



Fort Myers Beach Town Council

**Council Chambers
2525 Estero Blvd.
Fort Myers Beach, FL 33931**

Agenda

Monday, February 1, 2021

9:00 AM

ORDER OF BUSINESS

- I. CALL TO ORDER**
- II. INVOCATION**
- III. PLEDGE OF ALLEGIANCE**
- IV. APPROVAL OF FINAL AGENDA**
- V. PUBLIC COMMENT**
- VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS**
- VII. ADVISORY COMMITTEES ITEMS AND REPORTS**
- VIII. APPROVAL OF MINUTES**
 - A. Joint Session w/BORCAB - January 11, 2021
 - B. Town Council - January 11, 2021
 - C. Town Council - January 19, 2021
 - D. Joint Session w/Committee Chairs - January 21, 2021
 - E. M & P Session - January 21, 2021
- IX. CONSENT AGENDA**
 - A. Appointment to BORCAB
Appoint new member to fill the one vacancy on the Bay Oaks Recreational Campus Advisory Board
 - B. SWFL Resiliency Compact
Town Council authorization for voluntary, no cost participation in the proposed Southwest Florida Resiliency Compact
- X. ADMINISTRATIVE AGENDA**
 - A. Resolution 21-02; Harbor Management Plan

Approve Resolution 21-02; Update of the Town's Harbor Management Plan.

B. Resolution 21-04, FL Boating Improvement Plan

Approve Resolution 21-04, Florida Boating Improvement Program; Adoption of a Resolution from the Town Council of the Town of Fort Myers Beach, Florida authorizing the Town Manager or the Town Manager's designee to apply for and administer a grant from the Florida Boating Improvement Program for funds in the amount of up to \$200,000 for the appropriate 19 mooring ball field expansion; Authorizing the Town Manager or designee to execute related documents providing an effective date.

C. RFQ-20-26-PW CEI Intersection Improvements

Approve contract with AECOM Technical Services, Inc. for construction inspection services to (RFQ-20-26-PW) CEI Intersection Improvements in the amount of \$75,572.82 and authorize the Town Manager to execute the contract documents upon FDOT contract approval.

D. Investnet Retirement Solutions (ERS) Pension Plan

Approval of the acquisition of the Towns Pension Plan from Mass Mutual to Investnet Retirement Solutions (ERS)

E. Deferred Compensation Plan

Approval of the acquisition of the Towns Deferred Compensation Plan from Mass Mutual to Investnet Retirement Solutions (ERS)

F. Nuisance Abatement Board

Discussion on the next step in the implementation of the Nuisance Abatement Board

G. Arch Location

Town Council recommendations to Lee County of two locations for a scaled down, single arch replica of the original arches previously located on San Carlos Island.

XI. FINAL PUBLIC COMMENT

XII. TOWN MANAGER'S ITEMS

XIII. TOWN ATTORNEY'S ITEMS

XIV. COUNCILMEMBERS ITEMS AND REPORTS

A. Big Carlos Pass Bridge

Big Carlos Pass Bridge discussion regarding a joint effort with the City of Bonita Springs

XV. ADJOURNMENT

NOTE: THIS MEETING IS TELEVISED LIVE ON COMCAST CHANNEL 98.

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



Help for the hearing impaired is available through the Assistive Listening System. Receivers can be obtained from the Town Clerk's Office.

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



Fort Myers Beach Town Council Joint Session with Bay Oaks Recreational Campus Advisory Board (BORCAB)

**Council Chambers
2525 Estero Blvd.
Fort Myers Beach, FL 33931**

Minutes

Monday, January 11, 2021

9:00 AM

ORDER OF BUSINESS

DRAFT

I. CALL TO ORDER

Members present: Mayor Murphy, Vice Mayor Hosafros, Council Member Allers, Council Member Atterholt and Council Member Veach.

BORCAB Members present: Chair Betty Simpson, Vice Chair Barbara Hill, Beth Cherry, Janna Holmes, Lee Melsek, Holly Sweeten and Karen Woodson.

II. ITEMS FOR DISCUSSION

A. Discussion about Bay Oaks Campus Redevelopment

Mayor Murphy apologized for any confusion and noted they had to move on. He thanked BORCAB members for thinking big and hoped they could reach a consensus.

Chair Simpson commented that their original goal was to meet the needs of the community. She noted the recommendations were ambitious and might not be feasible. She stated that they recommended an athletic center with a new gym and a community center for low-impact, passive activities, emphasizing youth and senior needs. She suggested that they take advantage of the opportunity and work together for their Island.

BORCAB Member Melsek questioned whether they would discuss the list of questions submitted earlier. Mayor Murphy replied that they would see where the discussion went.

BORCAB Member Hill commented that the disconnect had to do with phasing the plan and she questioned whether phasing the overall plan was acceptable to Council. If concessions had to be made, the Welcome Center could be eliminated along with artificial turf.

She questioned whether they could look at available funding for the overall plan, perhaps up to \$15 million, with a separate amphitheater.

BORCAB Member Sweeten commented that basic issues needed to be discussed and it was important to move forward.

BORCAB Member Woodson noted additional funds could be available and she questioned fundraising by the Friends of Bay Oaks to offset the costs to the Town. Mayor Murphy replied that everything could be on the table.

BORCAB Member Holmes agreed with investigating fundraising opportunities.

Mayor Murphy agreed with comments and felt that phasing was an option, but he cautioned against locking in future Councils to any future phases.

Vice Mayor Hosafros remarked that she supported phasing the project. She noted they borrowed money in phases, they could stop borrowing it at any time and a future Council could stop the project in its tracks. BORCAB Member Melsek commented that the current Council had three years left and could get a lot done with phasing.

All Council Members understood that the budget was \$5.5 million. Council Member Atterholt mentioned that they did find an additional \$1 million in reserve funds for the Times Square project, which could be applied to Bay Oaks if that was the will of the Council. Council Member Allers noted that the current plan at 30% was well over \$5.5 million. He recommended that they address BORCAB's questions. Council Member Veach noted that they did discuss pulling the \$1.5 million out of the loan, but they decided to keep the project at \$10 million.

BORCAB Member Sweeten stated that the previous plan did not allow for phasing the project, but it was important because BORCAB members would like to see a separate amphitheater. Council Member Veach commented that it was a risk to count on an amphitheater with future expansion.

BORCAB Member Sweeten understood the risk but felt they should look at positive aspects. Council Member Atterholt stated that the recent plan was a phased plan, but the big question was how they phased it.

Mayor Murphy questioned whether BORCAB had a list of priorities. Chair Simpson replied that they came up with an ambitious plan that cost money, but they were not aware of all the other things that went into their plan.

BORCAB Member Cherry stated that it was hard to come up with a list without knowing how much the items cost. Council Member Allers reviewed previous discussions and questioned what services were not being incorporated in the current plan. BORCAB Member Melsek stated that they gave Council priorities, the proposed building was inadequate for the future and not close to what they planned. Council Member Veach stated that they could make one building larger instead of two separate buildings. He indicated that the latest design developed the amphitheater and provided for most of what they wanted for less money. BORCAB Member Hill explained that the Athletic Center and Community Building would house different activities. She stated that their priorities were two separate buildings and an amphitheater to be constructed in phases.

She felt that the latest consolidated plan did not allow for a separate, integrated amphitheater. She stated she was happy to revisit the cost of the buildings. Council Member Allers remarked that the recent plan would allow for expansion on the north side of the building. He indicated that a state-of-the-art amphitheater could be incorporated into a building to save money and suggested that they focus on what they could get now.

Chair Simpson and BORCAB agreed with BORCAB Member Hill's priorities. BORCAB Member Hill specified that the Community Center was the priority, followed by the Athletic Center and amphitheater.

Vice Mayor Hosafros suggested that they use the property they purchased and open up the entrance to Bay Oaks. BORCAB Member Woodson agreed and stated that everything in the design was smaller than they originally planned. Council Member Veach mentioned staffing multiple buildings and he felt one main building was more efficient. He noted that constructing two buildings might cost them 1/2 a stand-alone amphitheater and building a stand-alone amphitheater might mean they could not build a Community Center. He thought the gym had more life to it than what was being said.

BORCAB Member Hill indicated that if they agreed with one building, it would have to be redesigned to allow for a larger footprint or fuselage. She would like to see their original plan redrawn to incorporate their needs.

BORCAB Member Melsek stated that they were told that approximately \$2 million might not be used on the other two projects and he questioned whether Council would increase the budget for Bay Oaks. Council Member Veach replied that he was uncomfortable using reserves, but he supported securing grants to increase their budget. Council Member Allers stated that their current design was over \$5.5 million and he did not oppose using the funds leftover from Times Square. He understood that the plan was to move forward with securing available grants. Mayor Murphy stated that he would vote to use other funds if they become available. He noted that once the project started, grantors would be more inclined to approve grants.

BORCAB Member Hill thanked Council Members and felt that redesigning the 30% plan to allow for everything to happen and discuss as a part of phasing was positive. She felt they had a productive meeting.

Mayor Murphy thanked BORCAB for their work.

III. ADJOURNMENT

Vice Mayor Hosafros moved to adjourn; second by Council Member Veach. The meeting was adjourned at 10:06 a.m.



Fort Myers Beach Town Council

**Council Chambers
2525 Estero Blvd.
Fort Myers Beach, FL 33931**

Minutes

Monday, January 11, 2021

10:00 AM

ORDER OF BUSINESS

DRAFT

I. CALL TO ORDER

Members present: Mayor Murphy, Vice Mayor Hosafros, Council Member Allers, Council Member Atterholt and Council Member Veach.

II. INVOCATION

Town Clerk Baker.

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF FINAL AGENDA

Vice Mayor Hosafros moved to accept the agenda with items C. and D. removed; second by Council Member Veach.

Motion carried unanimously.

V. PUBLIC COMMENT

Phil Winter stated that northbound traffic needed help. He discussed traffic lights, timed crosswalks and citations, unmarked sidewalks and deputies on motorcycles or bicycles.

Ollie Curran, resident, supported Bay Oaks and noted that children needed something to do. She emphasized the importance of children to the Island. Jane Plummer, resident, described permits granted to docks, piers and easements. She requested that the Town allow the Town Attorney to look at an easement to give the owners back the use of their property.

Catherine Wallace, resident, requested help receiving the COVID-19 vaccine. She reviewed problems with the system. Mayor Murphy replied that he expected a call from Commissioner Ruane later in the day. He indicated that Father Adams offered his church as a vaccine site. He added that eventually, practitioners would be sent to provide vaccines to shut-ins.

Yulya Dejtyar indicated that one of the street performers with a permit had a criminal background. She questioned how he received the permit.

VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Council Member Veach recognized the Kiwana's Club for all the work they did. Council Member Atterholt discussed water quality issues and recognized public officials. He encouraged everyone to contact their state representatives.

Mayor Murphy noted that Representative Passidomo from Naples tested positive for the coronavirus.

Vice Mayor Hosafros recognized Patrick McKeon for volunteering to write the book on the Mound House. She recognized the Friends of the Mound House for providing the funds to produce the book.

Council Member Allers thanked Alison Giesen, BORCAB and staff for their hard work on Bay Oaks. He thanked the Woman's Club for allowing Santa and his elf to put a tree in the festival that raised almost \$500.00 for the autism group.

VII. ADVISORY COMMITTEES ITEMS AND REPORTS

No reports.

VIII. APPROVAL OF MINUTES**A. December 3, 2020 Management & Planning Session**

Amendment: Refer to Chadd Chustz as Project Manager in the future. Vice Mayor Hosafros moved to approve the minutes as amended; second by Council Member Allers.

Motion carried unanimously.

B. December 7, 2020 Town Council

Amendments: Vice Mayor Hosafros recognized all the citizens of the Town under Local Achievements and Recognitions. The dissenters to the vote to confirm Mayor Murphy were Vice Mayor Hosafros and Council Member Veach.

Vice Mayor Hosafros moved to approve the minutes with amendments; second by Council Member Allers.

Motion carried unanimously.

IX. CONSENT AGENDA

Vice Mayor Hosafros moved to approve the consent agenda; second by Council Member Atterholt.

Motion carried unanimously.

A. Extension of execution date for LCSB property swap

Amendment to extend Resolution 20-45 completion date for an exchange of real property and improvements related to the redevelopment of Bay Oaks recreational facility, **not to exceed 60 days.**

Vice Mayor Hosafros moved to approve the amendment; second by Council Member Atterholt.

Motion carried unanimously.

B. Friends of Bay Oaks donation

Accept donation of \$18,000 from the Friends of Bay Oaks to support the youth programs at Bay Oaks.

Mayor Murphy thanked the Friends of Bay Oaks for the donation.

Vice Mayor Hosafros moved to accept the donation; second by Council Member Atterholt.

Motion carried unanimously.

X. PUBLIC HEARINGS

A. Ordinance 19-14, Publix CPD Amendment

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, REPLACING TOWN OF FORT MYERS BEACH RESOLUTION 98-11, AND AMENDING THE SCHEDULE OF USES FOR PUBLIX CPD; PROVIDING FOR REVISIONS TO CONDITIONS OF APPROVAL, AND OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS OF LAW; AND PROVIDING FOR AN EFFECTIVE DATE. Second and final reading.

Mayor Murphy read the title of the ordinance. Town Attorney Herin swore in those providing testimony for items A. and B. Ex parte communication: All Council Members disclosed that they drove by, visited and received emails regarding Publix.

Town Attorney Herin stated that the matter was properly advertised. Community Development Director Jason Green noted that better access had been a major conflict. He reviewed the contents of the packet of information. Vice Mayor Hosafros questioned why a right turn lane was not specified on Page 30. Director Green explained that a right and left-turn lane would be in the final plan. Town Manager Hernstadt added that they should get the applicant on the record to acknowledge the turn lanes.

Council Member Allers questioned the summary on Page 91 and the length of stay. Director Green deferred to the applicant.

Council Member Veach questioned whether a pharmacy and the elimination of single-use plastic bags were addressed. Director Green replied that a pharmacy was added to the schedule of uses, but eliminating plastic bags was not. Council Member Veach suggested adding the elimination of single-use plastic bags as a condition. Town Attorney Herin stated that language would be allowed. Vice Mayor Hosafros supported the ban on plastic bags, but she noted the state preempted banning plastic bags from the beach as a whole.

Council Member Atterholt discussed the need for another pharmacy on the Island.

Josh R. from Greenspoon Marder represented the applicant. He stated there would be two exit lanes and the courts had not ruled on banning plastic bags (microphone cut in and out). He indicated that they had not decided whether to add a pharmacy.

Council Member Atterholt questioned their policy regarding trained security personnel on the premises versus clerks. Bob Hagler indicated that security personnel was not on-site, but they had cameras and security measures. He commented that customers complained about a security guard posted at one of their locations in the past. He noted that management provided extensive training on handling security protocols and store management teams were trained to deal with vagrancy issues. Council Member Atterholt questioned how they would handle people who purchased liquor and went to the park. Mr. Hagler replied that they did not sell liquor to inebriated customers and had no control once the sale was made.

Council Member Allers was concerned that a liquor store would attract loiterers. He questioned whether they would consider hiring someone to moderate the traffic congestion in front of the store to dissuade loiterers. Mr. Hagler responded that he would share his concern with leadership. Town Manager Hernstadt commented that a fire lane could be designated in the front of the building to prevent cars from sitting in front of the store.

Council Member Veach questioned banning plastic bags. Mr. Hagler replied that it was an open discussion at Publix. He added that because of the coronavirus, customers now preferred single-use plastic bags.

Attorney Josh stated that their objective was to add pharmacies to all their stores, but some footprints made it a challenge.

Council Member Allers questioned whether their study took the length of stay into consideration or a potential influx of boater traffic from the marina based on the liquor store. Joaquin Vargas replied that the studies were based on hundreds of studies for supermarkets and included length of stay. The boat traffic was difficult to quantify, but he felt the boat traffic was minimal based on specific hours. Council Member Allers questioned whether it would add to the full day of congestion, not just specific times of the day. Mr. Vargas replied that they relied on data from the FDOT (Florida Department of Transportation) count station on Estero Blvd.

Vice Mayor Hosafros suggested that someone motion to ban selling fireworks and flaming floating lanterns, or Chinese lanterns at Publix.

Town Attorney Herin noted that Publix agreed to discontinue plastic bags in other Florida locations, but it was voluntary due to the state preemption. He stated that banning fireworks and lanterns would be easier to implement.

Mayor Murphy noted that Publix currently offered paper bags, so consumers had a choice. Vice Mayor Hosafros questioned whether Publix could obtain the authority now to agree to ban single-use plastic bags and fireworks. A Publix representative replied that it was a possibility.

Publix comment:

Jeff McGlees lived across the street from Publix and felt a liquor store would encourage homeless people to hang out and buy liquor for minors. He stated that parking and traffic were major problems during season and would worsen with a liquor store and a pharmacy.

Claudia Metcalf lived across the street from Publix and voiced her concerns regarding the homeless population. She noted they used the fountain at Newton Park to bathe. She stated that strangers used her property and she had to use a security button when taking her dog for a walk because she did not feel safe. She felt that adding a liquor store would add fuel to the fire. Denise DeCristoforo lived beside Publix and addressed noise. She stated that Publix received several deliveries at 4:00-4:30 a.m. during peak season over the past five years. She approached Publix management every year regarding the deliveries, but nothing changed. She provided the ordinance, which prohibited deliveries before 7:00 a.m. She asked Town Council to ask Publix to follow the ordinance. She stated that she called the Sheriff's Office a few times, but they did not respond to the complaint. She did not support the liquor store and more deliveries.

Joe Madden, land use Attorney, represented Skipper Liquors and Beach Liquors. He stated Publix did not have specific traffic plans or adequate data analysis on traffic. He noted that liquor stores were prohibited within 500 feet of residences, schools, churches and similar uses. He indicated that they were a commercial planned development (CPD), but they had to request a deviation, which required certain criteria. He noted the addition of a liquor store did not enhance the CPD. He added that a school and residences were within 500 feet. He questioned why it was the right location to sell liquor. He discussed adding the liquor store in perpetuity. He stated that there were no special conditions in the staff report that made it okay to put a liquor store in that location.

Tony Patel, owner of Skipper Liquors and Estero Island Medical Care, indicated that he supported local business. He stated that he owned a pharmacy and was a pharmacist. He supported adding a pharmacy but did not support the liquor store.

Nick Dacos owned Beach Discount Liquor and felt he did the best to serve Fort Myers Beach. He chose Fort Myers Beach because he knew he would not be competing with big-box stores due to the 500-foot rule. He stated that they did not sell liquor to certain people and requested that Council not change the rules in the middle of the game.

Chad Boyco, certified planner, explained that the 500 boundary was to protect the residents nearby.

Vice Mayor Hosafros stated that there was not a school within 500 feet. Attorney Josh mentioned the fireworks. He discussed plastic bags.

Vice Mayor Hosafros moved to table the item during today's hearing only; second by Mayor Murphy. Motion carried unanimously.

Vice Mayor Hosafros moved to place the Publix proposed ordinance back on the table; second by Council Member Allers. Motion carried unanimously.

Attorney Josh described the concessions Publix gave up. He noted that amending the CPD would allow the use of a pharmacy and a liquor store. Attorney Josh stated that Publix agreed to stop selling fireworks and lanterns, but they could not reach anyone regarding the bags; however, the topic was on their agenda.

Council Member Allers questioned whether the 500-foot rule was in place for the liquor store at the old Topps location. Director Green thought the regulation was consistent with old Lee County's codes and he did not think they had a special exception. He explained that one could apply for a special exception to build a liquor store within 500 feet. Mr. Hagler explained the security training provided to employees and he was confident that the team at the store knew how to handle challenges. Council Member Allers questioned how they would protect the parking lot. Mr. Hagler stated they were already dealing with those challenges.

Vice Mayor Hosafros moved to approve Ordinance 19-14 with additional conditions to Exhibit A that this Publix will not sell fireworks or Chinese Lanterns and institute a procedure that employees offer options to plastic bags as a preference and that Council believes that the applicant has met the criteria of the code and the granting of the requested amendment to the CPD that the project as a whole was consistent with the Town's Comprehensive Plan. No second.

Mayor Murphy moved to deny the amendment to Publix's CPD; second by Council Member Allers.

Mayor Murphy explained why he moved to deny the amendment. He stated they did not need another liquor store, but they needed a pharmacy.

Town Attorney Herin suggested that the motion be amended to include that the project was not compatible with the planned uses and would cause damage, hazard, nuisance, or other detriments to persons or property. Mayor Murphy amended his motion and Council Member Allers amended his second.

Motion carried 4-1 with Vice Mayor Hosafros dissenting.

B. Matanzas Inn CPD

Determine if Matanzas Inn Commercial Planned Development project has met the conditions of approval for phased development.

Mayor Murphy stated that witnesses had been sworn. Ex parte communications: all Council Members received an email from the applicant. Director Green reviewed the background. He stated that the issue was that the terminology of the condition was open-ended. He was unable to locate evidence that phasing conditions were met.

Attorney Beverly Grady from Roedel & Andress represented the applicant. She distributed documents and utilized PowerPoint for her presentation.

