

no less broad than ISO Business Auto Coverage Form CA 0001 (2010 edition or newer), or equivalent.

Minimum Limits:

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

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

Minimum Limits:

\$2,000,000

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

Minimum limits:

\$2,000,000 per occurrence

\$2,000,000 annual aggregate

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

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

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

C. ADDITIONAL INSURED ENDORSEMENT AND PRIMARY AND NON-CONTRIBUTORY INSURANCE CLAUSE. Supplier agrees to list Sourcewell and its Participating Entities, including their officers, agents, and employees, as an additional insured under the Supplier's commercial general liability insurance policy with respect to liability arising out of activities, "operations," or "work" performed by or on behalf of Supplier, and products and completed operations of Supplier. The policy provision(s) or endorsement(s) must further provide that coverage is

primary and not excess over or contributory with any other valid, applicable, and collectible insurance or self-insurance in force for the additional insureds.

D. **WAIVER OF SUBROGATION.** Supplier waives and must require (by endorsement or otherwise) all its insurers to waive subrogation rights against Sourcewell and other additional insureds for losses paid under the insurance policies required by this Contract or other insurance applicable to the Supplier or its subcontractors. The waiver must apply to all deductibles and/or self-insured retentions applicable to the required or any other insurance maintained by the Supplier or its subcontractors. Where permitted by law, Supplier must require similar written express waivers of subrogation and insurance clauses from each of its subcontractors.

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

19. COMPLIANCE

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

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

20. BANKRUPTCY, DEBARMENT, OR SUSPENSION CERTIFICATION

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

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

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

Participating Entities that use United States federal grant or FEMA funds to purchase goods or services from this Contract may be subject to additional requirements including the procurement standards of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, 2 C.F.R. § 200. Participating Entities may have additional requirements based on specific funding source terms or conditions. Within this Article, all references to “federal” should be interpreted to mean the United States federal government. The following list only applies when a Participating Entity accesses Supplier’s Equipment, Products, or Services with United States federal funds.

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

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

C. **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (40 U.S.C. § 3701-3708).** Where applicable, all contracts awarded by the non-federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. § 5). Under 40 U.S.C. § 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence. This provision is hereby incorporated by reference into this Contract. Supplier certifies that during the term of an award for all contracts by Sourcewell resulting from this procurement process, Supplier must comply with applicable requirements as referenced above.

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

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

F. **DEBARMENT AND SUSPENSION (EXECUTIVE ORDERS 12549 AND 12689).** A contract award (see 2 C.F.R. § 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. § 180 that implement Executive Orders 12549 (3 C.F.R. § 1986 Comp., p. 189) and 12689 (3 C.F.R. § 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names

of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. Supplier certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency.

G. BYRD ANTI-LOBBYING AMENDMENT, AS AMENDED (31 U.S.C. § 1352). Suppliers must file any required certifications. Suppliers must not have used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Suppliers must disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the non-federal award. Suppliers must file all certifications and disclosures required by, and otherwise comply with, the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352).

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

I. ENERGY POLICY AND CONSERVATION ACT COMPLIANCE. To the extent applicable, Supplier must comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

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

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

L. PROCUREMENT OF RECOVERED MATERIALS (2 C.F.R. § 200.322). A non-federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation

and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. § 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

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

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

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

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

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

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

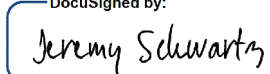
S. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT. To the extent applicable, Supplier certifies that during the term of this Contract it will comply with applicable requirements of 2 C.F.R. § 200.216.

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

22. CANCELLATION

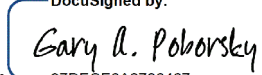
Sourcwell or Supplier may cancel this Contract at any time, with or without cause, upon 60 days' written notice to the other party. However, Sourcwell may cancel this Contract immediately upon discovery of a material defect in any certification made in Supplier's Proposal. Cancellation of this Contract does not relieve either party of financial, product, or service obligations incurred or accrued prior to cancellation.

Sourcwell

DocuSigned by:

By: C0FD2A139D06489...

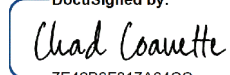
Jeremy Schwartz
Title: Chief Procurement Officer
Date: 11/23/2021 | 8:50 PM CST

GapVax Inc.

DocuSigned by:

By: 97DECE6A2796467...

Gary A. Poborsky
Title: President
Date: 12/20/2021 | 11:24 AM CST

Approved:

DocuSigned by:

By: 7E42B8F817A64CC...

Chad Coauette
Title: Executive Director/CEO
Date: 12/20/2021 | 11:25 AM CST

RFP 101221 - Sewer Vacuum, Hydro-Excavation, and Municipal Pumping Equipment with Related Accessories and Supplies

Vendor Details

Company Name: GapVax Inc
Address: 575 Central Ave.
Johnstown, PA 15902
Contact: Matt Hughes
Email: mhughes@gapvax.com
Phone: 814-535-6766 357
Fax: 814-539-3617
HST#: 25-1633228

Submission Details

Created On: Wednesday September 01, 2021 09:42:15
Submitted On: Tuesday October 12, 2021 14:06:26
Submitted By: Matt Hughes
Email: mhughes@gapvax.com
Transaction #: 8fa7ef9f-d273-42c6-9d49-164f2c639801
Submitter's IP Address: 207.255.5.150

Specifications**Table 1: Proposer Identity & Authorized Representatives**

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

Line Item	Question	Response *
1	Proposer Legal Name (one legal entity only): (In the event of award, will execute the resulting contract as "Supplier")	GapVax Inc.
2	Identify all subsidiary entities of the Proposer whose equipment, products, or services are included in the Proposal.	There are no subsidiary entities.
3	Identify all applicable assumed names or DBA names of the Proposer or Proposer's subsidiaries in Line 1 or Line 2 above.	There are no assumed names or DBA names.
4	Proposer Physical Address:	GapVax Inc. 575 Central Avenue Johnstown, PA 15902
5	Proposer website address (or addresses):	www.gapvax.com
6	Proposer's Authorized Representative (name, title, address, email address & phone) (The representative must have authority to sign the "Proposer's Assurance of Compliance" on behalf of the Proposer and, in the event of award, will be expected to execute the resulting contract):	Gary A. Poborsky President GapVax Inc. 575 Central Ave. Johnstown, PA 15902 gary@gapvax.com M 814-242-4140
7	Proposer's primary contact for this proposal (name, title, address, email address & phone):	Matt Hughes Senior Vice President, Sales GapVax Inc. 575 Central Ave. Johnstown, PA 15902 mhughes@gapvax.com M 814-322-7724
8	Proposer's other contacts for this proposal, if any (name, title, address, email address & phone):	Betty Smith Vice President, Administration GapVax Inc. 575 Central Ave. Johnstown, PA 15902 betty@gapvax.com 814-535-6766 x322

Table 2: Company Information and Financial Strength

Line Item	Question	Response *
9	Provide a brief history of your company, including your company's core values, business philosophy, and industry longevity related to the requested equipment, products or services.	GapVax Inc. can trace its history back to one of the worst natural disasters in Pennsylvania's history. The Johnstown Flood of 1977 resulted from 11 ½ inches of rain falling in 10 hours and the failure of 6 area dams, pouring 128 million gallons of water into the small steel town. Not long after the devastating flood, a soon-to-be entrepreneur named Gary Poborsky sprang into action. He quit his job, purchased a used septic pumper truck, and went to work in his hometown helping clean flooded factories and churches, cleaning storm and sanitary sewers, and assisting with other clean-up work within Johnstown's residential and industrial community. Gary's modest venture eventually became GAP Pollution & Environmental Control, Inc. Through tireless effort and unwavering support from his wife Rose, Gary turned his one-truck start-up into an entire fleet of industrial vacuum and municipal sewer cleaning trucks. To this day, GAP Pollution & Environmental Control is an industry leader offering wet/dry vacuuming, hydro excavation, and sewer cleaning throughout North America. Several years after starting their service business, Gary and Rose were so frustrated with maintenance issues and costly downtime associated with the products they were purchasing, they decided to try their hand at building a better mousetrap. As a result, in 1989, the first GapVax vacuum truck was introduced to the market. By 1994, GapVax Inc. was a full-fledged corporation. Since its inception, Gary has operated GapVax with this business philosophy: We will design and build the highest quality hydro excavation and sewer cleaning equipment that requires the least maintenance costs and the lowest long-term ownership cost. As Gary and Rose approach their 45th year in business, they remind their employees, dealers, vendors, and family members that every company will succeed if they focus on the people -- not just our valued employees and customers, but the people in our community -- just like Gary did after the Johnstown flood. So as we continue to grow into new markets and develop new products, we do so with the corporate mission of "Being good stewards of the communities where we work, live, and play."

10	What are your company's expectations in the event of an award?	We expect current and future Sourcewell members to purchase GapVax products to add industry-leading equipment to their fleet and achieve their goals of safely exposing and cleaning underground utilities, storm sewers, and sanitary sewers. Our ever-growing dealer network stands ready to support Sourcewell members with a standard of excellence that aligns with our corporate mission. By doing so, we expect to create new relationships with Sourcewell members and grow our government and education market share.
11	Demonstrate your financial strength and stability with meaningful data. This could include such items as financial statements, SEC filings, credit and bond ratings, letters of credit, and detailed reference letters. Upload supporting documents (as applicable) in the document upload section of your response.	Please see the GapVax Financial Information file that has been uploaded as part of our proposal.
12	What is your US market share for the solutions that you are proposing?	As a privately held, family-owned business, GapVax considers our market data confidential. However, we are very proud of the growth we've experienced since our first Sourcewell contract in 2018 and feel this is vital information to share. Before 2017, we manufactured between 60 to 90 machines a year and were at maximum capacity due to facility constraints. To help with our goal of continued growth, we completed two major capital expansion projects, one in 2017 and another in 2020. This investment gained a total of 160,000 sq. ft. of additional manufacturing space. As a result, our sales increased an average of 17.3% each year from 2017 to 2020. We attribute this growth to two main factors: 1) The sales acceleration from our initial Sourcewell contract award, and 2) The manufacturing space added to support the increased sales.
13	What is your Canadian market share for the solutions that you are proposing?	As a privately held, family-owned business, GapVax considers our market data confidential. However, we are very proud of the growth we've experienced since our first Sourcewell contract in 2018 and feel this is vital information to share. Before 2017, we manufactured between 60 to 90 machines a year and were at maximum capacity due to facility constraints. To help with our goal of continued growth, we completed two major capital expansion projects, one in 2017 and another in 2020. This investment gained a total of 160,000 sq. ft. of additional manufacturing space. As a result, our sales increased an average of 17.3% each year from 2017 to 2020. We attribute this growth to two main factors: 1) The sales acceleration from our initial Sourcewell contract award, and 2) The manufacturing space added to support the increased sales.
14	Has your business ever petitioned for bankruptcy protection? If so, explain in detail.	No, GapVax Inc. never petitioned for bankruptcy.
15	How is your organization best described: is it a manufacturer, a distributor/dealer/reseller, or a service provider? Answer whichever question (either a) or b) just below) best applies to your organization. a) If your company is best described as a distributor/dealer/reseller (or similar entity), provide your written authorization to act as a distributor/dealer/reseller for the manufacturer of the products proposed in this RFP. If applicable, is your dealer network independent or company owned? b) If your company is best described as a manufacturer or service provider, describe your relationship with your sales and service force and with your dealer network in delivering the products and services proposed in this RFP. Are these individuals your employees, or the employees of a third party?	b) GapVax Inc. is the manufacturer of GapVax branded equipment. Our dealers are independently owned and operated, not owned by GapVax Inc. The dealers handle most of the sales process, including equipment demonstrations, quotation, fulfillment, and all service work associated with GapVax products.
16	If applicable, provide a detailed explanation outlining the licenses and certifications that are both required to be held, and actually held, by your organization (including third parties and subcontractors that you use) in pursuit of the business contemplated by this RFP.	The Commonwealth of Pennsylvania licenses GapVax Inc. as a "VEHICLE MANUFACTURER" and a "VEHICLE DEALER." In addition, our Pennsylvania-based sales force has "VEHICLE REPRESENTATIVE" licenses also issued by the Commonwealth of Pennsylvania. Other licenses include State Sales Tax License, Business Privilege License, Pennsylvania State Vehicle Inspection License, State of Texas Converters License, State of Texas Vehicle Dealer License, Florida Manufacturer License, Louisiana Converter License, Kentucky Motor Vehicle Component License, National Association of Trailer Manufacturers Certificate of Compliance, and a Minnesota Workforce Certificate of Compliance. GapVax Inc. is registered with the Secretary of State in each state that is required.
17	Provide all "Suspension or Debarment" information that has applied to your organization during the past ten years.	GapVax Inc. has no Suspension or Disbarment notices to report.

Table 3: Industry Recognition & Marketplace Success

Line Item	Question	Response *	
18	Describe any relevant industry awards or recognition that your company has received in the past five years	2021 - Ralph Macchio Lifetime Achievement Award - The pumping industry's highest honor was awarded this year during the WEQ Fair in York, Pennsylvania, recognizing Gary Poborsky, owner of GapVax, for his 44 years of dedication and commitment to the industry. This award epitomizes the saying, "The best compliment any professional can receive is praise from another within their discipline." More information can be found at https://www.plumbermag.com/how-to-articles/gapvax-weq-fair-inc/macchio-achievement-award-to-be-presented-at-upcoming-weq-fair 2016 - Gary & Rose Poborsky, Cambria Regional Chamber of Commerce Business Hall of Fame Inductees - The Cambria Regional Chamber of Commerce, and Junior Achievement of Western Pennsylvania sponsor an annual award ceremony to celebrate the lives of extraordinary leaders whose achievements have enhanced the cultural, civic and economic growth of our region. The following link is the video submitted for their induction ceremony https://youtu.be/5plz7v45LsU	*
19	What percentage of your sales are to the governmental sector in the past three years	Our percentage of sales in the last three years to the government sector is: 2018 = 34% 2019 = 28% 2020 = 44% Average 35%	*
20	What percentage of your sales are to the education sector in the past three years	GapVax Inc. chooses to combine the education sector into government sales. Our percentage of sales in the last three years to the government sector is: 2018 = 34% 2019 = 28% 2020 = 44% Average 35%	*
21	List any state, provincial, or cooperative purchasing contracts that you hold. What is the annual sales volume for each of these contracts over the past three years?	Please see our GapVax Cooperative Purchasing Contract list that has been uploaded as part of our proposal.	*
22	List any GSA contracts or Standing Offers and Supply Arrangements (SOSA) that you hold. What is the annual sales volume for each of these contracts over the past three years?	GapVax Inc. does not currently hold a GSA Contract. However, we have a dealer that holds a GSA multiple award schedule that we utilize.	*

Table 4: References/Testimonials

Line Item 23. Supply reference information from three customers who are eligible to be Sourcwell participating entities.

Entity Name *	Contact Name *	Phone Number *	
City of Ventura	Frank Palmer	805-652-4573	*
City of Santa Ana	Edwin Sosa	714-472-7106	*
Santa Margarita Water District	Bill Webster	949-289-3327	*
Cape May County MUA	John Reardon Jr.	609-465-3968	

Table 5: Top Five Government or Education Customers

Line Item 24. Provide a list of your top five government, education, or non-profit customers (entity name is optional), including entity type, the state or province the entity is located in, scope of the project(s), size of transaction(s), and dollar volumes from the past three years.

Entity Name	Entity Type *	State / Province *	Scope of Work *	Size of Transactions *	Dollar Volume Past Three Years *	
City in TX	Government	Texas - TX	Sewer Cleaner, Hydro-Excavation	Avg \$338,350.00	\$1,015,054.00	*
County in CA	Government	California - CA	Sewer Cleaner	Avg \$316,962.00	\$950,888.00	*
State Transportation Agency, PA	Government	Pennsylvania - PA	Sewer Cleaner	Avg \$306,000.00	\$918,005.00	*
City in OH	Government	Ohio - OH	Sewer Cleaner	Avg \$290,248.00	\$870,745.00	*
City in KY	Government	Kentucky - KY	Hydro-Excavation	Avg \$244,730.00	\$489,461.00	*

Table 6: Ability to Sell and Deliver Service

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

Line Item	Question	Response *	
-----------	----------	------------	--

25	Sales force.	The GapVax sales team relies heavily on government markets to achieve corporate sales goals. Our teams consist of 6 Regional Sales Managers that oversee 22 Municipal Government dealers and 20 Federal Government dealers in the North American market. The Regional Sales Managers (RSM) go through an extensive factory training program that includes a minimum of 30-days on the shop floor, shadowing various disciplines. They spend most of their time working with the Quality Control team learning deep-dive inspection techniques that include testing, verification, adjustment, validation, test drives, and standard field repairs. Our customers and dealers value our rigorous internal training program and often refer to our RSM's as the most knowledgeable Subject Matter Experts in the industry. After training, the RSM's are deployed into the government sector to develop relationships with city, county, and state fleet managers, sewer, water, and wastewater department heads, and customers in the federal and educational markets. The RSM's also work with GapVax dealers to provide product training and a greater understanding of the Sourcewell sales process. The GapVax dealer is ultimately responsible for promoting and supporting the GapVax products they sell. In reference to the potential Sourcewell Sewer, Vacuum, Hydro-Excavation Equipment contract, the RSM's would promote the contract to state and local government officials who either do not have their own state purchasing contract or have limited products in their existing state contracts. If awarded, the RSM's will promote these resources to their dealers and partners throughout North America: 1) Sourcewell Sales Accelerator Seminar 2) Sourcewell University 3) Sourcewell New & Reclaimed Participating Agency Update	*
26	Dealer network or other distribution methods.	GapVax dealers are known for their dedication to providing best-in-class sales and customer service. Our ever-growing dealer network stands ready to support Sourcewell members with a standard of excellence that aligns with our corporate mission of "Being good stewards of the communities where we work, live, and play." GapVax dealers are privately-owned companies that are the link between GapVax and the end-user. Our dealers' sales managers oversee a team of representatives responsible for selling and marketing in their exclusive territories. In addition, each dealer is required to stock replacement parts and provide in-house and (or) on-site service and repair. GapVax dealer Tina and Cory McDonough of One.7 in Ravensdale, WA, are excellent examples of "Being good stewards of the communities where we work, live, and play." Their tireless pursuit of cancer awareness led them to start the Valley Girls & Guys foundation. Their once-small endeavor has grown into a thriving community service organization in the Pacific Northwest. More information on their public service can be found at: https://www.1point7.com/breast-cancer-awareness-wa-ca-az-nv-ak-nj-ut--three-day and https://valleygirlsandguys.org/ Having 22 GapVax dealer locations across North America, the likelihood of each of them establishing a thriving non-profit charity is not realistic, but that doesn't stop us from promoting the success of Cory and Tina McDonough and using community service as criteria for evaluating dealer success. For a complete list of Dealers, please reference the attached file GAPVAX DEALER AND SERVICE MAP. For more information on our dealer One.7 please see file GAPVAX MEET THE DEALER - ONE7	*
27	Service force.	In addition to two factory-owned service centers, one in Pennsylvania and the other outside of Houston, TX, GapVax uses channel partners as our service force to provide service, repair, and warranty support to our end-user customers. Our government sales sector has 22 dealers in the United States and Canada to meet the vast needs of Sourcewell members. We also utilize 16 factory-authorized service and repair facilities to offer added support outside our dealer network. The independently owned facilities provide in-house and (or) on-site service, repair, warranty, and equipment rental. Often our service force will act as a "force-multiplier" by identifying additional sales opportunities while providing first class service, repair, and warranty. For a complete list of service providers, please reference the attached file GAPVAX DEALER AND SERVICE MAP.	*
28	Describe the ordering process. If orders will be handled by distributors, dealers or others, explain the respective roles of the Proposer and others.	Sourcewell members will follow our Dealer-to-Government order process. The order process begins with the GapVax quote document. It is available on our web-based GapVax dealer portal and updated as needed. The dealer will download the current document revision and work with the Sourcewell member to develop a quotation that best suits their needs. Next, the finalized quotation is sent to GapVax Inc for engineering review. After engineering's final approval, the quote is logged into our document control system, awaiting the purchase order. Finally, the Sourcewell member or GapVax dealer is notified of engineering approval and submits the purchase order to the GapVax Regional Sales Manager for processing, noting the Sourcewell contract number on the PO. After the product is built, the dealer or GapVax Inc. will coordinate the delivery to the Sourcewell member. Upon final acceptance of the product, GapVax Inc., at its discretion, can invoice the Sourcewell member directly or elect to have the dealer invoice them (referencing the Sourcewell contract number.) Having all PO's sent to our Regional Sales Managers ensures the orders are correctly entered and monitored for accurate quarterly reporting.	*

29	Describe in detail the process and procedure of your customer service program, if applicable. Include your response-time capabilities and commitments, as well as any incentives that help your providers meet your stated service goals or promises.	Unless the Sourcewell member is within the geographic parameters of our two factory-direct service centers, the support of GapVax equipment occurs at our nationwide dealer network or our 16 factory-authorized service, warranty, and repair centers. The preferred method for scheduling warranty, service, or repair is to call ahead. Some locations offer drive-in service, and some provide field service capabilities that allow service work at the customer's site. Our directive is to respond within 24 hours of the customer's initial contact. Turnaround time is based on the scope of work required for the repair or service. The corporate office has trained service representatives on-call 24 hours a day, seven days a week, to support the customer, dealer, or service centers. While the post-sale customer service ultimately falls to the dealer or service network, the around-the-clock support offered by GapVax to our service and repair technicians ensures each member receives a consistent customer experience. When appropriate, customer service issues are elevated to the Regional Sales Managers, General Manager of Warranty and Service, Vice President of Sales, and, if necessary, the company President for resolution. For a complete list of dealers and service centers, please reference the attached file GAPVAX DEALER AND SERVICE MAP.	*
30	Describe your ability and willingness to provide your products and services to Sourcewell participating entities in the United States.	As described in some of the earlier questions, the GapVax government sales team utilizes 6 Regional Sales Managers that oversee 22 Municipal Government dealers and two Federal Government dealers. GapVax will promote the awarded Sourcewell contract to all current and future members of the government and educational sectors across North America. GapVax also utilizes factory-authorized service and repair facilities to offer added support outside our dealer network. Often our service force will act as a "force-multiplier" by identifying additional sales opportunities while providing first class service, repair, and warranty.	*
31	Describe your ability and willingness to provide your products and services to Sourcewell participating entities in Canada.	As described in some of the earlier questions, the GapVax government sales team utilizes 6 Regional Sales Managers that oversee 22 Municipal Government dealers and two Federal Government dealers. GapVax will promote the awarded Sourcewell contract to all current and future members of the government and educational sectors across North America. Pre-pandemic, GapVax was negotiating with dealers in Canada to promote the Canoe Procurement Group, a Sourcewell partner in Canada. Unfortunately, international travel restrictions have temporarily sidelined the project. However, we fully intend to move forward with this plan and look forward to improving our coverage in Canada.	*
32	Identify any geographic areas of the United States or Canada that you will NOT be fully serving through the proposed contract.	GapVax will promote the use of the awarded Sourcewell contract to all current and future members in the United States, including Alaska and Hawaii, and Canada.	*
33	Identify any Sourcewell participating entity sectors (i.e., government, education, not-for-profit) that you will NOT be fully serving through the proposed contract. Explain in detail. For example, does your company have only a regional presence, or do other cooperative purchasing contracts limit your ability to promote another contract?	GapVax will promote the use of the awarded Sourcewell contract to all current and future members in all participating entity sectors.	*
34	Define any specific contract requirements or restrictions that would apply to our participating entities in Hawaii and Alaska and in US Territories.	GapVax will serve all current and future Sourcewell members and market segments in Hawaii, Alaska, US Territories, and Canada. Factory freight will be calculated at quoting and will be included on the quote to the Sourcewell member.	*

Table 7: Marketing Plan

Line Item	Question	Response *
35	Describe your marketing strategy for promoting this contract opportunity. Upload representative samples of your marketing materials (if applicable) in the document upload section of your response.	GapVax will market the proposed Sourcewell contract through: a) Marketing staff and dedicated budget for marketing material and collateral items b) Internal and external staff communicating with government, end-users, and dealers c) Marketing campaigns using print media, digital media, online display ads, online and print buyers guides, e-blasts, e-newsletter, and social media (samples uploaded) d) Training of GapVax staff and dealers at annual dealer meeting, regional dealer meetings, corporate open house, and GapVax dealer's open house e) Maintaining a robust GapVax presence at tradeshow and association events such as WWETT, APWA Regional Shows, CWEA, WJTA, WEQ, Utility Expo, PA Safety Days, Tri State Seminar, NASTT No-Dig Show, TWUA, and TML, etc. f) Continued GapVax dealer network expansion g) GapVax dealer-only portal to access government sales tools such as the Sourcewell Contract, explanation of benefits, product offering and who to contact with quoting or ordering questions. h) GapVax.com public website to access Sourcewell Contract video and general description of cooperative purchasing advantages. Visit www.gapvax.com/purchasing i) Marketing material and literature with product offerings to include Sourcewell logos and contract numbers (samples uploaded)
36	Describe your use of technology and digital data (e.g., social media, metadata usage) to enhance marketing effectiveness.	GapVax Inc's marketing department, Regional Sales Managers, dealers, and partner contributors will continue to use social media platforms, including Facebook, Instagram, LinkedIn, TikTok, and Twitter, to build brand awareness, display customer affinity, communicate best-in-class value, and drive leads to our channel partners who sell and support our products locally. In addition, we will utilize Digital Media, Online Display Ads, E-Blasts, E-newsletters, and other digital communications to deliver our message to Sourcewell members. For a sample of our digital communications, please reference the attached file GAPVAX E-NEWSLETTER SAMPLE.
37	In your view, what is Sourcewell's role in promoting contracts arising out of this RFP? How will you integrate a Sourcewell-awarded contract into your sales process?	Our view of Sourcewell's role in promoting contracts from this RFP includes a broad-coverage PR event announcing the contract award. Additionally, for optimum coverage, Sourcewell should issue individual news releases to each contract holder so they can distribute them through their PR channels. The integration of Sourcewell into our sales process is an ongoing activity that currently exists today. Sourcewell plays a key role in supporting our Regional Sales Managers in their pursuit of capturing new Sourcewell members, supporting existing Sourcewell members, and continuously educating our dealer network. If awarded, we will include the following tools in our plan: 1) Sourcewell Sales Accelerator Seminar 2) Sourcewell University 3) Sourcewell New & Reclaimed Participating Agency Update Further, we will invite our Sourcewell Contract Administrator to present Sourcewell's advantages at our annual dealer meeting, regional dealer meetings, and corporate open house.
38	Are your products or services available through an e-procurement ordering process? If so, describe your e-procurement system and how governmental and educational customers have used it.	GapVax products are currently not available through e-procurement for government and education customers. However, we expect technology to advance to the degree that e-procurement platforms will one day easily adapt to our customer's procurement systems and have the capacity to configure very complex equipment combinations. When it comes to GapVax equipment, there are thousands of equipment configurations that could potentially overwhelm the end-user without the aid of a knowledgeable GapVax dealer. For the most part, government agencies still feel that working directly with the dealer will ensure they're getting equipment that best suits their needs.

Table 8: Value-Added Attributes

Line Item	Question	Response *
39	Describe any product, equipment, maintenance, or operator training programs that you offer to Sourcewell participating entities. Include details, such as whether training is standard or optional, who provides training, and any costs that apply.	A large portion of our government sales occurs through our dealer network. These dealers are independent business owners and offer varying degrees of training. The minimum training included with purchase is one day on-site. However, most dealers provide an additional day of classroom training. Sourcewell members needing phone support can call GapVax 24 hours a day. Calls received after standard business hours are answered by an answering service. The answering service will contact an "on-call" GapVax employee to help attend to any pressing customer needs. GapVax also offers in-depth factory training at a reasonable cost to the end-user. This training takes place in our newly expanded training department at GapVax's Headquarters in Johnstown, PA. The dates vary year by year. Topics include the following: - Operator Basic Maintenance - Operator Basic Troubleshooting - Mechanic Basic Maintenance - Mechanic Basic Troubleshooting When necessary, this training can be provided at the end-user's location. Please see the file GAPVAX TRAINING ANNOUNCEMENT for information on our newly expanded training department.

40	Describe any technological advances that your proposed products or services offer.	GapVax's most advanced technological offering is based on the "less is more" concept. Today's agencies are constantly pushed to save water. Seeing this as the wave of the future, GapVax partnered with German-based manufacturer Wiedemann Enviro-Tec, the inventors of water recycling technology for sewer cleaning equipment, to bring the GapVax Recycle JetVac to North America. Our Recycle JetVac is the only sewer cleaning recycling truck on the market that does not use mechanical filter screens or disposable filter cartridges as part of the water cleaning system. Instead, by using Wiedemann's tried-and-true "sedimentation system" for recycling the collected water, operators can work without interruptions from filter cleaning or filter failure from grease, sand or clay. As a result, pipe cleaning that once took several hours and wasted countless gallons of water can now be accomplished fast and efficiently. New to the GapVax product line is our VHX hydro excavator. Much like our GapVax HV, the most significant difference of the VHX is its ability to haul payload over the road legally. For example, government agencies can now legally move 15,000 pounds of wet or dry excavation spoils in states that strictly adhere to federal bridge laws. This ultra-light solution, combined with onboard weight scale technology, allows the operator to achieve maximum legal payload, reduce inefficiency from transporting partial loads, and ensures over-the-road safety by eliminating dangerously overweight loads.	*
41	Describe any "green" initiatives that relate to your company or to your products or services, and include a list of the certifying agency for each.	By following our corporate mission of "Being good stewards of the communities where we work, live, and play," our decision to utilize brownfield sites for our expansion plan was an easy one. According to the Johnstown Redevelopment Authority, "Cleaning up and reinvesting in brownfields increases the local tax base, facilitates job growth, utilizes existing infrastructure, takes development pressures off of undeveloped open land, and improves and protects the environment. Brownfield redevelopment is particularly critical in Johnstown because of the city's unique geography as a landlocked municipality. Adaptive reuse of Johnstown's limited available sites prevents urban sprawl and the destruction of one of Pennsylvania's biggest assets, its natural landscape." By one estimate, for every one acre of redeveloped brownfields, we save 4.5 acres of open space! Our capital expansion projects, one in 2017 and the other in 2020, reused turn-of-the-century steel mill buildings that were in disrepair, converting them into state-of-the-art manufacturing facilities encompassing 160,000 sq. ft. Several green initiatives, starting from the ground up, were considered when planning these projects. We designed our shop floors with radiant heat fed by high-efficiency 95% AFUE boilers that use significantly less energy than traditional methods. Radiant heat is also more efficient and requires less energy during winter, especially in manufacturing environments that utilize large overhead doors to reposition trucks. Any Pennsylvania trout fisherman will tell you the role that cool, clean water plays in the life cycle of our once-prolific State Fish, the native Brook trout. When choosing our roofing material, GapVax considered the impact of water runoff temperature and its harmful effect on the historic Stonycreek River that runs behind our facility. Using light-colored roofing material creates less heat; less heat means cooler water outflow from rainfall captured on our factory roofs. The Stonycreek, a once-damaged river that fell victim to decades of coal mining, steel making, and logging, is now making a comeback. In a report published by the Somerset Conservation District, the impact of public and private conservation initiatives are starting to pay off. "The comeback of water quality in the Stonycreek River watershed is one of Pennsylvania's greatest conservation success stories. The effort has taken nearly two decades, millions of dollars, and untold numbers of hours from professionals and volunteers alike to restore significant portions of the 486 square mile watershed. The public-private partnerships established to accomplish the task stand as a testament to innovation and determination in the broad field of resource conservation." Other efforts include a plant-wide use of energy-efficient LED lighting, a 4 million dollar investment in a high efficiency, state-of-the-art paint system designed to reduce VOC emissions, a computer-controlled paint mixing system that reduces waste by mixing precise quantities of paint, converting outdated cranes from inefficient DC power to highly efficient AC power, and a closed-loop water system designed to capture and reuse water in our QC test bays.	*
42	Identify any third-party issued eco-labels, ratings or certifications that your company has received for the equipment or products included in your Proposal related to energy efficiency or conservation, life-cycle design (cradle-to-cradle), or other green/sustainability factors.	All GapVax products offered will be compliant with the EPA (Environmental Protection Agency) Tier 4 requirements and CARB (California Air Resource Board), including products offered on clean-burning CNG (compressed natural gas) as an alternative to diesel engines.	*
43	Describe any Women or Minority Business Entity (WMBE), Small Business Entity (SBE), or veteran owned business certifications that your company or hub partners have obtained. Upload documentation of certification (as applicable) in the document upload section of your response.	GapVax does not qualify as a WMBE, SBE, or veteran-owned business. However, most of our distributor/dealer partners are designated Small Businesses. Our support of Woman/Minority-owned business is evident in our partnership with Anna Johnson from AQUIP LLC. AQUIP was founded in October of 2018 and is the first and only known independently female-owned vacuum truck and environmental products dealership in the United States. You can learn more about AQUIP at https://www.aquipco.com/about Gary And Rose Poborsky founded GapVax Inc as an equal business partnership. Though the legal definition of Woman-Owned does not apply, Rose has played an active role in GapVax's success and will continue to guide our organization into the future. For more information on dealer AQUIP, please see the attached file GAPVAX MEET THE DEALER - AQUIP	*
44	What unique attributes does your company, your products, or your services offer to Sourcewell participating entities? What makes your proposed solutions unique in your industry as it applies to Sourcewell participating entities?	Our most unique attribute that will appeal to Sourcewell members is that our ownership structure is now and always has been a family-owned business. We are also proud to promote that GapVax employees have partial ownership of the company through our ESOP program. This program incentivizes our employees to have a "customer-first" mentality while doing their jobs. Unlike most of our competition, GapVax is not owned and managed by an equity group or publicly traded company. This unique position allows us to change direction quickly based on our customer's needs. This flexibility, combined with our passionate pursuit of "Being good stewards of the communities where we work, live, and play," is how we've continued to grow in a highly competitive space. These beliefs may get overlooked at companies with absentee investors or a board of directors who have a "bottom line first" mentality when making decisions about customers and employees.	*

Table 9A: Warranty

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

Line Item	Question	Response *	
45	Do your warranties cover all products, parts, and labor?	Yes, our warranty covers all the products we are proposing within the specified warranty period. Warranty coverage on GapVax products sold through our dealers includes parts and labor (or partial labor in some circumstances.) In addition, optional extended warranties are available to meet the needs of current and future Sourcewell members. For a sample of our warranty policy, please reference the attached file GAPVAX WARRANTY.	*
46	Do your warranties impose usage restrictions or other limitations that adversely affect coverage?	The standard municipal equipment warranty covers the equipment for one year. Optional extended warranties are available to meet the needs of current and future Sourcewell members. The limited warranty does not cover chassis components, defects due to misuse, abuse, and neglect, nor does it supersede the warranty of an original component manufacturer.	*
47	Do your warranties cover the expense of technicians' travel time and mileage to perform warranty repairs?	Warranty on GapVax products sold through our dealers covers parts and labor or partial labor, depending on the claim. The labor and travel reimbursement varies from dealer to dealer.	*
48	Are there any geographic regions of the United States or Canada (as applicable) for which you cannot provide a certified technician to perform warranty repairs? How will Sourcewell participating entities in these regions be provided service for warranty repair?	Certain areas of North America do not have dealer coverage. These areas function as factory-direct regions. In these regions, parts associated with warranty claims are covered, but labor is not. There are certain instances that GapVax will dispatch a factory technician to a customer's site. GapVax evaluates each instance on a case-by-case basis. For a complete list of dealers and service centers, please reference the attached file GAPVAX DEALER AND SERVICE MAP.	*
49	Will you cover warranty service for items made by other manufacturers that are part of your proposal, or are these warranties issues typically passed on to the original equipment manufacturer?	The standard municipal equipment warranty covers the equipment for one year. The limited warranty does not supersede the warranty of an original component manufacturer. Note: all items offered in response to this RFP will be covered by the warranty of GapVax Inc.	*
50	What are your proposed exchange and return programs and policies?	To date, no exchanges or returns have occurred on GapVax products ordered from a government entity. However, if the situation arises, GapVax Inc. will work with the customer and dealer on a case-by-case basis. We intend to provide the customer with the best-in-class value that is synonymous with GapVax products. In the event that a new and unused GapVax is shipped and delivered to a Sourcewell member and it is found that the unit does not meet the customer's intent, and the unit was quoted and ordered per the Sourcewell member's request or quote, GapVax Inc. may initiate up to a 30% restocking fee on the new and unused unit to cover additional transportation and costs associated with reselling the unit.	*
51	Describe any service contract options for the items included in your proposal.	GapVax dealers and service partners offer a variety of maintenance programs depending on the need of the Sourcewell member. Plans range from preventive maintenance contracts, full-service maintenance and repair contracts, or customer-specific service intervals based on the region of operation. Dealers and service partners provide pricing for these programs on a local level. Therefore, GapVax Inc. is not including service contract options with our proposal.	*

Table 9B: Performance Standards or Guarantees

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

Line Item	Question	Response *	
52	Describe any performance standards or guarantees that apply to your services	GapVax Inc is offering manufactured goods only. Therefore, no services are being quoted in this RFP, and service performance standards and guarantees do not apply.	*
53	Describe any service standards or guarantees that apply to your services (policies, metrics, KPIs, etc.)	GapVax Inc is offering manufactured goods only. Therefore, no services are being quoted in this RFP, and service performance standards and guarantees do not apply.	*

Table 10: Payment Terms and Financing Options

Line Item	Question	Response *	
54	Describe your payment terms and accepted payment methods?	GapVax Inc's payment terms are NET 30 with authorized municipal, government, or dealer purchase orders. We accept bank checks, ACH, and wire transfers.	*
55	Describe any leasing or financing options available for use by educational or governmental entities.	GapVax Inc. does not directly finance or lease equipment; we utilize third-party finance companies to assist our customers with their financing needs. When a finance need arises with a Sourcewell member, we try to partner with Sourcewell contract holders like NCL Government Capital.	*
56	Describe any standard transaction documents that you propose to use in connection with an awarded contract (order forms, terms and conditions, service level agreements, etc.). Upload a sample of each (as applicable) in the document upload section of your response.	The GapVax quote document is the beginning of the purchase process for a Sourcewell member. Document revision control is facilitated through the GapVax dealer portal, which is password protected for dealer-only access. The GapVax dealer portal ensures that the dealer presents the Sourcewell member with the most up-to-date quote version and avoids rejection due to an out-of-date document. To begin the quotation, the dealer selects the "Yes box" next to the question asking if the purchase occurs through Sourcewell. By selecting yes, the custom program populates the Sourcewell contract number on the cover page and automatically chooses the Sourcewell discounted price column, ensuring the Sourcewell member receives the preferred pricing promised. From there, the quotation process is relatively simple, and the Sourcewell member has a bonafide, binding, quote document in a matter of minutes. In addition, the opportunity for human error is significantly reduced because the custom-programmed quote document has unique identifiers alerting the GapVax Regional Sales Manager and accounting team to invoice and report all Sourcewell contract sales accurately. For a sample of our quote document, please reference the attached file GAPVAX QUOTE DOCUMENT.	*
57	Do you accept the P-card procurement and payment process? If so, is there any additional cost to Sourcewell participating entities for using this process?	GapVax Inc. currently does not accept the P-card procurement and payment process.	*

Table 11: Pricing and Delivery

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

Line Item	Question	Response *	
58	Describe your pricing model (e.g., line-item discounts or product-category discounts). Provide detailed pricing data (including standard or list pricing and the Sourcewell discounted price) on all of the items that you want Sourcewell to consider as part of your RFP response. If applicable, provide a SKU for each item in your proposal. Upload your pricing materials (if applicable) in the document upload section of your response.	The GapVax Inc. pricing model is ceiling based with Sourcewell members receiving a percentage discount off of MSRP for each product category. For a complete price list, please reference the attached file GAPVAX SOURCEWELL PRICE LIST.	*
59	Quantify the pricing discount represented by the pricing proposal in this response. For example, if the pricing in your response represents a percentage discount from MSRP or list, state the percentage or percentage range.	The percentage of discount for Sourcewell members is 2% off MSRP. In addition, GapVax dealers understand that the Sourcewell contract is ceiling price based and may offer additional discounts throughout the contract's life.	*
60	Describe any quantity or volume discounts or rebate programs that you offer.	GapVax dealers understand that the Sourcewell contract is ceiling price based and may offer additional discounts based on unit quantity.	*
61	Propose a method of facilitating "sourced" products or related services, which may be referred to as "open market" items or "nonstandard options". For example, you may supply such items "at cost" or "at cost plus a percentage," or you may supply a quote for each such request.	GapVax will utilize open market pricing for the chassis portion of our equipment. The chassis is a sourced good that we will offer at Invoice + 3%. GapVax will also consider customization requests by Sourcewell members as open market or sourced goods negotiated between the GapVax dealer and Sourcewell member.	*
62	Identify any element of the total cost of acquisition that is NOT included in the pricing submitted with your response. This includes all additional charges associated with a purchase that are not directly identified as freight or shipping charges. For example, list costs for items like pre-delivery inspection, installation, set up, mandatory training, or initial inspection. Identify any parties that impose such costs and their relationship to the Proposer.	Outside of the chassis cost (as identified in question #61 regarding sourced goods), the other cost not included in the price list is delivery. Factory freight to the Sourcewell member is known at quoting and will be listed on their quote. Government agency requirements vary significantly from one agency to the next, as do the costs associated with these requirements. As a result, GapVax dealers may be required to offer pre-delivery inspections, on-site training, extended warranties, and service and repair contracts, which will be priced to the Sourcewell member at the time of quoting.	*
63	If freight, delivery, or shipping is an additional cost to the Sourcewell participating entity, describe in detail the complete freight, shipping, and delivery program.	Freight costs from the factory to customers in the contiguous United States and adjoining Canadian provinces will be itemized on the quote and paid by the customer. GapVax may charge up to \$4.00 per loaded mile to deliver the equipment. The dealer decides if the product will ship directly to the customer or the dealer's location. The dealer will be responsible for making contact with the customer to arrange final delivery and start-up training. Exceptions to this delivery fee are GapVax units built on truck chassis powered by CNG (compressed natural gas.) They require unique transportation methods and will be quoted at the time of the proposal.	*
64	Specifically describe freight, shipping, and delivery terms or programs available for Alaska, Hawaii, Canada, or any offshore delivery.	When deliveries are made to Alaska, Hawaii, Canadian territories, or offshore, the customer is responsible for the freight costs. GapVax Inc. and the customer will review these charges at the time of quoting. It is common for GapVax to work with the customer and utilize any specific delivery methods that work best for them.	*
65	Describe any unique distribution and/or delivery methods or options offered in your proposal.	Other than the delivery methods mentioned in #63 and #64, if a unique delivery situation exists that is better overall for the Sourcewell member, GapVax will work closely with them to attain the best possible solution.	*

Table 12: Pricing Offered

Line Item	The Pricing Offered in this Proposal is: *	Comments
66	c. better than the Proposer typically offers to GPOs, cooperative procurement organizations, or state purchasing departments.	Pricing offered in response to this Sourcewell RFP is similar or is better than some pricing offered to other cooperative procurement organizations or state purchasing departments. In addition, our discount structure offered will allow for best value, more flexibility, and volume discount considerations provided through our dealers because of the ceiling-based pricing.

Table 13: Audit and Administrative Fee

Line Item	Question	Response *	
67	Specifically describe any self-audit process or program that you plan to employ to verify compliance with your proposed Contract with Sourcewell. This process includes ensuring that Sourcewell participating entities obtain the proper pricing, that the Vendor reports all sales under the Contract each quarter, and that the Vendor remits the proper administrative fee to Sourcewell. Provide sufficient detail to support your ability to report quarterly sales to Sourcewell as described in the Contract template.	GapVax will be paying Sourcewell directly for all administrative fees associated with this contract. Pricing and discounts will be loaded into the GapVax quote document as detailed in our response to question #56. This document is controlled on a password-protected website known as the GapVax Dealer Portal. Dealers are required to submit all orders using the quote document they download from the dealer portal. Submitted orders will be verified against the customer's PO and processed by the GapVax Regional Sales Manager to ensure consistency and process compliance. Opportunity for error is significantly reduced because the custom-programmed quote document includes unique identifiers that alert the GapVax Regional Sales Manager, the order management team, and the accounting team that the order is through the Sourcewell contract, which ultimately triggers quarterly reporting and remittance activity. For a sample of the quote document mentioned above, please reference the attached file GAPVAX QUOTE DOCUMENT	*
68	If you are awarded a contract, provide a few examples of internal metrics that will be tracked to measure whether you are having success with the contract.	As with most businesses, GapVax projects its yearly sales forecast at the beginning of our fiscal year. This forecast includes a Government sales budget listed by month and quarter. The executive team reviews our sales budgets monthly, including sales through our cooperative purchasing contracts. A few examples of KPI's used to measure success are "quote to close ratio," "government sales budget vs. actual" and "Sourcewell sales budget vs. actual." We also review our dealers every year and evaluate them on their use of cooperative purchasing contracts.	*
69	Identify a proposed administrative fee that you will pay to Sourcewell for facilitating, managing, and promoting the Sourcewell Contract in the event that you are awarded a Contract. This fee is typically calculated as a percentage of Vendor's sales under the Contract or as a per-unit fee; it is not a line-item addition to the Member's cost of goods. (See the RFP and template Contract for additional details.)	If we are awarded a contract, GapVax will pay Sourcewell a 2% administrative fee for facilitating, managing, and promoting the Sourcewell Contract.	*

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

Line Item	Question	Response *
70	Provide a detailed description of the equipment, products, and services that you are offering in your proposal.	Unlike many cookie cutter-type manufacturers, GapVax Inc. is known as a customer-focused builder of industrial and municipal equipment. We pride ourselves in our ability to address a customer's needs and create a solution (that's often customized) to meet those needs. The following products were born from a passionate pursuit of building equipment "the way we'd want it" if we were the customer: The GapVax MC is a combination vacuum and sewer flushing machine designed to wash and remove debris from sewer drains. With a wide variety of sizes available, this is an ideal candidate for any size municipality, water and sewer district, or government agency that is cleaning storm drains, catch basins, and sewers. GapVax offers truck-mounted configuration available on a single-axle and a double-axle chassis. The single-axle gives you the choice of a 4-8 cubic yard debris body and a water tank capacity of 500-1,200 gallons. The Double Axle MC ranges from 8-13 cubic yards, and water tank sizes up to 2,000 gallons. In addition, our custom-configured units allow for various arrangements not currently available through our competition. GapVax VHE hydro excavators use non-destructive pressurized water combined with an industrial-strength vacuum to safely expose buried utilities or excavate near objects easily damaged by traditional mechanical digging. The operator directs the pressure stream to the ground to break up the soil, positions the vacuum hose at the excavation area, and conveys the loosened soil into the debris body through the vacuum hose. The hydro excavation process results in safe, fast, precise excavations that require less backfill and site restoration, and has less environmental impact than traditional excavation techniques. This system is ideal for any size municipality, water and sewer district, public or private utility, or contractor that needs to locate buried objects or safely excavate around underground utilities. The GapVax HV is a "next level" hydro excavator compared to the VHE. The HV series is a true wet and dry unit that offers high-pressure water and compressed air for excavating. The use of compressed air is becoming more common for unearthing buried utilities. Unlike water, compressed air does not increase the waste stream, and the excavated soil can be quickly backfilled into the same hole. However, unlike wet-only units, a very stringent filtration system is required to protect the truck's vacuum pump when vacuuming dry product. The HV uses cyclone and baghouse technology to provides ultimate vacuum pump protection. New to the GapVax product line is our VHX hydro excavator. Much like our GapVax HV, the most significant difference of the VHX is its ability to haul payload over the road legally. For example, government agencies can now legally move 15,000 pounds of wet or dry excavation spoils in states that strictly adhere to federal bridge laws. The GapVax GJET is a truck-mounted high-pressure water Jet designed to remove sand, dirt, grease, detergents, and materials typically found in sanitary and storm drain pipes. The GJET's single-engine design uses the chassis engine to power all functions. The hydraulically powered water pump pressurizes the onboard water supply and conveys the water into the sewer through a high-pressure hose. The hose is spooled in and out by a hydraulically powered hose reel mounted on the truck's front. The GJET's efficient design surpasses competitive units that utilize multiple engines by reducing weight, fuel costs, emissions, and maintenance costs. Our G7 is a trailer-mounted version of our GJET. It has a distinct non-cdl weight advantage over truck-mounted jetters, making it an ideal pipe cleaning solution for government agencies that struggle to find drivers with a commercial driver's license. Its compact design is an added benefit for tight, hard-to-reach areas. GapVax's most advanced technological offering is based on the "less is more" concept. Today's agencies are constantly pushed to save water. Seeing this as the wave of the future, GapVax partnered with German-based manufacturer Wiedemann Enviro-Tec, the inventors of water recycling technology for sewer cleaning equipment, to bring the GapVax Recycle JetVac to North America. Our Recycle JetVac is the only sewer cleaning recycling truck on the market that does not use mechanical filter screens or disposable filter cartridges as part of the water cleaning system. Instead, by using Wiedemann's tried-and-true "sedimentation system" for recycling the collected water, operators can work without interruptions from filter cleaning or filter failure from grease, sand or clay. As a result, pipe cleaning that once took several hours and wasted countless gallons of water, can now be accomplished fast and efficiently.
71	Within this RFP category there may be subcategories of solutions. List subcategory titles that best describe your products and services.	"RFP 101221 - Sewer Vacuum, Hydro-Excavation, and Municipal Pumping Equipment with Related Accessories and Supplies" accurately describes the products GapVax Inc. is offering. Therefore, no subcategories are needed for our submission.

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

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

Line Item	Category or Type	Offered *	Comments	
72	Sewer vacuums or combination sewer cleaners	☒ Yes ☐ No	GapVax MC JetVac GapVax Recycle JetVac Please reference the attached file GAPVAX SOURCEWELL LITERATURE	*
73	Hydro or air excavation equipment	☒ Yes ☐ No	GapVax VHE, Hydro Excavation GapVax VHX, Hydro/Air Excavation GapVax HV, Hydro/Air Excavation Please reference the attached file GAPVAX SOURCEWELL LITERATURE	*
74	Jetters and rodders	☒ Yes ☐ No	GapVax GJET Jetter Truck GapVax G7 Jetter Trailer Please reference the attached file GAPVAX SOURCEWELL LITERATURE	*
75	Dewatering, mud, trash, and centrifugal pumps	☐ Yes ☒ No	Not applicable to GapVax Inc. product offerings.	*
76	Pumps used in lift stations, sewage treatment, water treatment, or water collection facilities	☐ Yes ☒ No	Not applicable to GapVax Inc. product offerings.	*
77	Accessories, supplies and replacement or wear parts related to the offerings above.	☐ Yes ☒ No	Accessories, supplies and replacement or wear parts related to the offerings above will be supplied at the local level through GapVax dealers and service centers and are not included in this RFP.	

Table 15: Industry Specific Questions

Line Item	Question	Response *
78	Describe any product or equipment features that improve operator safety.	Several improvements have been made to GapVax models that improve operator's safety. These items include: 1) Standard chassis requirements to include additional entry grab handles, wider entry steps, and a two-speed or viscous engine fan drive to reduce noise in the cab and at the front operator station. 2) MC Front hose reel operation to include remote hose reel in/out options, front reel power articulation upgrade, remote or cab controls for front reel articulation upgrade, new and improved autowinder mounting for increased ground clearance, and hose tracking, and a new digital footage counter with very accurate hose measurement 3) New vacuum pump mounting and noise reduction silencers, mid-ship gearbox mounting, and ergonomic controls. 4) More accessible operator daily checks with ground-level cyclone and filter cleanouts, ground-level remote lubrication manifolds, and options for auto lube systems for the vacuum module, chassis, or both. 5) Camera system options to include single to quad-camera packages and new mounting positions to reduce/eliminate blind spots. 6) Simplified systems engagement, disengagement, console layout, and operational features with the GapVax G2 logic control system. 7) Improved wireless control systems, including charging stations, spare transmitters, and failsafe interlocks. Also, the new wireless transmitter safety features include LED indicators, feedback displays, integrated remote body dump options, remote body wash-out options, and remote water flow/pressure control options. 8) Better HX Water systems to include new hydraulically driven packages, new mounting arrangements to enclose all moving parts and reduce hoses, reduce the number of operation valves, and the development of a new multi-flow HX water system that is integrated with the new wireless remote system. 9) LED lighting options to illuminate perimeter work areas, operation controls, dumping / clean out areas, and SAE or CA Title 13 compliant beacon lights, directional lights, and flashers. 10) Ergonomic storage boxes, changing over to swing forward doors where possible in place of fold-down doors. In addition, pump enclosures now have an option to upgrade to a roll-up style door to keep the open door out of the operator work area. 11) Enhanced connectivity of the electrical controls with improved sunlight, oil, and abrasion-resistant engineered cord sets and over-molded, weather-tight electrical connectors. 12) New and improved hydraulic hose, water hose, electrical cord, and control wire routing and clipping on the frame and body. Also, a new hydraulic hose and wire support has been developed for the rear-mounted loading boom. 13) Improved operator manuals by customizing each manual to the system controls of each exact unit. 14) Air-actuated MC body safety prop that is safely engaged and disengaged at a safe distance from an elevated collector body 15) Rear-mounted MC float shut-offs eliminating the operator's need to enter the tank
79	Describe any product or equipment innovations that increase uptime and operator productivity.	GapVax's most advanced technological offering is based on the "less is more" concept. Today's agencies are constantly pushed to save water. Seeing this as the wave of the future, GapVax partnered with German-based manufacturer Wiedemann Enviro-Tec, the inventors of water recycling technology for sewer cleaning equipment, to bring the GapVax Recycle JetVac to North America. Our Recycle JetVac is the only sewer cleaning recycling truck on the market that does not use mechanical filter screens or disposable filter cartridges as part of the water cleaning system. Instead, by using Wiedemann's tried-and-true "sedimentation system" for recycling the collected water, operators can work without interruptions from filter clogging or filter failure from grease, sand or clay. As a result, pipe cleaning that once took several hours and wasted countless gallons of water can now be accomplished fast and efficiently. New to the GapVax 2021 product line is our VHX hydro excavator. Much like our GapVax HV, the most significant difference of the VHX is its ability to haul payload over the road legally. For example, government agencies can now legally move 15,000 pounds of wet or dry excavation spoils in states that strictly adhere to federal bridge laws. This ultra-light solution, combined with onboard weight scale technology, allows the operator to achieve maximum legal payload, reduce inefficiency from transporting partial loads, and ensures over-the-road safety by eliminating dangerously overweight loads.

Table 16: Exceptions to Terms, Conditions, or Specifications Form

Line Item 80. NOTICE: To identify any exception, or to request any modification, to the Sourcwell template Contract terms, conditions, or specifications, a Proposer must submit the exception or requested modification on the **Exceptions to Terms, Conditions, or Specifications Form** immediately below. The contract section, the specific text addressed by the exception or requested modification, and the proposed modification must be identified in detail. Proposer's exceptions and proposed modifications are subject to review and approval of Sourcwell and will not automatically be included in the contract.

Contract Section	Term, Condition, or Specification	Exception or Proposed Modification
N/A	N/A	N/A

Documents

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

1. Documents in PDF format are preferred. Documents in Word, Excel, or compatible formats may also be provided.
 2. Documents should NOT have a security password, as Sourcewell may not be able to open the file. It is your sole responsibility to ensure that the uploaded document(s) are not either defective, corrupted or blank and that the documents can be opened and viewed by Sourcewell.
 3. Sourcewell may reject any response where any document(s) cannot be opened and viewed by Sourcewell.
 4. If you need to upload more than one (1) document for a single item, you should combine the documents into one zipped file. If the zipped file contains more than one (1) document, ensure each document is named, in relation to the submission format item responding to. For example, if responding to the Marketing Plan category save the document as "Marketing Plan."
- [Pricing](#) - GAPVAX SOURCEWELL PRICE 2022.xlsx - Tuesday October 12, 2021 12:51:15
 - [Financial Strength and Stability](#) - GAPVAX FINANCIAL INFORMATION AND COOPERATIVE PURCHASING CONTRACT LIST.zip - Thursday October 07, 2021 12:37:04
 - [Marketing Plan/Samples](#) - GAPVAX SOURCEWELL MARKETING.zip - Thursday October 07, 2021 17:31:10
 - [WMBE/MBE/SBE or Related Certificates](#) - GAPVAX LITERATURE.zip - Tuesday October 12, 2021 14:02:44
 - [Warranty Information](#) - GAPVAX WARRANTY.pdf - Thursday October 07, 2021 12:19:03
 - [Standard Transaction Document Samples](#) - GAPVAX QUOTE DOCUMENT.pdf - Thursday October 07, 2021 12:19:45
 - [Upload Additional Document](#) - GAPVAX DEALER AND SERVICE MAP -TRAINING.zip - Thursday October 07, 2021 17:31:50

Addenda, Terms and Conditions**PROPOSER AFFIDAVIT AND ASSURANCE OF COMPLIANCE**

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

1. The Proposer is submitting this Proposal under its full and complete legal name, and the Proposer legally exists in good standing in the jurisdiction of its residence.
2. The Proposer warrants that the information provided in this Proposal is true, correct, and reliable for purposes of evaluation for contract award.
3. The Proposer, including any person assisting with the creation of this Proposal, has arrived at this Proposal independently and the Proposal has been created without colluding with any other person, company, or parties that have or will submit a proposal under this solicitation; and the Proposal has in all respects been created fairly without any fraud or dishonesty. The Proposer has not directly or indirectly entered into any agreement or arrangement with any person or business in an effort to influence any part of this solicitation or operations of a resulting contract; and the Proposer has not taken any action in restraint of free trade or competitiveness in connection with this solicitation. Additionally, if Proposer has worked with a consultant on the Proposal, the consultant (an individual or a company) has not assisted any other entity that has submitted or will submit a proposal for this solicitation.
4. To the best of its knowledge and belief, and except as otherwise disclosed in the Proposal, there are no relevant facts or circumstances which could give rise to an organizational conflict of interest. An organizational conflict of interest exists when a vendor has an unfair competitive advantage or the vendor's objectivity in performing the contract is, or might be, impaired.
5. The contents of the Proposal have not been communicated by the Proposer or its employees or agents to any person not an employee or legally authorized agent of the Proposer and will not be communicated to any such persons prior to Due Date of this solicitation.
6. If awarded a contract, the Proposer will provide to Sourcewell Participating Entities the equipment, products, and services in accordance with the terms, conditions, and scope of a resulting contract.
7. The Proposer possesses, or will possess before delivering any equipment, products, or services, all applicable licenses or certifications necessary to deliver such equipment, products, or services under any resulting contract.
8. The Proposer agrees to deliver equipment, products, and services through valid contracts, purchase orders, or means that are acceptable to Sourcewell Members. Unless otherwise agreed to, the Proposer must provide only new and first-quality products and related services to Sourcewell Members under an awarded Contract.
9. The Proposer will comply with all applicable provisions of federal, state, and local laws, regulations, rules, and orders.
10. The Proposer understands that Sourcewell will reject RFP proposals that are marked "confidential" (or "nonpublic," etc.), either substantially or in their entirety. Under Minnesota Statutes Section 13.591, subdivision 4, all proposals are considered nonpublic data until the evaluation is complete and a Contract is awarded. At that point, proposals become public data. Minnesota Statutes Section 13.37 permits only certain narrowly defined data to be considered a "trade secret," and thus nonpublic data under Minnesota's Data Practices Act.
11. Proposer its employees, agents, and subcontractors are not:
 1. Included on the "Specially Designated Nationals and Blocked Persons" list maintained by the Office of Foreign Assets Control of the United States Department of the Treasury found at: <https://www.treasury.gov/ofac/downloads/sdnlist.pdf>;
 2. Included on the government-wide exclusions lists in the United States System for Award Management found at: <https://sam.gov/SAM/>; or
 3. Presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from programs operated by the State of Minnesota; the United States federal government or the Canadian government, as applicable; or any Participating Entity. Vendor certifies and warrants that neither it nor its principals have been convicted of a criminal offense related to the subject matter of this solicitation.