Before proceeding, she provided a review of the background for new Council Members. Slides included Resolution 15-05 Matanzas Inn DCI2013-0002; LDC Section 34-932(d); Actions Taken by Matanzas Inn Since 2015; Sheet 3A; Phasing; Further Actions; Numerous Emails with Town of Fort Myers Beach Regarding Preparation for Construction of Phase A & C Sidewalk; Matanzas Inn Revision 3; Quoted by the Court in Persaud Properties FL Investments, LLC v. Town of Fort Myers Beach, Case Number 2D19-1282 and Conclusion. Doug Speirn-Smith, owner, reviewed improvements and his cooperation with the Town since 2015.

He noted that the Master Concept Plan (MCP) referenced the restaurant expansion and the December 10th memo to Director Green outlined where the restaurant expansion would be located. He distributed an exhibit related to the expenses, which showed his commitment to the property. He clarified that the density changed in the final approval, so the phasing was created to allow flexibility. He stated that they intended to build above the south building and the alternative was to bulldoze it. He clarified that three pods were in the original approval with the option of removing one of the pods and building on the existing building. He stated they were proposing doing phases A and C. The proposed building was a logical step and he intended to finish the project in total within 10 years. He stated he was not requesting an extension; he wanted Council to agree that they satisfied Condition 5.

Council Member Atterholt questioned whether neighboring businesses or anyone would oppose what he was asking for today. Mr. Speirn-Smith replied that he wanted to continue with what was approved. He stated that they were a good neighbor and there were no complaints when the project was approved in 2015. Vice Mayor Hosafros stated that she would like staff to clarify the phases and the restaurant expansion with Mr. Speirn-Smith. She wanted a list of items under each phase to indicate what was or what would be completed. Town Attorney Herin added that each phase could be checked off as it was completed, so everyone understood what the expectations were in the timeframe.

Director Green explained that the restaurant expansion was not complete, but a 40 square feet of outdoor seating area was complete. He questioned whether the 1,400 new seating area met the minimum standard of a phase and, if so, did that preclude him from the maximum expansion of 4,000 square feet. Town Manager Hernstadt commented that the phases and completion dates were not well defined. Town Attorney Herin stated that the MCP showed a 4,000 square foot improvement, but only 1,400 feet had been completed. Mr. Speirn-Smith stated that the restaurant expansion was not done, but the resolution allowed it to be completed in phases. He intended to continue implementing the resolution and would not use more density, change the MCP, or expand to more than 4,000 square feet. He noted that the first phase of the restaurant redevelopment had been complete.

Town Attorney Herin cautioned Council regarding an equitable estoppel claim if the project was not completed in 10 ten years. He suggested that Mr.

Speirn-Smith provide dates or a statement that the approval lapsed after 10 years and whatever was not completed would not be completed. Attorney Grady noted that Condition 5 stated that anything not completed in 120 months was vacated.

No public comment.

Mayor Murphy moved that the Matanzas Inn Commercial Planned Development project has met the conditions of approval for a phased development; second by Council Member Allers.

Vice Mayor Hosafros requested that Mr. Speirn-Smith assert that he would not challenge the 10-year deadline. Attorney Grady stated that the owner was allowed to request an extension per code.

Vice Mayor Hosafros did not think the motion was specific enough to clear up the current problem. She reiterated that the owner should sit down with staff to determine the phases. Council Member Allers questioned how determining phases would change what could happen at the end of 10 years. Vice Mayor Hosafros replied that it would not change, but it would clarify what was in each phase.

Town Attorney Herin, Jr. suggested that the owner be required to submit an annual report as to where they stood on the project. Mr. Speirn-Smith agreed to provide an annual report.

Mayor Murphy amended his motion to include an annual update regarding the status and progress of the project; second by Council Member Allers. Motion carried 3-2 with Vice Mayor Hosafros and Council Member Veach dissenting.

C. Ordinance 20-17 Special Events

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 6, 14, AND 34 OF THE FORT MYERS BEACH LAND DEVELOPMENT CODE regarding Special Events, REVISING CHAPTER 22 OF THE FORT MYERS BEACH CODE OF ORDINANCES; PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND PROVIDING FOR AN EFFECTIVE DATE.

Pulled due to advertising issues.

D. Ordinance 20-19; Height and Setback Requirements

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING THE DEFINITIONS IN THE FORT MYERS BEACH LAND DEVELOPMENT CODE AND AMENDING DIVISION 3 OF ARTICLE III OF CHAPTER 34, OF THE FORT MYERS BEACH LAND DEVELOPMENT CODE, ENTITLED "EXPLANATION OF PROPERTY DEVELOPMENT REGULATIONS FOR ALL ZONING DISTRICTS" REVISING HEIGHT AND SETBACK REQUIREMENTS; PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND PROVIDING FOR AN EFFECTIVE DATE. Second reading and final adoption.

Pulled due to advertising issues.

XI. ADMINISTRATIVE AGENDA

A. ITB-20-25-PW Intersection Improvements

Authorization to award the traffic signal bid to Ajax Paving Industries of Florida, LLC, the low, responsive and responsible bidder, in response to ITB-20-25- PW Intersection Improvements in the amount of \$494,172.50 and for the Town Manager to execute the contract documents pending FDOT approval and funding.

Town Manager Hernstadt reviewed the item. He stated they were in the process of reverifying that the lights were compliant.

Vice Mayor Hosafros moved to approve the requested motion; second by Council Member Allers. Motion carried unanimously.

B. RFQ-20-26-PW CEI Intersection Improvements

Authorization to accept the Town Manager's recommendation to enter into negotiations for AECOM Technical Services in response to RFQ-20-26-PW CEI Intersection Improvements, and bring back a contract for Town Council's subsequent consideration.

Council Member Veach moved to approve the recommendation; second by Vice Mayor Hosafros.

Motion carried unanimously.

XII. FINAL PUBLIC COMMENT

No public comment.

XIII. TOWN MANAGER'S ITEMS

Town Manager Hernstadt stated that he would speak with FP&L later in the week and hoped to confirm their attendance at the first Council meeting in February.

Town Manager Hernstadt met with the contractor and construction team regarding the road rehabilitation on Primo Drive. He was advised that the project be completed overnight, with the road closed from 8:00 p.m. to 6:00 a.m. He indicated a notice had or would go out to the neighborhood.

Town Manager Hernstadt stated that they received a credit of \$116,234.00 from their health care consortium. He intended to put the money into the health care reserves to offset future premium increases.

Council Member Veach questioned obtaining grants for Bay Oaks. Town Manager Hernstadt replied that they had to have a viable project, but he was unsure if they had a project with buildable plans. He stated the project was not shovel-ready.

The other challenge was that the state provided the grants and they were experiencing financial challenges. He felt they had a strong team to research grant opportunities and they would spend money for a grant writer if needed. He noted they were exploring all opportunities, not only grants specific to Bay Oaks. Until they had a set of buildable plans, they would be ranked low among applicants. He urged Council to make decisions about the project so they could proceed to get buildable plans to position themselves for grant opportunities. He noted one grant had a deadline at the end of the month, but they would submit an application anyway. He stated they would continue to pursue every opportunity available. He discussed taking money away from other projects. Avenues for new money would come from grants, donations and new tax dollars. He noted that grants could be available after the building was completed and could be used to outfit the building and fund programs.

Vice Mayor Hosafros requested an update regarding the firm reviewing the LDC. Town Manager Hernstadt will include an update in the monthly report from the Community Development Department.

Council Member Allers questioned whether Council was ready to make suggestions to continue the design phase of Bay Oaks. Council Member Atterholt suggested adding it to an M&P agenda. Town Manager Hernstadt remarked that the latest concept was in their packet. He commented that they had to reconcile where to put the amphitheater and the building. Vice Mayor Hosafros stated that they had to vote on it at the next Council meeting. Council Member Atterholt disagreed and suggested that they get a cost estimate of a standalone amphitheater. Town Manager Hernstadt replied that they already shared numbers and it was a fairly expensive alternative. He felt the real issue was whether they wanted a standalone amphitheater and wanted to phase it to a date unknown. He commented that the original drawing included the amphitheater at the back of the building. Council Member Veach described a modest amphitheater shell in Fort Myers. Town Manager Hernstadt remarked that the home plate location was not the only place for the amphitheater. He estimated that a new design could be ready for a Council meeting in February. Council Member Allers was comfortable moving forward with the 30% plan and building off that. He did not want to see the project stall out. Council Member Veach questioned whether the consensus was to move forward with the 30% plan as Phase 1 or go with the Bay Oaks design. He supported the 30% plan. Vice Mayor Hosafros supported the 30% plan.

Council Member Atterholt suggested adding the item to the agenda for next week's regular Council meeting. He supported allowing the public to comment. Council Member Allers did not object but noted that the design had been public since last October. Mayor Murphy stated that Town Manager Hernstadt could move forward and they could memorialize it at the next meeting.

XIV. TOWN ATTORNEY'S ITEMS

Town Attorney Herin stated that a personal injury claim related to road construction on Estero Blvd. had been resolved in favor of the Town with no exposure or financial commitment. He noted they received an order from the Second District Court of Appeal in the Persaud matter regarding selling alcohol at Sunset Grill. The property owner changed his mind concerning the settlement and Town Attorney Herin will keep Council posted. Two of three cases concerning derelict vessels were successfully concluded and a settlement was being discussed with the third owner.

Town Attorney Herin requested an Executive Session before the Council meeting next week regarding the Jamison case. Mediation was scheduled for early February. He noted that a Council Member would be designated as a Town representative to attend the mediation.

Town Attorney Herin stated that the League of Cities was handling the dune walkover case and he would keep Council posted.

XV. COUNCILMEMBERS ITEMS AND REPORTS

Council Member Allers clarified that the Christmas event raised \$7,500.00 for non-profits. He requested an update on the sound system for Town Hall. Town Clerk Baker replied that bids were going out. Town Manager Hernstadt added that they were going to hire a sound engineer. Council Member Allers questioned the status of the lighting consultant. Town Manager Hernstadt responded that they would recommend a design firm as an alternative to FP&L at the next meeting.

Council Member Allers questioned whether they should revisit the emergency declaration concerning special events. Town Manager Hernstadt commented that a special event permit was issued for a wedding with five participants; however, large gatherings were not approved. Town Attorney Herin indicated he would provide a memo outlining major points before they discussed it at their next regular meeting.

Vice Mayor Hosafros questioned whether they agreed to review modifying the footprint of a property. Mayor Murphy agreed and staff would prepare ideas for a future M&P Session. She questioned whether they would agree to discuss mechanical noise. Council Member Atterholt agreed. Vice Mayor Hosafros requested that Coordinator Dexter educate the public concerning home rule and speaking to legislators. A Council Member agreed with her request. Vice Mayor Hosafros noted that her flood insurance bill decreased due to the Town discount. Council Member Veach stated a public hearing regarding the bridge at Big Carlos Pass would be held on Thursday, January 28, 2021, from 5-7 p.m. at Bay Oaks. He questioned whether the Mayor would request that the old bridge be used for a reef and a fishing pier be constructed. Mayor Murphy replied that he would reiterate the requests. Council Member Veach recommended that a staff person be included on the independent committee for a veterans tribute. He suggested creating a second committee for a tribute for first responders. Vice Mayor Hosafros suggested that they have one committee for the veterans' tribute.

Council Member Atterholt agreed with Vice Mayor Hosafros. Town Attorney Herin stated that if Council created a committee and appointed members, it would be subject to Sunshine Laws. He agreed to work with Council Member Veach regarding communicating with an outside committee. Vice Mayor Hosafros supported appointing Council Member Veach as the point person.

Council Member Veach questioned whether Council supported allocating space to create a first responders tribute. Mayor Murphy preferred to keep it simple for the veterans. Council Member Veach received support to discuss adding business signs to beach accesses indicating available restrooms to an M&P Session.

Mayor Murphy stated that approximately 9,000 COVID-19 vaccines would be administered to front line health care workers and those over 65 during the week.

XVI. ADJOURNMENT

Vice Mayor Hosafros moved to adjourn; second by Council Member Allers. Meeting was adjourned at 2:49 p.m.



Fort Myers Beach Town Council

**Council Chambers
2525 Estero Blvd.
Fort Myers Beach, FL 33931**

Minutes**Tuesday, January 19, 2021****10:00 AM**

ORDER OF BUSINESS

DRAFT

I. CALL TO ORDER

Members present: Mayor Murphy, Vice Mayor Hosafros, Council Member Allers, Council Member Atterholt and Council Member Veach.

II. INVOCATION

Town Clerk Baker.

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF FINAL AGENDA

Vice Mayor Hosafros moved to accept the agenda; second by Council Member Atterholt.

Motion carried unanimously.

V. PUBLIC COMMENT

Town Clerk Baker read an email from the Fort Myers Beach Lions Club questioning whether Council would consider reviewing a Shrimp Festival permit. Steve Johnson, resident and Chair of MRTF (Marine Resources Task Force), supported entering into negotiations with the lighting design engineer.

Barbara Hill, BORCAB (Bay Oaks Recreational Campus Advisory Board) Member, thanked Council for moving the project forward.

Karen Woodson, BORCAB Member, commented that they needed to work together to complete the project. She noted that BORCAB would like to see a more detailed plan.

Lee Melsek, BORCAB Member, requested that Council defer moving forward with the building presented. He requested that BORCAB be allowed to meet with DRMP to design a nicer building for members of the community. He stated it was not the right building and it was in the wrong place.

VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Council Member Veach expressed condolences for Joe Coviello, Mayor of Cape Coral.

No items from other members.

VII. ADVISORY COMMITTEES ITEMS AND REPORTS

Katherine Light, Chair of the AAC (Anchorage Advisory Committee), requested that Council approve the Upland Service Provider. She reiterated that the units were for sale to the general public.

VIII. PRESENTATION

A. Southwest Florida Regional Resiliency Compact

Southwest Florida Regional Resiliency Compact

Mike Savarese, Ph.D., faculty member and scientist from Florida Gulf Coast University, introduced himself. The PowerPoint presentation was included in the packet of information. Due to time constraints, Mr. Savarese described the concept of the compact. The intention was to bring local communities together as an alliance to deal with climate problems. He discussed successful compacts throughout the state and listed local municipalities that signed on to their compact. Mr. Savarese indicated that signing the compact did not obligate them to do anything other than to participate in conversations. He noted it was a non-binding agreement and the organization did not have authority to make decisions. He provided examples of how the compact would work.

Mayor Murphy supported the compact and recommended joining the group.

IX. APPROVAL OF MINUTES

No minutes.

X. CONSENT AGENDA

No agenda.

XI. PUBLIC HEARINGS

A. Ordinance 20-17 Special Events

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 6, 14, AND 34 OF THE FORT MYERS BEACH LAND DEVELOPMENT CODE regarding Special Events, REVISING CHAPTER 22 OF THE FORT MYERS BEACH CODE OF ORDINANCES; PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND PROVIDING FOR AN EFFECTIVE DATE. Second reading and final adoption.

Vice Mayor Hosafros read the title of the ordinance. Town Attorney Herin stated that the item was properly advertised. Director Green reviewed changes. Vice Mayor Hosafros noted that the LPA recommended that a stricken portion be added back to the ordinance even though it was addressed in another section of the code. Town Attorney Herin explained why the LPA recommended keeping the section and he supported the recommendation.

No public comment.

Council Member Allers pointed out minor errors on Pages 23 and 35. Vice Mayor Hosafros brought up concerns by the Woman's Club regarding limiting special events to six times a year. Town Manager Hernstadt replied that he told representatives of the Woman's Club to meet with him to discuss how they envisioned using the club in the future.

Council Member Atterholt moved that Ordinance 20-17 be adopted by the Council as amended; second by Council Member Allers.

Motion carried 4-0 with Mayor Murphy excused.

B. Ordinance 20-19; Height and Setback Requirements

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING THE DEFINITIONS IN THE FORT MYERS BEACH LAND DEVELOPMENT CODE AND AMENDING DIVISION 3 OF ARTICLE III OF CHAPTER 34, OF THE FORT MYERS BEACH LAND DEVELOPMENT CODE, ENTITLED "EXPLANATION OF PROPERTY DEVELOPMENT REGULATIONS FOR ALL ZONING DISTRICTS" REVISING HEIGHT AND SETBACK REQUIREMENTS; PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND PROVIDING FOR AN EFFECTIVE DATE. Second reading and final adoption.

Vice Mayor Hosafros read the title of the ordinance. Town Attorney Herin stated that the matter was properly advertised. Director Green reviewed changes to the document.

No public comment.

Council Member Allers identified an error on Page 66.

Director Green stated they had the option to delay the effective date to educate the public. Town Manager Hernstadt added that their Public Information Officer submitted press releases and a newsletter after every meeting regarding decisions by Council.

Council Member Atterholt discussed enhancing view corridors on the Island. Council Member Atterholt moved the passage of Ordinance 20-19 as amended by Director Green effective in 30 days; second by Council Member Allers.

Motion carried 4-0 with Mayor Murphy excused.

XII. ADMINISTRATIVE AGENDA

A. Adopt Resolution 21-01 for an Interlocal agreement

Adopt Resolution 21-01 for an Interlocal agreement with the School Board of Lee County for the use of Bay Oaks Recreational Campus facilities for a collaborative shared use agreement for the students of Fort Myers Beach Elementary School throughout the school year.

Town Attorney Herin stated that the resolution was the second part of the land transfer agreement already approved. Council Member Allers moved to approve Resolution 21-01; second by Council Member Veach.

Motion carried 4-0 with Mayor Murphy excused.

B. Bay Oaks Campus Redevelopment

Determinations regarding the Bay Oaks Campus Redevelopment

Cultural Parks & Recreation Director Alison Giesen reviewed the history of events. She noted she previously distributed a spreadsheet of information. She stated that they were unable to serve the community right now due to space limitations. The current building design met their programming needs but not all future needs.

Town Manager Hernstadt stated there was room on the campus for a standalone amphitheater. A new 16,500 square foot gym would be attached to the left wing of the building in the future. Council Member Allers questioned whether they wanted to move forward with the design and incorporate future phasing plans. Council Member Atterholt supported the idea. Council Member Veach suggested that they plan the phasing after the first phase was completed. Town Manager Hernstadt commented that including the future gym and standalone amphitheater would not be difficult to accommodate. He clarified that the standalone amphitheater could potentially be located on the current gym site after it was moved.

Council Member Allers moved to direct staff to move forward with the current design as is and add a site plan for BORCAB to review for potential phases 2 and 3; second by Vice Mayor Hosafros.

Council Member Veach suggested that an acoustical engineer be involved in the amphitheater design and convert some paid parking to turf.

Town Manager Hernstadt noted those ideas were expressed to the consultant and he encouraged Council Member Veach to submit the balance of his list. Motion carried unanimously.

Mayor Murphy left to attend Mayor Coviello's memorial and will pass along condolences from Council.

C. Land & Water Conservation Grant Application

Authorize the Town Manager to apply for the Land and Water Conservation Fund Program Grant for Bay Oaks Park Redevelopment.

Town Manager Hernstadt felt they had the foundation for a viable project and would meet the grant criteria.

Council Member Allers moved to authorize the Town Manager to apply for the grant; second by Council Member Veach.

Motion carried 4-0 with Mayor Murphy excused.

D. RFP-21-03-PW; Lighting Consultant

Review rankings of the design-bid-build process in response to RFP-21-03-PW-Lighting Consultant, and discussion of next steps.

Town Manager Hernstadt stated that they had selected a consultant. He noted that FP&L agreed to make a presentation at their February 16, 2021 meeting. He questioned whether Council wanted to wait for FP&L before moving forward. Vice Mayor Hosafros commented that despite what FP&L presented, they still needed a consultant. Council supported moving forward with the lighting consultant.

E. FMB Little League Agreement

Authorization to enter into an agreement for Facility Use with FMB Little League

Town Attorney Herin stated that he reviewed Florida agreements regarding language for COVID-19 waivers for governmental facilities. He added the waiver to the Little League agreement and other Town agreements. The Little League asked that the Town reconsider the item.

Council Member Atterholt questioned whether there was time for the Town Attorney and the Little League to negotiate language. Town Manager Hernstadt replied that the Little League wanted to start immediately. Town Attorney Herin noted that removing the waiver would put the Town at risk. He read the waiver for participants in after-school activities at the Lee County School District and stated that the specific language was found in many waivers.

Vice Mayor Hosafros moved to approve the agreement as the Town Attorney recommended, second by Council Member Veach.

Motion carried unanimously.

XIII. FINAL PUBLIC COMMENT

No public comment.

XIV. TOWN MANAGER'S ITEMS

Town Manager Hernstadt stated that representatives from the Florida Department of Transportation (FDOT) were scheduled to discuss the status of the foot of the bridge project on March 1, 2021. He noted that a public meeting would probably be scheduled soon after. He reminded Council Members that the joint meeting with Committee Chairs was coming up.

Town Manager Hernstadt stated that the Town submitted an application for six signs regarding manatees to the FWCC (Fish & Wildlife Conservation Commission) for their review. He expected to hear from them in the next 45 days. Town Manager Hernstadt noted that delaying the Times Square project for a year allowed the Town to pursue grant opportunities. He added that they were working with the FDOT design team to develop a schedule for the work.

Town Manager Hernstadt commented that construction on Palermo started at 7:00 a.m. Council Member Atterholt noted that residents on Palermo supported overnight construction.

Town Manager Hernstadt indicated that he would add the Southwest Florida Regional Resiliency Compact to an upcoming agenda.

Town Manager Hernstadt remarked that he would forward the plan detail for the traffic light at Old San Carlos to Council Member Veach.