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

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

☒ Yes ☐ No

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

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

File Name	I have reviewed the below addendum and attachments (if applicable)	Pages
Addendum_3_Sewer_Vac_Hydro-Excavation_Pumps_RFP_101221 Thu September 30 2021 03:29 PM	☒	2
Addendum_2_Sewer_Vac_Hydro-Excavation_Pumps_RFP_101221 Fri September 10 2021 02:40 PM	☒	2
Addendum_1_Sewer_Vac_Hydro-Excavation_Pumps_RFP_101221 Thu August 26 2021 05:40 PM	☒	1

**AMENDMENT #1
TO
CONTRACT #101221-GPV**

THIS AMENDMENT is effective upon the date of the last signature below by and between **Sourcewell** and **GapVax Inc.** (Supplier).

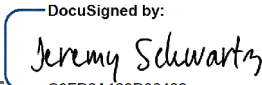
Sourcewell awarded a contract to Supplier to provide Sewer Vacuum, Hydro-Excavation, and Municipal Pumping Equipment with Related Accessories and Supplies, to Sourcewell and its Participating Entities, effective December 20, 2021, through November 29, 2025 (Contract).

NOW THEREFORE, the parties wish to amend the Contract as follows:

Section 18. Insurance—Subsection A. Requirements— Item 5. Network Security and Privacy Liability Insurance, of the Contract, is modified to reduce the minimum limit requirements to \$1,000,000 per occurrence and \$1,000,000 annual aggregate.

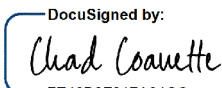
Except as amended by this Amendment, the Contract remains in full force and effect.

Sourcewell

By:  _____
C0FD2A139D06489...
Jeremy Schwartz, Director of Operations/CPO

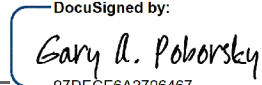
Date: 5/9/2023 | 6:51 PM CDT

Approved:

By:  _____
7E42B8F817A64CC...
Chad Coauette, Executive Director/CEO

Date: 5/9/2023 | 6:55 PM CDT

GapVax Inc.

By:  _____
97DECE6A2796467...
Gary Poborsky

Title: President

Date: 5/9/2023 | 3:31 PM CDT

1. **Request:**

Meeting Date: December 16, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING THE PURCHASE OF THREE VEHICLES FROM SAM GALLOWAY FORD, INC. AND AUTHORIZING THE TOWN MANAGER TO EXECUTE PURCHASE ORDERS FOR THESE THREE VEHICLES FOR A NOT-TO-EXCEED AMOUNT OF \$176,957; AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

The action is necessary to authorize the Town Manager to execute the purchase order to purchase these three vehicles.

What the action accomplishes:

The action authorizes the Town Manager to purchase these three vehicles.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Andy Hyatt, Town Manager

5. **Background:**

The Town lost 4 trucks as a result of the recent storm surge from Hurricane Helene. We received a total of \$111,366 in insurance proceeds. The Town would like to replace the 4 lost vehicles with 3 larger, more functional vehicles. The Town has chosen to "piggyback" onto a contract awarded by Lee County to Sam Galloway Ford, Inc. to provide the 3 vehicles. The total cost of all three vehicles is \$176,957. Resolution 24-289 proposes to allocate \$66,464 of the remaining ARPA Funds to the purchase of one of the trucks, leaving the remaining \$110,493 to be funded by the insurance proceeds.

Attachments:

1. 24-291, Authorizing \$176,957 Contract with Sam Galloway Ford for 3 Trucks
2. 24-291, Contract Information Summary Sheet
3. Attachment A - 24-291A, Quotes for 3 Ford Trucks
4. Attachment B - 24-291B, Solicitation Documents
5. Attachment C - 24-291C, Bid Tabulation
6. Attachment D - 24-291D, County Board Approval of Contract Award
7. Attachment E - 24-291E, FULLY EXECUTED CONTRACT- B200417BAG SAM GALLOWAY
8. Attachment F - 24-291F, Renewal Confirmation Sam Galloway

Financial Impact:

The total cost of the three vehicles is \$176,957. Resolution 24-289 proposes to allocate \$66,464 to the purchase of one of the trucks, leaving the remaining \$110,493 to be funded out of the \$111,366 of insurance proceeds received for the 4 vehicles totaled in the recent storm surge from Hurricane Helene.

6. **Alternative Action**

The Town Council may reject the proposed purchase.

7. **Management Recommendations:**

Management recommends approval of this resolution.

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 - 12/6/2024
Approved - 12/6/2024
Approved - 12/8/2024
Approved - 12/9/2024
Final Approval - 12/9/2024

RESOLUTION NUMBER 24-291

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING THE PURCHASE OF THREE VEHICLES FROM SAM GALLOWAY FORD, INC. AND AUTHORIZING THE TOWN MANAGER TO EXECUTE PURCHASE ORDERS FOR THESE THREE VEHICLES FOR A NOT-TO-EXCEED AMOUNT OF \$176,957; 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 Town wishes to purchase two 2025 Ford E-Series Cutaway trucks for a total not-to-exceed amount of \$132,929 and one Ford F150 4X4 Supercrew XL-145 for a not-to-exceed amount of \$44,028; and

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

WHEREAS, Lee County, Florida issued solicitation #B200417BAG for Ford Automobiles, Sport Utility Vehicles, Passenger & Light Duty Vans on October 2, 2020, and after tabulating the bids awarded the contract to Sam Galloway Ford, Inc. on December 15, 2020, that will expire on December 14, 2026; and

WHEREAS, the Fort Myers Beach Town Council finds solicitation #B200417BAG was competitively bid with procedural guarantees of fairness and competitiveness equivalent to those of the Town of Fort Myers Beach; and

WHEREAS, pursuant to this finding, the Town has chosen to “piggyback” on the existing agreement between Lee County and Sam Galloway Ford, Inc. (“Contractor”), whereby the Contractor has authorized the Town to “piggyback” on the competitive pricing provided to Lee County in Contract #B200417BAG for the desired vehicles; and

WHEREAS, it is being proposed in Resolution 24-289 that \$66,464 of the ARPA Funds be allocated to this purchase, with the remaining \$110,493 to be charged to the Emergency Fund, where it will be funded by insurance proceeds received for the vehicles being replaced.

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 are hereby adopted as the legislative and administrative findings of the Town Council.

Section 2. The Town Council hereby approves the purchase orders with Contractor for three (3) Ford trucks in the total not-to-exceed amount of \$176,957 and authorizes the Town Manager or his designee to execute any documentation related to the purchase orders, which are attached hereto as “Attachment A.” Also attached are Solicitation Documents (“Attachment B”), Bid Tabulation (“Attachment C”), Lee County Board Approval of Contract Award (“Attachment D”, Fully Executed Contract with Lee County (“Attachment E”), and Contract Renewal Confirmation (“Attachment F”).

Section 3. 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 vote, the result was as follows:

Dan Allers, Mayor	_____
Jim Atterholt, Vice Mayor	_____
John King, Council Member	_____
Bill Veach, Council Member	_____
Karen Woodson, Council Member	_____

ADOPTED this 16TH day of December 2024, by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm., Town Attorney

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

CONTRACT SUMMARY INFORMATION

SUMMARY: Purchase is made in accordance with the Terms and Conditions of Lee County Solicitation Number....

Solicitation No.: B200417BAG
Project Title: Ford Automobiles, Sport Utility Vehicles, Passenger & Light Duty Vans
Start Date: December 15, 2020
Expiration Date: December 14, 2026 Renewed Once
Board Date: December 15, 2020
Agenda Item: 20
Term: Three (3) years
Renewal Options: One (1) additional Three (3) Year Periods
Address Book (E1) No.: 101033
Awarded Vendor: Sam Galloway Ford Inc.
Contact Person: Robert Gran
Phone No.: 239-936-2193
Fax No.: 239-274-2354
Cell Phone/Pager No.: N/A
Email Address: rgran@qallowayauto.com

Award Amount or Details:

- Percentage Figure Below "Dealer Invoice W/Holdback Price" Column of the Ford Proprietary PRICE LIST: 3.415 %
- County's Adopted Budget



Preview Order B001 - W1L - 4x4 XL SuperCrew: Order Summary Time of Preview: 12/06/2024 16:13:12 Receipt: NA

Dealership Name: Sam Galloway Ford, Inc.

Sales Code : F24480

Dealer Rep. NEWMAN BOB	Type	Fleet	Vehicle Line F-150	Order Code B001
Customer Name FMB	Priority Code B2		Model Year 2025	Price Level 535

DESCRIPTION	MSRP	INVOICE DESCRIPTION	MSRP	INVOICE
F150 4X4 SUPERCREW XL - 145	\$47880	\$45726 3.73 ELECTRONIC LOCK RR AXLE	\$570	\$518
145 INCH WHEELBASE	\$0	\$0 6650# GVWR PACKAGE	\$0	\$0
TOTAL BASE VEHICLE	\$47880	\$44370 BLACK PLATFORM RUNNING BOARDS	\$250	\$228
OXFORD WHITE	\$0	\$0 50 STATE EMISSIONS	\$0	\$0
VINYL 40/20/40 FRONT SEAT	\$0	\$0 EXTENDED RANGE 36GAL FUEL TANK	\$0	\$0
MEDIUM DARK SLATE	\$0	\$0 BEDLINER-TOUGHBED SPRAYIN*ACCY	\$595	\$542
EQUIPMENT GROUP 101A	\$0	\$0 SPECIAL FLEET ACCOUNT CREDIT	\$0	\$-1356
.XL SERIES	\$0	\$0 FUEL CHARGE	\$0	\$12
.17" SILVER STEEL WHEELS	\$0	\$0 PRICED DORA	\$0	\$0
2.7L V6 ECOBOOST	\$0	\$0 ADVERTISING ASSESSMENT	\$0	\$0
ELEC TEN-SPEED AUTO TRANS	\$0	\$0 DESTINATION & DELIVERY	\$1995	\$1995
.265/70R 17 BSW ALL-TERRAIN	\$0	\$0		

TOTAL BASE AND OPTIONS
DISCOUNTS
TOTAL

F-150 4x4
Crew

MSRP	INVOICE
\$51290	\$47665
NA	NA
\$51290	\$47665

ORDERING FIN: QA105 END USER FIN: QA105

44,028

3.415% - 1627
LEE CO
CONTRACT
Discount \$ 46,028

FORD GOVT - 2000
PRICE CONCESSION

\$ 44,028

Customer Name:
Customer Address:

Customer Email:

Customer Phone:

* MUST BE ORDERED *

Customer Signature

Date

This order has not been submitted to the order bank.

This is not an invoice.

Attachment A

Sam Galloway Automotive

Date/Time: Dec 6, 2024 04:49 PM
Buyer: TOWN OF FMB
Phone:
Phone:

2025 Ford E-Series Cutaway SDD02100

Color: Oxford White VIN:1FDXE4FN9SDD02100

Cash	Balance Due
\$ Down	
\$0	\$66,465

LEE CO CONTRACT 3.415% DISCOUNT \$-1420	MSRP/Retail	\$70,590.00
	Total Savings	\$4,134.00
	Selling Price	\$66,456.00
	Government Fees	\$8.50
	Total Balance Due	\$66,464.50

FORD PRICE
CONCESSION GOVT
- 1000

FLEET DISCOUNT
1,714

FIN CODE QF 274

X

Customer Signature

Date

X

Manager Signature

Date

Terms & Conditions are subject to credit approval. For information only, not an offer or contract of sale. Dealer fee represents costs & profits to the retailer for such items as inspecting, cleaning & adjusting vehicles as well as preparing documents related to the sale. FOR INTERNAL USE ONLY

Sam Galloway Automotive

Date/Time: Dec 6, 2024 04:57 PM

Buyer: Town of FNB

Phone:

Phone:

2025 Ford E-Series Cutaway SDD02123

Color: Oxford White VIN:1FDXE4FNXSDD02123

Cash	Balance Due
\$ Down	
\$0	\$66,465

MSRP/Retail	\$70,590.00
Discount	\$4,134.00
Selling Price	\$66,456.00
Government Fees	\$8.50
Total Balance Due	\$66,464.50

X

Customer Signature_____
Date

X

Manager Signature_____
Date

Terms & Conditions are subject to credit approval. For information only, not an offer or contract of sale. Dealer fee represents costs & profits to the retailer for such items as inspecting, cleaning & adjusting vehicles as well as preparing documents related to the sale. FOR INTERNAL USE ONLY



Advertise Date: Friday, October 02, 2020

Lee County Board of County Commissioners
DIVISION OF PROCUREMENT MANAGEMENT

INVITATION TO BID (B)

Solicitation No.:	B200417BAG		
Solicitation Name:	Ford Automobiles, Sport Utility Vehicles, Passenger & Light Duty Vans		
Open			
Date/Time:	Tuesday, November 03, 2020	Time:	2:30 PM
Location:	Lee County Procurement Management 2115 Second Street, 1st Floor Fort Myers, FL 33901		
Procurement Contact:	Brooke Green	Title	Procurement Analyst
Phone:	(239) 533-8848	Email:	BGreen@leegov.com
Requesting Dept.	Fleet Services		

Pre-Bid Conference:

Type: No meeting scheduled at this time

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

Electronic bidding is coming! Visit www.leegov.com/bid to stay informed

Attachment B

VER 08-20-2020



Advertisement Date: 10/2/2020

Notice to Bidder

Invitation to Bid (B)

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

B200417BAG Ford Automobiles, Sport Utility Vehicles, Passenger & Light Duty Vans

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

Those individuals/firms interested in being considered for this solicitation are instructed to submit, in accordance with specifications, their Bids, pertinent to this project prior to

2:30 PM Tuesday, November 3, 2020

to the office of the **Procurement Management Director, 2115 Second Street, 1st Floor, Fort Myers, FL 33901**. The Invitation to Bid shall be received in a sealed envelope, prior to the time scheduled to receive Bid(s), and shall be clearly marked with the solicitation name, solicitation number, bidder name, and contact information as identified in these solicitation documents.

The Scope of Work/Specifications for this solicitation is available from www.leegov.com/procurement. Bidders who obtain Scope of Work/Specifications from sources other than www.leegov.com/procurement are cautioned that the solicitation package may be incomplete. The County's official bidders list, addendum(s) and information must be obtained from www.leegov.com/procurement. It is the bidder's responsibility to check for posted information. The County may not accept incomplete Bids.

There will be no Pre-Bid Conference for this solicitation.

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

Brooke Green BGreen@leegov.com

Sincerely,


Lindsay Cepero, CPPB
Procurement Manager

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

Attachment B

Terms and Conditions INVITATION TO BID (B)

1. DEFINITIONS

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

2. ORDER OF PRECEDENCE

- 2.1. In resolving conflicts, errors, and discrepancies, the order of precedence of the bid document is as follows
 - 2.1.1. Florida State Law as applied to Municipal Purchasing in accordance with Title XIX, "Public Business", Chapter 287 "Procurement of Personal Property and Services."
 - 2.1.2. Lee County Procurement Management Ordinance 18-22
 - 2.1.3. Change Order
 - 2.1.4. Agreement
 - 2.1.5. Addenda
 - 2.1.6. Special Conditions
 - 2.1.7. Detailed Scope of Work/Specifications
 - 2.1.8. Supplemental Information, if any
 - 2.1.9. Terms and Conditions

3. RULES, REGULATIONS, LAWS, ORDINANCES AND LICENSES

- 3.1. It shall be the responsibility of the bidder to assure compliance with all other federal, state, or county codes, rules, regulations or other requirements, as each may apply. Any involvement with the Lee County shall be in accordance with but not limited to:
 - 3.1.1. Lee County Procurement Management Ordinance 18-22
 - 3.1.2. Pursuant to FL § Section 119.071, Public Records, General exemptions from inspection or copying of public records. Sealed bids, proposals or replies received by the agency pursuant to a solicitation are exempt from public records request (s. 119.07(1) and s. 24(a), Art. I, of the State Constitution until such time as the agency provides notice of an intended decision or until 30 days after opening the bids, proposals or final replies, whichever is earlier.

Attachment B

VER 08-20-2020

- 3.1.3. FL § 215 regarding scrutinized companies and business operations.
- 3.1.4. FL § 218 Public Bid Disclosure Act.
- 3.1.5. Florida State Law as applied to Municipal Purchasing in accordance with Title XIX, “Public Business”, Chapter 287 “Procurement of Personal Property and Services.”
- 3.1.6. FL § 337.168 Confidentiality of official estimates, identities of potential bidders, and bid analysis and monitoring system.
- 3.1.7. FL § Section 607.1501(1) states: A foreign corporation may not transact business in the State of Florida until it obtains a certificate of authority from the Department of State.
- 3.2. **Local Business Tax Account:** As applicable, anyone providing merchandise or services to the public within the jurisdiction of Lee County must obtain a Lee County business tax account to operate unless specifically exempted.
- 3.3. **License(s):** Bidder should provide, at the time of the opening of the bid, licenses required for this product and/or service.

4. BID – PREPARATION OF SUBMITTAL

- 4.1. **Sealed Bid:** Submission must be in a sealed envelope/box, and the outside of the submission must be marked with the following information (Sealed Bid Label Form is attached for your use):
 - 4.1.1. Marked with the words “Sealed Bid”
 - 4.1.2. Bid Number
 - 4.1.3. Bid Title
 - 4.1.4. Bid Due Date
 - 4.1.5. Name of the firm submitting the bid
 - 4.1.6. Contact e-mail and telephone number
- 4.2. **Bid submission shall include:**
 - 4.2.1. Provide two (2) hard copies. Mark each: one “Original”, one “Copy”
 - 4.2.2. Provide one (1) electronic flash drive set of the entire submission documents.
 - 4.2.3. Electronic submission document is to be one single Adobe PDF file in the same order as the original hard copy.
 - 4.2.4. Limit the color and number of images to avoid unmanageable file sizes.
 - 4.2.5. Do not lock files.
- 4.3. **Submission Format:**
 - 4.3.1. Required Forms: complete and return **all** required forms. If the form is not applicable please return with “Not Applicable” or “N/A” in large letters across the form.
 - 4.3.2. Failure to submit required or requested information may result in the bidder being found non-responsive.
 - 4.3.3. Execution of Bid: All documents must be properly signed by corporate authorized representative, witnessed, and where applicable corporate and/or notary seals affixed. All Bids shall be typed or printed in ink. The bidder may not use erasable ink. All corrections made to the bids shall be initialed.
 - 4.3.4. If a cost/bid schedule was provided in Microsoft Excel format, the returned completed schedule should be included as a Microsoft Excel File on the Flash drive.
 - 4.3.5. The submission should not contain links to other web pages.
 - 4.3.6. Include any information requested by the County necessary to analyze your bid, i.e., required submittals, literature, technical data, financial statements.
 - 4.3.7. Bid Security/Bond(s), as applicable (Construction projects)
- 4.4. **Preparation Cost:** The Bidder is solely responsible for any and all costs associated with responding to this solicitation. No reimbursement will be made for any costs associated with the preparation and submittal of any bid, or for any travel and per diem costs that are incurred by any Bidder.

5. RESPONSES RECEIVED LATE

- 5.1. It shall be the Bidder’s sole responsibility to deliver the bid submission to the Lee County Procurement Management Division prior to or on the time and date stated. All references to date and time herein reference Lee County, FL local time.
- 5.2. Any bids received after the stated time and date will not be considered. The bid shall not be opened at the public opening. Arrangements may be made for the unopened bid to be returned at the bidder’s request and expense.

Attachment B

VER 08-20-2020

- 5.3. The Lee County Procurement Management Division shall not be responsible for delays caused by the method of delivery such as, but not limited to; internet, United States Postal Service, overnight express mail service(s), or delays caused by any other occurrence.

6. BIDDER REQUIREMENTS (unless otherwise noted)

- 6.1. **Responsive and Responsible:** Only bids received from responsive and responsible bidders will be considered. The County reserves the right before recommending any award to inspect the facilities and organization; or to take any other necessary action, such as background checks, to determine ability to perform is satisfactory, and reserves the right to reject submission packages where evidence submitted or investigation and evaluation indicates an inability for the bidder to perform.
- 6.1.1. Additional sources may be utilized to determine credit worthiness and ability to perform.
- 6.1.2. Any bidder or sub-contractor that will have access to County facilities or property may be required to be screened to a level that may include, but is not limited to fingerprints, statewide criminal. There may be fees associated with these procedures. These costs are the responsibility of the bidder or sub-contractor.
- 6.1.3. Bidders are responsible for ensuring that any required background screening are conducted in accordance with Chapter 435. Bidders shall be aware, understand, and ensure compliance with the statutory requirements regarding background checks. FL Statutes Chapter 435 governs required background screenings for any employees, contractors, subcontractors, or agents of the Bidder who will have contact with any vulnerable person, as defined by statute, or who otherwise are required to undergo a Level 1 or Level 2 background screening in accordance with Florida law. Such requirements shall flow down to sub-contractors/consultants of the prime Bidder and prime Bidder shall ensure compliance with Chapter 435 of such parties.
- 6.1.3.1. Documentation of such completed background screenings must be maintained for a period of no less than five (5) years and are subject to audit by Lee County at any time during such five (5) year period.
- 6.2. **BID--Past Performance:** Bidders past performance and prior dealings with Lee County (i.e., failure to meet specifications, poor workmanship, late delivery, etc.) may be reviewed. Poor or unacceptable past performance may result in bidder disqualification.
- 6.3. Submission packages, unless otherwise noted, will be considered only from bidders normally engaged in the provision of the services specified here in. The bidder shall have adequate organization, facilities, equipment, and personnel to ensure prompt and efficient service to Lee County. The County reserves the right before recommending any award to inspect the facilities and organization; or to take any other action necessary to determine ability to perform satisfactorily, and reserves the right to reject submission packages where evidence submitted or investigation and evaluation indicated an inability of the bidder to perform.

7. PRE-BID CONFERENCE

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

8. COUNTY INTERPRETATION/ADDENDUMS

- 8.1. Each Bidder shall examine the solicitation documents and shall judge all matters relating to the adequacy and accuracy of such documents. Any inquiries, suggestions or requests concerning interpretation, clarification or additional information pertaining to the solicitation shall be **submitted in writing prior to 5:00 PM at least eight (8) calendar days prior to the date when the submission is due.**

Attachment B

VER 08-20-2020

- 8.2. Response(s) will be in the form of an Addendum posted on www.leegov.com/procurement. It is solely the bidder's responsibility to check the website for information. No notifications will be sent by Lee County Procurement Management Division.
- 8.3. All Addenda shall become part of the Contract Documents.
- 8.4. The County shall not be responsible for oral interpretations given by any County employee, representative, or others. Interpretation of the meaning of the plans, specifications or any other contract document, or for correction of any apparent ambiguity, inconsistency or error there in, shall be in writing. Issuance of a written addendum by the County's Procurement Management Division is the only official method whereby interpretation, clarification or additional information can be given.

9. QUALITY GUARANTEE/WARRANTY (as applicable)

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

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

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

11. NEGOTIATED ITEMS

- 11.1. Any item not outlined in the Scope of Work/Specifications may be subject to negotiations between the County and the successful bidder.
- 11.2. After award of this bid the County reserves the right to add or delete items/services at prices to be negotiated at the time of addition or deletion.
- 11.3. At contract renewal time(s) or in the event of significant industry wide market changes, the County may negotiate justified adjustments such as price, terms, etc., if in its sole judgment, the County considers such adjustments to be in their best interest.

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

- 12.1. **Calculation Errors:** In the event of multiplication/addition error(s), the unit price shall prevail. Written prices shall prevail over figures where applicable. All bids will be reviewed mathematically and corrected, if necessary, using these standards, prior to further evaluation.

13. CONFIDENTIALITY

- 13.1. Bidders should be aware that all submissions provided are subject to public disclosure and will **not** be afforded confidentiality, unless provided by Chapter 119 FL §.
- 13.2. If information is submitted with a bid that is deemed “Confidential” the bidder must stamp those pages of the submission that are considered confidential. The bidder must provide documentation as to validate why these documents should be declared confidential in accordance with Chapter 119, “Public Records,” exemptions.
- 13.3. Lee County **will not reveal engineering estimates or budget amounts for a project** unless required by grant funding or unless it is in the best interest of the County. According to FL § 337.168: A document or electronic file revealing the official cost estimate of the department of a project is confidential and exempt from the provisions of s. 119.07(1) until the contract for the project has been executed or until the project is no longer under active consideration.

14. BID CONFLICT OF INTEREST

- 14.1. **Business Relationship Disclosure Requirement:** The award hereunder is subject to the provisions of Chapter 112, Public Officers and Employees: General Provisions, Florida Statutes. All bidders must disclose with their submission the name of any officer, director or agent who is also an employee of the Lee County or any of its agencies. Further, all bidders must disclose the name of any County employee who owns directly or indirectly, an interest of five percent (5%) or more in the bidder’s firm or any of its branches.

15. ANTI-LOBBYING CLAUSE (Cone of Silence)

- 15.1. Following FL § Section 287.057(23), Upon the issuance of the solicitation, prospective proposers/bidders or any agent, representative or person acting at the request of such proposer/bidder shall not have any contact, communicate with or discuss any matter relating in any way to the solicitation with any Commissioner, Evaluation Review Committee, agent or employee of the County other than the Procurement Management Director or their designee. This prohibition begins with the issuance of any solicitation, and ends upon execution of the final contract or when the solicitation has been cancelled. **If it is determined that improper communications were conducted, the Bidder/Proposer maybe declared non-responsible.**

16. DRUG FREE WORKPLACE

- 16.1. Lee County Board of County Commissioners encourages Drug Free Workplace programs.

17. FLORIDA CERTIFIED ENTERPRISES

- 17.1. The County encourages the use of Florida Certified Enterprises such as such as Disadvantaged, Minority, Women, Veterans Business Enterprise (DBE, MBE, WBE, VBE) firms.
- 17.2. Bidder/Proposer is requested to indicate whether the Firm and/or any proposed sub-consultants are a Florida Certified Enterprise. Lee County encourages the utilization and participation of DBE, MBE, WBE, VBE or similar in procurements, and evaluation proceedings will be conducted within the established guidelines regarding equal employment opportunity and nondiscriminatory action based upon the grounds of race, color, sex or national origin. Interested Florida Certified Enterprises such as Disadvantaged, Minority, Women, Veterans Business Enterprise (DBE, MBE, WBE, VBE) firms and similar are encouraged to submit.

18. ANTI-DISCRIMINATION/EQUAL EMPLOYMENT OPPORTUNITY

- 18.1. The bidder agrees to comply, in accordance with FL § 287.134, 504 of the Rehabilitation Act of 1973 as amended, the Americans with Disabilities Act of 1990 (ADA), the ADA Amendments Act of 2008 (ADAAA) that furnishing goods or services to the County hereunder, no person on the grounds of race, religion, color, age, sex, national origin, disability or marital status shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.
- 18.2. The bidder will not discriminate against any employee or applicant for employment because of race, religion, color, age, sex, national origin, disability or marital status. The bidder will make affirmative efforts to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, age, sex, national origin, disability or marital status.
- 18.3. The bidder will include the provisions of this section in every sub-contract under this contract to ensure its provisions will be binding upon each sub-contractor. The bidder will take such actions in respect to any sub-

Attachment B

VER 08-20-2020

contractor, as the contracting agency may direct, as a means of enforcing such provisions, including sanctions for non-compliance.

- 18.4. An entity or affiliate who has been placed on the State of Florida's Discriminatory Vendor List (This list may be viewed by going to the Department of Management Services website at <http://www.dms.myflorida.com>) may not submit a bid on a contract to provide goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not award or perform work as a vendor, supplier, sub-contractor, or consultant under contract with any public entity, and may not transact business with any public entity.

19. SUB-CONTRACTOR

- 19.1. The use of sub-contractors under this solicitation requires prior written authorization from the County representative.

20. BID - PROJECT GUIDELINES (as applicable)

- 20.1. The County has established the following Guidelines, Criteria, Goals, Objectives, Constraints, Schedule, Budget and or Requirements which shall service as a guide to the bidder(s) in conforming to the provision of goods and/or services to be provided pursuant to this Agreement/Contract:
- 20.1.1. No amount of work is guaranteed upon the execution of an Agreement/Contract.
- 20.1.2. Rates and all other negotiated expenses will remain in effect throughout the duration of the Agreement/Contract period.
- 20.1.3. This contract does not entitle any bidder to exclusive rights to County Agreement/Contracts. The County reserves the right to perform any and all available required work in-house or by any other means it so desires.
- 20.1.4. In reference to vehicle travel, mileage and man-hours spent in travel time, is considered incidental to the work and not an extra compensable expense.
- 20.1.5. Lee County reserves the right to add or delete, at any time, and or all material, tasks or services associated with this Agreement/Contract.
- 20.1.6. Any Single Large Project: The County, in its sole discretion, reserves the right to separately solicit any project that is outside the scope of this solicitation, whether through size, complexity or the dollar value.

21. BID – TIEBREAKER

- 21.1. Whenever two or more bids, which are equal with respect to price, quality and service, are received for procurement of commodities or contractual services, from responsive and responsible bidders, the following steps shall be taken to establish the award to the lowest bidder. This method shall be used for all ties.
- 21.1.1. Step 1 - Local Bidder: Between a local Bidder, and a non-local Bidder, a contract award, or the first opportunity to negotiate, as applicable, shall be made to the local Bidder. **If local preference is prohibited by the funding source then step 2 will replace step 1.**
- 21.1.2. Step 2 - Drug Free Workplace: At the conclusion of step 1, if all is equal, the Bidder with a Drug Free Workplace program shall be given preference over a Bidder with no Drug Free Workplace program. The contract award, or the first opportunity to negotiate, as applicable, shall be made to the bidder with the Drug Free Workplace program.
- 21.1.3. Step 3 - Coin Flip: At the conclusion of Step 1 and Step 2, if all is equal, the contract award, or the first opportunity to negotiate, as applicable, the final outcome shall be determined by the flip of a coin.
- 21.2. When the tie has been broken pursuant to the above procedures, the contract award, or the first opportunity to negotiate, as applicable, shall be furnished to the prevailing Bidder.
- 21.3. If an award or negotiation is unsuccessful with the initial bidder, award or negotiations may commence with the next highest bidder, utilizing the tiebreaker steps above to make the determination of next lowest bidder, if necessary.

22. WITHDRAWAL OF BID

- 22.1. No bid may be withdrawn for a period of **180 calendar days** after the scheduled time for receiving submissions. A bid may be withdrawn prior to the solicitation opening date and time. Withdrawal requests must be made in writing to the Procurement Management Director, who will approve or disapprove the request.
- 22.2. A bidder may withdraw a submission any time prior to the opening of the solicitation.

Attachment B

VER 08-20-2020

- 22.3. After submissions are opened, but prior to award of the contract by the County Commission, the Procurement Management Director may allow the withdrawal of a bid because of the mistake of the bidder in the preparation of the submission document. In such circumstance, the decision of the Procurement Management Director to allow the submission withdrawal, although discretionary, shall be based upon a finding that the bidder, by clear and convincing evidence, has met each of the following four tests:
- 22.3.1. The bidder acted in good faith in submitting the bid,
 - 22.3.2. The mistake in bid preparation that was of such magnitude that to enforce compliance by the bidder would cause a severe hardship on the bidder,
 - 22.3.3. The mistake was not the result of gross negligence or willful inattention by the bidder; and
 - 22.3.4. The mistake was discovered and was communicated to the County prior to the County Commission having formally awarded the Agreement/Contract.

23. PROTEST RIGHTS

- 23.1. Any Bidder that has submitted a formal Response to Lee County, and who is adversely affected by an intended decision with respect to the Award, has the right to protest an intended decision posted by the County as part of the Solicitation process.
- 23.2. Notice of Intended Decision is posted on the Lee County Department of Procurement Management website (www.leegov.com/procurement). Bidders are solely responsible to check for information regarding the Solicitation.
- 23.3. Refer to the "Procurement Protest" section of the Lee County Procurement Ordinance 18-22 for a complete description of the protest process and associated requirements. The ordinance is posted on the Lee County website or may be obtained by contacting the Procurement Management Director.
- 23.4. In order to preserve the right to protest, a written "**Notice Of Intent To File A Protest**" must be filed with the Lee County Procurement Management Director within seventy-two (72) hours of Posting of the Notice of Intended Decision.
 - 23.4.1. The notice shall clearly indicate all grounds being claimed for the protest.
 - 23.4.2. The notice must be physically received by the Procurement Management Director within the required time frame described above. No additional time will be granted for mailing.
- 23.5. Following receipt of the Notice of Intent to File a Protest, a "**Protest Bond**" and "**Formal Written Protest**" must be filed **within ten (10) business days** of Posting of the Notice of Intended Decision.
- 23.6. **Failure to follow the protest procedures requirement within the time frames as prescribed herein and in the Lee County Procurement Ordinance 18-22 shall constitute a waiver of the right to protest and shall bar any resulting claims.**

24. AUTHORITY TO UTILIZE BY OTHER GOVERNMENT ENTITIES

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

25. CONTRACT ADMINISTRATION

- 25.1. **Designated Contact:**
 - 25.1.1. The awarded bidder shall appoint a person(s) to act as a primary contact for all County departments. This person or back-up shall be readily available during normal working hours by phone or in person, and shall be knowledgeable of the terms and procedures involved.
 - 25.1.2. Lee County requires the awarded bidder to provide the name of a contact person(s) and phone number(s) which will afford Lee County access 24 hours per day, 365 days per year, of this service in the event of major breakdowns or natural disasters.
- 25.2. **BID – Term:** (unless otherwise stated in the Scope of Work or Detailed Specifications)
 - 25.2.1. Unless otherwise stated in the scope of work, specifications, or special conditions the default **contract term shall be for one (1) three-year (3) period. Upon mutual written agreement of both parties, the parties may renew the Agreement, in whole or in part, for a renewal term or terms not to exceed the initial Agreement term of three (3) years. The increments of renewal shall be at the sole discretion of the County as deemed in its best interest.**

Attachment B

VER 08-20-2020

- 25.2.2. The County reserves the right to renew this Agreement/Contract (or any portion thereof) and to negotiate pricing as a condition for each.
- 25.2.3. The County's performance and obligation to pay under this contract, and any applicable renewal options, is contingent upon annual appropriation of funds.
- 25.3. **BID – Basis of Award:**
 - 25.3.1. The bid is awarded under a system of sealed, competitive bidding to the lowest responsive and responsible bidder.
 - 25.3.2. In the event the lowest responsible and responsive bid for a project exceeds the available funds the County may negotiate an adjustment of the bid price with the lowest responsible and responsive bidder, in order to bring the total cost of the project within the amount of available funds.
 - 25.3.3. The County reserves the right to make award(s) by individual item, group of items, all or none, or a combination thereof. The County reserves the right to reject any and all bids or to waive any minor irregularity or technicality in the bids received. Award will be made to the lowest responsible and responsive bidder(s) within the category chosen for basis of award.
 - 25.3.4. The County reserves the right to award to one or multiple bidders at the discretion of the requesting authority and approval of the Procurement Management Director.
- 25.4. **Agreement/Contracts:**
 - 25.4.1. The awarded bidder will be required to execute an Agreement/Contract as a condition of award. A sample of this document may be viewed on-line at <http://www.lee.gov.com/procurement/forms>.
- 25.5. **Records:**
 - 25.5.1. Retention: The bidder shall maintain such financial records and other records as may be prescribed by Lee County or by applicable federal and state laws, rules and regulations. Unless otherwise stated in the specifications, the bidder shall retain these records for a period of five years after final payment, or until they are audited by Lee County, whichever event occurs first.
 - 25.5.2. Right to Audit/Disclosure: These records shall be made available during the term of the contract as well as the retention period. These records shall be made readily available to County personnel with reasonable notice and other persons in accordance with the Florida General Records Schedule. Awarded Bidder/Proposer(s) are hereby informed of their requirement to comply with FL §119 specifically to:
 - 25.5.2.1. Keep and maintain public records required by the County to perform the service.
 - 25.5.2.2. Upon request from the County's custodian of public records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided or as otherwise provided by law.
 - 25.5.2.3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the County.
 - 25.5.2.4. Upon completion of the contract, transfer, at no cost, to the County all public records in possession of the contractor or keep and maintain public records required by the County to perform the service. If the contractor transfers all public records to the County upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the County, upon request from the County's custodian of public records, in a format that is compatible with the information technology systems of the County.
 - 25.5.3. Public Record: **IF THE VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE VENDOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 239-533-2221, 2115 SECOND STREET, FORT MYERS, FL 33901, Email**

Attachment B

VER 08-20-2020

at PRRCustodian@leegov.com or Visit
<http://www.leegov.com/publicrecords>.

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

25.6. **Termination:**

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

25.6.2. The Procurement Management Director may immediately terminate any Agreement/Contract as a result of this solicitation for emergency purposes, as defined by the Lee County Procurement Ordinance 18-22.

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

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

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

25.6.4.2. Contractor has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List (FL §215.473);

25.6.4.3. Contractor has engaged in business operations in Cuba or Syria (FL § 215.471);

25.6.4.4. Contractor has been placed on the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel. (FL § 215.4725)

25.6.4.5. The County reserves the right to review, on a case-by-case basis, and waive this stipulation if it is deemed to advantageous to the County.

26. WAIVER OF CLAIMS

26.1. Once this contract expires, or final payment has been requested and made, the awarded bidder shall have waived any claims against the County concerning this contract. After that period, the County will consider the bidder to have waived any right to claims against the County concerning this Agreement/Contract.

27. LEE COUNTY PAYMENT PROCEDURES

27.1. Unless otherwise noted, all vendors are requested to mail an original invoice to:

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

27.2. All invoices will be paid as directed by the Lee County payment procedure unless otherwise stated in the detailed specifications for this project.

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

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

28. SAFETY DATA SHEETS (SDS) (as applicable)

28.1. It is the vendor's responsibility to provide Lee County with Safety Data Sheets on bid materials, as may apply to this procurement.

Attachment B

VER 08-20-2020

29. DEBRIS DISPOSAL (as applicable)

- 29.1. Unless otherwise stated, the bidder shall be fully responsible for the lawful removal and disposal of any materials, debris, garbage, vehicles or other such items which would interfere with the undertaking and completion of the project. There shall not be an increase in time or price associated with such removal.

30. SHIPPING (as applicable)

- 30.1. Cost of all shipping to the site, including any inside delivery charges and all unusual storage requirements shall be borne by the bidder unless otherwise agreed upon in writing prior to service. It shall be the bidders responsibility to make appropriate arrangements, and to coordinate with authorized personnel at the site, for proper acceptance, handling, protection and storage (if available) of equipment and material delivered. All pricing to be F.O. B. destination.
- 30.2. The materials and/or services delivered under the bid shall remain the property of the seller until a physical inspection and actual usage of these materials and/or services is accepted by the County and is deemed to be in compliance with the terms herein, fully in accord with the specifications and of the highest quality.

31. INSURANCE (AS APPLICABLE)

- 31.1. Insurance shall be provided by the awarded bidder/vendor. Prior to execution of the Agreement/Contract a certificate of insurance (COI) complying with the bid documents shall be provided by the bidder/vendor.

End of Terms and Conditions Section

Attachment B

INSURANCE GUIDE



Lee County Insurance Requirements

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

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

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

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

\$1,000,000 combined single limit (CSL); or
 \$500,000 bodily injury per person
 \$1,000,000 bodily injury per accident
 \$500,000 property damage per accident

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

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

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

Revised 03/19/2018 – Page 1 of 2



Verification of Coverage:

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

Lee County Board of County Commissioners
P.O. Box 398
Fort Myers, Florida 33902
 - b. *"Lee County, a political subdivision and Charter County of the State of Florida, its agents, employees, and public officials"* will be named as an "Additional Insured" on the General Liability policy, including Products and Completed Operations coverage.

Special Requirements:

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

Revised 03/19/2018 – Page 2 of 2

End of Insurance Guide Section

Attachment B

VER 08-20-2020

SPECIAL CONDITIONS

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

1. TERM

- 1.1 The Vendor shall be responsible for furnishing and delivering to the Lee County requesting Department(s) the commodity or services on an "as needed basis" for one (1) three-year (3) period. Upon mutual written agreement of both parties, the parties may renew the Agreement, in whole or in part, for a renewal term or terms not to exceed the initial Agreement term of three (3) years. The increments of renewal shall be at the sole discretion of the County as deemed in its best interest.

2. BASIS OF AWARD

- 2.1 The basis of award shall be determined by the **Highest Percentage Discount** Below/Off "Dealer Invoice W/Holdback Price" (Item 1 of Bid Schedule) Column of the Ford Proprietary PRICE LIST of the most responsive, responsible, and qualified Vendor meeting all bid specifications.

- 2.1.1 Vendors should complete the attached forms as instructed herein. New vehicle prices will be given as a percentage discount below/off the "Dealer Invoice W/Holdback Price" column, as shown on the Ford Proprietary PRICE LIST. This percentage discount below/off the "Dealer Invoice W/Holdback Price" column shall apply to the base price, freight, and all factory production options. The County shall participate in all fleet or price incentives or rebates available to the Vendor in addition to the percentage discount below/off the "Dealer Invoice W/Holdback Price" column, as shown on the Ford Proprietary PRICE LIST.

- 2.1.2 All vehicles purchased under this contract shall include as part of the base vehicle price: vehicle preparation costs, delivery, three complete sets of keys, vehicle title, vehicle registration, and a new County license plate. The Vendor shall take these factors into consideration when submitting final contracted percentage discount below/off "Dealer Invoice W/Holdback".

- 2.1.3 One (1) Vendor from all responsive Ford Motor Company dealers shall be awarded this Contract. Since fleet incentives or rebates will be consistent from dealer to dealer (same manufacturer), the award will be based on the response with the greatest/highest percentage discount off the "Dealer Invoice W/Holdback Price" column of the Ford Proprietary PRICE LIST.

- 2.1.4 **OPTION A: DEALER INSTALLED OPTIONS**

- 2.1.4.1 Vendor must provide a percentage markup above "actual invoice" for any dealer installed options to be performed by Vendor or Vendor selected sub-contractor. Although not part of Basis of Award determination, Vendor shall provide percentage for Option A in order to be considered for award and such shall become part of Vendor Contract.

- 2.1.4.2 Option A shall cover dealer installed options which may include, but are not limited: to strobe lights, bed liners, utility bodies, cranes, service manuals, and parts manuals. See Attachment "A" for the approved list of dealer installed option manufacturers (only manufacturers on this list will be accepted). The Division of Fleet Management will provide the Vendor with updated lists of approved manufacturers for dealer installed options as needed throughout the Contract period. The Vendor shall also handle any and all warranty claims for the dealer installed items and any accessories added to the vehicle(s). These warranty claims will be handled as quickly as possible to minimize downtime to the County. It will be the responsibility of the Vendor to pick up and deliver the equipment for all warranty repairs and issues.

- 2.1.4.3 Vendor shall provide copies of actual invoices as backup to invoicing. Failure to provide proper supporting documents (actual invoices) for Option A services may delay Vendor payment for services.

End of Special Conditions Section

Attachment B

SCOPE OF WORK AND SPECIFICATIONS

1. GENERAL SCOPE OF WORK

- 1.1 The Lee County Board of County Commissioners seeks to contract with a qualified Vendor for the purchase of vehicles for County use from Ford Motor Company Division dealers. The vehicles to be purchased under this Agreement are automobiles, sport utility vehicles, passenger and light duty vans, light and medium duty trucks, and cab/chassis. While the County makes no guarantees to the actual quantities of any vehicle type, we can predict the majority of purchases are expected to be trucks.
- 1.2 These specifications are intended to provide the information by which the Vendor may understand the requirements of the County relative to furnishing and delivering fleet vehicles.

2. SPECIFICATION BOOKS

- 2.1 The Vendor shall, at no cost, supply Lee County Fleet Management with one (1) current set of specification books covering all models of Ford products at the beginning of each model year change. These specification books must include all specifications including, but not limited to, measurements, capacities, colors, types, model year changes, detailed specifications, etc.

3. ADDITIONAL DISCOUNTS AND/OR CONCESSIONS

- 3.1 The County shall receive any and all additional discounts and/or concessions available at the time of each purchase. These discounts/concessions will be in addition to the percentage quoted under the "Basis of Award" (therefore, they will not be factored into the award process of this bid). All paperwork associated with these discounts/concessions must be sent to Lee County Fleet Management at the beginning/change of each model year or as they become available to the Dealership. In the space provided on Attachment B, please explain how you will pass these discounts/concessions on to Lee County Fleet Management on a per model basis.

4. STATE CONTRACT/SHERIFF'S ASSOCIATION/OTHER CONTRACTS

- 4.1 The County reserves the right to purchase any of the items associated with this Agreement from other contracts offered to the County; if the prices are lower and/or it is deemed in the best interest of the County to do so. The Vendor, at the sole discretion and request of Lee County Fleet Management, may be allowed to match these contracted prices.

5. PRE-DELIVERY

- 5.1 The Vendor shall be responsible for delivering vehicles that are new and unused, properly serviced, clean, and in first class operating condition. Pre-delivery service, at a minimum, shall include the following:
 - 5.1.1 Complete lubrication and check all fluid levels to assure proper fill.
 - 5.1.2 Adjustment of engine to proper operating condition.
 - 5.1.3 Inflate tires to proper pressure.
 - 5.1.4 Check for proper operation of all accessories, gauges, lights, mechanical and hydraulic features.
 - 5.1.5 Cleaning of vehicle, if necessary, and removal of all unnecessary tags, stickers, papers, etc. Remove window sticker and turn in with the delivery paperwork.
 - 5.1.6 Overall check for safe operating condition
 - 5.1.7 All fuel tanks on each new vehicle will come with a full tank of fuel.
 - 5.1.8 All new vehicles will come with three (3) complete sets of keys, including keys for any accessories such as: tool boxes, utility boxes, etc.
 - 5.1.8.1 The Vendor understands that the Agreement covers a complete, fully operative unit, as specified by the purchase order and enclosures, including the mounting of all attachments and connections to the chassis.

Attachment B

VER 08-20-2020

6. CONDITIONS & DELIVERY

- 6.1 All units must contain a full tank of fuel as indicated by the vehicle's fuel gauge at the time of delivery.
- 6.2 If a vehicle is delivered with more than 250 miles but less than 500 miles as indicated by the vehicle's odometer, the vendor shall be assessed \$0.575 (IRS rate) cents per mile for all miles over 250. Vehicles with 500 miles or more as indicated by the vehicle's odometer may not be accepted.
- 6.3 All vehicles shall be delivered to the Lee County's Division of Fleet Management located at 2955 Van Buren Street, Fort Myers, Florida 33916. Vendor must contact the Shop Superintendent or designee at (239) 533-5338 at least twenty-four (24) hours prior to delivery. Deliveries can be made Monday - Friday between the hours of 7:15 AM and 3:15 PM.
- 6.4 Delivery does not constitute acceptance. Acceptance and authorization of payment will be given only after a thorough inspection indicates that the vehicle meets specifications and conditions listed herein.
 - 6.4.1 Vehicles shall be delivered with each of the following documents satisfactorily completed:
 - 6.4.1.1 Temporary license plate.
 - 6.4.1.2 Owner and/or operator manual(s).
 - 6.4.1.3 Warranty certifications, including rust proofing, if applicable.
 - 6.4.1.4 Copy of pre-delivery service report.
 - 6.4.1.5 Window price sticker.
 - 6.4.1.6 All vehicles shall be equipped with all standard equipment as specified by the manufacturer for this model. All vehicles shall comply with the EPA Emission Standards, and all Motor Vehicle Safety Standards as established by the U.S. Department of Transportation regarding the manufacture of motor vehicles, and OSHA standards CFR 29 1910/1926.

7. TITLE, REGISTRATION, AND PLATES

- 7.1 All vehicles delivered under this contract shall be titled and registered by the Vendor in accordance with Florida Statutes Chapters 319 and 320. Vendor shall send any necessary form(s), which must be signed by an authorized representative of the Lee County Board of County Commissioners, with the vehicle upon delivery.
- 7.2 Vendor shall obtain necessary signature(s) and complete the titling and registration process for the County and return a county plate within twenty-five (25) calendar days of delivery of vehicle. Vendor shall include all fees involved in the title application, registration, and obtaining new plates in the "Dealer Invoice W/Holdback Price" for each vehicle.

NOTE: The Lee County Board of County Commission is self-insured, therefore, a "Proof of Insurance" form is not required.

8. INVOICING:

- 8.1 Vendor shall submit "Ford Proprietary PRICE LIST" documentation indicating all discount percentages including discount off Ford Proprietary PRICE LIST, any markup from Option A items, and any additional concessions.
 - 8.1.1 Documentation should be submitted prior to order being delivered and be included with all invoicing for completed/accepted deliveries.

9. INTRODUCTION OF NEW YEAR MODEL:

- 9.1 The Vendor shall notify the County Fleet Director of the order cutoff date for each year model and the anticipated release of a new, year model. Failure to do so shall result in the Vendor filling any and all orders against the resulting Agreement at pricing for the previous model year. The Vendor shall provide no less than thirty (30) calendar days' advance written notice to County Fleet Director.

Attachment B

ATTACHMENT A

List of Authorized Dealer Installed Option Manufacturers

1. Bedliners:
 - a. Duraliner
 - b. Rhino Linings
 - c. Line-X
2. Tool Boxes:
 - a. Delta
 - b. Dayton
 - c. United Welding
 - d. Jobox
3. Trailer Hitches:
 - a. Draw-Tite
 - b. Reese
4. Lift Gates:
 - a. Tommy Gate
5. Aluminum Dump Body Inserts:
 - a. Truck Craft
 - b. Ezdumper
6. Utility And Stake Bodies:
 - a. Omaha
 - b. Reading
 - c. Knapheide
7. Cranes:
 - a. Auto-Crane
 - b. Liftmoore
8. Dump And Flat Bed Dump Hoists:
 - a. Venco Conversion Hoists
9. Truck And Van Accessories:
 - a. Masterack
 - b. American Vans
 - c. Weatherguard

VER 08-20-2020

In the space provided below, please explain what additional concessions can be provided to the County additionally to “Option A: DEALER INSTALL OPTIONS” specified in the Bid Schedule. Please explain how these additional concessions will be passed to Lee County Fleet Management on per model basis.

[illegible]

19

Attachment B

FORMS DESCRIPTION & INSTRUCTIONS**INVITATION TO BID**

This table provides a brief list, description, and instructions regarding the standard requested forms that should be submitted with all bids or proposals. This is not intended to be an all-inclusive list of forms required for your submission, but rather a guide to assist in completion of the County's standard forms.

Form #	Title/Description
1	<i>Solicitation Response Form</i> All signatures must be by a corporate authorized representative, witnessed, and corporate and/or notary seal (as applicable.) The corporate or mailing address must match the company information as it is listed with the Florida Department of State Division of Corporations. Attach a copy of the web-page(s) from http://www.sunbiz.org as certification of this required information. Sample attached for your reference. Verify that all Addenda and tax identification number have been provided.
1a	<i>Bid/Proposal Form</i> This form is used to provide itemization of project cost. A more detailed "schedule of values" may be requested by the County.
*	<i>Business Relationship Disclosure Requirement</i> Sections 112.313(3) and 112.313(7), F.S., prohibit certain business relationships on the part of public officers and employees, their spouses, and their children. If this disclosure is applicable, the Bidder must request the form entitled "INTEREST IN COMPETITIVE BID FOR PUBLIC BUSINESS" (Required by § 112.313(12)(b), F.S.) to be completed and returned with the Solicitation Response. It is the Bidder's responsibility to request the form and disclose this relationship; failure to do so may result in being declared non-responsive. NOTICE: UNDER THE PROVISIONS OF § 112.317, F.S., A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR, AND MAY BE PUNISHED BY, ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$10,000.00.
2	<i>Affidavit Certification Immigration Laws</i> Submission of this form constitutes acknowledgement that the Bidder is in compliance in regard to all applicable immigration laws.
3	<i>Reference Survey</i> Provide this form to reference respondents. For Bids, this form will be requested from the apparent low Bidder prior to the award. (not required to submit with bid) Section 1: Bidder/Proposer to complete with <u>reference respondent's</u> information prior to providing to them for their response. (This is not the Bidder/Proposer's information.) Section 2: Enter the name of the Bidder/Proposer; provide the project information in which the reference respondent is to provide a response. - The <u>reference respondent</u> should complete "Section 3." Section 4: The reference respondent to print and sign name Three (3) Reference responses are to be provided upon request. - Failure to obtain reference surveys may make your company non-responsive.

Attachment B

VER 08-20-2020

4

Negligence or Breach of Contract Disclosure Form

The form may be used to disclose negligence or breach of contract litigation that your company may have been a part of over the past ten (10) years. You may need to duplicate this form to list all history. If the Bidder has more than ten (10) lawsuits, you may narrow them to litigation of the company or subsidiary submitting the Solicitation Response. Include, at a minimum, litigation for similar projects completed in the State of Florida. Final outcome should include in whose favor the litigation was settled and whether a monetary amount was awarded. The settlement amount may remain anonymous.

If you have **no litigation**, enter **“None”** in the first **“type of incident”** block of the form. Please do not write N/A on this form.

5

Affidavit - Principal Place of Business

Certifies Bidder's location information.

6

Sub-Contractor/Consultant List

To be completed and returned when sub-contractors/consultants are to be utilized and are known at the time of the submission.

7

Public Entity Crime Form

Any person or affiliate, as defined by statute, who has been placed on the convicted vendor list following a conviction for a public entity crime, may not submit a Bid on a Contract to provide any goods or services to the County; may not submit a Bid on a contract with the County for the construction or repair of a public building or a public work; may not submit Bids or leases of real property to the County; may not be Awarded or perform Work as a contractor, supplier, subcontractor, or consultant under a contract with the County, and may not transact business with the County in excess of \$25,000.00 for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

*

Bid/Proposal Label

Self-explanatory. Please affix to the outside of the sealed submission documents.

*

Include any licenses or certifications requested

Local Business Tax Account (as applicable) issued by City and/or County entity. This is necessary for all Florida vendors.

It is the Bidder's responsibility to ensure the Solicitation Response is mailed or delivered in time to be received no later than the specified opening date and time. (If Solicitation is not received prior to the deadline, it cannot be considered or accepted)

Attachment B

VER 08-20-2020

Form 1 – Solicitation Response Form

V09/12/2016



LEE COUNTY PROCUREMENT MANAGEMENT SOLICITATION RESPONSE FORM

Date Submitted: _____ Bid Due Date: 11/3/2020

SOLICITATION IDENTIFICATION: B200417BAG

SOLICITATION NAME: Ford Automobiles, Sport Utility Vehicles, Passenger & Light Duty Vans

COMPANY NAME: _____

NAME & TITLE: (TYPED OR PRINTED) _____

BUSINESS ADDRESS: (PHYSICAL) _____

CORPORATE OR MAILING ADDRESS: _____

☐ SAME AS PHYSICAL

ADDRESS MUST MATCH SUNBIZ.ORG _____

E-MAIL ADDRESS: _____

PHONE NUMBER: _____ FAX _____

NOTE REQUIREMENT: IT IS THE SOLE RESPONSIBILITY OF THE BIDDER/PROPOSER TO CHECK LEE COUNTY PROCUREMENT MANAGEMENT WEB SITE FOR ANY ADDENDA ISSUED FOR THIS PROJECT. THE COUNTY WILL POST ADDENDA TO THIS WEB PAGE, BUT WILL NOT NOTIFY.

By responding to this sealed solicitation, the Bidder/Proposer makes all representations required by the instructions and further warrants and represents that: Bidder/Proposer has examined copies of all the solicitation documents and of the following addenda:

No. _____	Dated: _____	No. _____	Dated: _____	No. _____	Dated: _____
No. _____	Dated: _____	No. _____	Dated: _____	No. _____	Dated: _____

Tax Payer Identification Number: _____

(1) Employer Identification Number -OR- (2) Social Security Number:

**** Lee County collects your social security number for tax reporting purposes only**

Please submit a copy of your registration from the website www.sunbiz.org establishing your firm as authorized (including authorized representatives) to conduct business in the State of Florida, as provided by the *Florida Department of State, Division of Corporations. (a sample is attached for your reference)*

1 **Collusion Statement:** Lee County, Florida The undersigned, as Bidder/Proposer, hereby declares that no person or other persons, other than the undersigned, are interested in this solicitation as Principal, and that this solicitation is submitted without collusion with others; and that we have carefully read and examined the specifications or scope of work, and with full knowledge of all conditions under which the services herein is contemplated must be furnished, hereby bid/propose and agree to furnish this service according to the requirements set out in the solicitation documents, specifications or scope of work for said service for the prices as listed on the county provided price sheet or (CCNA) agree to negotiate prices in good faith if a contract is awarded.

2 **Scrutinized Companies Certification:**

Section 287.135, FL §, "Prohibition against contracting with scrutinized companies." Prohibits agencies from contracting with companies, for goods or services over \$1,000,000, that are on the Scrutinized Companies with Activities in Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, Scrutinized Companies that Boycott Israel List, have been engaged in a boycott of Israel, or been engaged in business operations in Cuba or Syria. The County reserves the right to review, on a case-by-case basis, and waive this stipulation if it is deemed to advantageous to the County.

As the person authorized to sign on behalf of Respondent, I hereby certify that the company identified above is in compliance with Section 287.135, FL §. I understand that submission of a false certification may subject company to contract termination, civil penalties, attorney's fees, and/or costs.

Attachment B

VER 08-20-2020

Form#1 – Solicitation Form, Page 2

- 3 **Business Relationship Disclosure Requirement:** Sections 112.313(3) and 112.313(7), FL §, prohibit certain business relationships on the part of public officers and employees, their spouses, and their children. See Part III, Chapter 112, FL §, and/or the brochure entitled "A Guide to the Sunshine Amendment and Code of Ethics for Public Officers, Candidates and Employees" for more details on these prohibitions. However, Section 112.313(12), FL § (1983), provides certain limited exemptions to the above-referenced prohibitions, including one where the business is awarded under a system of sealed, competitive bidding; the public official has exerted no influence on bid negotiations or specifications; and where disclosure is made, prior to or at the time of the submission of the bid, of the official's or his spouse's or child's interest and the nature of the intended business. The Commission on Ethics has promulgated this form for such disclosure, if and when applicable to a public officer or employee.
- If this disclosure is applicable request form "INTEREST IN COMPETITIVE BID FOR PUBLIC BUSINESS" (Required by 112.313(12)(b), FL § (1983)) to be completed and returned with solicitation response. It is the bidder/proposer's responsibility to disclose this relationship, failure to do so could result in being declared non-responsive.**

☐	Business Relationship Applicable (request form)	☐	Business Relationship NOT Applicable
Disadvantaged, Minority, Women, Veterans Business Enterprise (DBE, MBE, WBE, VBE)		☐	☐
Proposer? If yes, please attach a current certificate.		Yes	No

ALL SUBMISSIONS MUST BE EXECUTED BY AN AUTHORIZED AUTHORITY OF THE BIDDER/PROPOSER. WITNESSED AND SEALED (AS APPLICABLE)

Company Name (Name printed or typed)

Authorized Representative Name (printed or typed)

Authorized Representative's Title (printed or typed)

Authorized Representative's Signature

(Affix Corporate Seal, as applicable)

Witnessed/Attested by:

(Witness/Secretary name and title printed or typed)

Witness/Secretary Signature

Any blank spaces on the form(s), qualifying notes or exceptions, counter offers, lack of required submittals, or signatures, on County's Form may result in the submission being declared non-responsive by the County.