XV. TOWN ATTORNEY'S ITEMS

Town Attorney Herin stated that the League of Cities was handling the LaCroix case. Town Clerk Baker indicated they received seven applications for the Nuisance Abatement Board. Town Manager Hernstadt explained that they were waiting for more applications. Council Member Atterholt expressed his preference to move forward. Vice Mayor Hosafros supported garnering a couple more applications. Town Manager Hernstadt suggested that he distribute the current applicants for discussion at the M&P Session. Council Members agreed. Town Attorney Herin stated that he was available to assist the Board with its organizational meeting, but a third party would advise the Board. Vice Mayor Hosafros requested that Council Members identify their applicants.

A. COVID-19 Emergency Declarations

Town Attorney Herin reviewed Executive Orders from the State and the Town's Emergency Declarations. He questioned whether Council wanted to modify the Declarations to allow certain special event permits. He noted that the governor allowed gatherings of up to 50 people but the CDC guidelines still recommended no more than 10 people in a group. Mayor Murphy recommended maintaining the mask mandate. Council Member Veach supported the mask mandate but not large special events.

Town Attorney Herin, Jr. addressed the governor's ambiguous language in the Executive Orders. Council Member Allers reviewed the special event process and questioned when they would allow special events. He supported masks, but he also supported letting businesses decide whether to wear masks.

Vice Mayor Hosafros agreed with Mayor Murphy and Council Member Veach. She suggested they create an Emergency Declaration 8 so staff knew how to answer questions.

Council Member Atterholt respected the majority of Council.

Town Attorney Herin will bring back proposed Emergency Declaration 8 for review at the next Council meeting.

XVI. COUNCILMEMBERS ITEMS AND REPORTS

Council Member Allers sent condolences to the Coviello family. He reminded members that the Big Carlos Bridge discussion was scheduled for January 28, 2021, from 5:00-7:00 p.m. at Bay Oaks.

Vice Mayor Hosafros questioned whether Council was interested in drafting a letter of support regarding Sanibel's state legislative priorities. Council Members agreed to add it to a future agenda. Vice Mayor Hosafros awarded a gold star to the Finance Department for the best monthly staff report. She reminded everyone that the next Hazardous Waste Collection day was February 5, 2021, from 8:00 a.m. to noon at Bay Oaks. She brought up the historic cottage and reminded Council not to forget about placing the cottage. Town Manager Hernstadt will follow up. Vice Mayor Hosafros questioned what they wanted to do concerning the Shrimp Festival application. Town Attorney Herin, Jr. suggested that they adopt Emergency Declaration 8 regarding special events first. Vice Mayor Hosafros would deny the application and she suggested that the Lion's Club contact Mayor Murphy. Council Member Veach would not approve the application. Town Manager Hernstadt and Council wished Town Clerk Baker a happy birthday. Council Member Atterholt praised BASE for decreased revenues and using education instead of enforcement measures. He thanked Town Manager Hernstadt for good accounting measures.

XVII. ADJOURNMENT

Council Member Allers moved to adjourn the meeting; second by Vice Mayor Hosafros.

The meeting was adjourned at 12:52 p.m.



Fort Myers Beach Town Council Joint Session with Advisory Committee Chairs

**Council Chambers
2525 Estero Blvd.
Fort Myers Beach, FL 33931**

Minutes

Thursday, January 21, 2021

9:00 AM

ORDER OF BUSINESS

DRAFT

I. CALL TO ORDER

Members present: Mayor Murphy, Vice Mayor Hosafros, Council Member Allers, Council Member Atterholt and Council Member Veach.

Advisory Committee Chairs present: Public Safety Committee (PSC) Chair John Goggin, Marine Resources Task Force (MRTF) Chair Steve Johnson, Cultural and Environmental Learning Center Advisory Board (CELCAB) Chair Barbara Hill, Bay Oaks Recreational Campus Advisory Board (CELCAB) Chair Betty Simpson, Anchorage Advisory Committee (AAC) Chair Katherine Light and Audit Committee Vice Chair Ed Lombard.

II. PLEDGE OF ALLEGIANCE

III. ITEMS FOR DISCUSSION

A. Updates from Advisory Committees

Public Safety Committee

John Goggin, Chair of the PSC, submitted documents concerning areas they were working on and a detailed description of a process they were following for discovery with the Fire Department and Lee County Sheriff's Department. He indicated they were reviewing monthly reports from both entities and were looking for domestic violence and pedestrian/vehicle accidents. He noted they were modifying a survey to obtain details of concerns regarding the homeless population. Once the PSC determined which issue to work on, they would submit a recommendation on estimated cost. He discussed educational opportunities and noted the PSC would include the progress of recommendations in their monthly report.

Chair Goggin brought up the foot of the bridge design and commented that the PSC recommended no crosswalks. He questioned whether Council

supported the PSC meeting with Lee County DOT to review the crosswalks. He reported that a new shelter was constructed on Bay St. and the PSC obtained a quote for a Code Blue communication system. He explained how the system worked. He suggested that the 2019 Interlocal agreement with the County to add markings to the sidewalks for bicycles and pedestrians be completed. He requested that the PSC be involved with reviewing lighting recommendations along with other committees.

Chair Goggin reported that bicycles were required to have audible devices and lights, but many did not. He suggested that the Town consider purchasing lights and bells to help improve safety. He noted it would cost the Town approximately \$1,000.00.

Vice Mayor Hosafros addressed the small area of shade in the shelter. Chair Goggin agreed and noted it was a prototype shelter. He added that they planned to survey tram riders for feedback.

Council Member Veach noted that some committees were working on similar issues and he suggested that the Chairs communicate with each other.

Council Member Atterholt supported the PSC providing data concerning criminal activity and encouraged them to review the Community Policing Proposal. Chair Goggin responded that many calls concerning the Lani Kai were eliminated due to a lack of cause. He noted they would look into whether people should walk bicycles in congested areas.

Council Member Allers stated that he would mention the 2019 sidewalk Interlocal to the Commissioner. Chair Goggin will forward the information to Council Members.

Mayor Murphy commented that future crosswalks should be fully automated. He described walking on sidewalks with his dogs and bicycles coming from behind. He supported bells and lights on bicycles and mentioned the need to maintain tree branches that obscured school speed limit signs.

Town Manager Hernstadt spoke but was inaudible.

Marine Resources Task Force

Steve Johnson, Chair of MRTF, noted that Council approved moving forward with the lighting consultant. The sale of yellow-bellied slider turtles was being handled between the store owners and Ranger Rob. MRTF would like the Town to help with removing invasive vegetation with property owners. A member was working with the Masters Gardeners Organization to identify exotic and invasive plants on the Island. He described the dune managed beach zone and noted the purpose was to grow a frontal dune along the beach. He noted that the property owner had the ability to manage the dune in the zone by following a list of criteria. Chair Johnson stated that Project Manager Chadd Chustz was working on an ordinance. He described education outreach concerning sunscreen use, rubble from the old bridge for an artificial reef, building a fishing pier, and creating a public beach access at Big Carlos Pass. He reported they would discuss a model ordinance concerning dark skies. He indicated that MRTF Member Fossum would discuss derelict vessels with the Anchorage Advisory Committee Chair

(AAC). He noted that pump-outs were also discussed. He mentioned monitoring public marinas for bacteria, reviewing the sea turtle ordinance and filling holes on the beach. MRTF requested that Council direct the Town Manager to use resources to fill holes.

Mayor Murphy reviewed the history of the new Big Carlos Pass bridge. He stated that Bonita Springs questioned whether Council would join them in opposing the bridge. Mayor Murphy reported that they would discuss the issue later.

Town Manager Hernstadt reported that staff currently addressed holes on the beach with property owners and addressed pump-outs.

Cultural and Environmental Center Advisory Board

Barbara Hill, Chair of CELCAB, reported that Director Giesen and staff did an outstanding job managing operations during the pandemic. She described new and ongoing programs and noted that improvements to the underground exhibit were moving forward. She encouraged everyone to purchase the new Mound House book and noted that all proceeds benefitted the Mound House. Beach walks were held twice a week at Newton Park and were very popular. The Seven Seas cottage at Newton Park was in the process of being repainted and repaired. CELCAB recommended that the Town trim the landscape. She noted that programming was on hold due to the pandemic.

Chair Hill stated that they were scheduled to review their Strategic Plan next week and she commended the Town for doing a great job with operations, budgeting, staff and programs.

Council Member Veach suggested interaction with MRTF Members regarding environmental education. Chair Hill commented that all committee members were welcome to attend their meetings and speak at public comment. She acknowledged safety issues at Newton Park and would like to see better security. Council Member Allers questioned adding additional cameras. Town Manager Hernstadt replied that he would follow up with Director Giesen.

Bay Oaks Recreational Campus Advisory Board

Betty Simpson, Chair of BORCAB, reported that it looked like they would be moving forward with planned phases and she personally thanked Council for listening to them. She stated it was her privilege to serve and participate in group meetings.

Council Member Veach appreciated Chair Simpson's words and was excited about the BORCAB plan. Mayor Murphy agreed.

Anchorage Advisory Committee

Katherine Light, Chair of the AAC, brought up the Upland Service Provider, expanding the Mooring Field, Strategic Plan and a Mooring Field staff report. She touched on the history of the Upland Service Provider and the decision to bring it in house. She noted that waterfront property was limited and the proposed purchase two units at Harbor House. The AAC hoped that Council would make a formal proposal to purchase the units and negotiate terms.

She indicated that there was no room to expand at Matanzas Pass. She described the steps to expand the Mooring Field and noted Director O'Riley was pursuing grant opportunities. Chair Light stated that their Strategic Plan activities were on hold due to the pandemic. She described the pump-out process, removing derelict vessels, delinquent accounts, field and dock maintenance and water quality issues. She agreed to work with MRTF on water quality and derelict boats. She stated that expanding the Mooring Field would give them more control over the area.

Town Manager Hernstadt stated that they would have jurisdiction over the area with an expansion and the quality of the Mooring Field would be elevated. Chair Light discussed the convenient location of Harbor House for the expanded field.

Audit Committee

Ed Lombard, Vice Chair of the Audit Committee, reported that the Audit Committee was now comprised of seven members. He stated that they recently approved a new wire transfer policy for electronic funds transfers due to the 2019 audit. He noted the new policy was more centralized with good controls. He commented that they recommended that Council rescind the Investment Policy. He described problems surrounding the policy and noted that they followed the Florida Statutes for their investment policy. He described the new Financial Controls and Reporting Policy recently adopted. He noted it included a requirement for a cash flow analysis, which would allow the Finance Director to analyze recommended investments. Vice Chair Lombard was grateful for the new Finance Director and he commended the former Finance Director. The audit was ongoing and the final report was expected in late March. He described the difference between budgeting and auditing. He indicated that the Audit Committee might be interested in participating in budgeting, but they would have to be careful not to wade into gray areas.

Town Manager Hernstadt welcomed feedback concerning the budget from all committees, but he was hesitant to add more steps to the budget process.

Mayor Murphy noted that the Local Planning Agency Chair (LPA) could not attend and the Community Resource Advisory Board (CRAB) did not enough members presently.

Town Manager Hernstadt thanked the Chairs for acknowledging staff and Council liaisons. He noted that Bayside Park was not mentioned, and he felt it should have some community leaders. Council Member Veach replied that CRAB was working on it before losing members.

Mayor Murphy thanked everyone for participating.

IV. ADJOURNMENT

Mayor Murphy adjourned the meeting at 10:24 a.m.



Fort Myers Beach Management & Planning Session

**Council Chambers
2525 Estero Blvd.
Fort Myers Beach, FL 33931**

Minutes

Thursday, January 21, 2021

10:30 AM

ORDER OF BUSINESS

DRAFT

I. CALL TO ORDER

Members present: Mayor Murphy, Vice Mayor Hosafros, Council Member Allers, Council Member Atterholt and Council Member Veatch.

II. PLEDGE OF ALLEGIANCE

III. ITEMS FOR DISCUSSION

A. Lee County Update

An update of Lee County projects on Fort Myers Beach - Written report only

Town Manager Hernstadt stated the report supported the County's plan to complete the road project by the end of 2021. He noted that entering into an Interlocal agreement with Lee County to mark the sidewalks for pedestrians and bicycles would make the Town responsible for future maintenance. He mentioned encouraging Lee County to do the markings since they would be marking other areas associated with the project. He indicated that the County installed grass between the curb and sidewalk. Property owners requested that the area be filled with the same material on their private property.

Vice Mayor Hosafros preferred that the Town maintain markings on sidewalks. She hesitated to allow property owners to determine the material used between the curb and sidewalk. She noted that new owners might believe that the area was part of their property. She stated that the Town intended to install native plantings in the area.

Council Member Atterholt discussed being lenient on bicyclists using the sidewalks when pedestrians were not around.

Council Member Allers commented that the Public Safety Committee (PSC) discussed the issue and questioned changing bike lanes' color and adding

reflective tape. He noted a company was scheduled to do a pilot project for free on the north end before the coronavirus. He would like to pursue the idea. He supported maintaining sidewalk markings and did not think it would be a huge cost to the Town.

Town Manager Hernstadt revealed that the pilot program company was contemplating a return.

Council Member Veach discussed electric bikes taking over sidewalks and creating conflict. Council Member Allers noted that the PSC discussed marking sidewalks where there were no bike lanes.

Council Member Veach felt it was risky to allow homeowners to install whatever material they wanted between the curb and sidewalk.

Town Attorney Herin stated that any decision to formally mark the sidewalks for bicycles would require an Interlocal with the County, which would open the Town to potential liability. He indicated that bicycles had the right to use the right of way, but they had to follow the law and cede to pedestrians. He noted that separate lanes for bicycles and pedestrians worked in some areas with wide sidewalks.

Mayor Murphy was concerned regarding liability issues for the Town.

Town Manager Hernstadt reported that bicyclists were allowed to ride on the sidewalk as long as they followed all the rules. Council Member Veach questioned whether the County would address shared sidewalks. Town Manager Hernstadt replied that Council had not officially requested that the County address it. Vice Mayor Hosafros supported marking shared sidewalks for public safety.

Council Member Allers supported asking the County to mark sidewalks where there were no bike lanes. He questioned whether the Town posted the location of bike lanes. Town Manager Hernstadt replied negatively and stated that he would contact Kaye Molnar to add locations.

Consensus was reached to keep the grass between the curb and sidewalk for now. There was no support for allowing homeowners to match their yards.

Town Manager Hernstadt suggested writing a letter to the County encouraging them to address conflicts between pedestrians and bicycles where bike lanes did not exist.

Council Member Veach discussed purchasing bells and lights for bicycles since some rental companies did not comply with the ordinance. Council Member Atterholt agreed.

B. Mooring Field / Upland Services

Mooring Field Upland Services Discussion

Town Attorney Herin provided a memo with a partial list of concerns regarding the Harbor House condominium documents. He stated the information was to assist Council in deciding whether to move forward with negotiations. He brought up limited commercial parking in the current documents and a preference for residential units. He noted that an amendment eliminated guaranteed parking spots for commercial units on the property. Representatives stated that if the Town combined the two units into

one, they would try to make sure one parking spot was available, but the Town would lose a vote.

Council Member Allers questioned whether the Town could lease parking spots by the dinghy dock under the bridge. Town Manager Hernstadt replied that they currently had a parking program for patrons in the Mooring Field and if Council decided to move forward with Harbor House, they would find a parking solution. He did not see the parking issue as a deal-breaker. Mayor Murphy agreed.

Town Attorney Herin discussed selling the units in the future. He noted they had no right to use common elements on the property; however, annual assessments were reduced accordingly to reflect the lack of access. Any modifications to units had to be approved by the condo board. He indicated that the board did not have an issue with the Town purchasing the units and alterations would have to go through proper channels. He stated that the Town did not receive any board-level correspondence from the condominium association.

Town Manager Hernstadt believed that the condominium association was willing to work with the Town. He explained the steps they would take if they decided to move forward. Mayor Murphy questioned the ownership of the two units. Town Manager Hernstadt thought Doug Speirn-Smith owned one unit and a board member owned the other. Town Attorney Herin added that copies of correspondence went to a real estate broker and the condo association's attorney. He discussed how they could protect the operation in the future by requesting an amendment to the condominium documents.

Vice Mayor Hosafros noted that she expressed her reservations to the AAC (Anchorage Advisory Committee) regarding the condominium documents, although she supported bringing the Upland Services in house. She was concerned that the board eliminated commercial parking and prohibited access to common areas after the original documents were prepared. She stated they would be paying for a portion of maintenance to common areas they were prohibited from using. Council Member Atterholt brought up mandating reserves for repairs to common areas.

Mayor Murphy questioned whether water meters were separate for commercial units. Utilities Director Christy Cory replied that there was one meter for the condos, one for the boat dock and one for the store.

Vice Mayor Hosafros stated that the possible problems they would be leaving for future Councils were too great. Council Member Atterholt supported the staff moving forward to try to mitigate concerns. Vice Mayor Hosafros responded that the items that could not be mitigated were too great.

Council Member Allers agreed with Vice Mayor Hosafros that it solved one problem but potentially created others. He did not think they could negotiate enough to make it worth their while. Council Member Veach did not see future conflicts and felt it was a good fit. Mayor Murphy supported further exploration. Mayor Murphy questioned whether parking was deeded. Town Attorney Herin indicated he would follow up.

Consensus was reached to move forward with discussions.

C. Structures at Beach Accesses

Town Manager Hernstadt indicated that regulations allowed the Town to have a portable, self-contained bathroom at Palm Ave. Other locations would have to be looked at individually due to rights of way and easements. He stated he intended to pursue funding from the TDC (Tourist Development Council) and move forward with the Palm Ave. location unless otherwise instructed.

Council Member Veach questioned the stipulation that the structure had to be on the site for fewer than 180 consecutive days. Town Manager Hernstadt replied that it was moved for hurricanes and general maintenance. Council Member Veach thought there were better alternatives such as working with businesses to allow the public to use their facilities. He discussed problems with public bathrooms on the beach.

Vice Mayor Hosafros understood that their discussion was to reassure residents that they would not install a public restroom anywhere else on the beach. She reiterated that the neighbors did not complain about the Palm Ave. location.

Town Attorney Herin noted that he could prepare a resolution banning bathroom installations at other beach accesses. He indicated the focus was on replacing the restroom at Palm Ave. Town Manager Hernstadt reviewed the steps they had to take before installing the restroom. Council Member Veach discussed informing the public.

Consensus was reached for Town Attorney Herin to draft a resolution.

Council Member Atterholt referred to five designs and potential locations for the arch. He noted that Lee County was responsible for designing and building and the Restore the Arches group was responsible for funding.

Bowditch Park and Lynn Hall Park were identified as two potential locations. He requested that the item be added to an agenda to endorse the project and a letter sent to the Lee County Commissioners. Consensus was reached to add the item to a future agenda.

Mayor Murphy discussed a green sheet from Bonita Springs City Council Member Amy Quaremba concerning the new bridge at Big Carlos Pass. He relayed a conversation regarding support for another bridge option. He questioned whether Council Members were interested in joining Bonita Springs with an objection to the current design. Town Manager Hernstadt added that Bonita Springs was waiting to hear from them before sending their letter. Mayor Murphy supported the efforts of Bonita Springs.

IV. AGENDA MANAGEMENT

A. Agenda Management

Add revising footprints.

Add support for Sanibel's state legislature priorities concerning water quality issues. Town Manager Hernstadt indicated that he would prepare a letter to the state with a copy to Sanibel.

Add a discussion to a future M&P regarding converting private beach accesses to public accesses in areas where Homeowner Associations were not active and did not maintain their beach access.

Remove Kiwana's Club bench advertising.

V. ADJOURNMENT

Council Member Atterholt moved to adjourn the meeting; second by Vice Mayor Hosafros.

The meeting was adjourned at 1:25 p.m.

1. **Requested Motion:**

Meeting Date: February 1, 2021

Appoint new member to fill the one vacancy on the Bay Oaks Recreational Campus Advisory Board

Why the action is necessary:

Fills a vacancy on the board

What the action accomplishes:

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

4. **Submitter of Information:**

5. **Background:**

There is currently one vacancy on the seven member board. Island resident Rebecca Guidry has requested appointment to BORCAB

Attachments:

1. Guidry, Rebecca - BORCAB

Financial Impact:

6. **Alternative Action**

Do not appoint and advertise for new members

7. **Management Recommendations:**

8. **Recommended Approval:**

Amy Baker, Town Clerk
John R Herin Jr, Town Attorney
Amy Baker, Town Clerk
Roger Hernstadt, Town Manager
Town Council,

Created/Initiated - 1/26/2021
Approved - 1/26/2021
Approved - 1/27/2021
Approved - 1/27/2021
New - 1/1/1900



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.

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
- ☒ Bay Oaks Recreational Campus Advisory Board
- ☐ Community Resource Advisory Board
- ☐ Cultural and Environmental Learning Center Advisory Board
- ☐ Historic Preservation Advisory Committee
- ☐ Local Planning Agency
- ☐ Marine 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?

My husband and I (along our two young boys, age 5 & 7) have made Fort Myers Beach our forever home and love it here. We live here full time and believe Bay Oaks is an important part of our community. As such, I would love to not only see Bay Oaks grow and remain such an integral aspect of our local culture, but I want to be a part of, and help guide, the future of this local treasure.

Community Involvement:

I coached the FMB U6 soccer team for 2020, and I was their assistant coach in 2019.

Interests / Activities:

Boating, paddleboarding, fishing, beach activities, crafting, traveling, taking my family to new places, cooking.

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 and you are appointed, you will be asked to fill out Public Records Exemption Request form and return to the Town.

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

Signed



Date 1-23-2021

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

Office Use Only:

Appointed: Yes _____ No _____

DATE: _____

1. **Requested Motion:**

Meeting Date: February 1, 2021

Town Council authorization for voluntary, no cost participation in the proposed Southwest Florida Resiliency Compact

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

5. **Background:**

The Compact 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 Compact is further committed to engaging the public through education and participation in the decision-making process.

All these efforts are necessary to preserve the quality of life and the economic prosperity of our region as we proceed through this century and beyond. Collaboration across the region conserves resources, provides greater diversity of expertise and experience, enhances competitiveness for private and public funding, and generates a united voice for affecting policy and legislative action at higher governmental levels.

The local governments and agencies included in this Compact share a common geographic and biogeographic region with: (1) comparable ecosystem services (e.g., need for potable water, managing storm and fresh water inundation, shoreline protection, comparable green infrastructure); (2) similar regulatory services (e.g., coastal erosion control, flood control, water quality); (3) comparable demographics, with a seasonal and older population; and (4) similar cultural and social services (e.g., sense of place, eco-based tourism economy).

Attachments:

1. Resolution 21-03, SWFL Resiliency Compact Support
2. Nesheiwat Ltr for Compact
3. SWFL Compact MOU FAQs 062320

Financial Impact:

None

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

Amy Baker, Town Clerk
Amy Baker, Town Clerk

Created/Initiated - 1/25/2021
Approved - 1/25/2021

John R Herin Jr, Town Attorney
Amy Baker, Town Clerk
Roger Hernstadt, Town Manager

Approved - 1/26/2021
Approved - 1/27/2021
Final Approval - 1/27/2021

RESOLUTION NUMBER 21-03

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, SUPPORTING THE CONCEPT AND PURPOSE OF THE SOUTHWEST FLORIDA REGIONAL RESILIENCY COMPACT; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the Southwest Florida Regional Resiliency Compact (hereinafter, the Compact) has been formed to develop a regionally consistent approach to the impacts of climate change and to advance local and regional responses to and preparations for economic and community disruption projected to result from the impacts of climate change; and

WHEREAS, the Counties of Charlotte, Lee, and Collier and the municipalities in these counties (hereinafter, the Compact Members) form a unique and extraordinary area, sharing a sense of community, economy, and critically important environmental resources; and

WHEREAS, the Southwest Florida region has some of Florida's most remarkable beaches, rivers, estuaries, and unique ecosystems which are closely coupled to the region's history and cultural heritage; and

WHEREAS, the Southwest Florida region has approximately 1.26 million permanent residents which represents approximately 6.1% of Florida's population, and is projected to exceed 1.7 million residents by 2040; and

WHEREAS, tourism is of critical importance to the Southwest Florida region with approximately 7.5M visitors to our 3 counties in 2019 and is heavily dependent on its unique natural resources to promote and sustain that tourism; and

WHEREAS, the Southwest Florida region is especially vulnerable to the impacts of a changing climate, including: sea-level rise, rainfall, heat events, wildfires, droughts, flooding, and storms, which threaten community priorities, human well-being, and natural resources; and

WHEREAS, rising sea levels, intense rainfall, rising water temperatures, and other climatic stressors will compromise crucial drainage infrastructure and water quality (e.g., saltwater intrusion); and

WHEREAS, extreme weather events can impact the lives of residents, damage property, and disrupt businesses; and

WHEREAS, natural areas including forests, beaches with dunes, wetlands, mangroves, and oyster reefs can provide valuable flood risk reduction and water quality benefits and may be compromised by changing climate conditions; and

WHEREAS, planning for and implementation of activities to reduce the Southwest Florida region's vulnerability to a changing climate is among the most consequential actions the Southwest Florida region could pursue; and

WHEREAS, a regionally consistent message communicated through a coordinated outreach program to citizens of, and visitors to, the Southwest Florida region is critically important to ensuring thorough understanding of the issues facing the region; and

WHEREAS, the Compact Members are committed to being resilient to a changing climate, and will consider adaptation and risk reduction strategies intended to ensure public safety and safeguard infrastructure, property, cultural and environmental assets, and basic quality of life for current residents and future generations; and

WHEREAS, measures to mitigate hazard risks provide a significant return on investment because resilient communities and regions support a thriving economy and create opportunities to attract new businesses and economic investments; and

WHEREAS, proactively preparing for a changing climate will be less costly and enhance the major sectors of the regional economy, maintaining and growing manufacturing, health care, tourism, agriculture, and other economic drivers; and

WHEREAS, many of the activities undertaken to enhance resiliency to a changing climate will be concurrent and supportive of existing local efforts, such as addressing aging infrastructure, emergency management, and public health; and

WHEREAS, local governments play a critical role in fostering social equity in the face of climate-related challenges, including the potential for community displacement; and

WHEREAS, while counties and cities in Southwest Florida have independently identified and undertaken activities to address vulnerabilities, they recognize the value of a collaborative commitment to build resiliency in the region; and

WHEREAS, the Compact Members have joined in formation of the Southwest Florida Regional Resiliency Compact to coordinate their efforts and enhance their abilities to prepare, adapt, and mitigate for the effects of climate change in their individual communities and throughout the entire Southwest Florida region.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH THAT:

Section 1. Findings - The findings set forth above are adopted and set forth as the reasons and statement of purpose for the formation of the Southwest Florida Regional Resiliency Compact.

Section 2. Regional Cooperation - The Compact Members shall work together to maximize their efforts to adapt to and work to mitigate the effects of climate change by: identifying vulnerabilities to the effects of climate change in their communities; identifying common vulnerability assessment methodologies; planning for adaptation and mitigation actions that will enhance the resiliency of their communities; learning from each other and their prior efforts and planning documents; leveraging their resources; and pursuing public-private partnerships.

Section 3. Regional Resiliency Action Plan - The Compact Members shall develop a Regional Resiliency Action Plan which shall include strategies for coordinated regional preparation for and adaption to a rapidly changing global environment.

Section 4. Science-based Decisions - The Compact Members will base their strategies and actions on sound science and technical data and shall work together to identify experts for guidance and use recognized and consistent sea-level rise projections to assess vulnerability and inform planning efforts.

Section 5. Legislative Strategy - The Compact Members shall develop a legislative strategy which recognizes the region-specific vulnerabilities of Southwest Florida to the impacts of climate change and includes recommendations for the allocation of state and federal resources.

Section 6. Community Involvement - Recognizing the importance of involvement in these regional, cooperative efforts by all members of the community, the Compact Members shall engage and involve local businesses, organizations, associations, and individuals in developing the Compact's plans, policies and recommendations. Additionally, the Compact membership may grow, with private and public organizations joining as best seen fit by the existing members.

Section 7. Education and Outreach - It is critical that the Southwest Florida region present a cohesive and consistent message to avoid ambiguity across jurisdictional lines. Therefore, the Compact Members will develop a Regional Resiliency Education and Outreach strategy to assist the Compact Members in communicating efforts to their citizens.

Section 8. Intent - The Compact Members each join the Southwest Florida Regional Resiliency Compact as an expression of their intent and commitment to work together on a regional level to identify and address the effects of climate change.

Section 9. Funding – The compact members do not hereby commit any financial resources to the operation of the compact and shall seek alternative funding sources through grants, philanthropic funding and other means to fund the operation of the compact.

Section 10. Governance – The compact shall be governed by a leadership committee consisting of one member appointed by each compact member. This member may be staff or an elected official of the jurisdiction they are representing. Each compact member shall have one vote on the actions of the compact and all actions shall require a majority vote to progress.

Section 11. Autonomy – Nothing in this compact will prevent any compact member from taking actions to increase their own resiliency nor shall this compact take any power or authority away from the individual compact members.

Section 12. Separation from the Compact – Any compact member may leave the compact at any time by informing the other compact members in writing of their intent to leave the compact.

Section 13. The above recitals are true and correct and are hereby incorporated by reference as though fully set forth herein.

Section 14. This Resolution shall take effect immediately upon adoption.

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

Raymond P. Murphy, Mayor
Rexann Hosafros, Vice Mayor
Dan Allers, Council Member
Jim Atterholt, Council Member
Bill Veach, Council Member

ADOPTED this 1st day of February, 2020 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Raymond P. Murphy, 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:

John R. Herin, Jr., Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ____ day of February 2020.



RON DESANTIS
GOVERNOR

STATE OF FLORIDA
Office of the Governor

THE CAPITOL
TALLAHASSEE, FLORIDA 32399-0001

www.flgov.com
850-717-9418

February 20, 2020

As the State of Florida's first Chief Resilience Officer, I am proud to support the formation of a Southwest Florida Resiliency Compact. Creating this compact could lead to a more unified approach in addressing the environmental, physical, and economic impacts of rising sea levels and extreme weather in Florida. The compact could work together to advocate in areas such as clean alternatives in energy, sustainable infrastructure projects, and other natural resource solutions through the Southwest Florida region.

Building a partnership among the Southwest Florida counties will help create a collaborative effort toward resiliency that will allow better sharing of data and new vulnerability assessments for each community. With each county's participation and insights, stronger communication and cooperation will be established, leading to more efficient planning efforts throughout each community. Steadily rising sea levels can be addressed in a way specifically tailored for the region's geography and economy by identifying concrete projects that are cost-efficient.

As we face continuous climate threats throughout our state, we must ensure that every region is given adequate representation and preparation for the future with available resources and funding. Southwest Florida has its own unique strengths and challenges that could be amplified and become more competitive to receive dedicated funding toward resiliency projects.

I appreciate and recognize the tremendous impact that cooperation and teamwork have with the active participation of our regional planning councils, and I am certain that the formation of the Southwest Florida Climate Compact will help pave the way for more Floridians to be better equipped with the necessary tools and resources toward a resilient community.

Sincerely,

A handwritten signature in blue ink, appearing to read "Julia Nesheiwat".

Dr. Julia Nesheiwat
Chief Resilience Officer
State of Florida

Southwest Florida Regional Resiliency Compact – Frequently Asked Questions

Draft: June 23, 2020

1) Who will pay for the operation of the compact?

The Memorandum of Understanding (MOU) addresses, in SECTION 9. – Funding, the question of funding the compact. At this time, the compact members are not being asked for any financial contributions. FGCU has acquired a small donation from a philanthropic foundation for the initial expenses and the compact will collectively pursue alternative funding sources from grants and other funding sources to fund the initial operations of the compact.

If, in the future, funding is needed from the compact members, this shall be a change to the MOU and be taken before each jurisdictions' governing body for approval.

2) Will the compact have any regulatory power?

No – SECTION 11. – Autonomy confirms that the compact does not remove the ability for any individual compact member to take any resiliency actions separate from the compact and specifically does not take away any power or authority away from any of the compact members.

3) Will a member be able to leave the compact at any time?

Yes – SECTION 12. – Separation from compact, states that any compact member may leave the compact at any time by informing the compact members in writing of the intent to leave the compact.

4) How will the compact be governed?

SECTION 10. – Governance addresses this by forming a leadership committee consisting of one appointed voting member from each agency or jurisdiction represented within the compact. The member agency or jurisdiction may appoint either a staff member or an elected official. Each individual member shall have one vote, and a majority vote will be required to move an item forward. A quorum of the leadership committee will be required to take action on any item.

5) How will the compact help members become more resilient?

SECTION 3. – Regional Resiliency Action Plan will be the first priority of the compact. This plan will determine the threats the region faces, identify vulnerabilities and propose actions for the region to address those vulnerabilities.

6) How will the compact ensure all actions are based on scientific data?

SECTION 4. – Science--based Decisions, mandates that the compacts actions and recommendations be based on sound science and technical data and that recognized experts and data sources be used to develop regional scenarios.

7) Is there support for the compact at a state level?

Yes – Dr. Julia Nesheiwat, the previous State Chief Resiliency Officer, has provided a written endorsement of the compact. Though Dr. Nesheiwat has left this position with the

responsibilities of the post now residing with the State's Chief Science Officer, Dr. Tom Frazier, the expectation is that the CRO's efforts will be maintained.

- 8) Can other organizations, groups, or agencies join the Compact, or is the Compact envisioned as just a collection of county and city governments?

The Compact Steering Committee members agreed that the MOU should be ratified initially by the region's governing jurisdictions. Without participation by local government, the Compact's effectiveness would be compromised. Once the MOU is ratified, we expect other organizations to join the organization. This is presented in Section 6.

- 9) What if a jurisdiction has already undertaken an independent, vulnerability or adaptation planning?

Any effort by a jurisdiction to independently pursue its climate change preparedness is welcome and would never be superseded by a compact-wide effort.

- 10) How is Florida Gulf Coast University's Water School involved in the compact development process?

FGCU's Water School has offered its assistance in providing professional staff time to facilitate the development of the compact. The Water School, as part of its role in community engagement, views this as part of its mission. It has no intention of administering the organization if and when it forms, but is willing to consider such a future roll if this is something desired by the compact membership.

1. **Requested Motion:**

Meeting Date: February 1, 2021

Approve Resolution 21-02; Update of the Town's Harbor Management Plan.

Why the action is necessary:

To update the Harbor Management Plan to incorporate the expanded mooring field area of approximately 19 mooring balls.

What the action accomplishes:

Updates the Harbor Management Plan.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Chelsea O'Riley, Public Works
Director

5. **Background:**

In 2019, the Town Council authorized staff to begin the permitting process for the Mooring Field expansion. After 2 years, the Town is nearing completion of the permitting process. Final steps include updating the Harbor Management Plan to include the newly permitted area prior to DEP issuing the permit. The Town has received the Army Corps of Engineer permit. Once the DEP permit is approved/issued, the Town may begin moving forward with construction.

Attachments:

1. 21-02, Update Harbor Management Plan
2. Matanzas Mooring Field Management Plan Update 1.21.21

Financial Impact:

6. **Alternative Action**

Do not approve.

7. **Management Recommendations:**

Approve the Resolution.

8. **Recommended Approval:**

Chelsea O'Riley, Public Works Director
Chelsea O'Riley, Public Works Director
John R Herin Jr, Town Attorney
Amy Baker, Town Clerk
Roger Hernstadt, Town Manager

Created/Initiated - 1/25/2021
Approved - 1/25/2021
Approved - 1/27/2021
Approved - 1/27/2021
Final Approval - 1/27/2021

RESOLUTION NUMBER 20-02

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH UPDATING THE FORT MYERS BEACH HARBOR MANAGEMENT PLAN TO THE MATANZAS MOORING FIELD MANAGEMENT PLAN

WHEREAS, In cooperation with the Town of Fort Myers Beach Anchorage Advisory Committee and the State of Florida Department of Environmental Protection, the Fort Myers Beach Harbor Management Plan has now been amended; and,

WHEREAS, the Harbor Management Plan requires update to include the Expansion to the Mooring Field west of Matanzas Pass Bridge thus including incorporation of permitted area and a name change; and

WHEREAS, the newly titled Matanzas Mooring Field Management Plan addresses issues and needs pursuant to the Authorities and Sovereign Submerged Lands Lease with the State of Florida Department of Environmental Protection and the Corps of Engineers and as deemed necessary by the Town in order to appropriately manage Matanzas Mooring Field; and,

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Fort Myers Beach, Florida that:

Section 1. Incorporation of Whereas Clauses. The above "Whereas" clauses are hereby incorporated by reference as though fully set forth herein.

Section 2. Adoption of Fort Myers Beach Harbor Management Plan. The Fort Myers Beach Harbor Management Plan, attached hereto as Exhibit "A" and incorporated by reference, is hereby adopted by the Town Council of the Town of Fort Myers Beach.

Section 3. Effective Date. This resolution shall take effect immediately upon its adoption by the Town Council.

NOW, THEREFORE, IT IS HEREBY 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. The Agreement attached hereto as Exhibit "A", Matanzas Mooring Field Management Plan.

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

Raymond P. Murphy, Mayor
Rexann Hosafros, Vice Mayor
Dan Allers, Council Member
Bill Veach, Council Member
Jim Atterholt, Council Member

ADOPTED this ____ day of February, 2021 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Raymond P. Murphy, Mayor

ATTEST:

Amy Baker, Deputy Town Clerk

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

John R. Herin, Jr., Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ____ day of _____ 2021.

TOWN OF FORT MYERS BEACH ~~MUNICIPAL ANCHORAGE~~
MATANZAS ~~HARBOR-MOORING FIELD~~ MANAGEMENT PLAN

As amended

~~May 2017~~ January 2021

Adopted _____, ~~2017~~ 2021

Prepared for

TOWN OF FORT MYERS BEACH TOWN COUNCIL
2525 ESTERO BLVD.
FORT MYERS BEACH, FLORIDA 33931

Prepared by

TOWN OF FORT MYERS BEACH
ANCHORAGE ADVISORY COMMITTEE

TABLE OF CONTENTS

I.	INTRODUCTION	4
II	RULES AND REGULATION FOR THE USE AND OPERATION OF THE TOWN OF FORT MYERS BEACH MUNICIPAL <u>MATANZAS MOORING FIELD</u> ANCHORAGE	
	A. The Harbormaster	4
	B. The Service Provider	5
	C. Vessel Registration	5
	D. Mooring Rental Agreement	6
	E. Rules and Regulations Governing the Mooring Rental Agreement	6
	F. Rules and Regulations Governing Mooring and Other Activities in the Anchor <u>age Facility Mooring Field</u> 9	9
	G. Enforcement of Rules and Regulations	10
III	FINANCIAL CONSIDERATIONS	11
IV	MOORING ALLOCATIONS	11
V	AREAS OTHER THAN THE ANCHORAGE <u>FACILITY MOORING FIELD</u> 11	11
VI	COMMUNICATIONS	11
	A. Communication Procedures with Renters	11
	B. Communication with Other Jurisdictional Authorities	12
	C. VHF Radio Procedures	12
	D. Calls to the Town	13
VII	ENVIRONMENTAL CONSIDERATIONS	13
	A. Environmental Warning	13
	B. Marine Sanitation	13
	C. Marine Pollution	13
	D. Fuel and Oil Spills	14
	E. Manatees and Other Protected Species	14
	F. Seag <u>Grass</u> Protection Area	15
VIII	APPENDICES	46 <u>17</u>

I	Duties and Responsibilities of the Harbormaster	16 <u>17</u>
II	Town of Fort Myers Beach Municipal Anchorage Matanzas Mooring Field Mooring Rental Agreement.	18 <u>19</u>
III	Anchorage Facility Marine Sanitation Regulations	22 <u>22</u>
IV	Anchorage Facility Marine Pollution Regulations	23 <u>23</u>
V	Anchorage Facility Fuel and Oil Spill Regulations	24 <u>24</u>
VI	Anchorage Facility Protected Species Regulations	25 <u>25</u>
VII	Service Provider Agreement	28 <u>26</u>
VIII	<u>Mooring Field Plans</u>	<u>27</u>

I. INTRODUCTION

It is the intent of the Town of Fort Myers Beach (the “TOWN”) to provide a municipal ~~anchorage—mooring field~~ (the “ANCHORAGE FACILITY”) and shore side amenities to accommodate the needs of as many responsible and considerate users of sailing or motor vessels while protecting environmental resources, navigational access, discouraging unregulated anchoring, and protecting the property of others. The TOWN further desires to provide a safe and environmentally sound mooring field while improving compliance with the Clean Vessel Act thereby improving the water quality and ecosystem health of Estero Bay.

It is the intent of this Matanzas ~~Harbor—Mooring Field~~ Management Plan (hereinafter called “PLAN”) to establish the Management Authority and to provide the Rules and Regulations for the operation of the ANCHORAGE FACILITY.

The TOWN is retaining harbormaster (the “HARBORMASTER”) duties and responsibilities, and will hire a SERVICE PROVIDER, that will work as an agent to the TOWN. The SERVICE PROVIDER will manage registration and upland services for the ANCHORAGE FACILITY on behalf of the TOWN.

This PLAN may be modified and changed as needed to address unanticipated issues and needs pursuant to the future authorizations with the State of Florida Department of Environmental Protection (the “DEP”), the U.S. Army Corps of Engineers (the “COE”), and the TOWN. It may also become necessary or desirable to expand or modify the ANCHORAGE FACILITY to provide additional moorings to accommodate future demand. This expansion or modification may include additional management issues and concerns, resulting in a modification of this PLAN. Before any PLAN modifications become effective they must be accepted by the DEP, the COE, and the TOWN.

II. RULES AND REGULATIONS FOR THE USE AND OPERATION OF THE TOWN OF FORT MYERS BEACH ~~MUNICIPAL—ANCHORAGE~~MATANZAS MOORING FIELD

A. HARBORMASTER

1. The TOWN will appoint a full time TOWN employee ~~of the TOWN~~ to act as the HARBORMASTER. For the purposes of this PLAN, the TOWN is acting through its designated HARBORMASTER or contracted SERVICE PROVIDER. Use of the term “HARBORMASTER” encompasses and includes the designated/contracted “SERVICE PROVIDER” unless otherwise clearly indicated. All or a portion of the duties attributable to the HARBORMASTER may be delegated to the SERVICE PROVIDER through an approved contract.