Detail by Entity Name**Florida Profit Corporation**

Bill's Widget Corporation

Filing Information

Document Number 655555
 FB/EIN Number 511111111
 Date Filed 09/22/1980
 State FL
 Status ACTIVE
 Last Event AMENDED AND RESTATED ARTICLES
 Event Date Filed 07/25/2006
 Event Effective Date NONE

Principal Address

555 N Main Street
 Your Town, USA 99999

Changed 02/11/2012

**Verify either Principal or Mailing
 address is on Form 1**

Mailing Address

555 N Main Street
 MYour Town, USA 99999

Changed 02/11/2012

Registered Agent Name & Address

My Registered Agent
 111 Registration Road
 Registration, USA 99999

Name Changed: 12/14/2006

Address Changed: 12/14/2006

Officer/Director Detail**Name & Address**

Title P

President, First
 555 AVENUE
 Anytown, USA 99999

Title V

President, Second
 555 AVENUE
 Anytown, USA 99999

IMPORTANT:

For corporations, ALL documents must be signed by the president of the company or an authorized individual. For any individual other than the president, we will need one of the following to confirm their authority to sign:

1. a corporate resolution by the Board of Directors, or
2. an extract of minutes, or
3. an extract of Vote by the Board of Directors

If the company's articles of incorporation identify additional positions that have the power to bind the corporation, we will accept the articles of incorporation with verification from the president that a certain individual serves in that role (e.g., the president confirms that John Doe is the CEO, and the articles of incorporation provide that the CEO has the power to bind the company).

With respect to an LLC, the authority to bind a limited liability company is controlled by Florida statutes. Managers or managing members have inherent authority to bind an LLC.

If the president of a corporation or a manager/managing member of an LLC delegates their authority, such delegation must be sent to us on company letterhead with the President's or manager's/managing member's original, wet signature.

v01/03/2018



PROCUREMENT MANAGEMENT DEPARTMENT BID/PROPOSAL FORM

**COMPANY
NAME:** _____

SOLICITATION: **B200417BAG Ford Automobiles, Sport Utility Vehicles, Passenger & Light Duty Vans**

Having carefully examined the Contract Documents, Contractor/Vendor proposes to furnish the following which meeting these specifications.

PRICING

Pricing shall be inclusive of all labor, equipment, supplies, overhead, profit, material, and any other incidental costs required to perform and complete all work as specified in the Contract Documents. All Unit Prices will be bid at the nearest whole penny.

In the event there is a discrepancy between a subtotal or total amount and the unit prices and extended amounts, the unit prices will prevail and the corrected extension(s) and total(s) will be considered the price.

The County will only accept bids submitted on bid forms provided by the County. Bids submitted on other forms, other than those provided by the County, will be deemed non-responsive and ineligible for award.

Ford Automobiles, Sport Utility Vehicles, Passenger & Light Duty Vans

Item	Description
1	Percentage Discount Below/Off “Dealer Invoice W/Holdback Price” Column of the Ford Proprietary PRICE LIST: _____%
Option A: DEALER INSTALL OPTIONS	
2	Percentage Markup Above “Actual Invoice” of Dealer Installed Options Performed by Vendor or Vendor selected Sub- Contractor _____%

Attachment B

VER 08-20-2020

Form 2 – Affidavit Certification of Immigration Laws



AFFIDAVIT CERTIFICATION IMMIGRATION LAWS

SOLICITATION NO.: B200417BAG SOLICITATION NAME: Ford Automobiles, Sport Utility Vehicles, Passenger & Light Duty Vans

LEE COUNTY WILL NOT INTENTIONALLY AWARD COUNTY CONTRACTS TO ANY CONTRACTOR WHO KNOWINGLY EMPLOYS UNAUTHORIZED ALIEN WORKERS, CONSTITUTING A VIOLATION OF THE EMPLOYMENT PROVISIONS CONTAINED IN 8 U.S.C. SECTION 1324 a(e) {SECTION 274A(e) OF THE IMMIGRATION AND NATIONALITY ACT (“INA”).

LEE COUNTY MAY CONSIDER THE EMPLOYMENT BY ANY CONTRACTOR OF UNAUTHORIZED ALIENS A VIOLATION OF SECTION 274A(e) OF THE INA. **SUCH VIOLATION BY THE RECIPIENT OF THE EMPLOYMENT PROVISIONS CONTAINED IN SECTION 274A(e) OF THE INA SHALL BE GROUNDS FOR UNILATERAL CANCELLATION OF THE CONTRACT BY LEE COUNTY.**

BIDDER/PROPOSER ATTESTS THAT THEY ARE FULLY COMPLIANT WITH ALL APPLICABLE IMMIGRATION LAWS (SPECIFICALLY TO THE 1986 IMMIGRATION ACT AND SUBSEQUENT AMENDMENTS).

Company Name: _____

Signature

Title

Date

STATE OF _____
COUNTY OF _____

The foregoing instrument was signed and acknowledged before me, by means of ☐ physical presence or ☐ online notarization, this _____ day of _____ 20____, by _____ who has produced
(Print or Type Name)

_____ as identification.
(Type of Identification and Number)

Notary Public Signature

Printed Name of Notary Public

Notary Commission Number/Expiration

The signee of this Affidavit guarantee, as evidenced by the sworn affidavit required herein, the truth and accuracy of this affidavit to interrogatories hereinafter made. **LEE COUNTY RESERVES THE RIGHT TO REQUEST SUPPORTING DOCUMENTATION, AS EVIDENCE OF SERVICES PROVIDED, AT ANY TIME.**

Attachment B

VER 08-20-2020

Form 3 Reference Survey

Lee County Procurement Management Reference Survey

Reference surveys submitted can be a maximum of twelve (12) months old. If using a previous reference, Proposers must clearly identify the project name and number the reference is being submitted for.

Project Name & Number: _____

Section 1	Reference Respondent Information	Please return completed form to:	
FROM: _____		Bidder/Proposer:	
COMPANY: _____		Due Date:	
PHONE #: _____		Total # Pages: 1	
FAX #: _____		Phone #: _____ Fax #: _____	
EMAIL: _____		Bidder/Proposer E-Mail:	

Section 2	Enter Bidder/Proposer Information , as applicable Similar Performed Project (Bidder/Proposer to enter details of a project performed for above reference respondent)		
Bidder/Proposer Name: _____			
Reference Project Name: _____		Project Address: _____	Project Cost: _____
Summarize Scope: _____		_____	_____

You as an individual or your company has been given as a reference on the project identified above. Please provide your responses in section 3 below.

Section 3		Indicate: "Yes" or "No"
1. Did this company have the proper resources and personnel by which to get the job done?		
2. Were any problems encountered with the company's work performance?		
3. Were any change orders or contract amendments issued, other than owner initiated?		
4. Was the job completed on time?		
5. Was the job completed within budget?		
6. On a scale of one to ten, ten being best, how would you rate the overall work performance, considering professionalism; final product; personnel; resources. Rate from 1 to 10. (10 being highest)		
7. If the opportunity were to present itself, would you rehire this company?		
8. Please provide any additional comments pertinent to this company and the work performed for you:		

Section 4 Please submit non-Lee County employees as references

Reference Name (Print Name) _____

Reference Signature _____

Attachment B

VER 08-20-2020

Form 4 -Negligence or Breach of Contract Disclosure Form

REVISED 09/12/2016



ALLEGED NEGLIGENCE OR BREACH OF CONTRACT DISCLOSURE FORM

Please fill in the form below. Provide each incident in regard to alleged negligence or breach of contract that has occurred over the past 10 years.
Please complete in chronological order with the most recent incident on starting on page 1.

Company Name: _____

Type of Incident <i>Alleged Negligence or Breach of Contract</i>	Incident Date And Date Filed	Plaintiff <i>(Who took action against your company)</i>	Case Number	Court <i>County/State</i>	Project	Claim Reason <i>(initial circumstances)</i>	Final Outcome <i>(who prevailed)</i>

Make as many copies of this sheet as necessary in order to **provide a 10 year history** of the requested information. If there is no action pending or action taken in the last 10 years, complete the **company name** and write **“NONE”** in the first **“Type of Incident”** box of this page and return with your submission package. This form should also include the primary partners listed in your submission. Do not include litigation with your company as the plaintiff. Final outcome should include who prevailed and what method of settlement was made. If a monetary settlement was made the amount may remain anonymous. **Please do not modify this form (expansion of spacing allowed) or submit your own variation.**

Page Number: _____ Of _____ Total pages

Update the page number to reflect the current page and the total number of pages. Example: Page 3, of 5 total submitted pages of this form.

Attachment B

VER 08-20-2020

Form 5 - Affidavit Principal Place of Business



LEE COUNTY
SOUTH WEST FLORIDA

AFFIDAVIT PRINCIPAL PLACE OF BUSINESS

Instructions: Please complete all information that is applicable to your firm

Company Name: _____

Printed name of authorized signer

Title

⇒

Authorized Signature

Date

The signee of this Affidavit guarantee, as evidenced by the sworn affidavit required herein, the truth and accuracy of this affidavit to interrogatories hereinafter made. **LEE COUNTY RESERVES THE RIGHT TO REQUEST SUPPORTING DOCUMENTATION, AS EVIDENCE OF SERVICES PROVIDED, AT ANY TIME.**

The foregoing instrument was signed and acknowledged before me, by means of ☐ physical presence or ☐ online notarization, this _____ day of _____ 20____, by _____ who has produced
(Print or Type Name)

_____ as identification.
(Type of Identification and Number)

Notary:

State of

County of

⇒

Notary Public Signature

Notary Commission Number and expiration

1. Principal place of business is located within the boundaries of: _____ Lee County
_____ Collier County
_____ Non-Local

Local Business Tax License # _____

2. Address of Principal Place of Business: _____

3. Number of years at this location _____ years

4. Have you provided goods or services to Lee County on a regular basis within the past 3 consecutive years

____ Yes*

____ No

*If yes, attach contractual history for past 3 consecutive years

5. Number of available employees for this contract _____

6. Does your company have a Drug Free Workplace Policy

____ Yes

____ No

Attachment B

VER 08-20-2020

Form 6-Sub-contractor/consultant List



SUB-CONTRACTOR/CONSULTANT LIST

Sub-Contractor/Consultant Company Name	Area Of Work	Point Of Contact Or Project Supervisor	Contact Info Phone or Email	Qualified DBE, MBE, WBE, VBE or Similar	Amount or Percentage of Total

Please include sub-contractor/consultant name, area of work (i.e. mechanical, electrical, etc.) and a **valid** phone number and/or email. Also include the dollar value or percentage that the sub-contractor/consultant will be performing. If sub-contractor/consultant qualifies as a current certificate Florida Certified Business Enterprise such as MBE, WBE, DBE, VBE or similar please indicate such above and provide proof of certification.

Attachment B

VER 08-20-2020

Form 7: Public Entity Crime Form

Page 1 of 2

This form must be signed and sworn to in the presence of a notary public or other officer authorized to administer oaths.

1. This sworn statement is submitted to _____
(Print name of the public entity)

by _____
(Print individual's name and title)

for _____
(Print name of entity submitting sworn statement)

whose business address is _____

(If applicable) its Federal Employer Identification Number (FEIN) is _____

(If the entity has no FEIN, include the Social Security Number of the individual signing this sworn statement: On the attached sheet.) Required as per IRS Form W-9.

2. I understand that a "public entity crime" as defined in Paragraph 287.133(1) (g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or with the United States, including but not limited to, and bid or contract for goods or services to be provided to any public entity or agency or political subdivision or any other state or of the United States, and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.
3. I understand that "convicted" or "conviction" as defined in Paragraph 287.133(1) (b), Florida Statutes, means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere.
4. I understand that "affiliate" as defined in Paragraph 287.133(1)(a), Florida Statutes, means:
 1. A predecessor or successor of a person convicted of a public entity crime:
or:
 2. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those offices, directors, executives, partners, shareholders, employees, members and agents who are active in the management of the affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not fair market value under an arm's length Agreement/Contract, shall be a facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.
5. I understand that a "person" as defined in Paragraph 287.133(1) (c), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of the entity.
6. Based on information and belief, the statement which I have marked below is true in relation to the entity submitting those sworn statement. (Please indicate which statement applies.)

_____ Neither the entity submitted this sworn statement, nor any officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity nor affiliate of the entity have been charged with and convicted of a public entity crime subsequent to July 1, 1989.

Attachment B

VER 08-20-2020

Public Entity Crime Form

Page 2 of 2

_____ The entity submitting this sworn statement, or one or more of the officers, directors, executives, partners, shareholders, employees, member, or agents who are active in management of the entity, or an affiliate of the entity have been charged with and convicted of a public entity crime subsequent to July 1, 1989.

_____ The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, member, or agents who are active in management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989. However, there has been subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearing and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list. (Attach a copy of the final order)

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 (ONE) ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES, FOR CATEGORY TWO OR ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

(Signature)

(Date)

STATE OF _____

COUNTY OF _____

Sworn to (or affirmed) and subscribed before me, by means of ☐ physical presence or ☐ online notarization, this _____ day of _____ 20____, by _____ who has produced
(Print or Type Name)

_____ as identification.
(Type of Identification and Number)

Notary Public Signature

Printed Name of Notary Public

Notary Commission Number/Expiration

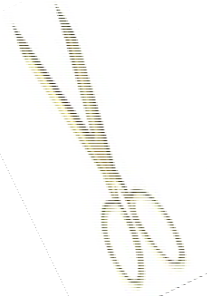
Attachment B

VER 08-20-2020

Sealed Bid Label

Cut along the outer border and affix this label to your sealed solicitation envelope to identify it as a “Sealed Bid”.

SEALED BID DOCUMENTS • DO NOT OPEN	
BID No.:	B200417BAG
BID TITLE:	Ford Automobiles, Sport Utility Vehicles, Passenger & Light Duty Vans
DATE DUE:	Tuesday, November 3, 2020
TIME DUE:	Prior to: 2:30 PM
SUBMITTED BY:	 (Name of Company)
e-mail address	Telephone
DELIVER TO:	Lee County Procurement Management 2115 Second Street, 1st Floor Fort Myers, FL 33901



***Notice:** the Date Due/Bid Due Date/Opening Date as stated on this label and other forms contained herein may have been updated via issuance of Addenda against this project. It is the sole responsibility of the Contractor/Vendor to monitor the County project webpage for any updates to the Date Due/Bid Due Date/Opening Date via Addenda. This label nor other original forms may not be updated. Contractor/Vendor may strike through and update Date Due/Bid Due Date/Opening Date at their discretion to match any updates to this date that have been published via Addenda.

Submission received after the time and date of the Date Due/Bid Due Date/Opening Date will not be accepted at the sole discretion of the County.

PLEASE PRINT CLEARLY

Attachment C



Lee County Procurement Management Division
 2115 Second Street, 1st Floor
 Fort Myers, FL 33901
 Main Line: (239) 533-8881
 Fax Line: (239) 485-8383
www.leegov.com/procurement

Bid Opening Tabulation

Bid Number: B200417BAG

Bid Title: Ford Automobiles, Sport Utility Vehicles, Passenger & Light Duty Vans

Opening Date: Tuesday, November 03, 2020

Opening Time: 2:30 PM

Opened By: Brooke Green

Title: Procurement Analyst

Verified By: Jake Bond

Attended Opening: See Sign In Sheet

	FIRM	COST
1	Bartow Ford Co.	4.269%
2	Sam Galloway Ford	3.415%
3		
4		
5		
6		
7		
8		
9		
10		

**** AWARD TO BE MADE AFTER STAFF RECOMMENDATION AND COUNTY COMMISSION APPROVAL AT A LATER DATE****

Page 1 of 1

Attachment D



ITEM 20.
Procurement Management - Consent

AGENDA ITEM REPORT

DATE: December 15, 2020
DEPARTMENT: Procurement Management
REQUESTER: Mary Tucker
TITLE: Award Contract for Ford Automobile Purchases

I. MOTION REQUESTED

A) Award Invitation to Bid No. B200417BAG, Ford Automobiles, Sport Utility Vehicles, Passenger & Light Duty Vans to Sam Galloway Ford, Inc. for the purchase of vehicles for County use from Ford Motor Company Division of dealers, including sport utility vehicles, passenger and light duty vans, light and medium duty trucks, and cab/chassis on an as needed basis, for an initial term of three years, as approved in the departments' annual adopted budgets. Purchases in excess of \$100,000.00 will be presented to the Board for approval.
B) Authorize the County Manager or Designee the authority to apply Local Vendor Preference of 3% to the award to Sam Galloway Ford, Inc.
C) Authorize the Chair to execute the contract documents on behalf of the Board of County Commissioners.
D) Grant the County Manager or designee the authority to renew the contract, for up to three years, and to execute all associated documents, as approved in the departments' annual adopted budgets, if doing so is in the best interest of Lee County, and there are no cost increases associated with the renewal.

II. ITEM SUMMARY

Awards a competitively solicited contract to Sam Galloway Ford, Inc. for the purchase of Ford automobiles, sport utility vehicles as well as passenger and light duty vans, on an as needed basis, for an initial term of three years, as approved in the departments' annual adopted budgets. The contract can be renewed up to three years, upon the agreement of both parties. Total expenditures for these services for Fiscal Year 19-20 were \$2,718,753.60. Sam Galloway Ford, Inc. provides the highest discount percentage, after application of the Local Vendor Preference of 3%, and was determined to be the most responsible and responsive bidder. Purchases in excess of \$100,000.00 will be presented to the Board for approval.

III. BACKGROUND AND IMPLICATIONS OF ACTION

A) Board Action and Other History

Procurement Management obtained bids for the project known as Invitation to Bid No. B200417BAG, Ford Automobiles, Sport Utility Vehicles, Passenger & Light Duty Vans. On the bid deadline of November 3, 2020, Procurement Management received two submittals. After conducting an analysis of the bid submissions, Sam Galloway Ford, Inc. was determined to be the most responsible and responsive bidder with the highest discount percentage, after application of the Local Vendor Preference of 3%.

Staff recommends awarding a contract to Sam Galloway Ford, Inc. for use on an as-needed basis for an initial three year period as approved in the departments' annual adopted budgets. Purchases in excess of \$100,000.00 will be presented to the Board for approval. The contract can be renewed up to three years, upon the agreement of both parties. Total expenditures for these services for Fiscal Year 19-20 were \$2,718,753.60.

B) Policy Issues

C) BoCC Goals

D) Analysis

E) Options

IV. FINANCIAL INFORMATION

A)	Current year dollar amount of item:	See comments below.
B)	Is this item approved in the current budget?	Yes
C)	Is this a revenue or expense item?	Expense
D)	Is this Discretionary or Mandatory?	Discretionary
E)	Will this item impact future budgets? If yes, please include reasons in III(D) above.	
F)	Fund: Program:	

Attachment D

	Project:	
	Account Strings:	
G)	Fund Type?	Other: Vehicle Replacement
H)	Comments:	

V. RECOMMENDATION

Approve

VI. TIMING/IMPLEMENTATION

VII. FOLLOW UP

ATTACHMENTS:

Description	Upload Date	Type
VENDOR EXECUTED RFP200327BAG from Galloway Ford	12/8/2020	Agreement

Attachment E

B200417BAG
Ford Automobiles, Sport Utility Vehicles, Passenger & Light Duty Vans
Sam Galloway Ford, Inc.

E1 Contract # n/A
Board Approval Date: 12-15-2020

AGREEMENT FOR FORD AUTOMOBILES, SPORT UTILITY VEHICLES, PASSENGER & LIGHT DUTY VANS

THIS AGREEMENT ("Agreement") is made and entered into by and between Lee County, a political subdivision of the State of Florida, hereinafter referred to as the "County" and Sam Galloway Ford, Inc., a Florida corporation, whose address is 1800 Boy Scout Dr., Ft. Myers, Florida 33907, and whose federal tax identification number is 59-0329880, hereinafter referred to as "Vendor."

WITNESSETH

WHEREAS, the County intends to purchase Ford automobiles, sport utility vehicles, passenger & light duty vans from the Vendor in connection with "Ford Automobiles, Sport Utility Vehicles, Passenger & Light Duty Vans" (the "Purchase"); and,

WHEREAS, the County issued Solicitation No. B200417BAG on October 2, 2020 (the "Solicitation"); and,

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

WHEREAS, the County posted a Notice of Intended Decision on December 1, 2020; and,

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

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

I. PRODUCTS AND SERVICES

The Vendor agrees to diligently provide all products and services for the Purchase, a more specific description of the Project Scope of Services is set forth in Sections 1-9, Scope of Work and Specifications of B200417BAG, a photocopy of said sections being attached hereto and incorporated by reference as Exhibit A. Vendor shall comply strictly with all of the terms and conditions of Solicitation No. B200417BAG, as modified by its Addendum, copies of which are on file with the County's Department of Procurement Management and are deemed incorporated into this Agreement.

II. TERM AND DELIVERY

A. This Agreement shall commence immediately upon the effective date and shall continue services on an "as needed basis" for one (1), three (3) year

Attachment E

period. Upon mutual written agreement of both parties, the parties may renew the Agreement, in whole or in part, for a renewal term or terms not to exceed the initial Agreement term of three (3) years. The increments of renewal shall be at the sole discretion of the County as deemed in its best interest. The effective date shall be the date the Lee County Board of County Commissioners awarded the Solicitation to the Vendor.

- B. A purchase order must be issued by the County before commencement of any work or purchase of any goods related to this Agreement.

III. COMPENSATION AND PAYMENT

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

IV. METHOD OF PAYMENT

Attachment E

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

V. ADDITIONAL PURCHASES

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

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

VI. LIABILITY OF VENDOR

- A. The Vendor shall save, defend, indemnify and hold harmless the County from and against any and all claims, actions, damages, fees, fines, penalties, defense costs, suits or liabilities which may arise out of any act, neglect, error, omission or default of the Vendor arising out of or in any way connected with the Vendor or subcontractor's performance or failure to perform under the terms of this Agreement.
- B. This section shall survive the termination or expiration of this Agreement.

VII. VENDOR'S INSURANCE

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

VIII. RESPONSIBILITIES OF THE VENDOR

- A. The Vendor shall be responsible for the quality and functionality of all products supplied and services performed by or at the behest of the Vendor under this Agreement. The Vendor shall, without additional compensation, correct any errors or deficiencies in its products, or if directed by County, supply a comparable replacement product or service.
- B. The Vendor warrants that it has not employed or retained any company or person (other than a bona fide employee working solely for the Vendor), to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm other than a bona fide employee working solely for the Vendor, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award of this Agreement.
- C. The Vendor shall comply with all federal, state, and local laws, regulations and ordinances applicable to the work or payment for work thereof, and shall not discriminate on the grounds of race, color, religion, sex, or national origin in the performance of work under this Agreement.
- D. Vendor specifically acknowledges its obligations to comply with Section 119.0701, Florida Statutes, with regard to public records, and shall:

Attachment E

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

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

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

IX. OWNERSHIP OF PRODUCTS

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

X. TIMELY DELIVERY OF PRODUCTS AND PERFORMANCE OF SERVICES

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

XI. COMPLIANCE WITH APPLICABLE LAW

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

XII. TERMINATION

- A. The County shall have the right at any time upon thirty (30) days' written notice to the Vendor to terminate this Agreement in whole or in part for any reason whatsoever. In the event of such termination, the County shall be responsible to Vendor only for fees and compensation earned by the Vendor, in accordance with Section III, prior to the effective date of said termination. In no event shall the County be responsible for lost profits of Vendor or any other elements of breach of contract.
- B. After receipt of a notice of termination, except as otherwise directed, the Vendor shall stop work on the date of receipt of the notice of termination or other date specified in the notice; place no further orders or sub-

Attachment E

contracts for materials, services, or facilities except as necessary for completion of such portion of the work not terminated; terminate all vendors and subcontracts; and settle all outstanding liabilities and claims.

- C. The County's rights under this Agreement shall survive the termination or expiration of this Agreement and are not waived by final payment or acceptance and are in addition to the Vendor's obligations under this Agreement.

XIII. DISPUTE RESOLUTION

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

XIV. VENDOR WARRANTY

- A. All products provided under this Agreement shall be new (unless specifically identified otherwise in Exhibit B) and of the most suitable grade for the purpose intended.
- B. If any product delivered does not meet performance representations or other quality assurance representations as published by manufacturers, producers or distributors of the products or the specifications listed in this Agreement, the Vendor shall pick up the product from the County at no expense to the County. The County reserves the right to reject any or all materials if, in its judgment, the item reflects unsatisfactory workmanship

Attachment E

or manufacturing or shipping damage. In such case, the Vendor shall refund to the County any money which has been paid for same.

- C. Vendor shall secure from the applicable third party manufacturers, and assign and pass through to the County, at no additional cost to the County, such warranties as may be available with respect to the equipment, parts and systems provided through the Purchase.

XV. MISCELLANEOUS

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

Attachment E

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

Vendor's Representative:

Name: Robert Gran

Title: Fleet Manager

Address: 1800 Boy Scout Drive
Fort Myers, FL 33907

Telephone: 239-936-2193

Facsimile: 239-274-2354

E-mail: rgran@gallowayauto.com

County's Representatives:

Names:	<u>Roger Desjarlais</u>	<u>Mary Tucker</u>
Titles:	<u>County Manager</u>	<u>Director of Procurement Management</u>
Address:	<u>P.O. Box 398</u> <u>Fort Myers, FL 33902</u>	
Telephone:	<u>239-533-2221</u>	<u>239-533-8881</u>
Facsimile:	<u>239-485-2262</u>	<u>239-485-8383</u>
E-Mail:	<u>rdesjarlais@leegov.com</u>	<u>mtucker@leegov.com</u>

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

Attachment E

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

[The remainder of this page intentionally left blank.]

Attachment E

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

WITNESS:

Signed By: [Signature]

Print Name: Robert Galloway

SAM GALLOWAY FORD, INC.

Signed By: [Signature]

Print Name: Katherine G. Dougherty

Title: Vice President

Date: 12-07-2020

LEE COUNTY

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: [Signature]

CHAIR

DATE: 1-14-21

ATTEST: **LINDA DOGGETT**
CLERK OF THE CIRCUIT COURT
Linda Doggett, Clerk

BY: [Signature]

DEPUTY CLERK

Commissioner Cecil L. Pendergrass
Lee County Board of County Commissioners
District 2

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

BY: [Signature]

OFFICE OF THE COUNTY ATTORNEY

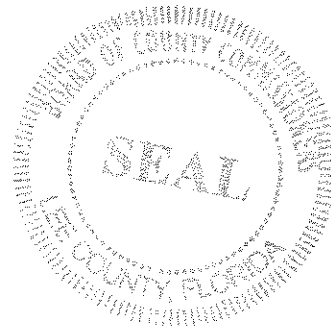


EXHIBIT A SCOPE OF WORK AND SPECIFICATIONS

1. GENERAL SCOPE OF WORK

- 1.1 The Lee County Board of County Commissioners seeks to contract with a qualified Vendor for the purchase of vehicles for County use from Ford Motor Company Division dealers. The vehicles to be purchased under this Agreement are automobiles, sport utility vehicles, passenger and light duty vans, light and medium duty trucks, and cab/chassis. While the County makes no guarantees to the actual quantities of any vehicle type, we can predict the majority of purchases are expected to be trucks.
- 1.2 These specifications are intended to provide the information by which the Vendor may understand the requirements of the County relative to furnishing and delivering fleet vehicles.

2. SPECIFICATION BOOKS

- 2.1 The Vendor shall, at no cost, supply Lee County Fleet Management with one (1) current set of specification books covering all models of Ford products at the beginning of each model year change. These specification books must include all specifications including, but not limited to, measurements, capacities, colors, types, model year changes, detailed specifications, etc.

3. ADDITIONAL DISCOUNTS AND/OR CONCESSIONS

- 3.1 The County shall receive any and all additional discounts and/or concessions available at the time of each purchase. These discounts/concessions will be in addition to the percentage quoted under the "Basis of Award" (therefore, they will not be factored into the award process of this bid). All paperwork associated with these discounts/concessions must be sent to Lee County Fleet Management at the beginning/change of each model year or as they become available to the Dealership. In the space provided on Attachment B, please explain how you will pass these discounts/concessions on to Lee County Fleet Management on a per model basis.

4. STATE CONTRACT/SHERIFF'S ASSOCIATION/OTHER CONTRACTS

- 4.1 The County reserves the right to purchase any of the items associated with this Agreement from other contracts offered to the County; if the prices are lower and/or it is deemed in the best interest of the County to do so. The Vendor, at the sole discretion and request of Lee County Fleet Management, may be allowed to match these contracted prices.