2. The HARBORMASTER is responsible for the enforcement of the rules and regulations for the ~~ANCHORAGE FACILITY~~ included in this PLAN and all applicable DEP and COE Authorizations/ Sovereign Submerged Lands Lease/ Permits (the “PERMITS”). The HARBORMASTER has the authority under this PLAN to order any vessel to vacate a mooring for violation of any rule or regulation provided in this PLAN relating to the ~~ANCHORAGE FACILITY~~. The HARBORMASTER may grant the SERVICE PROVIDER the written authority to act under this provision.

3. The HARBORMASTER is authorized to conduct communications with patrons, register and inspect vessels, enter into rental agreements, assign moorings, and collect rental fees. The duties and responsibilities of the HARBORMASTER are presented in Appendix I attached to and made part of this PLAN.

4. The HARBORMASTER is authorized, but not required, to relocate vessels. A vessel may be relocated for the following reasons: safety purposes, emergency repairs, failure to vacate a mooring on termination of a rental agreement, the reassignment of a mooring, or for other reasons permitted under state or federal law. Before relocating a vessel the HARBORMASTER will make every reasonable effort to contact the vessel’s owner or authorized operator. In the event that the owner or authorized operator is not immediately available or can not be contacted, the HARBORMASTER is authorized to affect the necessary relocation, through towing at the owner’s or authorized operator’s expense, except for the relocation of a vessel due to a reassignment of a mooring. This authority will only be used when vessel relocation is an operational necessity, and then, exercised only with the utmost discretion and care.

B. SERVICE PROVIDER

1. The TOWN may contract with a SERVICE PROVIDER who will be responsible for providing certain upland services that will include, but are not limited to, communication with boaters, assignment of moorings, execution of mooring agreements, collection of rental fees, and performance of other duties as may be directed by the HARBORMASTER. The TOWN and the SERVICE PROVIDER will enter into a negotiated SERVICE PROVIDER AGREEMENT that sets forth the specific duties of the SERVICE PROVIDER, establishes compensation to the SERVICE PROVIDER, and provides for indemnification of the HARBORMASTER and Town while acting under the SERVICE PROVIDER AGREEMENT. The proposed SERVICE PROVIDER AGREEMENT is attached to this PLAN as appendix VIII.

2. If a SERVICE PROVIDER AGREEMENT is in place, certain duties and responsibilities of the HARBORMASTER, as described in this PLAN, may be delegated to the SERVICE PROVIDER. If a SERVICE PROVIDER AGREEMENT is not in place, then the duties and responsibilities of the HARBORMASTER, as described in this PLAN, remain in effect and are discharged by the HARBORMASTER.

C. VESSEL REGISTRATION

Vessel owners or authorized operators may contact the HARBORMASTER by radio or telephone to receive registration and mooring instructions before entering the ANCHORAGE FACILITY. Vessels that enter the ANCHORAGE FACILITY after business hours must register with the HARBORMASTER first thing the next morning. Vessel owners or authorized operators desiring to moor in the ANCHORAGE FACILITY must ~~first~~ notify the HARBORMASTER and execute a rental agreement within the first 24 hours of taking a mooring.

D. MOORING RENTAL AGREEMENT

Registration of a vessel includes the execution of a Mooring Rental Agreement (the “AGREEMENT”) that will be provided to the vessel owner or authorized operator (the “RENTER”) by the HARBORMASTER. The provisions of this AGREEMENT may be changed or modified from time to time as deemed necessary. The form AGREEMENT is set forth in Appendix II attached to this PLAN.

E. RULES AND REGULATIONS GOVERNING THE MOORING RENTAL AGREEMENT

1. PAYMENT TERMS: The RENTER must agree to pay to the TOWN the rental rate as provided by this PLAN and the Rental Rate Schedule (the “SCHEDULE”). Rental rates, as indicated on the SCHEDULE, are established by the TOWN. The SCHEDULE will be posted by the TOWN in a location readily accessible to RENTERS. Rental rates are based on length of stay. Length of stay categories are as follows:

- a. Transient – one to six nights: one day’s rent for each night of use.
- b. Weekly – three weeks or less: one week’s rental for each week of use.
- c. Monthly – four weeks to six months: one month’s rent plus a refundable security in an amount equal to one month’s rent.

All rental fees are payable in advance. Payments for monthly rentals are due before close of business on the first day of the month. If a rental payment is not paid in full by the close of business on the fifth day of the month, a late fee of \$5.00 per day will be assessed. If RENTER does not make full payment of all rent and fees due by close of business on the tenth day of the month, HARBORMASTER may terminate the AGREEMENT.

Security deposits, if applicable, are payable at the time the AGREEMENT is executed by the RENTER, and will be returned to the RENTER, minus appropriate deductions, upon the termination of the AGREEMENT. The HARBORMASTER has the authority to use any portion of the RENTER’S security deposit against any delinquent balance owed by the RENTER or to offset any damage attributed to the RENTER.

2. TERM OF AGREEMENT: The term of the Anchorage Facility rental will be as provided in the AGREEMENT executed by the RENTER. Extension of rental periods will require written amendment of the AGREEMENT. The AGREEMENT term will continue unless sooner terminated in accordance with one of the following:

- a. By destruction of the facilities by fire, storm, or otherwise.
- b. By default in the payment of the established rent.
- c. Failure of renter to follow the established Mooring Field rules.

3. RULES and REGULATIONS: RENTER must agree to comply with all Rules and Regulations relating to the ANCHORAGE FACILITY including the AGREEMENT, this PLAN, the PERMITS, and all State, Federal, and local laws pertaining to marinas and boating. The RENTER acknowledges that any breach of the established Rules and Regulations may result in the immediate termination of the AGREEMENT by the HARBORMASTER. Copies of the PLAN and PERMITS are available for review in the TOWN's office and the Upland Service Provider's office. Upon observation of any non-compliance with the provisions of the PLAN or PERMITS, the HARBORMASTER will give a written or verbal "Caution" notice to the RENTER, informing them of the infraction. A second infraction will result in a written "Warning" notice to the RENTER. A third infraction will result in the immediate termination of the AGREEMENT, and the RENTER will be given 24 hours to remove the vessel from the ANCHORAGE FACILITY.

4. NON-ASSIGNMENT: RENTER is not permitted to assign or sublet ANCHORAGE FACILITY privileges provided by the AGREEMENT. No vessel other than the vessel described in the AGREEMENT may be moored in the ANCHORAGE FACILITY without prior coordination with the HARBORMASTER. In the event the vessel described in the AGREEMENT is sold, or otherwise permanently removed from the ANCHORAGE FACILITY, the RENTER must immediately notify the HARBORMASTER and provide intentions as to the future use of the mooring.

5. DELINQUENT BALANCE: By virtue of rental within the ANCHORAGE FACILITY, the HARBORMASTER holds a possessory lien on the moored vessel under Florida Statutes (FS) s. 328.17. Under FS s. 328.17; the HARBORMASTER has a right to place a lien against the vessel described in the AGREEMENT to recover unpaid sums due for use of a mooring in the ANCHORAGE FACILITY, for other services, materials and supplies charged to the RENTER's account, or for damages or injuries, including but not limited to fines, penalties, environmental restoration, or fuel spill clean-up, caused or contributed to by the RENTER, or any vessel owned or operated by the RENTER, or their authorized representatives or agents, to any property of the HARBORMASTER and ANCHORAGE FACILITY or any other person, property, or vessel at the ANCHORAGE FACILITY. THE REMEDIES PROVIDED IN FS s.328.17 FOR THE NON-JUDICIAL SALE OF A VESSEL FOR NON-PAYMENT OF DOCKAGE WILL BE SPECIFICALLY INCLUDED AND INCORPORATED INTO THE RENTAL AGREEMENT AS AN ADDITIONAL REMEDY AVAILABLE FOR THE HARBORMASTER; AND, THE RENTER MUST AGREE TO BE NOTIFIED AT THE POSTAL ADDRESS PROVIDED BY THE RENTER IN THE AGREEMENT IF ACTION UNDER FS S.328.17 BECOMES NECESSARY.

6. FACILITIES: The AGREEMENT covers mooring space, holding tank pump out, dinghy docks, shower and bathroom facilities, and use of garbage and recycling bins at authorized locations, and other services as determined consistent with the Service Provider Agreement

7. **SOLE RISK:** An assigned mooring space is to be used at the sole risk of the RENTER. The TOWN will not be liable for the care, protection or security of the vessel, its appurtenances or contents, or for any loss or damage of any kind or nature to the vessel, its appurtenances or contents, due to fire, theft, vandalism, collision, equipment failure, windstorm, hurricane, rains, casualties, or negligence by any person or other events. There is no warranty of any kind as to the condition of the piers, walks, gangways, ramps, mooring gear, or electrical and water service and the TOWN will not be responsible for any injuries to persons or property occurring upon the ANCHORAGE FACILITY property for any reason.

8. **HOLD HARMLESS:** The RENTER must agree to hold the TOWN, harmless and to indemnify the TOWN from any loss, damage, or liability imposed by reason of any acts or omissions on the part of the RENTER, his agents, employees, or guests in the use of the facilities. The indemnification provided must include, but not be limited to, all costs, expenses and reasonable attorney's fees incurred by the TOWN in any action based on the foregoing, including, but not limited to, any action brought by the RENTER, crew, guests, heirs, assigns or subrogees.

9. **FOUL WEATHER:** In the event of a tropical storm or hurricane watch or warning, all vessels at the ANCHORAGE FACILITY should be properly secured for foul weather by the RENTER. It is the RENTER'S responsibility to be aware of such warnings and to make arrangements for the proper securing of the vessel or removal of the vessel to another location. The TOWN will not be held liable for any consequences in their attempt to protect life and property in the event of a tropical storm or hurricane including a warning or watch. In the event it becomes necessary to move a RENTER'S vessel, for safety purposes or otherwise, and the vessel is unattended, the HARBORMASTER is authorized but not required to effect the necessary move at RENTER'S expense, which costs will become a part of the rent for mooring of RENTER'S vessel. See Section IIA-3 above.

10. **FAILURE TO VACATE:** If a RENTER fails to vacate an assigned mooring space within seven days after receipt of a written Notice of Termination by the HARBORMASTER, the RENTER will be deemed to have granted the HARBORMASTER permission to board the RENTER'S vessel and move it under its own power, or to place it in tow and remove the vessel from its assigned mooring, to a location chosen pursuant to the HARBORMASTER's sole discretion, at RENTER'S expense; and, the HARBORMASTER may take possession of the assigned mooring. See Section IIA-3 above.

11. **ENFORCEMENT FEES:** RENTER will be responsible for the payment of any and all reasonable attorney's fees, together with any costs and other charges incurred by the TOWN in the enforcement of any provision of the AGREEMENT.

12. **SEVERABILITY:** The mooring of vessels in the ANCHORAGE FACILITY is hereby declared to be a privilege and not a right, and all rentals are terminable with cause upon one week's written notice at the discretion of the HARBORMASTER.

13. DISPUTES: Disputes arising under the RENTAL AGREEMENT will be presented to the HARBORMASTER. The HARBORMASTER will resolve disputes arising out of the activity on the waters of the Town related to mooring and anchoring, subject to appeal to the ANCHORAGE ADVISORY COMMITTEE (AAC). Thereafter, in an appropriate instance, the recommendation of the AAC may be presented to Town Council for a final determination. RENTER may go to Town Hall in person or may phone the TOWN at (239) -765-0202 to present a dispute to the HARBORMASTER or appeal the HARBORMASTER's determination to the AAC.

14. VESSEL REPAIRS: RENTER is required to notify the HARBORMASTER when work by an outside contractor is to be done on a RENTER'S vessel; the nature of the work; the name, address and phone number of the party doing the work; and, a copy of the insurance policies of the party doing the work.

15. ACKNOWLEDGEMENT: By signing the AGREEMENT, RENTER will be deemed to acknowledge that a copy of the Rules and Regulations have been made available to the RENTER by the HARBORMASTER.

16. INSURANCE: RENTER must provide current proof of liability insurance for the Vessel to be moored in the minimum of \$100,000/\$300,000. Failure to provide proof of insurance is sufficient grounds for denial of mooring rental.

F. RULES AND REGULATIONS GOVERNING MOORING AND OTHER ACTIVITIES IN THE ANCHORAGE MOORING FIELD

1. APPLICABLE RULES: The Rules and Regulations as provided by this PLAN, the AGREEMENT, the PERMITS, along with TOWN Code of Ordinances ~~sections~~ Sections 2-93 thru 2-113 (AAC provisions) and 32-19 thru 32-29 (vessel control provisions), as amended from time to time, apply to all RENTERS using the ANCHORAGE FACILITY insofar as applicable. Violations of these rules and regulations may result in the TOWN terminating the AGREEMENT and further, the violation may be reported to the appropriate law enforcement agency.

2. OPERATIONAL CONDITION: Only vessels deemed to be in compliance with the United States Coast Guard regulations and safety standards and FS Chapter 327 will be permitted to moor within the ANCHORAGE FACILITY. Only vessels in good operational condition, capable of maneuvering under their own power and with current registration and acceptable documentation will be allowed to moor within the ANCHORAGE FACILITY. The decision of whether a vessel is considered to be in good operational condition, and capable of maneuvering under its own power will be at the sole discretion of the HARBORMASTER. In the event of an emergency, such as, but not limited to, breakdown of bilge pump, leaks or bad lines, the HARBORMASTER is authorized to have the necessary repairs made, as economically as possible, and to charge the RENTER therefore, or, may relocate such vessel. See Section IIA-3 above.

3. VESSEL OPERATION WITHIN THE ANCHORAGE FACILITY: The Rules of the Road relating to vessels apply in and around the ANCHORAGE FACILITY. All vessels must observe the “idle speed/no wake” zone in and around the ANCHORAGE FACILITY.
4. TEMPORARY LEAVE OF MOORING: RENTERS with AGREEMENTS in effect who temporarily leave the Anchorage—Facility for more than three days must notify the HARBORMASTER of the anticipated departure and return dates. The HARBORMASTER reserves the right to rent the temporarily vacated moorings on a temporary basis to transient vessels. Transient vessels may be required to vacate the mooring within 24 hours of the RENTER’S anticipated return date. In the event the RENTER returns prior to the scheduled return date the HARBORMASTER will assign RENTER a temporary mooring until the RENTER’S original mooring becomes available. All proceeds from temporary rentals to transients will be retained by the TOWN.
5. VESSEL INSPECTIONS: In order to insureensure compliance with State and Federal safety and marine sanitation regulations, the HARBORMASTER may need to do periodic inspections of the vessel. The HARBORMASTER may contact the RENTER and request permission to conduct an inspection. No vessel inspections will be conducted by the HARBORMASTER without prior approval by the RENTER absent an emergency as determined by the HARBORMASTER. Denial of an inspection is grounds for termination of the AGREEMENT.
6. PEACEFUL USAGE: All RENTERS and their guests agree to peacefully use the ANCHORAGE FACILITY and may not cause, suffer or allow, whether individually or as part of a group, any act that may have the effect of disturbing the peace, inconveniencing or subjecting to physical jeopardy the ANCHORAGE FACILITY, facilities, employees, vessels moored in the ANCHORAGE FACILITY, or do anything which may impede, disrupt, or injure the orderly operation of the ANCHORAGE FACILITY.
7. NOISE: The TOWN’S Noise Ordinance is in effect in the ANCHORAGE FACILITY. Noise must be kept to a minimum so as not to create a nuisance or disturbance to other RENTERS in the ANCHORAGE FACILITY, particularly between the hours of 10 P.M. and 7 A.M. RENTERS will use discretion in operating engines, generators, radios, TVs, etc. Sailboat halyards and other lines must be tied off to prevent slapping against masts.
8. SOLICITATION: No person may solicit or loiter within the ANCHORAGE FACILITY.
9. ANCHORING: The use of an anchor in the ANCHORAGE FACILITY is strictly prohibited except in emergency situations when no other solution is available.
10. TROPICAL STORMS AND HURRICANES: In the event the National Weather Service issues a tropical storm or hurricane warning that includes Fort Myers Beach, the HARBORMASTER is authorized to open the ANCHORAGE FACILITY to vessels in transit seeking safe harbor of refuge. Such vessels are permitted to be secured in the ANCHORAGE FACILITY under the direction of the HARBORMASTER. No rental fees will be charged for the duration of the storm. However, registration with the HARBORMASTER is

required. If conditions at the time of arrival preclude going ashore by dinghy to register, vessel operators must contact the HARBORMASTER by radio or cell phone to provide registration information. NOTE: This waiver should, in no way be construed as a recommendation that the ANCHORAGE FACILITY is the safest place to be in a storm.

11. GRAY WATER DISCHARGES: The use of shoreside shower and laundry facilities are encouraged to reduce the impacts associated with gray water discharges from vessels (increased phosphates, reduced dissolved oxygen, and other water quality problems). To this end, shower and bathroom facilities are included in the Rental fee. Coin operated laundry facilities are readily available.

G. ENFORCEMENT OF RULES AND REGULATIONS

1. **RESPONSIBILITY:** It is the responsibility of the HARBORMASTER to ensure compliance with this PLAN and PERMITS and all State, Federal and local laws pertaining to marinas and boating.
2. **NOTICE OF INFRACTIONS:** The procedure for notifying a RENTER of an observed infraction of the Rules and Regulations are provided in Section II, C- 4 above.
3. **RECORD OF INFRACTIONS:** Infractions do not have to be identical, and separate notices of violation are cumulative. All Caution, Warning and Termination Notices must be documented by the HARBORMASTER in a Log, including the reason for the infraction. Copies of all Notices of infraction must be maintained by the HARBORMASTER and made available to the TOWN and DEP upon request. Copies of Termination Notices resulting from violations of the PLAN or PERMITS will be forwarded to the DEP, Fort Myers office.
4. **NOTICES OF INFRACTION TO RENTERS:** A notice of an infraction to a RENTER may be given to RENTER aboard RENTER'S vessel. Prior to boarding the vessel, to give or leave a Notice, the HARBORMASTER will sound a horn three times and will voice call RENTER. Notice will be deemed hand delivered if RENTER or another person on RENTER'S vessel responds. If RENTER or other person on RENTER'S vessel does not respond or is not present, Notice will be posted in a conspicuous location on the exterior of the vessel, and Notice will be deemed given as of the time of posting on the vessel.
5. **LIABILITY:** The TOWN and HARBORMASTER reserve the right to identify any offender causing a violation within the ANCHORAGE FACILITY, and to name the offender in any enforcement action taken by competent authority. The TOWN and HARBORMASTER acknowledge they have the duty to monitor RENTERS and their guests to ensure compliance with this PLAN and PERMITS. Nothing herein may be construed to waive any defenses provided to the TOWN and HARBORMASTER in Chapters 403 and 376, Florida Statutes, in any enforcement action brought by the DEP.

III. FINANCIAL CONSIDERATIONS

Gross Rental Revenues are to be assessed as provided in accordance with Section II D-1 above. Gross Rental revenues are to be offset by the expenses of operation and maintenance of the ANCHORAGE FACILITY. The TOWN will deposit gross rental revenues in a General fund for the purpose of maintenance of the ANCHORAGE FACILITY.

IV. MOORING ALLOCATIONS

In order to maintain the character of Matanzas Harbor and accommodate both transient and longer term users, the ANCHORAGE FACILITY will be allocated as follows

- a. ~~Grandfathered Vessels — 1% (1 moorings)~~
- b.a. Overnight/Transient Rentals - 10% (~~7~~9 Moorings)

e.b. Flexible - 8990% (6280 Moorings)

~~There is currently one grandfathered mooring in the ANCHORAGE. If a grandfathered mooring is vacated then the mooring will be reclassified as a flexible mooring.~~

V. AREAS OTHER THAN THE MOORING FIELDANCHORAGE

Anchoring in navigation channels is prohibited. Anchoring in SEA-GRASS PROTECTION areas is subject to the restrictions provided in Section VII ~~G-F~~ below. Vessels anchoring in other areas are subject to all applicable State and Federal laws, Rules and Regulations, this PLAN and applicable ordinances of the TOWN. Enforcement will be by the United States Coast Guard (USCG), the FWC and by Lee County Sheriff's Marine Division. The TOWN is not responsible for vessels anchored in other areas.

VI. COMMUNICATIONS

A. COMMUNICATION PROCEDURES WITH RENTERS

1. The TOWN or its Upland Services Provider must continuously monitor VHF Channel 16 during operating hours. Upon making contact, the caller will be directed to the ANCHORAGEFACILITY standby station for further communication.
2. The TOWN or its Upland Services Provider must be available via telephone during normal business hours.
3. The TOWN or its Upland Services Provider must provide ~~afor an answering machinevoicemail~~ service to pick up telephone calls during non-operating hours. The TOWN or Upland Service Provider will respond to those calls at their earliest opportunity.
4. The TOWN or its Upland Services Provider may communicate with RENTERS alternatively as follows:
 - a. Mail correspondence
 - b. Lightly weighted Ziploc bag placed in the vessel's cockpit
 - c. Notice taped to vessel
 - d. Verbally

B. COMMUNICATION WITH OTHER JURISDICTIONAL AUTHORITIES

1. The TOWN or its Upland Services Provider will continuously monitor VHF Channel 16 during normal business hours and will report any emergency or other law enforcement issues in the ANCHORAGEFACILITY to the appropriate authority.
2. The TOWN will meet regularly with the local Florida Fish and Wildlife Conservation Commission, the U.S. Coast Guard, County, Ostego Bay Oil Spill Co-op, and the TOWN'S

emergency and law enforcement staff to participate in emergency and law enforcement issues involving the Harbor (fuel spill, media, disabled vessel, etc.).

C. VHF RADIO PROCEDURES

1. All personnel operating radios at the ANCHORAGE FACILITY will use proper radio procedures.
2. A marine radio is on a port operations frequency and can be heard for some distance. The ANCHORAGE FACILITY is authorized to transmit on VHF Channels 16 and 17 ONLY.
3. Channel 16 is a calling and distress frequency only.
4. When receiving or calling a vessel, communications should first be established on Channel 16 and then shifted to Channel 17 for conversation.
5. All conversations should be kept to a minimum, brief and to the point.
6. It is illegal to advertise on VHF channels.

D. CALLS TO THE TOWN

1. Any incoming calls for ~~ANCHORAGE~~FACILITY RENTERS and their guests, unless the caller states that an emergency exists, will be noted by the receptionist, and this message will be posted on the ~~Municipal Anchorage~~FACILITY bulletin board.
2. Emergency calls will be given immediate attention. The emergency should be clearly described (e.g., fire, heart attack, fall, fuel spill, sinking boat, etc.).
3. Use of TOWN telephones by RENTERS or their guests for personal calls is prohibited.

VII. ENVIRONMENTAL CONSIDERATIONS

A. ENVIRONMENTAL WARNING

Any Employee, Renter, Customer, or Outside Contractor violating the TOWN'S ~~Matanzas Municipal Mooring Field Anchorage~~ Marine Sanitation and Pollution Rules, outlined below, will be expected to pay for cleanup, and may have mooring use privileges terminated.

B. MARINE SANITATION

Pursuant to the Clean Vessel Act of 1994, boaters are prohibited from discharging raw sewage into fresh water or within coastal salt-water limits. Coastal limits are nine nautical miles on the Gulf of Mexico and three nautical miles on the Atlantic Ocean.

The Florida Fish and Wildlife Conservation Commission (the "FWC") enforces the Clean Vessel Act and has the authority to board vessels to check for compliance with this Act, including inspecting for marine sanitation devices and holding tanks. The U.S. Coast Guard also regulates the installation and use of marine sanitation devices.

Florida Statutes s. 327.53 includes the requirements for marine sanitation devices (MSDs) and discharge of sewage. No waste may be discharged from MSD Types I, II, III or other marine sanitation devices into Florida waters. All such waste must be discharged into an approved sewage pump-out facility.

The TOWN'S marine sanitation Rules and Regulations are provided in attached Appendix III.

C. MARINE POLLUTION

Dumping plastic and trash in state and federal waters is against the laws enforced by the U.S. Coast Guard and the FWC. This type of debris is especially harmful to water fowl, sea turtles, fish, and other wildlife, and has been known to cause entanglement, strangulation, choking and mortality in these species. The U.S Coast Guard requires every boat greater than 26' in length operating in U.S. waters to have a sign or placard clearly visible that states:

"It is illegal for any vessel to dump plastic trash anywhere in the ocean or navigable waters of the United States. Annex V of the MARPOL (MARine POLLution) TREATY is an International Law for a cleaner, safer marine environment. Violation of these requirements may result in civil penalty up to \$25,000, fine and imprisonment".

Biodegradable litter may also be problematic in the [Anchorage FACILITY](#). Overboard dumping of food items, fish cleaning wastes, etc. increase bacteria, nutrient loading, odors, and biochemical oxygen demand and lower dissolved oxygen in the [Anchorage Facility](#).

The use of shore-side trash and recycling facilities are encouraged to reduce the impacts associated with litter from vessels. To this end, free use of these facilities, located at the Upland Services Provider or dinghy dock on Gulf Beach Road, will be given to Renters for their length of stay.

The TOWN'S marine pollution Rules and Regulations are provided in attached Appendix IV.

D. FUEL & OIL SPILLS

The U.S. Coast Guard, FWC, and the emergency response staff of the DEP regulatory office deal with oil spill containment and clean-up. The Ostego Bay Environmental Emergency Response Co-op located on San Carlos Island assists these agencies in the event of an oil spill in the harbor or surrounding waterways. The Harbormaster will contact appropriate authorities at Lee County, DEP, FWC, and U.S. Coast Guard, and the oil spill reporting hot line (1-800-424-8802) immediately, in the event of a spill

U.S. Law requires that every vessel greater than 26' in length and powered with an inboard engine have a sign by the bilge that states:

"Discharge of Oil Is Prohibited! The Federal Water Pollution Control Act prohibits the discharge of oil or oily waste into or upon the navigable waters and contiguous zone of the United States if such discharge causes a film or sheen upon, or discoloration of the surface of the water, or causes a sludge or emulsion beneath the surface of the water. Violators are subject to a penalty of \$5,000."

The TOWN and the oil spill reporting hot line (1-800-424-8802) will be contacted immediately when a spill is discovered. WARNING: There is a large fine if even minor spills aren't reported. Oil absorbent pads and pillows should be used to contain and remove a spill. Detergents should never be used to contain oil spills! The cause of the spill should be identified and measures taken to secure against spreading.

The TOWN'S fuel and oil spill control rules and regulations are provided in attached Appendix V.

E. MANATEES AND OTHER PROTECTED SPECIES

Matanzas Harbor, Estero Bay Aquatic Preserve, and surrounding waters are known to be home to the endangered West Indian Manatee. The ANCHORAGE FACILITY lies entirely within a year around Manatee speed zone. Local law enforcement strictly enforces the Manatee speed zones within the ANCHORAGE FACILITY.

The TOWN will make available relevant literature, such as publications and warnings regarding safe operation in waters frequented by manatees, to all RENTERS, and explain the rules, regulations, and safety precautions that apply to manatee protection in the Harbor and surrounding waters.

The TOWN'S protected species rules and regulations are provided in attached Appendix VI.

F. SEA-GRASS PROTECTION AREA

The area immediately abutting and extending north of the Matanzas Pass Mooring Field is a Seagrass Protection Area, and will be delineated by "CAUTION: SHOAL" warning signs as shown on the Plans in Appendix VIII. No mooring is allowed within this Area.

The northern section of the west Mooring Field in Matanzas Harbor is a Seag-Grass Protection Area, and ~~must be~~ delineated by "CAUTION: SHOAL" warning signs as shown on the Plans in Appendix ~~IV~~VIII. ~~No overnight mooring is allowed within this Area. No mooring is allowed within this Area. Transient mooring for shallow draft vessels and recreational purposes will be allowed, provided these vessels do not damage the sea grass beds through improper anchoring or prop dredging.~~

VIII. APPENDICES

APPENDIX I

DUTIES AND RESPONSIBILITIES OF THE HARBORMASTER OR DESIGNEE

A. General Duties and Responsibilities

The HARBORMASTER, as an agent of the TOWN, has overall responsibility for the management for the ANCHORAGE FACILITY and the activities of the shore side amenities. Responsibilities include sales, collections, administration, security, and maintenance activities.

B. Specific Duties and Responsibilities

Enforces provisions of the PLAN and PERMITS.

Provides administration for the operation, maintenance, and security of the ANCHORAGE FACILITY and shore side amenities.

Assigns mooring spaces in the ANCHORAGE FACILITY, maintains records for the collection and disposition of applicable fees, and takes corrective actions for delinquent accounts.

Monitors and controls Mooring Field traffic to ensure adherence to established harbor rules, regulations and safe boating practices.

Provides overall assistance to the general public regarding the waterways in Matanzas Harbor, i.e. harbor rules and regulations, mooring fees, transient mooring, and safe boating practices.

Prepares and maintains various records or reports concerning Harbor activities; i.e. revenues and fees collected, maintenance and repair activities, materials/supplies purchases, operating budgets, and transient registrations.

Inspects boats, moorings, dinghy docks, and adjacent facilities for adherence to established safety regulations, and for the purpose of preventing accident or injury to personnel and patrons.

Observes conditions and schedules improvements to the mooring field, subject to TOWN direction and approval.

Oversees operations of the sales office; ensures accurate accounting and balancing of all monies processed; prepares and submits bank deposits.

Operates pump out boat as needed, and VHF radio equipment in communicating and responding to public mooring/boating needs.

Reports oil and hazardous materials spills; cooperates with local and state authorities for

containment according to established regulations.

Coordinates and oversees cleanup efforts after a storm with towing, salvage, and cleanup crews.

| Coordinates operation of the ANCHORAGE FACILITY with the TOWN'S Hurricane Preparation and Recovery Plan and puts such plan into action when necessary.

| Ensures all signage in the waterways of the ANCHORAGE FACILITY is proper and readable. Reports all discrepancies to the proper authorities.

Additional duties and responsibilities as may be assigned by the TOWN from time to time.

The list of essential functions, as outlined herein, is intended to be representative of the tasks performed within this classification. It is not necessarily descriptive of any one position in the class. The omission of an essential function does not preclude assigning duties not listed herein if such functions are a logical assignment to the position.

APPENDIX II

TOWN OF FORT MYERS BEACH ~~MUNICIPAL ANCHORAGE~~ MATANZAS MOORING FIELD MOORING RENTAL AGREEMENT

THIS MOORING RENTAL AGREEMENT, (the "AGREEMENT"), is made this _____ day of _____, 20 ____, by and between the Town of Fort Myers Beach, Florida (the "TOWN or HARBORMASTER") and _____ (the "RENTER") with respect to the vessel identified as follows:.

Mooring #:	Vessel Name:
Overall Length: _____ Beam: _____ Draft: _____	Power: _____ Sail: _____ Hull Color: _____
Vessel Make: _____ Year: _____	Liability Insurance Company: _____ Policy#: _____ Expiration Date: _____
Vessel Registration/Documentation: # _____ Owner: _____	Notice & Billing Address: _____ _____ _____
Marine Sanitation Device: Holding Tank _____ Deck Plate _____ Starboard _____ Port _____ Other _____	Email: _____ _____ Phone Number : () - - Emergency Contact Name: _____ Phone Number : () - -
Rental Fee/Security Deposit : _____/_____ (As determined by Posted Rate Schedule)	Rental Type (Circle One): Daily Weekly Monthly

The TOWN operates the mooring facility (the "~~ANCHORAGE FACILITY~~") located in Matanzas Harbor, Fort. Myers Beach, Florida. The TOWN operates the ~~ANCHORAGE FACILITY~~ in accordance with the Matanzas ~~Harbor Mooring Field~~ Management Plan (the "PLAN").

1. PAYMENT TERMS: RENTER agrees to pay to TOWN the above stated rental rate. For monthly rentals, a refundable security deposit in an amount equal to one month's rent is required at the time rental agreement is executed. All rental fees are payable in advance. Payments for monthly leases are due before close of business on the first day of the month. If rent is not paid in full by close of business on the fifth day of the month, a late fee of \$5.00 per day will be assessed. If RENTER does not make full payment of all rent and fees by close of business on the tenth day of the month, TOWN may terminate this AGREEMENT.

Payment for daily and weekly rentals are due in full at the time the rental AGREEMENT is executed.

2. TERM OF AGREEMENT: This AGREEMENT begins on _____ and continues to _____, unless sooner terminated by either party in accordance with one of the following:

- (a) By destruction of the facilities by fire, storm, or otherwise; (b) By default in the payment of the required rent; (c) Failure of RENTER to follow established Mooring Field rules; or (d) Upon appropriate written notice from RENTER to the TOWN.

NOTE: Written notice is required by RENTER to TOWN to terminate this Agreement as follows: 24 hour notice for transient rentals or 72 hour notice for weekly/monthly rentals.

3. RULES AND REGULATIONS: RENTER agrees to comply with all rules and regulations relating to the ~~ANCHORAGE FACILITY~~ including the Matanzas ~~Harbor Mooring Field~~ Management Plan, applicable Permits, and State, Federal, and local laws pertaining to marinas and boating. RENTER acknowledges that a breach of any provision of this AGREEMENT or of any of the applicable rules and regulations may result in the immediate termination of the AGREEMENT. Copies of the Plan and Permits are available for review in the TOWN'S office and Upland Service Provider's office. Upon observation of any non-compliance with the provisions of the Plan or Permits, the Harbormaster will provide a written or verbal "Caution" notice to the RENTER, informing them of the infraction. A second infraction will result in a written "Warning" notice. A third infraction will result in the immediate termination of the AGREEMENT, and the RENTER will be given 24 hours to remove the vessel from the ~~ANCHORAGE FACILITY~~.

4. **NON-ASSIGNMENT:** RENTER may not assign this AGREEMENT or sublet any privileges provided under this AGREEMENT. No vessel, other than the vessel described above, may be moored at the designated mooring without prior coordination with the TOWN. In the event the above described vessel is sold, or otherwise permanently removed, the RENTER must immediately notify the TOWN and provide intentions as to the future use of the mooring.
5. **DELINQUENT BALANCE:** By virtue of rental within the ANCHORAGE FACILITY, the HARBORMASTER holds a possessory lien on the moored vessel under Florida Statutes (FS) s. 328.17. Under FS s. 328.17 the TOWN has the authority to place a lien against the above-described vessel, or any vessel hereafter, moored by RENTER at a rented mooring, including the appurtenances and contents thereof, in the event of any unpaid sums due for use of mooring facilities, other services, materials and supplies charged to the RENTER's account, or for damages or injuries, including but not limited to fines, penalties, environmental restoration, and fuel spill clean-up, caused or contributed to by the above described vessel or any vessel owned by the RENTER, or RENTER's, representatives or agents, to any property of the HARBORMASTER and ANCHORAGE FACILITY or any other person, property, or vessel at the ANCHORAGE FACILITY. **THE REMEDIES PROVIDED IN FLORIDA STATUTES S. 328.17, FOR THE NON-JUDICIAL SALE OF A VESSEL FOR NON-PAYMENT OF DOCKAGE ARE SPECIFICALLY INCLUDED AND INCORPORATED INTO THIS RENTAL AGREEMENT AS AN ADDITIONAL REMEDY AVAILABLE FOR THE HARBORMASTER, AND THE RENTER AGREES TO BE NOTIFIED AT THE POSTAL ADDRESS PROVIDED BY THE RENTER IF ACTION UNDER FS s. 312.17 BECOMES NECESSARY.**
6. **FACILITIES:** This AGREEMENT is for mooring space, holding tank pump out, dinghy docks, shower and bathroom facilities, and use of garbage and recycling bins at authorized locations.
7. **SOLE RISK:** Mooring rental space is to be used at the sole risk of the RENTER, and the TOWN will not be liable for the care, protection or security of the vessel, appurtenances or contents, or for any loss or damage of any kind or nature to the vessel, appurtenances or contents, due to fire, theft, vandalism, collision, equipment failure, windstorm, hurricane, rains, or other casualties. There is no warranty of any kind as to the condition of the piers, walks, gangways, ramps, mooring gear, or electrical and water service and the TOWN will not be responsible for any injuries to persons or property occurring upon the ANCHORAGE FACILITY property for any reason.
8. **HOLD HARMLESS:** The RENTER agrees to hold the TOWN, harmless and to indemnify the TOWN from any loss, damage, or liability imposed by reason of any acts or omissions on the part of the RENTER, his agents, employees, or guests in the use of the facilities. The indemnification provided herein includes, but is not limited to, all costs, expenses and reasonable attorney's fees incurred by the TOWN in any action based on the foregoing, including, but not limited to, any action brought by the RENTER, RENTER's family, crew, guests, heirs, assigns or subrogees.
9. **FOUL WEATHER:** In the event of a tropical storm or hurricane watch or warning, all vessels at the ANCHORAGE FACILITY should be properly secured for foul weather by the RENTER. It is the RENTER'S responsibility to be aware of such warnings and to make arrangements for the proper securing of the vessel or removal of the vessel to another location. It is agreed that the TOWN will not be held liable for any consequences in their attempt to protect life and property in the event of a tropical storm or hurricane including a warning or watch. In the event it becomes necessary to move RENTER'S vessel, for safety purposes or otherwise, and the vessel is unattended, the TOWN is authorized, but not required, to effect the necessary move at RENTER'S expense, which costs will become a part of the rent for mooring of RENTER'S vessel.
10. **FAILURE TO VACATE:** In the event RENTER fails to vacate the mooring space within seven days after receipt of a written Notice of Termination by the TOWN, RENTER hereby grants the TOWN permission to board the vessel and move it under its own power, or to place it in tow and remove the vessel from its mooring space, to a location to be chosen at the sole discretion of the HARBORMASTER, at RENTER'S expense, and to take possession of the mooring space.
11. **ENFORCEMENT FEES:** RENTER is responsible for and will pay any and all reasonable attorney's fees, together with any costs or other charges incurred by the TOWN in the enforcement of any provision of this AGREEMENT.
12. **SEVERABILITY:** The mooring of vessels at the ANCHORAGE FACILITY is hereby declared to be a privilege and not a right, and all rentals are terminable with cause upon one week's written notice at the discretion of the TOWN, subject to appeal as identified below.
13. **DISPUTES:** Disputes arising under the RENTAL AGREEMENT will be presented to the HARBORMASTER. The HARBORMASTER will resolve disputes arising out of the activity on the waters of the Town related to mooring and anchoring, subject to appeal to the Anchorage FACILITY Advisory Committee. Thereafter, in an appropriate instance, the recommendation of the Anchorage Advisory Committee may be presented to Town Council for a final determination. RENTER may go to Town Hall in person or may phone the TOWN at (239)-765-0202 to present a dispute to the HARBORMASTER or appeal the HARBORMASTER's determination to the Anchorage Advisory Committee.
14. **VESSEL REPAIRS:** RENTER is required to notify the TOWN when work is to be done by an outside contractor on RENTER'S vessel; the nature of the work; the name, address and phone number of the party doing the work; and a copy of the insurance policies of the party doing the work.
15. **MODIFICATION:** This AGREEMENT is the entire agreement between the parties and may only be modified in a writing executed with the same formality.
16. **VENUE AND APPLICABLE LAW:** This AGREEMENT will be construed in accordance with the laws of the State of Florida. Venue for any action to enforce the provisions of this agreement will be in Lee County, Florida.

I acknowledge that I have read and accept the terms and conditions, listed front and back, of this lease agreement.

Date

Date

RENTER

HARBORMASTER or designee

Copies to: White –Town of Fort Myers Beach, Florida

APPENDIX III

ANCHORAGE FACILITY MARINE SANITATION REGULATIONS

1. All vessels mooring in the Anchorage Facility must contain a U.S. Coast Guard approved marine sanitation device as required, complying with the requirements of the Coast Guard governing the installation and use of such devices upon the particular vessel involved.
2. Sanitation devices must be properly functioning and used at all times while the vessel is in the Anchorage Facility and are subject to inspection by the Harbormaster.
3. Y-valves must be locked and sealed in the non-overboard position.
4. All vessels, upon entering into a Mooring Rental Agreement at the Anchorage Facility, must pump out their sewage holding tanks into the authorized mobile pump out unit as soon as possible.
5. Absolutely no pumping of sewage in any area within the Anchorage Facility is allowed, except at approved pump out stations or mobile pump out units.
6. All vessels are required to have their tanks pumped at an approved pump out station or by the mobile pump out unit every three days unless an alternative pump out schedule for the vessel is approved by the Harbormaster. This schedule will be based on holding tank capacity and vessel usage.
7. Overboard discharge of human or pet sewage waste is strictly prohibited in the Anchorage Facility.
8. The use of shoreside shower and laundry facilities are encouraged to reduce the impacts associated with gray water discharges from vessels (increased phosphates, reduced dissolved oxygen, and other water quality problems).
9. Violation of these conditions will be reason for withholding of the security deposit and will be prosecuted to the fullest extent of the law.

APPENDIX IV

ANCHORAGE FACILITY MARINE POLLUTION REGULATIONS

1. No person may litter into the water or discharge or throw overboard any oils, spirits, flammable liquids or oily bilge into Matanzas Harbor/Estero Bay. Overboard dumping of any trash is illegal and will not be tolerated within the Town's jurisdiction.
2. Hazardous materials, including sealed paint cans, waste oil, or solvents may not be deposited in trash receptacles. For disposal of these materials, please contact the Harbormaster.
3. If the Renter or their guests cause pollution, the TOWN may clean up the boater's refuse and unsightly material at the Renter's expense.
4. All boats with in-board or in-board/outboard engines must be equipped with a sorbent sock, properly installed in the engine compartment bilge. Sorbent socks are available at ship's stores in the vicinity of the **ANCHORAGE FACILITY**. The socks must be renewed annually or when contaminated.
5. Bilge cleaners and liquid detergents may not be used in boat bilges, as they will destroy the effectiveness of the sorbent socks.

APPENDIX V

ANCHORAGE FACILITY FUEL & OIL SPILL CONTROL REGULATIONS

1. The TOWN and the oil spill reporting hot line (1-800-424-8802) will be contacted immediately when a spill is discovered. WARNING: There is a large fine if even minor spills aren't reported.
2. Oil absorbent pads and pillows should be used to contain and remove a spill. Detergents should never be used to contain oil spills!
3. The cause of the spill should be identified and measures taken to secure against spreading.