5. PRE-DELIVERY

- 5.1 The Vendor shall be responsible for delivering vehicles that are new and unused, properly serviced, clean, and in first class operating condition. Pre-delivery service, at a minimum, shall include the following:
 - 5.1.1 Complete lubrication and check all fluid levels to assure proper fill.
 - 5.1.2 Adjustment of engine to proper operating condition.
 - 5.1.3 Inflate tires to proper pressure.
 - 5.1.4 Check for proper operation of all accessories, gauges, lights, mechanical and hydraulic features.
 - 5.1.5 Cleaning of vehicle, if necessary, and removal of all unnecessary tags, stickers, papers, etc. Remove window sticker and turn in with the delivery paperwork.
 - 5.1.6 Overall check for safe operating condition
 - 5.1.7 All fuel tanks on each new vehicle will come with a full tank of fuel.
 - 5.1.8 All new vehicles will come with three (3) complete sets of keys, including keys for any accessories such as: tool boxes, utility boxes, etc.
 - 5.1.8.1 The Vendor understands that the Agreement covers a complete, fully operative unit, as specified by the purchase order and enclosures, including the mounting of all attachments and connections to the chassis.

6. CONDITIONS & DELIVERY

- 6.1 All units must contain a full tank of fuel as indicated by the vehicle's fuel gauge at the time of delivery.
- 6.2 If a vehicle is delivered with more than 250 miles but less than 500 miles as indicated by the vehicle's odometer, the vendor shall be assessed \$0.575 (IRS rate) cents per mile for all miles over 250. Vehicles with 500 miles or more as indicated by the vehicle's odometer may not be accepted.
- 6.3 All vehicles shall be delivered to the Lee County's Division of Fleet Management located at 2955 Van Buren Street, Fort Myers, Florida 33916. Vendor must contact the Shop Superintendent or designee at (239) 533-5338 at least twenty-four (24) hours prior to delivery. Deliveries can be made Monday - Friday between the hours of 7:15 AM and 3:15 PM.
- 6.4 Delivery does not constitute acceptance. Acceptance and authorization of payment will be given only after a thorough inspection indicates that the vehicle meets specifications and conditions listed herein.
 - 6.4.1 Vehicles shall be delivered with each of the following documents satisfactorily completed:
 - 6.4.1.1 Temporary license plate.
 - 6.4.1.2 Owner and/or operator manual(s).
 - 6.4.1.3 Warranty certifications, including rust proofing, if applicable.
 - 6.4.1.4 Copy of pre-delivery service report.
 - 6.4.1.5 Window price sticker.
 - 6.4.1.6 All vehicles shall be equipped with all standard equipment as specified by the manufacturer for this model. All vehicles shall comply with the EPA Emission Standards, and all Motor Vehicle Safety Standards as established by the U.S. Department of Transportation regarding the manufacture of motor vehicles, and OSHA standards CFR 29 1910/1926.

7. TITLE, REGISTRATION, AND PLATES

- 7.1 All vehicles delivered under this contract shall be titled and registered by the Vendor in accordance with Florida Statutes Chapters 319 and 320. Vendor shall send any necessary forms(s), which must be signed by an authorized representative of the Lee County Board of County Commissioners, with the vehicle upon delivery.
- 7.2 Vendor shall obtain necessary signature(s) and complete the titling and registration process for the County and return a county plate within twenty-five (25) calendar days of delivery of vehicle. Vendor shall include all fees involved in the title application, registration, and obtaining new plates in the "Dealer Invoice W/Holdback Price" for each vehicle.

NOTE: The Lee County Board of County Commission is self-insured, therefore, a "Proof of Insurance" form is not required.

8. INVOICING:

- 8.1 Vendor shall submit "Ford Proprietary PRICE LIST" documentation indicating all discount percentages including discount off Ford Proprietary PRICE LIST, any markup from Option A items, and any additional concessions.
 - 8.1.1 Documentation should be submitted prior to order being delivered and be included with all invoicing for completed/accepted deliveries.

9. INTRODUCTION OF NEW YEAR MODEL:

- 9.1 The Vendor shall notify the County Fleet Director of the order cutoff date for each year model and the anticipated release of a new, year model. Failure to do so shall result in the Vendor filling any and all orders against the resulting Agreement at pricing for the previous model year. The Vendor shall provide no less than thirty (30) calendar days' advance written notice to County Fleet Director.

W:\B200417BAG

ATTACHMENT A

List of Authorized Dealer Installed Option Manufacturers

1. Bedliners:
 - a. Duraliner
 - b. Rhino Linings
 - c. Line-X
2. Tool Boxes:
 - a. Delta
 - b. Dayton
 - c. United Welding
 - d. Jobox
3. Trailer Hitches:
 - a. Draw-Tite
 - b. Reese
4. Lift Gates:
 - a. Tommy Gate
5. Aluminum Dump Body Inserts:
 - a. Truck Craft
 - b. Ezdumper
6. Utility And Stake Bodies:
 - a. Omaha
 - b. Reading
 - c. Knapheide
7. Cranes:
 - a. Auto-Crane
 - b. Liftmoore
8. Dump And Flat Bed Dump Hoists:
 - a. Venco Conversion Hoists
9. Truck And Van Accessories:
 - a. Masterack
 - b. American Vans
 - c. Weatherguard

Attachment E

VS01-08-20-2024

SPECIAL CONDITIONS

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

1. TERM

- 1.1 The Vendor shall be responsible for furnishing and delivering to the Lee County requesting Department(s) the commodity or services on an "as needed basis" for one (1) three-year (3) period. Upon mutual written agreement of both parties, the parties may renew the Agreement, in whole or in part, for a renewal term or terms not to exceed the initial Agreement term of three (3) years. The increments of renewal shall be at the sole discretion of the County as deemed in its best interest.

2. BASIS OF AWARD

- 2.1 The basis of award shall be determined by the Highest Percentage Discount Below/Off "Dealer Invoice W/Holdback Price" (Item 1 of Bid Schedule) Column of the Ford Proprietary PRICE LIST of the most responsive, responsible, and qualified Vendor meeting all bid specifications.

- 2.1.1 Vendors should complete the attached forms as instructed herein. New vehicle prices will be given as a percentage discount below/off the "Dealer Invoice W/Holdback Price" column, as shown on the Ford Proprietary PRICE LIST. This percentage discount below/off the "Dealer Invoice W/Holdback Price" column shall apply to the base price, freight, and all factory production options. The County shall participate in all fleet or price incentives or rebates available to the Vendor in addition to the percentage discount below/off the "Dealer Invoice W/Holdback Price" column, as shown on the Ford Proprietary PRICE LIST.

- 2.1.2 All vehicles purchased under this contract shall include as part of the base vehicle price: vehicle preparation costs, delivery, three complete sets of keys, vehicle title, vehicle registration, and a new County license plate. The Vendor shall take these factors into consideration when submitting final contracted percentage discount below/off "Dealer Invoice W/Holdback".

- 2.1.3 One (1) Vendor from all responsive Ford Motor Company dealers shall be awarded this Contract. Since fleet incentives or rebates will be consistent from dealer to dealer (same manufacturer), the award will be based on the response with the greatest/highest percentage discount off the "Dealer Invoice W/Holdback Price" column of the Ford Proprietary PRICE LIST.

2.1.4 OPTION A: DEALER INSTALLED OPTIONS

- 2.1.4.1 Vendor must provide a percentage markup above "actual invoice" for any dealer installed options to be performed by Vendor or Vendor selected sub-contractor. Although not part of Basis of Award determination, Vendor shall provide percentage for Option A in order to be considered for award and such shall become part of Vendor Contract.

- 2.1.4.2 Option A shall cover dealer installed options which may include, but are not limited: to strobe lights, bed liners, utility bodies, cranes, service manuals, and parts manuals. See Attachment "A" for the approved list of dealer installed option manufacturers (only manufacturers on this list will be accepted). The Division of Fleet Management will provide the Vendor with updated lists of approved manufacturers for dealer installed options as needed throughout the Contract period. The Vendor shall also handle any and all warranty claims for the dealer installed items and any accessories added to the vehicle(s). These warranty claims will be handled as quickly as possible to minimize downtime to the County. It will be the responsibility of the Vendor to pick up and deliver the equipment for all warranty repairs and issues.

- 2.1.4.3 Vendor shall provide copies of actual invoices as backup to invoicing. Failure to provide proper supporting documents (actual invoices) for Option A services may delay Vendor payment for services.

End of Special Conditions Section

Attachment E



Procurement Management Department
2115 Second Floor, 1st Floor
Fort Myers, FL 33901
Main Line: (239) 533-8881
Fax Line: (239) 485-8383
www.lee.gov.com/procurement

Posted Date: October 22, 2020

Solicitation No.: B200417BAG

Solicitation Name: Ford Automobiles, Sport Utility Vehicles, Passenger & Light Duty Vans

Subject: Addendum Number 1

The following represents clarification, additions, deletions, and/or modifications to the above referenced bid. This addendum shall hereafter be regarded as part of the solicitation. Items not referenced herein remain unchanged, including the response date. Words, phrases or sentences with a strikethrough represent deletions to the original solicitation. Underlined words and bolded, phrases or sentences represent additions to the original solicitation.

1. QUESTIONS/ANSWERS

1.	In reference to the Sub-Contractor/ Consultant list. We only use Lee County approved contractors and/or vendors since we have the current contract. Do I need to list each individually, or can I just write in "same contractors as approved by Lee County"?
Answer	Please list any subcontractors individually if known.

2.	On the Affidavit Principal Place of Business form, the question asks if we provided services/goods to Lee Co. within the past 3 consecutive years and if so, attach contractual history. What documentation is required considering we have the current bid?
Answer	A list of projects or the current contract would be sufficient documentation.

3.	Finally, the basis of the bid award shall be determined by highest % discount below/off "Dealer Invoice W/holdback. Normally Government concession money is more than factory rebates and incentives. There is no mention of this in the contract, how does this factor in?
Answer	The County is expecting to receive the fleet vehicle concession discount offered by Ford Motor Company. In addition to the fleet concession, the County is looking to receive an additional percentage discount below/off the Dealer Invoice W/holdback price. See article 3.1 of the Scope of Work and Specifications as found on page 16.

BIDDER/PROPOSER IS ADVISED, YOU ARE REQUIRED TO ACKNOWLEDGE RECEIPT OF THIS ADDENDUM WHEN SUBMITTING A BID/PROPOSAL. FAILURE TO COMPLY WITH THIS REQUIREMENT MAY RESULT IN THE BIDDER/PROPOSER BEING CONSIDERED NON-RESPONSIVE.

ALL OTHER TERMS AND CONDITIONS OF THE SOLICITATION DOCUMENTS ARE AND SHALL REMAIN THE SAME.

Brooke Green

Brooke Green
Procurement Analyst Direct Line: 239-533-8848
Lee County Procurement Management

**EXHIBIT B
FEE SCHEDULE**

<i>Ford Automobiles, Sport Utility Vehicles, Passenger & Light Duty Vans</i>	
Item	Description
1	Percentage Figure Below "Dealer Invoice W/Holdback Price" Column of the Ford Proprietary PRICE LIST: <u>3.415</u> %
2	Option A: DEALER INSTALL OPTIONS Percentage Figure Above "Actual Invoice" of Dealer Installed Options Performed by a Sub- Contractor <u>0</u> %

EXHIBIT C

INSURANCE REQUIREMENTS



Lee County Insurance Requirements

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

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

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

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

\$1,000,000 combined single limit (CSL); or
\$500,000 bodily injury per person
\$1,000,000 bodily injury per accident
\$500,000 property damage per accident

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

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

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



Verification of Coverage:

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

- a. The certificate holder shall read as follows:

Lee County Board of County Commissioners
P.O. Box 398
Fort Myers, Florida 33902

- b. *"Lee County, a political subdivision and Charter County of the State of Florida, its agents, employees, and public officials"* will be named as an "Additional Insured" on the General Liability policy, including Products and Completed Operations coverage.

Special Requirements:

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

EXHIBIT D

VENDOR BACKGROUND SCREENING AFFIDAVIT

VENDOR BACKGROUND
SCREENING AFFIDAVIT

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

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

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

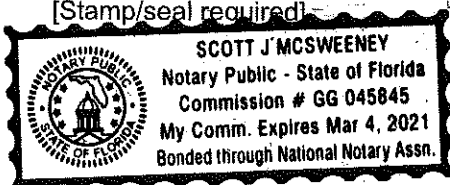
Date: 11-7-20

STATE OF FL
COUNTY OF LEE

Signature
Katherine G. Dougherty, V.P.
Name/Title

The foregoing instrument was sworn to (or affirmed) and subscribed before me by means of ☒ physical presence or ☐ online notarization, this 7th day of December, 2020 by the above-named person and in their stated capacity, and is either personally known to me or who has produce the following as identification: _____

[Stamp/seal required]



Signature, Notary Public

Attachment F



Kevin Ruane
District One

July 11, 2023

Cecil L. Pendergrass
District Two

Ray Sandelli
District Three

Brian Hamman
District Four

Mike Greenwell
District Five

Roger Desjarlais
County Manager

Richard Wesch
County Attorney

Donna Marie Collins
County Hearing Examiner

Mr. Robert Gran
Sam Galloway Ford, Inc.
1800 Boy Scout Drive
Fort Myers, FL 33902

SUBJECT: Renewal of Annual Contract No. B200417BAG
Ford Automobiles, Sport Utility Vehicles, Passenger & Light Duty Vans

Dear Mr. Gran:

This is to inform you that Lee County agrees to renew the above subject contract for an additional three (3) year period, from 12/15/23 through 12/14/26.

We are hereby extending the annual contract for an additional three-year period under the same terms and conditions as the original award.

If you have any questions regarding this letter, please contact me at (239) 533-8871.

Sincerely,

Kimberly Urban

Kimberly Urban
Contracts Analyst
Procurement Management Division

C: Project File

Attachment F



Kevin Ruane
District One

June 7, 2023

239-533-8871

Cecil L. Pendergrass
District Two

Ray Sandelli
District Three

Brian Hamman
District Four

Mike Greenwell
District Five

Roger Desjarlais
County Manager

Richard Wesch
County Attorney

Donna Marie Collins
County Hearing
Examiner

Mr. Robert Gran
Sam Galloway Ford, Inc.
1800 Boy Scout Drive
Fort Myers, FL 33902

Subject: Renewal of Annual Contract B200417BAG
Ford Automobiles, Sport Utility Vehicles, Passenger & Light Duty Vans

Dear Mr. Gran

The above-referenced annual contract will expire on December 14, 2023, unless renewed. Lee County is requesting that this annual contract be renewed for an additional three-year period (12/15/23 – 12/14/26). Therefore, we are requesting that you choose one of the following options and return this letter to Lee County Procurement Management, Attn: Kimberly Urban, P.O. Box 398, Ft. Myers, FL 33902-0398, (Fax: 239-485-8383 or email kurban@leegov.com), within 15 calendar days from receipt. Failure to return by June 22, 2023, may, at the County's sole discretion, result in contract cancellation and/or rebid of solicitation.

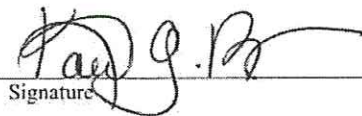
☒ a. I want to continue performing under this annual contract for an additional three-year period under the same terms and conditions as agreed upon in the above-referenced quotation.

As a condition of this renewal, the vendor agrees to provide Lee County with an updated insurance certificate upon expiration of the original certificate on file with the County.

☐ b. I am not interested in extending this contract for an additional three-year period. Why? _____

Vendor:

Lee County:


Signature


Signature of Authorized Official

Vice President
Title

Procurement Management Director
Title

06-19-23
Date

6-26-2023
Date

P.O. Box 398, Fort Myers, Florida 33902-0398 Phone: (239) 533-2111
www.leegov.com

AN EQUAL OPPORTUNITY EMPLOYER

1. **Request:**

Meeting Date: December 16, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA RATIFYING SPA-24-11-EN FOR ACTION OF THE TOWN TAKEN OCTOBER 3, 2024 REGARDING THE WAIVING OF THE TOWN'S COMPETITIVE PROCUREMENT POLICY AND CONTRACTING WITH ICS MATERIALS INC. TO SCREEN DEBRIS FROM SAND OVERWASHED BY HURRICANE HELENE TO PRODUCE BEACH COMPATIBLE SAND, PLACE AND GRADE BEACH COMPATIBLE SAND ONTO THE BEACH, REMOVE DEBRIS FROM THE BEACH, REMOVE DEBRIS SAND FROM RIGHT OF WAY AND TOWN PROPERTY AND DELIVER TO DEBRIS MANAGEMENT SITE, AND DISPOSE OF DEBRIS AT AUTHORIZED WASTE MANAGEMENT SITE; AND APPROVING PAYMENT OF ICS MATERIALS INC. INVOICE NOS. 110624-29, 111524-29, AND 111824-29 IN THE AMOUNT \$427,870.00; AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

Hurricane Helene overwashed 1000's of cubic yards of sand and debris onto Town Right of Way and Town Properties. Screening the sand for debris and placing it back on to the beach provides beneficial resiliency to upland properties for future storm impacts.

What the action accomplishes:

Ratifies SPA-24-11-EN to contract with ICS Materials, Inc. to:

- Screen overwash sand from Hurricane Helene to produce beach compatible sand that is free of all debris.
- Place and grade beach compatible sand onto the beach as directed by the Town.
- Remove debris from beach prior to placing sand on beach.
- Remove debris sand from right of way and Town property and deliver to Town debris management site. Dispose of screener debris byproduct and beach debris at permitted disposal site.
- Follow all local, state and federal regulations.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Chadd Chustz, Environmental
Projects Manager

5. **Background:**

Hurricane Helene was a devastating hurricane that caused widespread destruction and numerous fatalities across the Southeastern United States in late September 2024. It was the strongest hurricane on record to strike the Big Bend region of Florida, the deadliest Atlantic hurricane since Maria in 2017, and the deadliest to strike the mainland U.S. since Katrina in 2005.

Attachments:

1. 24-295, Ratify ICS Contract Hurricane HELENE Sand Screening
2. Hurricane Helene FMB Sand Haul Out Spreadsheet 10.26.24 -11.18
3. INV110624-29 ICS for Hurricane Helene Sand Haul Out 10.26.24 -11.06.24
4. INV111524-29 ICS for Hurricane Helene Sand Haul Out 11.07.24 -11.15.24
5. INV111824-29 ICS for Hurricane Helene Sand Haul Out 11.18.24

Financial Impact:

Per FEMA PAPPG V4 2020 page 105, when removing sand debris, disposal of sand spoils on a public beach is eligible as part of the debris removal project when it is the most cost-effective method of disposal. Category A (debris) eligible projects may receive 100% cost share from FEMA Public Assistance contracted duration of SPA-24-11-EN.

6. Alternative Action

Do not ratify SPA-24-11-EN.

7. Management Recommendations:

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 - 12/5/2024
Approved - 12/5/2024
Approved - 12/9/2024
Approved - 12/9/2024
Final Approval - 12/9/2024

RESOLUTION NUMBER 24-295

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA RATIFYING SPA-24-11-EN FOR ACTION OF THE TOWN TAKEN OCTOBER 3, 2024 REGARDING THE WAIVING OF THE TOWN'S COMPETITIVE PROCUREMENT POLICY AND CONTRACTING WITH ICS MATERIALS INC. TO SCREEN DEBRIS FROM SAND OVERWASHED BY HURRICANE HELENE TO PRODUCE BEACH COMPATIBLE SAND, PLACE AND GRADE BEACH COMPATIBLE SAND ONTO THE BEACH, REMOVE DEBRIS FROM THE BEACH, REMOVE DEBRIS SAND FROM RIGHT OF WAY AND TOWN PROPERTY AND DELIVER TO DEBRIS MANAGEMENT SITE, AND DISPOSE OF DEBRIS AT AUTHORIZED WASTE MANAGEMENT SITE; AND APPROVING PAYMENT OF ICS MATERIALS INC. INVOICE NO'S. 110624-29, 111524-29, AND 111824-29 IN THE AMOUNT \$427,870.00; 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, on October 5, 2024 Governor Ron DeSantis by Executive Order No. 24-214, declared a State of Emergency throughout the Emergency Area based upon the serious threat to the public health, safety, and welfare posed by the Storm; and

WHEREAS, on October 6, 2024, the Florida Department of Environmental Protection issued Emergency Final Order OGC NO. 24-2580 for an Emergency Area of 61 counties including Lee County; and

WHEREAS, on October 6, 2024 the Florida Department of Environmental Protection issued Emergency Procurement Order OGC NO. 24-2580 to suspend, to the extent necessary to ensure said emergency response functions, the effect of any statute, rule, or order, including Chapter 255 and Sections 287.055(3)(a)-(d), 4(a)-(d), 5(a)-(c), and 287.057(3), Florida Statutes, and Chapters 60A- 1.002(4), 60A-1.021(2), and 60A-1.043(1)-(3), and 60D-5, Florida Administrative Code, to the extent needed to procure any and all necessary supplies, commodities, services, temporary premises, and other resources to include, without limiting the generality of the foregoing, any and all statutes, rules, and orders which affect budgeting, leasing, printing, purchasing, travel, the conditions of employment, and the compensation of employees as set forth in an established Tracker item at the Florida Emergency Operations Center, as prescribed in the State Comprehensive Emergency Management Plan, as directed by the State Coordinating Officer, or as directed by the Executive Office of the Governor; and

WHEREAS, on October 6, 2024 the Town of Fort Myers Beach approved Resolution 24-214 declaring a state of local emergency as authorized by Section 252.38(3), Florida Statutes, thereby waiving the procedures and formalities otherwise required of political subdivisions by; 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, the Town of Fort Myers Beach Code Sec. 2-480 (d) provides the basis for emergency purchase for the Town Manager to make, or authorize others to make, emergency purchases of supplies, services or construction items when there exists a threat to public health, welfare or safety; provided that such emergency purchases are made with such competition as is practicable under the circumstances.

WHEREAS, on October 24th, 2024 the Town Manager entered into a contract with ICS Materials, Inc. for a term of 60 days (from 3rd day of October to the 2nd day of December 2024.) to screen debris from sand overwashed by Hurricane Helene to produce beach compatible sand, and returning screened sand to the beach to protect upland properties and the health and welfare of the citizens and visitors of the Town of Fort Myers Beach, as well as to protect the financial well-being of the businesses in the Town that depend on tourism; and

WHEREAS, the contract with ICS Materials, Inc. was for a not-to-exceed amount of \$450,000, which requires ratification by the Town Council;

WHEREAS, the ICS Materials, Inc. invoice INV101824-31 in the amount of \$ \$427,870.00 requires approval for payment by the Town Council;

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. This Resolution memorializes and ratifies the actions of the Town to contract with ICS MATERIALS INC. for screening debris from overwash sand and returning screened sand to the beach for a period of 60 days for a not-to-exceed amount of \$450,000 and approves the Town Manager’s emergency procurement.

Section 3. This Resolution authorizes payment of invoices 110624-29, 111524-29, and 111824-29 in the amount \$427,870.00 to ICS MATERIALS INC. for services rendered.

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 ____ day of _____ 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

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

Sand

Overview:

Date	Project	Description	Quantity	Rate	Total Cost	Weekly Totals
10.26.24	Helene Sand	Sand Screener & Equipment Mobilization & Demobilization	1	\$ 12,000.00	\$ 12,000.00	
10.26.24 - 11.06.24	Helene Sand	Beach Compatible Sand Production (Cubic Yards)	6409.40	\$ 11.50	\$ 73,708.10	
10.26.24 - 11.06.24	Helene Sand	On Road Truck Delivery from DDMS to Beach Access (Cubic Yards)	6409.4	\$ 7.00	\$ 44,865.80	
10.26.24 - 11.06.24	Helene Sand	Off Road Truck Delivery from Beach Access to Beach (Cubic Yards)	6409.4	\$ 7.00	\$ 44,865.80	
10.26.24 - 11.06.24	Helene Sand	Place and Grade onto Beach (Cubic Yards)	6409.4	\$ 6.49	\$ 41,597.01	\$ 217,036.71
11.07.24 - 11.15.24	Helene Sand	Beach Compatible Sand Production (Cubic Yards)	5802.60	\$ 11.50	\$ 66,729.90	
11.07.24 - 11.15.24	Helene Sand	On Road Truck Delivery from DDMS to Beach Access (Cubic Yards)	5802.60	\$ 7.00	\$ 40,618.20	
11.07.24 - 11.15.24	Helene Sand	Off Road Truck Delivery from Beach Access to Beach (Cubic Yards)	5802.60	\$ 7.00	\$ 40,618.20	
11.07.24 - 11.15.24	Helene Sand	Place and Grade onto Beach (Cubic Yards)	5802.60	\$ 6.49	\$ 37,658.87	\$ 185,625.17
11.18.24	Helene Sand	Beach Compatible Sand Production (Cubic Yards)	788.00	\$ 11.50	\$ 9,062.00	
11.18.24	Helene Sand	On Road Truck Delivery from DDMS to Beach Access (Cubic Yards)	788.00	\$ 7.00	\$ 5,516.00	
11.18.24	Helene Sand	Off Road Truck Delivery from Beach Access to Beach (Cubic Yards)	788.00	\$ 7.00	\$ 5,516.00	
11.18.24	Helene Sand	Place and Grade onto Beach (Cubic Yards)	788.00	\$ 6.49	\$ 5,114.12	\$ 25,208.12
Total:					\$ 427,870.00	\$ 427,870.00

DELIVER AND PLACE SAND ONTO BEACH											
Date	Truck Number	Truck Number	Release	From	To	Truck Capacity (CY)	Load Cap (TN)	Quantity (CY)	Load Count	Per Day Trips (CY)	
10/26/2024 10:00:00 AM	002771	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	95	27	1		
10/26/2024 10:00:00 AM	002772	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	95	27	1		
10/26/2024 10:00:00 AM	002773	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002774	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002775	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	95	28.5	1		
10/26/2024 10:00:00 AM	002776	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	95	28.5	1		
10/26/2024 10:00:00 AM	002777	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	95	28.5	1		
10/26/2024 10:00:00 AM	002778	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	95	28.5	1		
10/26/2024 10:00:00 AM	002779	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	95	28.5	1		
10/26/2024 10:00:00 AM	002780	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	95	28.5	1		
10/26/2024 10:00:00 AM	002781	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	95	28.5	1		
10/26/2024 10:00:00 AM	002782	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	95	28.5	1		
10/26/2024 10:00:00 AM	002783	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	95	28.5	1		
10/26/2024 10:00:00 AM	002784	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	95	28.5	1		
10/26/2024 10:00:00 AM	002785	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	95	28.5	1		
10/26/2024 10:00:00 AM	002786	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	95	28.5	1		
10/26/2024 10:00:00 AM	002787	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	95	28.5	1		
10/26/2024 10:00:00 AM	002788	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	95	28.5	1		
10/26/2024 10:00:00 AM	002789	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	95	28.5	1		
10/26/2024 10:00:00 AM	002790	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	95	28.5	1		
10/26/2024 10:00:00 AM	002791	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	95	28.5	1		
10/26/2024 10:00:00 AM	002792	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	95	28.5	1		
10/26/2024 10:00:00 AM	002793	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	95	28.5	1		
10/26/2024 10:00:00 AM	002801	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002802	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002803	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002804	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002805	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002806	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002807	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002808	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002809	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002810	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002811	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002812	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002813	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002814	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002815	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002816	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002817	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002818	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002819	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002820	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002821	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002822	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002823	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002824	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002825	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002826	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002827	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002828	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002829	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002830	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002831	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002832	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002833	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002834	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002835	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002836	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002837	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002838	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002839	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002840	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002841	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002842	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002843	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002844	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002845	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002846	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002847	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002848	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002849	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002850	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002851	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002852	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002853	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002854	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002855	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002856	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002857	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002858	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002859	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002860	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002861	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002862	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002863	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002864	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002865	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002866	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002867	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002868	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002869	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002870	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002871	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002872	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002873	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002874	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002875	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002876	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002877	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002878	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002879	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002880	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002881	44701	SAND	BAY OAKS DOWNS - STE 1	NEWTON PARK FDS	30	90	27	1		
10/26/2024 10:00:00 AM	002882	44701	SAND	BAY OAKS D							

Page 653 of 694

Total CY:		5802.60	334	5802.6
Rate Per Cubic Yard:	\$	31.99		
Total:	\$	185,625.17		
TASK		Rate Per Cubic Yard		
Beach Compatible Sand Production	\$	11.50		
On Road Truck Delivery from DDMS to Beach Access	\$	7.00		
Off Road Truck Delivery from Beach Access to Beach	\$	7.00		
Place and Grade onto Beach	\$	6.49		
Rate Per Cubic Yard:	\$	31.99		