APPENDIX VI

~~ANCHORAGE~~FACILITY PROTECTED SPECIES REGULATIONS

1. Renters must acquaint themselves with the publications and warnings available from the TOWN regarding safe operation in waters frequented by manatees and abide by all laws, ordinances, rules and regulations governing the operation of watercraft in the presence of manatees.
2. Harassment of protected wildlife is illegal.
3. Any incident relating to injured marine wildlife should be reported immediately to the Florida Fish and Wildlife Conservation Commission at (888) 404-3922.

APPENDIX VII
SERVICE PROVIDER AGREEMENT

APPENDIX VIII
MOORING FIELD PLANS

1. Requested Motion:

Meeting Date: February 1, 2021

Approve Resolution 21-04, Florida Boating Improvement Program; Adoption of a Resolution from the Town Council of the Town of Fort Myers Beach, Florida authorizing the Town Manager or the Town Manger's designee to apply for and administer a grant from the Florida Boating Improvement Program for funds in the amount of up to \$200,000 for the appropriate 19 mooring ball field expansion; Authorizing the Town Manager or designee to execute related documents providing an effective date.

Why the action is necessary:

This meets the grant's requirements.

What the action accomplishes:

Authorizes the Town Manager or the designee to apply for grant funding for the mooring field expansion through the Florida Boating Improvement Program from the Florida Fish and Wildlife Conservation Commission.

2. Agenda:

ADMINISTRATIVE AGENDA

3. Requirement/Purpose:

Resolution

4. Submitter of Information:

Chelsea O'Riley, Public Works
Director

5. Background:

The Town of Fort Myers Beach has the opportunity to apply for grant funding from the Florida Boating Improvement Program (FBIP) Grant through the U.S. Wildlife Service, a grant program to enhance boating access and other boating-related activities. This funding would potentially be utilized for the mooring field expansion.

The grant cycle will coincide with the Town's Fiscal Year in which funds being requested will be available effective October 1, 2021 and if approved would require up to \$100,000 match from the Town in the next fiscal year's budget.

Attachments:

1. Resolution 21-04, Florida Boating Improvement Grant -MPMF

Financial Impact:

6. Alternative Action

Do not approve.

7. Management Recommendations:

Approve the Resolution.

8. Recommended Approval:

Randy Paniaqua, Administrative Officer
Chelsea O'Riley, Public Works Director
John R Herin Jr, Town Attorney

Created/Initiated - 1/25/2021

Approved - 1/25/2021

Approved - 1/26/2021

Amy Baker, Town Clerk
Roger Hernstadt, Town Manager

Approved - 1/27/2021
Final Approval - 1/27/2021

RESOLUTION NO. 21-04

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AUTHORIZING THE TOWN MANAGER OR THE TOWN MANAGER'S DESIGNEE TO APPLY FOR AND ADMINISTER A GRANT FROM THE FLORIDA BOATING IMPROVEMENT PROGRAM FOR FUNDS IN THE AMOUNT OF UP TO \$200,000.00 FOR CONSTRUCTION OF THE MATANZAS PASS MOORING FIELD; AUTHORIZING THE TOWN MANAGER OR HIS DESIGNEE TO EXECUTE RELATED DOCUMENTS; AND PROVIDING AN EFFECTIVE DATE

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

WHEREAS, Article X of the Town Charter of the Town of Fort Myers Beach 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 ("Town") has an opportunity to apply for grant funding from the Florida Boating Improvement Program ("Grant") through Florida Fish and Wildlife Conservation Commission for construction of the Matanzas Pass Mooring Field ("Project"); and

WHEREAS, the Town will commit funds (up to \$100,000) to complete the construction of the Matanzas Pass Mooring Field, which funding is budgeted in the 2021-2022 Fiscal Year Budget for the Project; and

WHEREAS, the Town desires to apply for the Grant in the amount of up to \$200,000 in order to provide the Town with funds to complete the Project; and

WHEREAS, in order to apply for the Grant, a Resolution of the Town is required designating a "Project Manager", and authorizing the Project Manager to apply for and administer the Grant on behalf of the Town; and

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

WHEREAS, the Grant also requires the Town to enter into a 20-year agreement for the maintenance and operation of the project once the new improvements are completed.

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

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

Section 2. The Town Council hereby designates the Town Manager or his designee as Project Manager, and authorizes the Town Manager or the Town Manager's designee to apply for the Grant in the amount of up to \$200,000 and administer the grant on behalf of the Town.

Section 3. The Town Manager or his designee is authorized to execute any documents necessary to apply, receive, and administer the Grant, including entering into a 20-year agreement for the maintenance and operation of the project once the new improvements are completed.

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

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

DULY PASSED AND ADOPTED on this ____ day of February, 2021.

Raymond P. Murphy, Mayor
Rexann Hosafros, Vice Mayor
Dan Allers, Council Member
Bill Veach, Council Member
Jim Atterholt, Council Member

TOWN OF FORT MYERS BEACH

Raymond P. Murphy, 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:**

John R. Herin, Jr., Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ____ day of _____ 2021.

1. Requested Motion:

Meeting Date: February 1, 2021

Approve contract with AECOM Technical Services, Inc. for construction inspection services to (RFQ-20-26-PW) CEI Intersection Improvements in the amount of \$75,572.82 and authorize the Town Manager to execute the contract documents upon FDOT contract approval.

Why the action is necessary:

Provides specialized expertise for Construction Engineering Inspection for the Traffic Signal Construction and Intersection Improvements to Old San Carlos Boulevard and Estero Boulevard in accordance to LAP standards/requirements.

What the action accomplishes:

Provides an engineering firm to provide CEI services for the construction associated with the installation of a new traffic signal at Old San Carlos Boulevard and Estero Boulevard. Approves contract and authorizes the Town Manager to execute the contract.

2. Agenda:

ADMINISTRATIVE AGENDA

3. Requirement/Purpose:

Other

4. Submitter of Information:

Chelsea O'Riley, Public Works
Director

5. Background:

The Town received seven qualified responses to this solicitation. There were no local (Town of Fort Myers Beach) respondents. The following firms were the top contenders: AECOM Technical Services Inc., KCCS, Inc., and Johnson Engineering. Staff scheduled interviews for December 11, 2020. A Selection Committee met to review and rank the firms. The committee's recommendation to the Town Manager is to enter into negotiations with AECOM Technical Services.

Per the LAP approval process, authorization was granted to enter into negotiation with AECOM Technical Services. This is the second and final step of a two-step process which allows entry into contracts with AECOM Technical Services.

Submitted proposals are available for review upon request.

Upon negotiations with AECOM Technical Services, the final negotiated amount is \$75,572.82. The Town of Fort Myers Beach will be required to pay \$5,572.82 out of pocket while \$70,000.00 will be paid for by FDOT.

Attachments:

1. Professional Services Agreement AECOM DRAFT

Financial Impact:

The funding source for the project and CEI is LAP (FDOT) and subsidized with Town Gas Tax funds.

6. Alternative Action

Do not approve.

7. **Management Recommendations:**

Approve and authorize the Town Manager to execute the contract documents.

8. **Recommended Approval:**

Randy Paniaqua, Administrative Officer
Chelsea O'Riley, Public Works Director
John R Herin Jr, Town Attorney
Amy Baker, Town Clerk
Roger Hernstadt, Town Manager

Created/Initiated - 1/21/2021
Approved - 12/14/2020
Approved - 12/14/2020
Approved - 1/26/2021
Final Approval - 1/27/2021

PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT is made and entered into this _____ day of _____, 2020 by and between the Town of Fort Myers Beach, Florida, a chartered municipality of the State of Florida, whose address is 2525 Estero Boulevard, Fort Myers Beach, Florida 33931 ("Town"), and **AECOM Technical Services, Inc.** ("Consultant"), whose address is **4415 Metro Parkway, Suite 404 Fort Myers, FL 33916.**

WHEREAS, the Town desires the Consultant to provide and perform professional services as further described hereinafter concerning **CEI Intersection Improvements**, ("Project"); and

WHEREAS, the selection and engagement of the Consultant has been made by the Town in accordance with the provisions of the Consultants' Competitive Negotiation Act, Chapter 287.055, Florida Statutes and applicable Town Ordinances, Rules, and Charter Provisions;

TIME OF CONTRACT: This contract will be for a period of three (3) years with an option to renew for two (2) terms of one-year each by mutual agreement of the parties. Hourly rates and all other negotiated expenses will remain in effect throughout the duration of the contract period, and any subsequent renewal.

NOW, THEREFORE, in consideration of the mutual covenants, terms and provisions contained herein, the parties hereto agree as follows:

ARTICLE 1.00 - SCOPE OF PROFESSIONAL SERVICES

1.01 SCOPE OF SERVICES. Consultant hereby agrees to provide and perform the professional services required and necessary to complete the work set forth on EXHIBIT "A", entitled "Scope of Professional Services", which is attached hereto and incorporated herein by reference. Such services shall be referred to hereunder as "Basic Services."

1.02 ADDITIONAL SERVICES. Should the Town request the Consultant to provide and perform professional services for this Project which are not set forth in EXHIBIT "A", the Consultant agrees to provide and perform such Additional Services as may be agreed to in a Supplemental Task Authorization to this Agreement.

1.03 SUPPLEMENTAL TASK AUTHORIZATION. All authorized changes to the scope of professional services, tasks, work or materials to be performed or provided by the Consultant; the compensation and method of payment; the schedule or time period for performance and completion; and/or the guidelines, criteria and requirements pertaining thereto, shall be (i) reduced to writing on the Town's standard form Supplemental Task Authorization and (ii) signed by both parties, to be effective. Notwithstanding anything to the contrary herein, the Town shall have the unilateral right to delete all, or portions, of the Scope of Services, set forth on EXHIBIT "A" and/or any Supplemental Task Authorization executed hereunder, by the unilateral issuance of a written Supplemental Task Authorization to the Consultant, which shall be effective with or without Consultant's execution thereof.

ARTICLE 2.00 - OBLIGATIONS OF THE CONSULTANT

The obligations of the Consultant shall include, but not be limited to, the following:

2.01. LICENSES: Consultant certifies that it possesses valid, current licenses to do business, including, but not limited to, licenses required by the respective State Boards and other governmental agencies responsible for regulating and licensing the professional services provided and performed by the Consultant pursuant to this Agreement. Consultant agrees to maintain such licenses throughout the period that this Agreement is in effect.

2.02 QUALIFIED, WILLING AND ABLE. Consultant certifies it is qualified, willing and able to provide and perform all services hereunder, in accordance with the requirements hereof.

2.03 PERSONNEL

- (1) **QUALIFIED PERSONNEL:** The Consultant shall employ and/or retain only qualified personnel for all services it provides hereunder. Such personnel shall have all license(s), certificate(s) of authorization and other legal

qualifications to provide such services.

(2) CONSULTANT'S PROJECT DIRECTOR: The Consultant agrees to employ and designate, in writing, a qualified and properly licensed professional as the Consultant's Project Director. The Consultant's Project Director shall be authorized and responsible to act on behalf of the Consultant with respect to directing, coordinating and administering all aspects of the services to be provided and performed under this Agreement and all addenda hereto. The Consultant's Project Director shall have full authority to bind and obligate the Consultant on any matter arising hereunder unless the parties have previously agreed otherwise in writing. The Project Director shall devote whatever time is required to satisfactorily direct, supervise and manage the services provided and performed by the Consultant throughout the entire period this Agreement is in effect. The person selected by the Consultant to serve as the Consultant's Project Director shall be subject to the prior approval and acceptance by the Town.

(3) REMOVAL OF PERSONNEL: Within ten (10) days of receipt of the Town's written request, the Consultant shall remove and replace its Project Director, or any other personnel employed or retained by the Consultant, or personnel of the sub consultant(s) or subcontractor(s) engaged by the Consultant to provide and/or perform services and/or work pursuant to this Agreement, and any Addenda hereto. The Town shall have the ability to make such request with or without cause.

(4) SUB-CONSULTANT: The Consultant shall have the ability to engage the professional services of a Sub-consultant or Sub-consultants to assist the Consultant in providing and performing the professional services, work and materials for which the Consultant is contractually obligated to perform hereunder. The Town shall not be a party to, responsible or liable for, or assume any obligation whatever for any Agreement entered into between the Consultant and any Sub-consultant. Such engagement shall be with the prior written approval of Town, and is subject to the terms of ARTICLE 8 below.

(5) SUB-CONTRACTOR: The Consultant shall have the ability to engage the services of a Sub-contractor or Sub-contractors to assist the Consultant in providing and performing services, work and materials for which the Consultant is contractually obligated to perform hereunder. The Town shall not be a party to, responsible or liable for, or assume any obligation whatever for any Agreement entered into between the Consultant and any Subcontractor. Such engagement shall be with the prior written approval of Town, and is subject to the terms of ARTICLE 8 below.

2.04 TIMELY ACCOMPLISHMENT OF SERVICES: The timely performance and completion of the required services, work and materials is vitally important to the interests of the Town and time is of the essence for all of the duties and obligations contained in this Agreement. The Town may suffer damages in the event that the Consultant does not accomplish and complete the required services in a timely manner. The Consultant agrees to employ, engage, retain and/or assign an adequate number of personnel throughout the period of this Agreement so that all services will be provided, performed and completed in a timely and diligent manner throughout.

2.05 STANDARDS OF PROFESSIONAL SERVICE: The work and/or services to be provided and/or performed by the Consultant (and by any Sub-consultant(s) and/or Sub-contractor(s) engaged by the Consultant) as set forth in the Scope of Professional Services, EXHIBIT "A", shall be done in accordance with the generally accepted standards of professional practice and in accordance with the laws, rules, regulations, ordinances, codes, policies, standards or other guidelines issued by those governmental agencies which have jurisdiction over all or a portion of this project and which are in effect at the time the Town approves this Agreement, or which may subsequently be changed or revised.

2.06 CORRECTION OF ERRORS, OMISSIONS OR OTHER DEFICIENCIES

(1) RESPONSIBILITY TO CORRECT: The Consultant agrees to be responsible for the professional quality, technical adequacy and accuracy, timely completion, and the coordination of all data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents, photographs, reports, memoranda, other documents and instruments, and other services, work and materials performed, provided, and/or furnished by Consultant or by any Sub consultant(s) and/or Subcontractor(s) retained or engaged by the Consultant pursuant to this Agreement. The Consultant shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in such data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents and instruments, and other services, work and materials resulting from the negligent act, errors or omissions or intentional misconduct of Consultant or any Sub consultant(s) or Subcontractor(s) engaged by

the Consultant.

(2) TOWN'S APPROVAL NOT RELIEVING CONSULTANT OF RESPONSIBILITY: Neither review, approval, nor acceptance by the Town of data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents, photographs, reports, memoranda, other documents and instruments, and/or incidental professional services, work and materials furnished hereunder by the Consultant or any Sub consultant(s) or Subcontractor(s) engaged by the Consultant, shall in any way relieve Consultant of responsibility for the adequacy, completeness and accuracy of its services, work and materials and the services, work and materials of any and all Sub consultants and/or Subcontractors engaged by the Consultant to provide and perform services in connection with this Agreement. Neither the Town's review, approval or acceptance of, nor payment for, any of the Consultant's services, work and materials shall be construed to operate as a waiver of any of the Town's rights under this Agreement, or any cause of action it may have arising out of the performance of this Agreement.

2.07 LIABILITY/HOLD HARMLESS. The Consultant shall be liable and agrees to be liable for and shall indemnify and hold the Town harmless for any and all claims, suits, judgments or damages, losses and expenses including but not limited to court costs and attorney's fees (including but not limited to appellate attorney fees) arising out of, or resulting from, the Consultant's errors, omissions, and/or negligence, and/or willful and/or deliberate acts or failure to act, or those of any and all Sub consultants and/or Subcontractors engaged by the Consultant during the providing, performing and furnishing of services, work and materials pursuant to this Agreement and any and all Supplemental Task Authorizations hereto. The Consultant shall not be liable to nor indemnify the Town for any portions of damages arising out of any error, omission, and/or negligence of the Town, its employees, agents, or representatives or third parties. The Consultant hereby acknowledges that the compensation to be paid it by the Town hereunder includes compensation as consideration for the indemnification provided herein.

2.08 NOT TO DIVULGE CERTAIN INFORMATION: Consultant agrees, during the term of this Agreement, not to divulge, furnish or make available to any third person, firm, or organization, without Town's prior written consent, or unless incident to the proper performance of Consultant's obligations hereunder, or in the course of judicial or legislative proceedings where such information has been properly subpoenaed, any non-public information concerning the services to be rendered by Consultant or any sub consultant(s) or subcontractor(s) hereunder, subject to the requirements of the Florida Public Records Law. Consultant shall require all of its employees, Sub consultant(s) and Subcontractor(s) to comply with these provisions.

2.09 CONSULTANT TO REPAIR PROPERTY DAMAGE IT HAS CAUSED: Consultant agrees to promptly repair and/or replace, or cause to have repaired and/or replaced, at its sole cost and expense and in a manner acceptable to and approved by the Town, any property damage arising out of, or caused by, the willful or negligent acts of the Consultant, or of its Sub consultants and/or Subcontractors. The Consultant's obligation hereunder does not apply to property damage caused by any other Consultant or Contractor engaged directly by the Town. Should the Consultant fail to make such repairs and/or replacements within a reasonable time, the Town reserves the right to cause such repairs and/or replacement to be made by others and for all costs and expenses associated with having such repairs and/or replacement done to be paid for by the Consultant, or by the Consultant reimbursing the Town for all such costs and expenses.

2.10 PERMITS: The Consultant shall be responsible for preparing and submitting all required applications and other supportive information necessary to assist the Town in obtaining all reviews, approvals and permits, with respect to the Consultant's design, drawings and specifications required by any governmental body having authority over the Project. Any fees required for such reviews, approvals or permits will be paid via check issued by the Town and made payable to the respective governmental body, upon the Consultant furnishing the Town satisfactory documentation of such fees. The Consultant will be similarly responsible for preparing and submitting all required applications and other supportive information necessary to assist the Town in obtaining any renewals and/or extensions of reviews, approvals or permits that may be required while this Agreement is in effect. The Town shall, at the Consultant's request, assist in obtaining required signatures and provide the Consultant with all information known to be available to the Town so as to assist the Consultant in the preparation and submittal of any original, renewal or extension of required reviews, approvals or permits.

2.11 TRUTH-IN-NEGOTIATIONS CERTIFICATE: The Consultant shall execute a Truth-in-Negotiations Certificate

("Certificate"), in a form attached as EXHIBIT "F" and incorporated herein by reference. The Certificate shall state that wage rates and other factual unit costs supporting the compensation are accurate, complete and current at the time this Agreement is executed. The original contract price and any additions thereto shall be adjusted to exclude any significant sums by which the Town determines the contract price was increased due to inaccurate, incomplete or non-current wage rates or other factual unit costs.

2.12 COMPLETION OF TASKS: Unless otherwise set forth herein, the Consultant shall be responsible for providing and performing whatever services, work, equipment, material, personnel, supplies, facilities, transportation and administrative support that are necessary and required to complete all of the tasks set forth in EXHIBIT "A" entitled "Scope of Professional Services" and Supplemental Task Authorizations, if any, hereto. The compensation to be paid the Consultant as set forth in EXHIBIT "B" entitled "Compensation and Method of Payment" and Supplemental Task Authorizations authorized hereunder shall be understood and agreed to adequately and completely compensate the Consultant for providing and performing whatever services, work, equipment, material, personnel, supplies, facilities, transportation and administrative support that are necessary and required to complete the tasks set forth in EXHIBIT "A" and Supplemental Task Authorizations, if any, thereto.

2.13 DUTIES AND OBLIGATIONS IMPOSED ON THE CONSULTANT: The duties and obligations imposed upon the Consultant by this Agreement and the rights and remedies available hereunder to the Town shall be in addition to, and not a limitation of, any which are otherwise imposed or available by law, regulation, ordinance or statute.

2.14 REPRESENTATION OF THE TOWN BY CONSULTANT: Other than as specified in the Scope of Services which is attached to this Agreement as Exhibit "A" or in any duly executed addendum to this Agreement, the Consultant is not authorized to act on the Town's behalf, and shall not act on the Town's behalf. The Town will neither assume nor accept any obligation, commitment, responsibility or liability which may result from representation by the Consultant not specifically provided for and authorized as stated hereinabove.

ARTICLE 3.00 - OBLIGATIONS OF THE TOWN

3.01 TOWN PROJECT MANAGER: The Town shall promptly provide written notice to Consultant of the name of the Town's PROJECT MANAGER, who, on behalf of the Town, shall provide information, assistance, guidance, coordination, review, approval and acceptance of the professional services, work and materials to be provided and performed by the Consultant pursuant to this Agreement and any addenda hereto. The PROJECT MANAGER is not authorized to, and shall not issue any verbal or written request or instruction to the Consultant that would have the effect or be interpreted to have the effect, of modifying or changing in any way whatever the: (1) Scope of Services to be provided and performed by the Consultant; (2) the time the Consultant is obligated to commence and complete all such services; and (3) the amount of compensation the Town is obligated or committed to pay the Consultant.

3.02 AVAILABILITY OF TOWN INFORMATION

(1) **PROJECT GUIDELINES AND CRITERIA:** Guidelines to the Consultant regarding requirements the Town has established or suggests relative to the Project, including, but not limited to such items as: goals, objectives, constraints, and any special financial, budgeting, space, site, operational, equipment, technical, construction, time and scheduling criteria, are set forth in EXHIBIT "E", entitled "PROJECT GUIDELINES AND CRITERIA", which is attached hereto and incorporated herein by reference.