DELIVER Service: AND										
Date	Ticket Number	Truck Number	Material	From	To	Truck Capacity (CY)	Load Call (%)	Quantity (CY)	Load Count	Per Day Totals(CY)
11/18/2024 12:00:00 AM	9374073	8407411	SAND	BAY OAKS DDMS - SITE 1	NEWTON PARK FDS	18	80	14.4	1	
11/18/2024 12:00:00 AM	9374074	8359781	SAND	BAY OAKS DDMS - SITE 1	NEWTON PARK FDS	20	80	16	1	
11/18/2024 12:00:00 AM	9374075	8407131	SAND	BAY OAKS DDMS - SITE 1	NEWTON PARK FDS	20	80	16	1	
11/18/2024 12:00:00 AM	9374076	8407081	SAND	BAY OAKS DDMS - SITE 1	NEWTON PARK FDS	24	75	18	1	
11/18/2024 12:00:00 AM	9374071	8407011	SAND	BAY OAKS DDMS - SITE 1	NEWTON PARK FDS	30	75	22.5	1	
11/18/2024 12:00:00 AM	9374079	8407411	SAND	BAY OAKS DDMS - SITE 1	NEWTON PARK FDS	18	80	14.4	1	
11/18/2024 12:00:00 AM	9374080	8407131	SAND	BAY OAKS DDMS - SITE 1	NEWTON PARK FDS	20	80	16	1	
11/18/2024 12:00:00 AM	9374072	8407021	SAND	BAY OAKS DDMS - SITE 1	NEWTON PARK FDS	30	80	24	1	
11/18/2024 12:00:00 AM	9374078	8407021	SAND	BAY OAKS DDMS - SITE 1	NEWTON PARK FDS	30	80	24	1	
11/18/2024 12:00:00 AM	9374077	8407011	SAND	BAY OAKS DDMS - SITE 1	NEWTON PARK FDS	30	80	24	1	
11/18/2024 12:00:00 AM	9366906	8359781	SAND	BAY OAKS DDMS - SITE 1	NEWTON PARK FDS	20	80	16	1	
11/18/2024 12:00:00 AM	9366907	8407081	SAND	BAY OAKS DDMS - SITE 1	NEWTON PARK FDS	24	75	18	1	
11/18/2024 12:00:00 AM	9366908	8407011	SAND	BAY OAKS DDMS - SITE 1	NEWTON PARK FDS	30	75	22.5	1	
11/18/2024 12:00:00 AM	9366910	8407021	SAND	BAY OAKS DDMS - SITE 1	NEWTON PARK FDS	30	75	22.5	1	
11/18/2024 12:00:00 AM	9366909	8407411	SAND	BAY OAKS DDMS - SITE 1	NEWTON PARK FDS	18	80	14.4	1	
11/18/2024 12:00:00 AM	9374091	8407131	SAND	BAY OAKS DDMS - SITE 1	NEWTON PARK FDS	20	80	16	1	
11/18/2024 12:00:00 AM	9374092	8359781	SAND	BAY OAKS DDMS - SITE 1	NEWTON PARK FDS	20	80	16	1	
11/18/2024 12:00:00 AM	9374093	8407081	SAND	BAY OAKS DDMS - SITE 1	NEWTON PARK FDS	24	75	18	1	
11/18/2024 12:00:00 AM	9374094	8407011	SAND	BAY OAKS DDMS - SITE 1	NEWTON PARK FDS	30	80	24	1	
11/18/2024 12:00:00 AM	9374095	8407021	SAND	BAY OAKS DDMS - SITE 1	NEWTON PARK FDS	30	75	22.5	1	
11/18/2024 12:00:00 AM	9374096	8407411	SAND	BAY OAKS DDMS - SITE 1	NEWTON PARK FDS	18	80	14.4	1	
11/18/2024 12:00:00 AM	9374097	8407131	SAND	BAY OAKS DDMS - SITE 1	NEWTON PARK FDS	20	80	16	1	
11/18/2024 12:00:00 AM	9374098	8359781	SAND	BAY OAKS DDMS - SITE 1	NEWTON PARK FDS	20	80	16	1	
11/18/2024 12:00:00 AM	9374099	8407081	SAND	BAY OAKS DDMS - SITE 1	NEWTON PARK FDS	24	80	19.2	1	
11/18/2024 12:00:00 AM	9374100	8407011	SAND	BAY OAKS DDMS - SITE 1	NEWTON PARK FDS	30	80	24	1	
11/18/2024 12:00:00 AM	9374051	8407021	SAND	BAY OAKS DDMS - SITE 1	NEWTON PARK FDS	30	75	22.5	1	
11/18/2024 12:00:00 AM	9374052	8407411	SAND	BAY OAKS DDMS - SITE 1	NEWTON PARK FDS	18	80	14.4	1	
11/18/2024 12:00:00 AM	9374053	8407131	SAND	BAY OAKS DDMS - SITE 1	NEWTON PARK FDS	20	80	16	1	
11/18/2024 12:00:00 AM	9374054	8359781	SAND	BAY OAKS DDMS - SITE 1	NEWTON PARK FDS	20	80	16	1	
11/18/2024 12:00:00 AM	9374055	8407011	SAND	BAY OAKS DDMS - SITE 1	NEWTON PARK FDS	30	80	24	1	
11/18/2024 12:00:00 AM	9374056	8407081	SAND	BAY OAKS DDMS - SITE 1	NEWTON PARK FDS	24	75	18	1	
11/18/2024 12:00:00 AM	9374057	8407021	SAND	BAY OAKS DDMS - SITE 1	NEWTON PARK FDS	30	80	24	1	
11/18/2024 12:00:00 AM	9374058	8407411	SAND	BAY OAKS DDMS - SITE 1	NEWTON PARK FDS	18	80	14.4	1	
11/18/2024 12:00:00 AM	9374059	8407131	SAND	BAY OAKS DDMS - SITE 1	NEWTON PARK FDS	20	80	16	1	
11/18/2024 12:00:00 AM	9374060	8359781	SAND	BAY OAKS DDMS - SITE 1	NEWTON PARK FDS	20	80	16	1	
11/18/2024 12:00:00 AM	9374101	8407021	SAND	BAY OAKS DDMS - SITE 1	NEWTON PARK FDS	30	80	24	1	
11/18/2024 12:00:00 AM	9374102	8407011	SAND	BAY OAKS DDMS - SITE 1	NEWTON PARK FDS	30	75	22.5	1	
11/18/2024 12:00:00 AM	9374103	8407411	SAND	BAY OAKS DDMS - SITE 1	NEWTON PARK FDS	18	80	14.4	1	
11/18/2024 12:00:00 AM	9374104	8407131	SAND	BAY OAKS DDMS - SITE 1	NEWTON PARK FDS	20	80	16	1	
11/18/2024 12:00:00 AM	9374105	8407021	SAND	BAY OAKS DDMS - SITE 1	NEWTON PARK FDS	30	75	22.5	1	
11/18/2024 12:00:00 AM	9374106	8407011	SAND	BAY OAKS DDMS - SITE 1	NEWTON PARK FDS	30	75	22.5	1	
11/18/2024 12:00:00 AM	9374107	8359781	SAND	BAY OAKS DDMS - SITE 1	NEWTON PARK FDS	20	80	16	1	788

Total CY:	788	42
Rate Per Cubic Yard:	\$ 31.99	
Total:	\$ 25,208.12	

TASK	Rate Per Cubic Yard
Beach Compatible Sand Production	\$ 11.50
On Road Truck Delivery from DDMS to Beach Access	\$ 7.00
Off Road Truck Delivery from Beach Access to Beach	\$ 7.00
Place and Grade onto Beach	\$ 6.49
Rate Per Cubic Yard:	\$ 31.99

ICS Materials Inc.

16301 Palm Beach Blvd Unit 3
Alva, FL 33920 US
(239) 839-0862
info@floridacontractors.us



Invoice

BILL TO
Town of Fort Myers Beach
2525 Estero Blvd
Fort Myers Beach, FL 33931

INVOICE INV110624-29
DATE 11/06/2024
TERMS Net 7
DUE DATE 11/13/2024

DESCRIPTION	QTY	RATE	AMOUNT
Town of Fort Myers Beach Project: Hurricane Helene Sand Dates: 10.26.24 - 11.06.24	1	12,000.00	12,000.00
Sand Screener & Equipment Mobilization & Demobilization Quantity: 1 Lump Sum Rate: \$12,000.00		0	
Beach Compatible Sand Production Quantity: 6409.40 Cubic Yards Rate: \$11.50/CY	6,409.40	11.50	73,708.10
On Road Truck Delivery from DDMS to Beach Access Quantity: 6409.40 Cubic Yards Rate: \$7.00/CY	6,409.40	7.00	44,865.80
Off Road Truck Delivery from Beach Access to Beach Quantity: 6409.40 Cubic Yards Rate: \$7.00/CY	6,409.40	7.00	44,865.80
Place and Grade onto Beach Quantity: 6409.40 Cubic Yards Rate: \$6.49/CY	6,409.40	6.49	41,597.01

SUBTOTAL	217,036.71
TAX	0.00
TOTAL	217,036.71
BALANCE DUE	\$217,036.71

ICS Materials Inc.

16301 Palm Beach Blvd Unit 3
Alva, FL 33920 US
(239) 839-0862
info@floridacontractors.us



Invoice

BILL TO
Town of Fort Myers Beach
2525 Estero Blvd
Fort Myers Beach, FL 33931

INVOICE
DATE
TERMS
DUE DATE
INV111524-29
11/15/2024
Net 7
11/22/2024

DESCRIPTION	QTY	RATE	AMOUNT
Town of Fort Myers Beach Project: Hurricane Helene Sand Dates: 11.07.24 - 11.15.24	5,802.60	11.50	66,729.90
Beach Compatible Sand Production Quantity: 5,802.60 Cubic Yards Rate: \$11.50/CY			
On Road Truck Delivery from DDMS to Beach Access Quantity: 5,802.60 Cubic Yards Rate: \$7.00/CY	5,802.60	7.00	40,618.20
Off Road Truck Delivery from Beach Access to Beach Quantity: 5,802.60 Cubic Yards Rate: \$7.00/CY	5,802.60	7.00	40,618.20
Place and Grade onto Beach Quantity: 5802.60 Cubic Yards Rate: \$6.49/CY	5,802.60	6.49	37,658.87

SUBTOTAL	185,625.17
TAX	0.00
TOTAL	185,625.17
BALANCE DUE	\$185,625.17

ICS Materials Inc.

16301 Palm Beach Blvd Unit 3
Alva, FL 33920 US
(239) 839-0862
info@floridacontractors.us



Invoice

BILL TO
Town of Fort Myers Beach
2525 Estero Blvd
Fort Myers Beach, FL 33931

INVOICE
DATE
TERMS
DUE DATE
INV111824-29
11/04/2024
Net 7
11/11/2024

DESCRIPTION	QTY	RATE	AMOUNT
Town of Fort Myers Beach Project: Hurricane Helene Sand Date: 11.18.2024	788	11.50	9,062.00
Beach Compatible Sand Production Quantity: 788 Cubic Yards Rate: \$11.50/CY			
On Road Truck Delivery from DDMS to Beach Access Quantity: 788 Cubic Yards Rate: \$7.00/CY	788	7.00	5,516.00
Off Road Truck Delivery from Beach Access to Beach Quantity: 788 Cubic Yards Rate: \$7.00/CY	788	7.00	5,516.00
Place and Grade onto Beach Quantity: 788 Cubic Yards Rate: \$6.49/CY	788	6.49	5,114.12

SUBTOTAL	25,208.12
TAX	0.00
TOTAL	25,208.12
BALANCE DUE	\$25,208.12

1. **Request:**

Meeting Date: December 16, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, RATIFYING SPA-24-12-EN FOR THE ACTION OF THE TOWN TAKEN OCTOBER 7, 2024, UNDER THE EMERGENCY PROCUREMENT POLICY TO CONTRACT WITH ICS MATERIALS INC. TO TAKE EMERGENCY PROTECTIVE MEASURES TO REMOVE HAZARDS TO PUBLIC HEALTH AND SAFETY FROM THE RIGHT OF WAY, TOWN PROPERTY, AND THE BEACH CAUSED BY HURRICANE MILTON; AND APPROVING PAYMENT OF ICS MATERIALS INC. INVOICE No. 101824-31 IN THE AMOUNT \$256,167.25; AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

Hurricane Milton impacts resulted in dangers to public health and safety blocking the right of way with overwash sand and numerous hazards on the beach that needed to be removed for public health and safety.

What the action accomplishes:

The action taken removed overwash sand, debris and other hazards to public health and safety from the Right of Way, Town Property, and the Beach.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Chadd Chustz, Environmental
Projects Manager

5. **Background:**

Hurricane Milton was an extremely powerful and destructive hurricane which became the second-most intense Atlantic hurricane ever recorded over the Gulf of Mexico, behind only Hurricane Rita in 2005. Milton made landfall on the west coast of the U.S. state of Florida, less than two weeks after Hurricane Helene devastated the state's Big Bend region. The thirteenth named storm, ninth hurricane, fourth major hurricane, and second Category 5 hurricane of the 2024 Atlantic hurricane season, Milton is, so far, the strongest tropical cyclone worldwide in 2024.

The contract was necessary to assist with hazards to public health and safety resulting from the destruction caused by Hurricane Milton and was procured under the powers delegated by the local state of emergency proclamation.

Attachments:

1. 24-287, Ratify ICS Contract Hurricane Milton Beach Cleanup Final
2. INV101824-31 ICS Hurricane Milton Work for Town of FMB 10.07.24 - 10.18.24
3. SPA-24-12-EN Hurricane MILTON ICS Contract FINAL 241122

Financial Impact:

Compensation under SPA-24-12-EN shall not exceed \$300,000. Emergency protective measures taken in the contracted time of SPA-24-12-EN to protect public health and safety following Hurricane Milton qualify for 100% Category B Public Assistance from FEMA for Category B work completed by January 11, 2025.

6. **Alternative Action**

Do not ratify SPA-24-12-EN.

7. **Management Recommendations:**

Ratify SPA 24-12-EN.

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 - 12/5/2024
Approved - 12/5/2024
Approved - 12/9/2024
Approved - 12/9/2024
Final Approval - 12/9/2024

RESOLUTION NUMBER 24-287

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, RATIFYING ACTION OF THE TOWN TAKEN SEPTEMBER 27, 2024, UNDER THE EMERGENCY PROCUREMENT POLICY TO CONTRACT WITH ICS MATERIALS INC. TO TAKE EMERGENCY PROTECTIVE MEASURES TO REMOVE HAZARDS TO PUBLIC HEALTH AND SAFETY FROM THE BEACH; AUTHORIZING PAYMENT OF INVOICE INV101824-31 IN THE AMOUNT OF \$256,167.25; 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, on October 5, 2024 Governor Ron DeSantis by Executive Order No. 24-214, declared a State of Emergency throughout the Emergency Area based upon the serious threat to the public health, safety, and welfare posed by the Storm; and

WHEREAS, on October 6, 2024, the Florida Department of Environmental Protection issued Emergency Final Order OGC NO. 24-2580 for an Emergency Area of 61 counties including Lee County; and

WHEREAS, on October 6, 2024 the Florida Department of Environmental Protection issued Emergency Procurement Order OGC NO. 24-2580 to suspend, to the extent necessary to ensure said emergency response functions, the effect of any statute, rule, or order, including Chapter 255 and Sections 287.055(3)(a)-(d), 4(a)-(d), 5(a)-(c), and 287.057(3), Florida Statutes, and Chapters 60A- 1.002(4), 60A-1.021(2), and 60A-1.043(1)-(3), and 60D-5, Florida Administrative Code, to the extent needed to procure any and all necessary supplies, commodities, services, temporary premises, and other resources to include, without limiting the generality of the foregoing, any and all statutes, rules, and orders which affect budgeting, leasing, printing, purchasing, travel, the conditions of employment, and the compensation of employees as set forth in an established Tracker item at the Florida Emergency Operations Center, as prescribed in the State Comprehensive Emergency Management Plan, as directed by the State Coordinating Officer, or as directed by the Executive Office of the Governor; and

WHEREAS, on October 6, 2024 the Town of Fort Myers Beach approved Resolution 24-214 declaring a state of local emergency as authorized by Section 252.38(3), Florida Statutes, thereby waiving the procedures and formalities otherwise required of political subdivisions by; 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, the Town of Fort Myers Beach Code Sec. 2-480 (d) provides the basis for emergency purchase for the Town Manager to make, or authorize others to make, emergency purchases of supplies, services or construction items when there exists a threat to public health, welfare or safety; provided that such emergency purchases are made with such competition as is practicable under the circumstances.

WHEREAS, on November 22, 2024 the Town Manager entered into a contract with ICS Materials,

Inc. for a term of 30 days (from 7th Day of October to the 6th day of November 2024.) to remove debris deposited by Hurricane Milton from the right of way, town properties and beaches within the Town's jurisdiction in order to protect the health and welfare of the citizens and visitors of the Town of Fort Myers Beach, as well as to protect the financial well-being of the businesses in the Town that depend on tourism; and

WHEREAS, the contract with ICS Materials, Inc. was for a not-to-exceed amount of \$300,000, which requires ratification by the Town Council;

WHEREAS, the ICS Materials, Inc. invoice INV101824-31 in the amount of \$256,167.25 requires approval for payment by the Town Council;

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. This Resolution memorializes and ratifies the actions of the Town to contract with ICS MATERIALS INC. for removal of hazards to public safety from the right of way, Town properties, and the beach for a period of 30 days for a not-to-exceed amount of \$300,000 and approves the Town Manager’s emergency procurement.

Section 3. This Resolution authorizes payment of invoice INV101824-31 in the amount \$256,167.25 to ICS MATERIALS INC. for services rendered.

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 Council Member King and seconded by Council Member Safford, and upon being put to a roll call vote, the result was as follows:

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

ADOPTED this ____ day of _____ 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

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

ICS Materials Inc.

16301 Palm Beach Blvd Unit 3
Alva, FL 33920 US
(239) 839-0862
info@floridacontractors.us



Invoice

BILL TO
Town of Fort Myers Beach
2525 Estero Blvd
Fort Myers Beach, FL 33931

INVOICE INV101824-31
DATE 10/18/2024
TERMS Net 7
DUE DATE 10/25/2024

DESCRIPTION	QTY	RATE	AMOUNT
Project: Town of Fort Myers Beach Hurricane Milton	1	256,167.25	256,167.25

Dates: 10.07.2024 - 10.18.2024

ICS Daily - Subs, Equipment, Operators, Labor & Supervision:

- 10/7/2024 - \$19,675.79
- 10/8/2024 - \$20,640.10
- 10/10/2024 - \$18,786.48
- 10/11/2024 - \$26,931.20
- 10/12/2024 - \$29,554.50
- 10/13/2024 - \$16,255.65
- 10/14/2024 - \$25,997.45
- 10/15/2024 - \$25,211.30
- 10/16/2024 - \$24,086.47
- 10/17/2024 - \$27,246.82
- 10/18/2024 - \$21,781.54

Total Daily Shifts Labor and Equipment: \$256,167.25

SUBTOTAL	256,167.25
TAX	0.00
TOTAL	256,167.25
BALANCE DUE	\$256,167.25

EMERGENCY SERVICE PROVIDER AGREEMENT

This SERVICE PROVIDER AGREEMENT is entered into on this **22nd day of November, 2024** by and between the **TOWN OF FORT MYERS BEACH**, 2731 Oak Street, Fort Myers Beach, FL 33931, a chartered municipality of the State of Florida (hereafter "Town"), and **ICS MATERIALS, INC.** with an address of **9160 FORUM CORPORATE PKWY #350, FORT MYERS, FL 33905** (hereafter "Provider").

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

1. **Scope of Services.** Provider will perform all services and work necessary as set forth in "Scope of Services" attached as Exhibit "A". Provider warrants and represents that it is qualified, willing and able to provide and perform all services in accordance with the terms of this Agreement. The parties have the ability to modify the Scope of Services by mutual written agreement, except that the Town has the unilateral right to exclude specified services hereunder for any reason upon prior written notice to Provider and Provider will not be entitled to compensation for such excluded services unless those services have already been performed by Provider.
2. **Term.** The term of this Agreement is **30 days** retroactive from **7th Day of October** to the **6th day of November 2024.**
3. **Payment Obligation.** The Town will pay for all requested and authorized services rendered hereunder by the Provider and completed in accordance with this Agreement, as set forth in attached Exhibit "B". The Provider's invoice statements must contain a breakdown of charges, description of services and work provided or performed, and, where appropriate, supportive documentation of charges consistent with the basis of compensation set forth in this Agreement. In the event of a dispute as to the Town's payment obligation, the Town will pay the undisputed amount, if any, within 30 days of the date of the invoice.
3. **Provider's Obligations.** The Provider's obligations include, but are not limited to, the following:
 - a) **Licensure.** The Provider will maintain all licenses and certifications required by governmental agencies responsible for regulating and licensing the services provided and performed by the Provider.
 - b) **Provision of Services.** The Provider will perform all services pursuant to this Agreement in accordance with generally accepted standards of professional practice and in accordance with the laws, statutes, ordinances, codes, rules, regulations and requirements of governmental agencies that regulate or have jurisdiction over the services to be provided or performed by the Provider. All personnel assigned by Provider hereunder will be qualified to perform such duties. Provider will designate one person as the point of contact for the Town regarding its duties hereunder. Provider is solely responsible for all taxes incurred by Provider and will make all deductions required of employers by state, federal and local laws.

- c) Non-Waiver. Neither review, approval, nor acceptance by Town of data, studies, reports, memoranda, and incidental professional services, work and materials furnished hereunder by the Provider will in any way relieve Provider of responsibility for the adequacy, completeness and accuracy of its services, work and materials.
 - d) Indemnity and Hold Harmless. The Provider agrees to indemnify and hold harmless the Town, its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of Provider and persons employed or utilized by Provider in providing services under this Agreement.
 - e) Non-Public Information. The Provider agrees, during the term of this Agreement, not to divulge, furnish or make available to any third person, firm, or organization, without the Town's prior written consent, or unless incident to the proper performance of Provider's obligations hereunder, or as provided for or required by law, any non-public information concerning the services to be rendered by Provider. Provider will require all of its employees and agents to comply with the provisions of this paragraph.
 - f) Statutory Duties. The duties and obligations imposed upon the Provider by this Agreement and the rights and remedies available to the Town hereunder will be in addition to, and not a limitation of, any otherwise imposed or available by law or statute.
 - g) Disclosure. The Provider warrants it has not employed or retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for it, any fee, commission, percentage, gift or other compensation contingent upon or resulting from the award or making of this Agreement.
5. Commencement and Completion of Work. The Town will provide written notice to the Provider regarding commencement of services under this Agreement. Time is of the essence in the performance of this Agreement. The Provider agrees to commence work promptly and carry on all services and work as may be required in a timely and diligent manner to completion. Should the Provider fail to commence, provide, perform, and complete any of the services and work required hereunder in a timely and diligent manner, the Town may terminate this Agreement, in addition to any other remedies the Town may have.
6. Insurance. The Provider will have, and maintain, during the entire period of this Agreement, all such insurance (or self-insurance) as set forth on Exhibit "C". Each Certificate of Insurance must include the name and type of policy and coverages provided; the amount or limit applicable to each coverage provided; the date of expiration of

coverage; the designation of the Town of Fort Myers Beach as additional insured and as certificate holder, except as to Professional Liability Insurance and Workers' Compensation Insurance.

Should any of these policies be cancelled before the expiration date thereof, Provider will instruct the issuing company to mail 30 days written notice to the Town of such cancellation.

7. Inclusion of Additional Documents. Any request for bids and/or request for proposal, along with all exhibits or other attachments thereto as issued by the Town, are hereby incorporated by reference. In addition, the following Exhibits are attached hereto and hereby incorporated by reference: Exhibit "A"; Exhibit "B"; Exhibit "C"; Exhibit "D"; Exhibit "E".
8. Termination of Agreement. Either party may terminate this Agreement without cause upon 30 calendar days' prior written notice to the other, in which case the Town will compensate the Provider for all services performed prior to the effective date of termination and reimbursable expenses then due.
9. Assignment, Transfer and Subcontracts. The Provider may not assign or transfer any of its rights, benefits, or obligations hereunder, except for transfers that result from the merger or consolidation of Provider with a third party. The Provider has the right, subject to the Town's prior written approval, to employ other persons and firms to serve as subcontractors to Provider in connection with its performance of services and work pursuant to this Agreement.
10. Maintenance of Records. The Provider will keep and maintain adequate records and supporting documentation applicable to all the services, work, information, expense, costs, invoices and materials provided and performed pursuant to this Agreement. Said records and documentation will be retained by the Provider for a minimum of three years from the date of termination of this Agreement, or for such period as required by law. The Town and its authorized agents will, with reasonable prior notice, have the right to audit, inspect and copy all such records and documentation as often as the Town deems necessary during the term of this Agreement and the next succeeding three years.
11. Public Records. The following provisions are required by §119.0701, Fla. Stat., and may not be amended. Provider shall keep and maintain public records required by the Town to perform the services required under this Contract. Upon request from Town's custodian of public records, Provider shall provide Town with a copy of any requested public records or to allow the requested public records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law. Contractor shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Contract's term and following completion of the Contract if Contractor does not transfer the public records to Town. Upon completion of the Contract, Contractor may transfer, at no cost, to Town all public records in possession of Contractor or keep and maintain public records required by Town to perform the services required under the Contract. If Contractor transfers all public records to Town upon completion of the Contract, Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Contractor keeps and maintains public records upon completion of the

Contract, Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to Town, upon request from Town's custodian of public records, in a format that is compatible with Town's information technology systems. The failure of Contractor to comply with the provisions set forth in this Section shall constitute a Default and Breach of this Agreement, for which, the Town may terminate the Agreement.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF THE PUBLIC RECORDS AT (239) 765-0202, FMBPUBLICRECORDS@FMBGOV.COM, 2731 OAK ST. ESTERO BOULEVARD, FORT MYERS BEACH, FLORIDA 33931.

12. References to Town. Public Records Compliance Indemnification. Provider agrees to indemnify and hold the Town harmless against any and all claims, damage awards, and causes of action arising from the Provider's failure to comply with the public records disclosure requirements of Section 119.07(1), Florida Statutes, or by Provider's failure to maintain public records that are exempt or confidential and exempt from the public records disclosure requirements, including, but not limited to, any third party claims or awards for attorneys' fees and costs arising therefrom. Provider authorizes the public agency to seek declaratory, injunctive, or other appropriate relief against Provider in Lee County Circuit Court on an expedited basis to enforce the requirements of this section.
13. References to Town. All references to "the Town" or "the Town of Fort Myers Beach" are deemed to include its employees, agents, and authorized representatives.
14. Modification. Except as set forth in Paragraph 1 above, modifications to this Agreement will be valid only when made in writing and signed by both parties. In the event of a conflict between the requirements, provisions, or terms of this Agreement and any subsequent written modification hereto, the most recently executed document will take precedence.
15. E-Verify Compliance. By entering into this Agreement, the Contractor is obligated to comply with the provisions of Section 448.095, Florida Statutes "Employment Eligibility," as amended from time to time. This includes but is not limited to register with and use the E-Verify System to verify the work authorization status of all newly hired employees, and requiring all subcontractors to provide an affidavit to Contractor attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Contractor agrees to maintain a copy of such affidavit for the duration of this Agreement. Failure to comply with this paragraph will result in the termination of this Agreement as provided in Section 448.095, Florida Statutes, as amended and Contractor will not be awarded a public contract for at least one (1) year after the date on which the Agreement was terminated. Contractor will also be liable for any additional costs to the Town as a result of the termination of this Agreement in accordance with this paragraph. Contractor affirmatively states, under penalty of perjury, that in accordance with Section 448.095, Florida Statutes, Contractor is registered with and uses the E-Verify system to verify the work authorization status of all newly hired employees, that in accordance with such statute, Contractor requires from each of its subcontractors an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien,

and that Contractor is otherwise in compliance with Sections 448.09 and 448.095, Florida Statutes.

a. Town, upon good faith belief that a subcontractor knowingly violated the provisions of this section, but Contractor otherwise complied, shall promptly notify Contractor and Contractor shall immediately terminate the contract with the subcontractor.

b. A contract terminated under the provisions of this section is not a breach of contract and may not be considered such. Any contract termination under the provisions of this section may be challenged pursuant to Section 448.095(2)(d), Fla. Stat. Contractor acknowledges that upon termination of this AGREEMENT by the Town for a violation of this section by Contractor, Contractor may not be awarded a public contract for at least one (1) year. Contractor further acknowledges that Contractor is liable for any additional costs incurred by the Town as a result of termination of any contract for a violation of this section.

c. *Subcontracts.* Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section, including this subsection, requiring the subcontractors to include these clauses in any lower tier subcontracts. Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

16. Compliance/Consistency with Scrutinized Companies Provisions of Florida Statutes. Section 287.135(2)(a), Florida Statutes, prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services of any amount if, at the time of contracting or renewal, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to section 215.4725, Florida Statutes, or is engaged in a boycott of Israel. Section 287.135(2)(b), Florida Statutes, further prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services over one million dollars (\$1,000,000) if, at the time of contracting or renewal, the company is on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, both created pursuant to section 215.473, Florida Statutes, or the company is engaged in business operations in Cuba or Syria. Contractor hereby certifies that Contractor is not listed on any of the following: (i) the Scrutinized Companies that Boycott Israel List, (ii) Scrutinized Companies with Activities in Sudan List, or (iii) the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. Contractor further hereby certifies that Contractor is not engaged in a boycott of Israel or engaged in business operations in Cuba or Syria. Contractor understands that pursuant to section 287.135, Florida Statutes, the submission of a false certification may subject Contractor to civil penalties, attorney's fees, and/or costs. Contractor further understands that any contract with Town for goods or services of any amount may be terminated at the option of Town if Contractor (i) is found to have submitted a false certification, (ii) has been placed on the Scrutinized Companies that Boycott Israel List, or (iii) is engaged in a boycott of Israel. And, in addition to the foregoing, if the amount of the contract is one million dollars (\$1,000,000) or more, the contract may be terminated at the option of Town if the company is found to have submitted a false certification, has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has been engaged in business operations in Cuba or Syria.
17. Non-appropriation. Town's performance and obligation to pay under this Agreement is contingent upon an appropriation during the Town's annual budget approval process. If funds are not appropriated for a fiscal year, then the Contractor shall be notified as soon as is practical by

memorandum from the Town Manager or designee that funds have not been appropriated for continuation of the Agreement, and the Agreement shall expire at the end of the fiscal year for which funding has been appropriated. The termination of the Agreement at fiscal year end shall be without penalty or expense to the Town subject to the Town paying all invoices for services rendered during the period the Agreement was funded by appropriations.

18. Compliance/Consistency with Scrutinized Companies Provisions of Florida Statutes. Section 287.135(2)(a), Florida Statutes, prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services of any amount if, at the time of contracting or renewal, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to section 215.4725, Florida Statutes, or is engaged in a boycott of Israel. Section 287.135(2)(b), Florida Statutes, further prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services over one million dollars (\$1,000,000) if, at the time of contracting or renewal, the company is on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, both created pursuant to section 215.473, Florida Statutes, or the company is engaged in business operations in Cuba or Syria. Contractor hereby certifies that Contractor is not listed on any of the following: (i) the Scrutinized Companies that Boycott Israel List, (ii) Scrutinized Companies with Activities in Sudan List, or (iii) the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. Contractor further hereby certifies that Contractor is not engaged in a boycott of Israel or engaged in business operations in Cuba or Syria. Contractor understands that pursuant to section 287.135, Florida Statutes, the submission of a false certification may subject Contractor to civil penalties, attorney's fees, and/or costs. Contractor further understands that any contract with Town for goods or services of any amount may be terminated at the option of Town if Contractor (i) is found to have submitted a false certification, (ii) has been placed on the Scrutinized Companies that Boycott Israel List, or (iii) is engaged in a boycott of Israel. And, in addition to the foregoing, if the amount of the contract is one million dollars (\$1,000,000) or more, the contract may be terminated at the option of Town if the company is found to have submitted a false certification, has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has been engaged in business operations in Cuba or Syria.
19. Disclosure Requirements for "Foreign Countries of Concern." Contractor shall comply with the disclosure requirements set forth in Section 286.101(3)(a), Florida Statutes, which requires "Any entity that applies to a state agency or political subdivision for a grant or proposes having a contract value of \$100,000 or more shall disclose to the state agency or political subdivision any current or prior interest of, any contract with, or any grant or gift received from a "foreign country of concern" if such interest, contract, grant or gift received from a "foreign country of concern" if such interest, contract, grant or gift has a value of \$50,000 or more and such interest existed at any time or such contract, grant or gift was received or in force at any time during the previous five (5) years. Such disclosure shall contain the name and mailing address of the disclosing entity, the amount of the gift or the value of the interest disclosed, the applicable "foreign country of concern" and, if applicable the date of termination of the contract or interest, the date of receipt of the grant or gift and the name of the agent or controlled entity that is the source or interest holder. Within one (1) year before applying for any grant or proposing any contract, such entity must provide a copy of such disclosure to the Department of Financial Services". Pursuant to section 268.101(7), Florida Statutes: "In addition to any fine assessed under [section 286.101(7)(a), Florida Statutes], a final order determining a third or subsequent violation by an entity other than a state agency or political subdivision shall automatically disqualify the entity from eligibility for any grant or contract funded by a state agency or any political subdivision until such ineligibility is lifted by the Administration Commission for good cause."

20. Venue and Jurisdiction. Notwithstanding any of other provision to the contrary, this Agreement and the parties' actions under this Agreement shall be governed by and construed under the laws of the state of Florida, without reference to conflict of law principles. As a material condition of this Agreement, each Party hereby irrevocably and unconditionally consents to submit and does submit to the jurisdiction of the Circuit Court in and for Lee County, Florida for any actions, suits or proceedings arising out of or relating to this Agreement.
21. Attorneys' Fees and Costs. Notwithstanding any of other provision to the contrary, if litigation ensues regarding this Agreement, each party hereto shall bear its own attorneys' fees and costs.
22. Public Entities Crime or Convicted Vendor List. Contractor agrees and assumes a continuous duty to disclose to the Town if the Contractor or any of its affiliates as defined by Section 287.133(1)(a), Florida Statutes are placed on the Convicted Vendor List or the Antitrust Violator Vendor List maintained by the Florida Department of Management Services.
23. Data Management; Notice of Breach. Contractor shall cooperate with the Town and provide timely incident reporting, response activities/fact gathering, public and agency notification, severity level assessment, after-action reports, etc., which the Town must report in accordance with Sections 282.3185(5) & (6), Florida Statutes in the event of a data breach.
24. Environmental and Social Government and Corporate Activism. The Town has not given preference or requested documentation from the Contractor based on Contractor's social, political or ideological interest. Contractor agrees to similarly not request documentation or give preference to any subcontractor based on the subcontractor's social, political or ideological interests.
25. Taxes. The Town shall not be liable for any taxes and assessments imposed by a federal, state or local governmental agency to the extent that the Town is exempt from same by Florida law, including but not limited to any sales or use tax.
26. No coercion for labor or services. The Contractor swears under penalty of perjury that the Contractor does not use coercion for labor or services as defined as follows:

"Coercion" means:

1. Using or threatening to use physical force against any person;
2. Restraining, isolating, or confining or threatening to restrain, isolate, or confine any person without lawful authority and against her or his will;
3. Using lending or other credit methods to establish a debt by any person when labor or services are pledged as a security for the debt, if the value of the labor or services as reasonably assessed is not applied toward the liquidation of the debt, the length and nature of the labor or services are not respectively limited and defined;
4. Destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, or other immigration document, or any other actual or purported government identification document, of any person;
5. Causing or threatening to cause financial harm to any person;
6. Enticing or luring any person by fraud or deceit; or
7. Providing a controlled substance as outlined in Schedule I or Schedule II of Sec. 893.03, Fla. Stat. to any person for the purpose of exploitation of that person.

27. Additional Terms. The parties further agree as follows:

- A. Federal Emergency Management Agency Supplemental Conditions. The terms and conditions contained in the Federal Emergency Management Supplemental Conditions attached as Exhibit E are incorporated by reference herein.

28. Miscellaneous Provisions.

- a) Applicable Law. This Agreement is governed by the laws of the State of Florida.
- b) Non-Discrimination. The Provider covenants that in the furnishing of services hereunder, no person on the grounds of race, color, national origin, handicap, or sex will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.
- c) Headings. The headings of the Articles, Sections, Exhibits, and Attachments in this Agreement are for the purpose of convenience only and may not be deemed to expand, limit or change the provisions contained in such Articles, Section, Exhibits and Attachments.
- d) Entire Agreement. This Agreement, including any Exhibits, constitutes the entire Agreement between the parties and supersedes all prior agreements or understandings, written or oral, relating to the matters set forth herein.
- e) Notices. All notices required under this Agreement must be in writing and sent via U.S. Postal Service, first class mail, to the other party's address as listed at the beginning of this Agreement. Either party may change its address by prior written notice to the other party.

IN WITNESS WHEREOF, the parties have executed this Agreement as set forth below.

TOWN OF FORT MYERS BEACH

ATTEST:

BY: _____
Andrew Hyatt, Town Manager,

BY: _____
Amy Baker, Town Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

BY: _____
Town Attorney

PROVIDER: ICS Materials

BY: _____
Signature

Witness Signature

Printed name of person signing

Printed name of witness

Title (printed)

EXHIBIT "A"

TO THE EMERGENCY SERVICE PROVIDER AGREEMENT DATED THE 7th
DAY OF OCTOBER 2024 BETWEEN THE TOWN AND PROVIDER.

1. **SCOPE OF SERVICES:** The Provider will perform the following services under this Agreement:

Provide emergency measures to protect public life, health, and safety within the jurisdiction of the Town of Fort Myers Beach as directed by Town Staff including:

- Clear roads of storm generated overwash sand and debris by collecting, removing, transporting and staging storm generated overwash sand and debris from the right of way and public areas to Town Staff approved disaster debris management sites and landfills.
- Collect, remove and dispose of storm related construction, demolition and vegetative debris from the beach to Town Staff approved disaster debris management sites and landfills.
- Clear beach accesses of storm generated overwash sand and debris by collecting, removing, transporting and staging storm generated overwash sand and debris from the right of way and public areas to Town Staff approved disaster debris management sites and landfills.

Storm-related debris must be properly disposed of at Town approved and permitted waste management facility authorized to accept the type of debris offered for disposal. The Provider shall provide the Town with all compliance documentation including tipping fee receipts, truck tickets, waste disposal facility location and disposal facility permit information.

Only Town approved properties shall be used as the Disaster Debris Management Site for staging and handling of debris as directed by Town Staff. All debris Receipt documentation of proper disposal of debris from the disposal facility shall be submitted to Town Staff within 7 days of disposal.

All Provider operators and subcontractors shall provide the Town with complete Florida Recovery Obligation Calculation Individual and Team Forms daily to support operator and equipment claims.

Provider shall comply with all Federal, State, and Local Rules and guidelines for Storm debris removal and construction on the Beach, including the United States Fish and Wildlife Service 2015 Statewide Programmatic Biological Opinion, the State issued Executive Order 24-2222, the Florida Fish & Wildlife Conservation Guidelines for Driving on the Beach, and the Florida Department of Environmental Protection Guidance for Establishment, Operation, and Closure of Disaster Debris Management Sites, United States National Marine Fisheries Service Sea Turtle and Saw Fish Construction Conditions, and the United States Fish and Wildlife Service EHP FEMA Statewide Programmatic Consultation.

EXHIBIT "B"

TO THE EMERGENCY SERVICE PROVIDER AGREEMENT DATED THE 7th
DAY OF OCTOBER 2024 BETWEEN THE TOWN AND PROVIDER.

PAYMENT OBLIGATION

The Town will pay the Provider as follows for all services listed in Exhibit "A":

The Town will compensate the Provider on a time and materials basis for staff labor, equipment and vehicle equipment usage, and actual disposal costs incurred in the performance of the scope of services listed in Exhibit A and at the rates identified in Exhibit D.

The Provider will receive no compensation for mobilization to the site.

Invoicing for services must include the following documentation to support labor, equipment and vehicle usage, and disposal charges:

- List of vehicles and equipment used in providing services with type of equipment vehicle including capacity and size necessary to determine correct equipment rental rates.
- Proof of proper disposal of debris including but not limited to receipts for tipping fees for other charges from a properly permitted solid waste disposal facility
- Daily records for each operator assigned to the project describing work performed and equipment used in providing services claimed
- Supervisor and employee-approved timecards or timesheets which support the number of hours charged for individual staff members

The Provider will not be reimbursed for any fuel, mileage, or other expenses incidental to the operation of equipment or vehicles. The Provider will be reimbursed for properly documented staff time as may be required by federal, state or local regulations or laws.

Compensation under this Agreement shall not exceed \$300,000.

EXHIBIT "C"

INSURANCE: The Provider shall obtain and maintain the following insurance coverages:

- a) Workers Compensation Coverage to comply for all employees for Statutory Limits in compliance with the applicable State and Federal laws;
- b) Employer's Liability with a minimum limit per accident in accordance with statutory requirements.
- c) Commercial General Liability Insurance with minimum limits of \$500,000 per occurrence and \$500,000 aggregate for Bodily Injury Liability and a minimum limit of \$500,000 for Property Damage Liability, or a minimum combined single limit of \$1,000,000.
- d) Business Automobile Liability Insurance with minimum limits of \$500,000 per person and \$500,000 per accident for Bodily Injury Liability and a minimum limit of \$500,000 for Property Damage Liability, or a minimum combined single limit of \$500,000, with coverage including owned vehicles, hired and non-owned vehicles, and employee non-ownership.

EXHIBIT "D"

ICS Materials Inc. Rate Sheet

Project: Hurricane Milton
Location: Fort Myers Beach, FL

Category	Description	Hourly Rate	
Equipment:	740 B - Off Road End Dump	\$	208.23
	950 CAT Loader	\$	135.07
	Mid Island Tractor	\$	95.00
	ISC Kubota Tractor	\$	95.00
	Rake Attachment	\$	19.55
	Kubota Skidsteer	\$	85.64
	Clamshell Attachment	\$	6.91
	CAT D3 Dozer	\$	125.64
	Broom Sweeper	\$	142.99
	12 CY Dump Trailer	\$	35.00
	2500 Dodge Ram	\$	36.62
	Side by Side	\$	28.00
Labor:	Supervisor Standard Time	\$	78.00
	Supervisor Overtime	\$	117.00
	Operator Standard Time	\$	50.00
	Operator Overtime	\$	75.00
	Laborer Standard Time	\$	43.00
	Laborer Overtime	\$	64.50

EXHIBIT “E”

ADDITIONAL TERMS – SUPPLEMENTAL FEDERAL EMERGENCY MANAGEMENT AGENCY SUPPLEMENTAL CONDITIONS

FEDERAL EMERGENCY MANAGEMENT AGENCY PUBLIC ASSISTANCE

The supplemental conditions contained in this section are intended to cooperate with, to supplement, and to modify the general conditions and other specifications. In cases of disagreement with any other section of this contract, the Supplemental Conditions shall govern. This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract.

Pursuant uniform requirements of federal awards (2 CFR Part 200.23) the definition of CONTRACTOR is an entity that receives a Contract / Purchase Order.

Compliance with Federal Law, Regulations and Executive Orders: The Sub-Recipient (Town) agrees to include in the subcontract that (i) the subcontractor is bound by the terms of the Federally- Funded Subaward and Grant Agreement, (ii) the subcontractor is bound by all applicable state and Federal laws and regulations, and (iii) the subcontractor shall hold the Division and Sub-Recipient harmless against all claims of whatever nature arising out of the subcontractor's performance of work under this Agreement, to the extent allowed and required by law.

Specifically, the Contractor shall be responsible for being knowledgeable and performing any and all services under this contract in accordance with the following governing regulations along with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

- 2 C.F.R. Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- 44 C.F.R. Part 206
- The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended, 42 U.S.C. 5121 et seq., and Related Authorities
- FEMA Public Assistance Program and Policy Guide

Access to Records: The contractor agrees to provide the Town, the Florida Department of Emergency Management, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representative's access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions. (2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. (3) The contractor agrees to provide the FEMA Administrator or his authorized representatives' access to construction or other work sites pertaining to the work being completed under the contract. (4) In compliance with section 1225 of the Disaster Recovery Act of 2018, the Town and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

Affirmative Socioeconomic Steps If subcontracts are to be let, the prime contractor is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

Changes: To be allowable under a FEMA grant or cooperative agreement award, the cost of any contract change, modification, amendment, addendum, change order, or constructive change must be necessary, allowable, allocable, within the scope of the grant or cooperative agreement, reasonable for the scope of work, and otherwise allowable.

DHS Seal, Logo, and Flags: The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre- approval. The contractor shall include this provision in any subcontracts.

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

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

License and Delivery of Works Subject to Copyright and Data Rights: The Contractor grants to the Town, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the contract but not first produced in the performance of this contract, the Contractor will identify such data and grant to the Town or acquires on its behalf a license of the same scope as for data first produced in the performance of this contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this contract, the Contractor will deliver to the Town data first produced in the performance of this contract and data required by the contract but not first produced in the performance of this contract in formats acceptable by the Town.

No Obligation by Federal Government: The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

Prohibition on Covered Telecommunications Equipment or Services

(a) Definitions. As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy, #405-143-1 Prohibitions on Expending FEMA Award Funds for covered Telecommunications Equipment or Services As used in this clause –

(b) Prohibitions.

(1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug. 13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

(2) Unless an exception in paragraph (c) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:

- (i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
- (ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
- (iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or
- (iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(c) Exceptions.

(1) This clause does not prohibit contractors from providing — (i). A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or (ii). Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) By necessary implication and regulation, the prohibitions also do not apply to: (i). Covered telecommunications equipment or services that: i. Are not used as a substantial or essential component of any system; and ii. Are not used as critical technology of any system. (ii). Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(d) Reporting requirement.

(1) In the event the contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause: (i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer

number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended. (ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph(e), in all subcontracts and other contractual instruments.

Program Fraud and False or Fraudulent Statements or Related Acts: The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract.

Rights to Inventions Made Under a Contract or Agreement: Exempt from FEMA Public Assistance Funding

Suspension and Debarment: (1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935). (2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into. (3) This certification is a material representation of fact relied upon by the Town. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Town, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Procurement of Recovered Materials (§200.323) (Over \$10,000): In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired— Competitively within a timeframe providing for compliance with the contract performance schedule; Meeting contract performance requirements; or At a reasonable price. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines webpage:

<https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

Termination for Cause and Convenience (over \$10,000): See Standard Purchase Order and/or Contract Terms and Conditions

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

Contractors must sign and submit a certification to the Town with each bid or offer exceeding \$100,000. See Certifications and Assurances and the end of this document.

Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708) (over \$100,000): Where applicable, all contracts awarded by the solicitor in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The Town or FEMA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

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

For contracts that are only subject to Contract Work Hours and Safety Standards Act and are not subject to the other statutes in 29 C.F.R. § 5.1

"Further Compliance with the Contract Work Hours and Safety Standards Act.

(1) The contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

(2) Records to be maintained under this provision shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Homeland Security, the Federal Emergency Management Agency, and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

Clean Air Act (over \$150,000): 1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. 2. The contractor agrees to report each violation to the Town and understands and agrees that the Town will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office. 3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act (over \$150,000): 1. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. 2. The contractor agrees to report each violation to the Town and understands and agrees that the Town will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office. 3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Administrative, Contractual, or Legal Remedies (over \$250,000): Unless otherwise provided in this contract, all claims, counter-claims, disputes and other matters in question between the local government and the contractor, arising out of or relating to this contract, or the breach of it, will be decided by arbitration, if the parties mutually agree, or in a Florida court of competent jurisdiction.

CONSTRUCTION ACTIVITIES

Equal Employment Opportunity Clause (§60-1.4): Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60-1.4.

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

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Davis Bacon Act: Exempt under FEMA Public Assistance Funding

Copeland Anti-Kickback Act: Exempt under FEMA Public Assistance Funding

**STATE OF FLORIDA PROVISIONS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
BEACH MANAGEMENT FUNDING ASSISTANCE PROGRAM**

Applicable Laws - The Town and all its agents shall comply with all federal, state and local regulations, including, but not limited to, nondiscrimination, wages, social security, workers' compensation, licenses, and registration requirements. The Town shall include this provision in all contracts issued.

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

In order to comply with Florida Auditor General report 2014-064 regarding conflicts of interest and to be consistent with Section 287.057(17)(a)(I), F.S., **all monitoring data and statistical analysis must be provided directly and concurrently from the monitoring contractor to the Florida Department of Environmental Protection/Town/permittee/engineering consultant.** The Town's engineering consultant must provide an adequate mitigation plan, consistent with Section 287.057(17)(a)(I), F.S., including a description of organizational, physical, and electronic barriers to be used by the Town's engineering consultant, that addresses conflicts of interest when contracting multi-disciplinary firms for Project engineering and post-construction environmental monitoring services, or when the Project engineering consultant firm subcontracts for post-construction environmental monitoring. Environmental monitoring includes hardbottom, seagrass, and mangrove resources.

Equal Employment Opportunity: No person on the ground of race, creed, color, religion, national origin, age, gender, or disability, shall be excluded from participation in; be denied the proceeds or benefits of, otherwise subjected to discrimination.

Inspector General Cooperation: The Parties agree to comply with Section 20.055(5), Florida Statutes, for the inspector general to have access to any records, data and other information deemed necessary to carry out his or her duties and incorporate into all subcontracts the obligation to comply with Section 20.055(5), Florida Statutes.

Lobbying: No funds received pursuant to this Agreement may be expended for lobbying the Legislature, the judicial branch or a state agency.

Local Preference: Pursuant to Section 255.0991, F.S. local vendor preference is not applicable

Physical Access and Inspection: Grantor personnel shall be given access to and may observe and inspect work being performed under this Agreement, with reasonable notice and during normal business hours, including by any of the following methods:

- i. The Town shall provide access to any location or facility on which Town is performing work, or storing or staging equipment, materials or documents.
- ii. The Town shall permit inspection of any facility, equipment, practices, or operations required in performance of any work pursuant to this Agreement; and,
- iii. The Town shall allow and facilitate sampling and monitoring of any substances, soils, materials or parameters at any location reasonable or necessary to assure compliance with any work or legal requirements pursuant to this Agreement.

Record Retention: A. The contractor shall maintain and retain sufficient records demonstrating its compliance with the terms of the Agreement for a period of at least five (5) years after final payment is

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

made and shall allow the Town, the State, or its authorized representatives access to such records for audit purposes upon request.

Statutory Notices Relating to Unauthorized Employment: The Town shall consider the employment by any Contractor of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. If the Contractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this Agreement

Statutory Notices Relating to Subcontracts: Pursuant to Sections 287.133 and 287.134, F.S., the following restrictions apply to persons placed on the convicted vendor list or the discriminatory vendor list:

- i. **Public Entity Crime.** A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a Grantee, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, F.S., for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.
- ii. **Discriminatory Vendors.** An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity.
- iii. **Notification.** The Grantee shall notify Department if it or any of its suppliers, subcontractors, or consultants have been placed on the convicted vendor list or the discriminatory vendor list during the life of the Agreement. The Florida Department of Management Services is responsible for maintaining the discriminatory vendor list and posts the list on its website. Questions regarding the discriminatory vendor list may be directed to the Florida Department of Management Services, Office of Supplier Diversity, at (850) 487-0915.

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

Compliance with Federal Law, Regulations, And Executive Orders and Acknowledgement of Federal Funding

Certification

This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

If the Contractor subcontracts any of the work required under this Agreement, a copy of the signed subcontract must be available to the Town for review and approval. The Contractor agrees to include in the subcontract that (1) the subcontractor is bound by the terms of this Agreement, (ii) the subcontractor is bound by all applicable state and federal laws and regulations, and (iii) the subcontractor shall hold the Town and the Grantor Agency harmless against all claims of whatever nature arising out of the subcontractor's performance of work under this Agreement, to the extent allowed and required by law. The Town may document in the quarterly report the Contractor's progress in performing its work under this agreement.

On behalf of my firm, I acknowledge, the grant requirements identified in this document.

Vendor/Contractor Name _____

Date _____

Authorized Signature _____

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY
and VOLUNTARY EXCLUSION**

Contractor Covered Transactions

- (1) The prospective subcontractor of the Sub-recipient, Town, certifies, by submission of this document, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the Sub-recipient's subcontractor is unable to certify to the above statement, the prospective contract shall attach an explanation to this form.

CONTRACTOR

By: _____
Signature

Name and Title

Street Address

City, State, Zip

UEI Unique Entity Identifier (for SAM.gov verification)

Date

Sub-Recipient Name: Town of Fort Myers Beach

DEM Contract Number: TBD

FEMA Project Number: TBD

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

TOWN OF FORT MYERS BEACH																						
ANTICIPATED DISADVANTAGED, MINORITY, WOMEN OR VETERAN PARTICIPATION STATEMENT																						
Status will be verified. Unverifiable statuses will require the PRIME to either provide a revised statement or provide source documentation that validates a status.																						
A. PRIME VENDOR/CONTRACTOR INFORMATION																						
PRIME NAME		PRIME FED NUMBER		CONTRACT DOLLAR AMOUNT																		
IS THE PRIME A FLORIDA-CERTIFIED DISADVANTAGED, MINORITY OR WOMEN BUSINESS ENTERPRISE? (DBE/MBE/WBE) OR HAVE A SMALL DISADVANTAGED BUSINESS BA CERTIFICATION FROM THE SMALL BUSINESS ADMINISTRATION? A SERVICE DISABLED VETERAN?		VETERAN Y N DBE? Y N MBE? Y N WBE? Y N SOB BA? Y N		IS THE ACTIVITY OF THIS CONTRACT... CONSTRUCTION ? Y N CONSULTATION? Y N OTHER? Y N																		
IS THIS SUBMISSION A REVISION?		Y N		IF YES, REVISION NUMBER _____																		
B. IF PRIME HAS SUBCONTRACTOR OR SUPPLIER WHO IS A DISADVANTAGED MINORITY, WOMEN-OWNED, SMALL BUSINESS CONCERN OR SERVICE DISABLED VETERAN, PRIME IS TO COMPLETE THIS NEXT SECTION																						
DBE VETERAN	M/WBE	SUBCONTRACTOR OR SUPPLIER NAME	TYPE OF WORK OR SPECIALTY	ETHNICITY CODE (See Below)	SUB/SUPPLIER DOLLAR AMOUNT	PERCENT OF CONTRACT DOLLARS																
TOTALS:																						
C. SECTION TO BE COMPLETED BY PRIME VENDOR/CONTRACTOR																						
NAME OF SUBMITTER		DATE		TITLE OF SUBMITTER																		
EMAIL ADDRESS OF PRIME (SUBMITTER)		TELEPHONE NUMBER		FAX NUMBER																		
NOTE: This information is used to track and report anticipated DBE or MBE participation in federally-funded contracts. The anticipated DBE or MBE amount is voluntary and will not become part of the contractual terms. This form must be submitted at time of response to a solicitation. If and when awarded a County contract, the prime will be asked to update the information for the grant compliance files.																						
<table border="1" style="width: 100%; border-collapse: collapse; font-size: x-small;"> <thead> <tr> <th style="text-align: center;">ETHNICITY</th> <th style="text-align: center;">CODE</th> </tr> </thead> <tbody> <tr><td>Black American</td><td>BA</td></tr> <tr><td>Hispanic American</td><td>HA</td></tr> <tr><td>Native American</td><td>NA</td></tr> <tr><td>Subcont. Asian American</td><td>SAA</td></tr> <tr><td>Asian-Pacific American</td><td>APA</td></tr> <tr><td>Non-Minority Women</td><td>NMW</td></tr> <tr><td>Other, not of any other group listed</td><td>O</td></tr> </tbody> </table>							ETHNICITY	CODE	Black American	BA	Hispanic American	HA	Native American	NA	Subcont. Asian American	SAA	Asian-Pacific American	APA	Non-Minority Women	NMW	Other, not of any other group listed	O
ETHNICITY	CODE																					
Black American	BA																					
Hispanic American	HA																					
Native American	NA																					
Subcont. Asian American	SAA																					
Asian-Pacific American	APA																					
Non-Minority Women	NMW																					
Other, not of any other group listed	O																					
D. SECTION TO BE COMPLETED BY TOWN OF FORT MYERS BEACH																						
DEPARTMENT NAME		FMS CONTRACT # (IFB/RFP or PO/REQ)		GRANT PROGRAM/CONTRACT																		
ACCEPTED BY:					DATE																	

LOBBYING CERTIFICATION
(To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form- LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.

Contractor (Firm Name)

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

1. **Request:**

Meeting Date: December 16, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, ADOPTING THE NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY'S CYBERSECURITY FRAMEWORK AS THE CYBERSECURITY STANDARD FOR THE TOWN OF FORT MYERS BEACH, FLORIDA; AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

Required per State Statute

What the action accomplishes:

Complies with current cybersecurity legislation

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

5. **Background:**

Section 282.3185 (4) of the Florida Statutes provides that each local government shall adopt cybersecurity standards that safeguard its data, information technology, and information technology resources to ensure availability, confidentiality, and integrity.

Each municipality with a population of less than 25,000 must adopt the cybersecurity standards required by this subsection by January 1, 2025.

Attachments:

1. ADDED 12.13.24: 24-297, Adopting Cybersecurity Standards

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

Adopt the national cybersecurity standards

8. **Recommended Approval:**

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

Created/Initiated - 12/13/2024
Approved - 12/13/2024
Approved - 12/13/2024
Final Approval - 12/13/2024

RESOLUTION NUMBER 24-297

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, ADOPTING THE NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY'S CYBERSECURITY FRAMEWORK AS THE CYBERSECURITY STANDARD FOR THE TOWN OF FORT MYERS BEACH, FLORIDA; 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, Section 282.3185 (4) Florida Statutes provides that each local government shall adopt cybersecurity standards that safeguard its data, information technology, and information technology resources to ensure availability, confidentiality, and integrity; and

WHEREAS, Section 282.3185 (4) Florida Statute provides that each municipality with a population of less than 25,000 must adopt the cybersecurity standards required by this subsection by January 1, 2025; and

WHEREAS, the Town must notify the Florida Digital Service of its compliance with this subsection as soon as possible; and

WHEREAS, the Town Council of the Town of Fort Myers Beach, Florida deems it to be in the best interest of the business owners, residents, and visitors of the Town of Fort Myers Beach to adopt the National Institute of Standards and Technology Cybersecurity Framework as a baseline cybersecurity standard to which all cybersecurity policies of the Town of Fort Myers Beach, Florida, will adhere.

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 hereby authorizes that the National Institute of Standards and Technology Cybersecurity Framework shall be the guiding cybersecurity standard for all cybersecurity policies adopted by the Town of Fort Myers Beach.

Section 3. The Town of Fort Myers Beach, Florida, may further use any standards, guidelines, and best practices from within any generally accepted cybersecurity standard to establish cybersecurity policies for the Town of Fort Myers Beach, providing all such policies are as stringent or more stringent than those provided by the National Institute of Standards and Technology's Cybersecurity Framework.

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 16th day of December 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, Town Attorneys

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

1. **Request:**

Meeting Date: December 16, 2024

Approve terms of an offer of Settlement in litigation styled Leo J. DiBiasi, Trustee of the Leo J. DiBiasi and Valeria J. DiBiasi Revocable Living Trust v. Town of Fort Myers Beach (Fla. 20th Judicial Circuit 23-CA-005377) as reached during a mediation on the matter held on December 4, 2024.

Why the action is necessary:

Resolution of pending litigation

What the action accomplishes:

Resolution of pending litigation

2. **Agenda:**

TOWN ATTORNEY'S ITEMS

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

Nancy Stuparich, Town
Attorney

5. **Background:**

On December 4, 2024, a mediation was held between the parties in the case of Leo J. DiBiasi, Trustee of the Leo J. DiBiasi and Valerie J. DiBiasi Revocable Living Trust v. Town of Fort Myers Beach (Fla. 20th Judicial Circuit 23-CA-005377). Chris Stearns, Esquire represented the Town on behalf of the Town's liability carrier. Town Manager Andrew Hyatt and Town Attorney Nancy Stuparich also participated in the mediation. The final terms of the proposed settlement were not available at the time of agenda distribution and will be presented for direction at the meeting.

This case involved the Town's removal of a ramp and construction of drainage infrastructure on the DiBiasi property. The Town has tentatively agreed to a settlement, subject to final approval of a settlement agreement approved by the Town Council, to the payment of \$85,000 in exchange for an easement to allow the Town's drainage infrastructure to remain in its present location.

Attachments:

Financial Impact:

6. **Alternative Action**

Approve or deny tentative terms

7. **Management Recommendations:**

8. **Recommended Approval:**

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

Created/Initiated - 12/9/2024
Approved - 12/9/2024
Approved - 12/9/2024
Final Approval - 12/9/2024