(2) **TOWN TO PROVIDE PERTINENT REFERENCE MATERIAL:** At the Consultant's request, the Town agrees to provide to the Consultant, at no cost to the Consultant, all pertinent information known to be available to the Town to assist the Consultant in providing and performing the required professional services. Such information may include, but not be limited to: previous reports; plans, drawings and specifications; maps; property, boundary, easement, right-of-way, topographic, reference monuments, control points, plats and related survey data; data prepared or services furnished by others to the Town such as sub-surface investigations, laboratory tests, inspections of natural and man-made materials, property appraisals, studies, designs and reports.

ARTICLE 4.00 - COMPENSATION AND METHOD OF PAYMENT

4.01 BASIC SERVICES: The Town shall pay the Consultant for all requested and authorized Basic Services rendered hereunder by the Consultant and completed in accordance with the requirements, provisions, and/or terms hereof and accepted by the Town. Such payment shall be as set forth in EXHIBIT "B", entitled "COMPENSATION AND METHOD OF PAYMENT", which is attached hereto and incorporated herein by reference.

4.02 ADDITIONAL SERVICES: The Town shall pay the Consultant for all such Additional Services as have been requested and authorized by the Town and agreed to, in writing, by both parties hereto, which have been rendered as Additional Services by the Consultant and completed in accordance with the requirements, provisions, and/or terms of this Agreement and accepted by the Town. Such payment shall be made as set forth under "ADDITIONAL SERVICES" in EXHIBIT "B".

4.03 LUMP SUM AND NOT-TO-EXCEED PAYMENTS

~~—(1) LUMP SUM FEE(S): When the Consultant's compensation hereunder (including any Addenda) is established on a Lump Sum Fee ("L.S.") basis, it shall include all direct and indirect labor costs, personnel-related costs, overhead and administrative costs, costs of Sub consultant(s) and/or Subcontractor(s), out of pocket expenses and costs, professional service fee(s) and any other costs or expenses which may pertain to the services and/or work to be performed, provided and/or furnished by the Consultant, as may be required and/or necessary to complete each and every task set forth in this Agreement and/or any Addenda hereto. [NOT USED for this Contract]~~

(2) NOT-TO-EXCEED FEE(S): When the Consultant's compensation hereunder (including any Addenda) is established on a NOT-TO-EXCEED ("N.T.E.") amount basis, it shall mean:

- For the actual hours necessary, required and expended by the Consultant's professional and technical personnel, multiplied by the applicable hourly rates for each classification or position as set forth in Attachment No. 1 to EXHIBIT "B" to this Agreement; and
- For actual necessary, required and expended non-personnel reimbursable expenses and costs, multiplied by the applicable "Basis of Charges" for each item as set forth in Attachment No. 2 to EXHIBIT "B" to this Agreement and any Supplemental Task Authorizations and
- For actual, necessary and required hours, and non-personnel expenses and costs, expended by Sub-consultants and Subcontractors engaged by the Consultant, multiplied by such hourly rates and unit costs as are agreed to by the Town and the Consultant and as are set forth as a part of this Agreement and any Supplemental Task Authorizations thereto; and
- Any payment hereunder is subject to the Consultant presenting an itemized and detailed invoice with appropriate supporting documentation attached thereto to show evidence satisfactory to the Town covering all such costs and expenses; and
- The Consultant's invoices and all payments to be made for all N.T.E. amounts shall be subject to the review, acceptance and approval of the Town; and
- When the Consultant's compensation is established on a N.T.E. basis for a specific Task(s), the total amount of compensation to be paid to the Consultant to cover all personnel costs, non-personnel reimbursable expenses and costs, and Sub consultant and Subcontractor costs for any such specific Task(s) shall not exceed the amount of the total N.T.E. compensation established and agreed to for each specific Task(s).
- If the amount of compensation for any Task(s) which the Consultant is entitled on the N.T.E. basis set forth above is determined to be necessary, required and actually expended and is determined to be actually less than the N.T.E. amount established for the specific Task, any unexpended amount under a specific Task may not be used, applied, transferred, invoiced or paid for services or work provided or performed on any other Task(s).

4.04 METHOD OF PAYMENT

(1) MONTHLY STATEMENTS: The Consultant shall submit no more than one invoice statement to the Town each calendar month, covering services rendered during the preceding calendar month. The Consultant's invoice statement(s) shall be itemized to correspond to the basis of compensation as set forth in the Agreement or Supplemental Task Authorization(s) hereunder. The Consultant's invoice statements shall contain a breakdown of charges, description of service(s) and work provided and/or performed, and where appropriate, supportive documentation of charges consistent with the basis of compensation set forth in the Agreement, or in Supplemental Task Authorization(s) hereunder.

(2)

(3) PAYMENT FOR SERVICES PERFORMED: The Town shall pay the Consultant for services performed using either of the following methods, or using a combination thereof. **The Town shall follow the Florida Prompt Pay**

Act, found in Part VII, Ch. 218 of the Florida Statutes.

(A) The Town shall pay the Consultant on the basis of services completed, for tasks set forth in EXHIBITS "A" and "B", as evidenced by work products such as reports, drawings, specifications, etc., submitted by the Consultant and accepted by the Town. No payments shall be made for Consultant's Work-in-Progress until service items for which payment amounts have been established and set forth in this Agreement have been completed by the Consultant and accepted by the Town. Whenever an invoice statement covers services for which no work product is required to be furnished by the Consultant to the Town, the Town reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.

(B) The Town shall pay the Consultant for services performed for tasks set forth in EXHIBITS "A" and "B" on the basis of an invoice statement covering Consultant's Work-in-Progress, expressed as a percentage of the total cost of the service and/or work required for each task invoiced in this manner. All such Work-in-Progress percentages (WIPP) are subject to the review and approval of the Town. The decision of the Town shall be final as to the Work-in-Progress percentages paid. Payment by the Town for tasks on a Work-in-Progress percentage basis shall not be deemed or interpreted in any way to constitute an approval or acceptance by the Town of any such service or Work-in-Progress. The Consultant shall be responsible for correcting, re-doing, modifying or otherwise completing the services and work required for each task before receiving final, full payment whether or not previous Work-in-Progress payments have been made. All tasks to be paid for on a Work-in-Progress percentage basis shall be agreed to by both parties to the Agreement and each task to be paid in this manner shall be identified in EXHIBIT "B" with the notation (WIPP). Only tasks so identified will be paid on a Work-in-Progress percentage basis. The Town reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.

(4) PAYMENT SCHEDULE: The Town shall issue payment to the Consultant within thirty (30) calendar days after receipt of an invoice statement from the Consultant in an acceptable form and containing the requested breakdown and detailed description and documentation of charges. Should the Town object or take exception to the amount of any Consultant's invoice statement, the Town shall notify the Consultant of such objection or exception within the thirty (30) calendar day payment period set forth in this subparagraph. If such objection or exception remains unresolved at the end of said thirty (30) calendar day period, the Town shall withhold the disputed amount and make payment to the Consultant of the amount not in dispute. Payment of any disputed amount, or adjustments thereto, shall be made within thirty (30) calendar days of the date such disputed amount is resolved by mutual agreement of the parties to this Agreement.

4.05 PAYMENT IF SERVICES ARE TERMINATED AT CONVENIENCE OF THE TOWN:

If this Agreement is terminated at the convenience of the Town and not at the fault of the Consultant, the Town shall compensate the Consultant only for services performed prior to the effective date of termination and reimbursable expenses then due including project drawings, plans, data, and other project documents.

4.06 PAYMENT WHEN SERVICES ARE SUSPENDED: If the Town suspends the Consultant's services and work on all or part of the services required be providing and performing by the Consultant pursuant to this Agreement, the Town shall compensate the Consultant only for the services performed prior to the effective date of suspension and reimbursable expenses then due.

4.07 NON-ENTITLEMENT TO ANTICIPATED FEES IN THE EVENT OF SERVICE TERMINATION, SUSPENSION, ELIMINATION, CANCELLATION AND/OR DECREASE: If the services required pursuant to this Agreement are terminated, eliminated, cancelled, or decreased by the Town and/or are modified by the subsequent issuance of Supplemental Task Authorization(s), other than receiving the compensation set forth in Sub Articles 4.05 and 4.06, the Consultant shall not be entitled to receive compensation for anticipated professional fees, profit, mobilization costs, general and administrative overhead expenses or for any other anticipated or unanticipated income or expense which may be associated with the services terminated, suspended, eliminated, cancelled or decreased.

ARTICLE 5.00 - TIME AND SCHEDULE OF PERFORMANCE

5.01 NOTICE TO PROCEED: Following the execution of this Agreement by both parties, and after the Consultant

has complied with the insurance requirements set forth hereinafter, the Town shall issue the Consultant a written Notice to Proceed. Following the issuance of such Notice to Proceed, the Consultant shall commence work promptly and shall carry on all such services and work as may be required in a timely and diligent manner to completion. A separate Notice to Proceed shall be issued for each Project requested by the Town hereunder.

5.02 TIME OF PERFORMANCE: The Consultant agrees to complete the services required pursuant to this Agreement by the date assigned with each individual Supplemental Task Authorization as defined for completion of the various phases and/or tasks of each individual project as set forth and described in this Agreement, and specifically as set forth in EXHIBIT "C", entitled "Time and Schedule of Performance", which EXHIBIT "C" is attached hereto and hereby incorporated by reference.

Should the Consultant be obstructed or delayed in the prosecution or completion of its obligations under this Agreement as a result of causes beyond the control of the Consultant, or its Sub consultant(s) and/or Subcontractor(s), and not due to their fault or neglect, the Consultant shall notify the Town, in writing, within two (2) calendar days after the commencement of such delay, stating the cause(s) thereof and requesting an extension of the Consultant's time of performance. Upon receipt of the Consultant's request for an extension of time, the Town shall grant the extension if the Town determines the delay(s) encountered by the Consultant, or its Sub consultant(s) and/or Subcontractor(s), is due to unforeseen causes and not attributable to their fault or neglect, in the Town's sole judgment.

5.03 CONSULTANT WORK SCHEDULE: The Consultant shall be required as a condition of this Agreement to prepare and submit to the Town, on a monthly basis, commencing with the issuance of the NOTICE TO PROCEED, a Consultant's Work Schedule for each project. The Work Schedule shall set forth the time and manpower scheduled for all of the various phases and/or tasks required to provide, perform and complete all of the services and work requiring completion of the various phases and/or tasks of the project services set forth and described in this Agreement, as set forth in EXHIBIT "C", pursuant to this Agreement in such a manner that the Consultant's planned and actual work progress can be readily determined. The Consultant's Work Schedule of planned and actual work progress shall be updated and submitted by the Consultant to the Town on a monthly basis or as otherwise indicated by the Town in writing.

5.04 FAILURE TO PERFORM IN A TIMELY MANNER: Should the Consultant fail to commence, provide, perform and/or complete any of the services and work required hereunder in a timely and diligent manner, the Town may consider such failure as justifiable cause to terminate this Agreement. As an alternative to termination, the Town at its option, may, upon written notice to the Consultant, withhold any or all payments due and owing to the Consultant, not to exceed the amount of the compensation for the work in dispute, until such time as the Consultant resumes performance of his obligations in such a manner as to get back on schedule in accordance with the time and schedule of performance requirements set forth in this Agreement, or any Supplemental Task Authorization(s) hereto. The termination rights specified in this sub-paragraph are in addition to any termination rights set forth elsewhere herein.

ARTICLE 6.00 - SECURING AGREEMENT:

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

ARTICLE 7.00 - CONFLICT OF INTEREST:

The Consultant represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder. The Consultant further agrees that no person having any such interest shall be employed or engaged by the Consultant for said performance.

If Consultant, for itself and on behalf of its Sub-consultants and Subcontractors, is about to engage in representing another client, which it in good faith believes could result in a conflict of interest with the work being performed by Consultant or such Sub consultant or Subcontractor under this Agreement, then it will promptly bring such potential conflict of interest to the Town's attention, in writing. The Town will advise the Consultant, in writing, within ten (10) calendar days as to the period of time required by the Town to determine if such a conflict of interest exists. If the Town determines that there is a conflict of interest, Consultant or such Sub consultant shall decline the representation

upon written notice by the Town.

If the Town determines that there is not such conflict of interest, then the Town shall give its written consent to such representation. If the Consultant or Sub consultant accepts such a representation without obtaining the Town's prior written consent, and if the Town subsequently determines that there is a conflict of interest between such representation and the work being performed by Consultant or such Sub consultant under this Agreement, then the Consultant or such Sub consultant agrees to promptly terminate such representation. Consultant shall require each of such Sub consultants to comply with the provisions of this Section. Should the Consultant fail to advise or notify the Town as provided hereinabove of representation which could, or does, result in a conflict of interest, or should the Consultant fail to discontinue such representation, the Town may consider such failure as justifiable cause to terminate this Agreement.

Neither the Town nor any of its contractors or their subcontractors shall enter into any contract, subcontract or arrangement in connection with the Project or any property included or planned to be included in the Project in which any member, officer or employee of the Town or the locality during tenure or for 2 years thereafter has any interest, direct or indirect. If any such present or former member, officer or employee involuntarily acquires or had acquired prior to the beginning of tenure any such interest, and if such interest is immediately disclosed to the Town, the Town, with prior approval of the Department, may waive the prohibition contained in this paragraph provided that any such present member, officer or employee shall not participate in any action by the Town or the locality relating to such contract, subcontract or arrangement. The Town shall insert in all contracts entered into in connection with the Project or any property included or planned to be included in any Project, and shall require its contractors to insert in each of their subcontracts, the following provision:

"No member, officer or employee of the Town or of the locality during his tenure or for 2 years thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof."

The provisions of this paragraph shall not be applicable to any agreement between the Town and its fiscal depositories or to any agreement for utility services the rates for which are fixed or controlled by a governmental agency.

ARTICLE 8.00 - ASSIGNMENT, TRANSFER AND SUBCONTRACTS:

The Consultant shall not assign or transfer any of its rights, benefits or obligations hereunder, except for transfers that result from: (1) the merger or consolidation of Consultant with a third party; or (2) the disestablishment of the Consultant's professional practice and the establishment of a successor consultant, or consulting organization. The Consultant shall not subcontract any of its service obligations hereunder to third parties, except as otherwise authorized in this Agreement, without prior written approval of the Town. The Consultant shall have the right, subject to the Town's prior written approval, to employ other persons and/or firms to serve as Sub consultants and/or Subcontractors to Consultant in connection with Consultant providing and performing services and work pursuant to the requirements of this Agreement. The Town shall have the right and be entitled to withhold such approval.

In providing and performing the services and work required pursuant to this Agreement, Consultant intends to engage the assistance of the Sub consultant(s) and/or Subcontractor(s) set forth in EXHIBIT "D", entitled "CONSULTANT'S ASSOCIATED SUB-CONSULTANTS AND SUBCONTRACTORS."

ARTICLE 9.00 - APPLICABLE LAW:

Unless otherwise specified, this Agreement shall be governed by the applicable ordinances, laws, rules, and regulations of the Town of Fort Myers Beach, Lee County, Florida, and the State of Florida. It shall be governed by the laws, rules, and regulations of the United States when the Consultant is providing services funded by the United States government.

3.1 ARTICLE 10.00 - LITIGATION

The venue for any litigation arising from this Agreement shall be Lee County, Florida. The prevailing party in any litigation arising out of this Agreement is entitled to recover reasonable attorney's fees from the non-prevailing party.

ARTICLE 11.00 - COVENANTS AGAINST DISCRIMINATION

The Consultant for itself, its successors in interest, and assigns as part of the consideration thereof, does hereby covenant and agree that in the furnishing of services to Town hereunder, no person on the grounds of race, color, national origin, handicap, or sex shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination. The Consultant shall comply with state laws in the hiring of sub consultants.

ARTICLE 12.00 - WAIVER OF BREACH:

Waiver by either party of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this Agreement.

ARTICLE 13.00 - OWNERSHIP OF DOCUMENTS

All documents such as drawings, tracings, notes, computer files, photographs, plans, specifications, maps, evaluations, reports and other records and data relating to this project, other than working papers, specifically prepared or developed by the Consultant under this Agreement shall be property of the Consultant until the Consultant has been paid for providing and performing the services and work required to produce such documents.

Upon completion or termination of this Agreement, or upon the issuance by the Town of written Supplemental Task Authorization(s) deleting all or portions of the scope of services or task(s) to be provided or performed by the Consultant, all of the above documents, to the extent requested in writing by the Town, shall be delivered by the Consultant to the Town within seven (7) calendar days of the Town making such a request. If the Town gives the Consultant a written Notice of Termination of all or part of the services or work required, or upon the issuance to the Consultant by the Town of a written Supplemental Task Authorization deleting all or part of the services or work required, the Consultant shall deliver to the Town the requested documents as set forth hereinabove, with the mutual understanding and commitment by the Town that compensation earned or owing to the Consultant for services or work provided or performed by the Consultant prior to the effective date of any such termination or deletion will be paid to the Consultant within thirty (30) calendar days of the date of issuance of the Notice of Termination or Supplemental Task Authorization.

The Consultant, at its expense, may make and retain copies of all documents delivered to the Town for reference and internal use. The Consultant shall not, and agrees not to use any of these documents, and data and information contained therein on any other project or for any other client without the prior express written permission of the Town.

Any use by the Town of said documents, and data and information contained therein, obtained by the Town hereunder for any purpose not within the scope of this Agreement shall be at the risk of the Town, and without liability to the Consultant.

ARTICLE 14.00 - MAINTENANCE OF RECORDS

The Consultant will keep and maintain adequate records and supporting documentation applicable to all of the services, work, information, expense, costs, invoices and materials provided and performed hereunder. Said records and documentation will be retained by the Consultant for a minimum of five (5) years from the date of termination of this Agreement.

The Town and its authorized agents shall have the right to audit, inspect and copy all such records and documentation as often as the Town deems necessary during this Agreement, and during the period of five (5) years thereafter. Such activity shall be conducted only during normal business hours and at the expense of the Town. To the extent permitted by law, the Town shall retain all such records as confidential.

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, [AMY @FMBGOV.COM](mailto:AMY@FMBGOV.COM) , 2525 ESTERO BOULEVARD, FORT MYERS BEACH, FLORIDA 33931.

Inspector General: The Parties agree to comply with s.20.055(5), Florida Statutes, and to incorporate in all subcontracts the comply with s.20.055(5), Florida Statutes. Specifically:

“(5) It is the duty of every state office, employee, agency, special district, board, commission, contractor and subcontractor to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing pursuant to this section.

ARTICLE 15.00 - TERMINATION

This Agreement may be terminated by the Town without cause and/or at its convenience, or due to the fault of the Consultant, by the Town giving thirty (30) days' written notice to the Consultant. If the Consultant is adjudged bankrupt or insolvent; if it makes a general assignment for the benefit of its creditors; if a trustee or receiver is appointed for the Consultant or for any of its property; if it files a petition to take advantage of any debtor's act or to reorganize under the bankruptcy or similar laws; if it disregards the authority of the Town's designated representatives; if it otherwise violates any provisions of this Agreement; or for any other just cause, the Town may, without prejudice to any other right or remedy, terminate this Agreement.

In addition to the Town's contractual right to terminate this Agreement in its entirety as set forth above, the Town may also, at its convenience, stop, suspend, supplement or otherwise change all, or any part of, the Scope of Professional Services as set forth in EXHIBIT "A", or the Project Guidelines and Criteria as set forth in EXHIBIT "E", or as such may be established or modified by a Supplemental Task Authorization. The Town shall provide written notice to the Consultant in order to implement a stoppage, suspension, supplement or change.

The Consultant may request that this Agreement be terminated by submitting a written notice to the Town dated not less than sixty (60) calendar days prior to the requested termination date and stating the reason(s) for such a request. However, the Town reserves the right to accept or not accept the termination request submitted by the Consultant, and no such termination request submitted by the Consultant shall become effective unless and until Consultant is notified, in writing, by the Town of its acceptance.

Upon termination, the Consultant shall deliver to the Town all papers, drawings, models, and other material in which the Town has exclusive rights by virtue hereof or of any business done, or services or work performed or provided by the Consultant on behalf of the Town.

ARTICLE 16.00 - MODIFICATION AND AMENDMENTS

Modifications and amendments to the covenants, terms and provisions of this Agreement shall only be valid when issued in writing as a properly executed Supplemental Task Authorization(s) or written contract amendment, executed by both parties. In the event of any conflicts between the requirements, provisions, and/or terms of this Agreement and any written Supplemental Task Authorization(s), the latest executed Supplemental Task Authorization(s) shall take precedence.

In the event the Town issues a purchase order, memorandum, letter, or other instruments covering the professional services, work and materials to be provided and performed pursuant to this Agreement, it is hereby specifically agreed and understood that such purchase order, memorandum, letter or other instruments are for the Town's internal control purposes only, and any terms, provisions and conditions contained therein, whether printed or written, shall in no way modify the covenants, terms and provisions of this Agreement and shall have no force or effect thereon.

No modification, waiver, or termination of the Agreement or of any terms hereof shall impair the rights of either party.

ARTICLE 17.00 - HEADINGS

The Headings of the Articles, Sections, Exhibits, Attachments, Phases or Tasks herein are for the purpose of convenience only and shall not be deemed to expand, limit or change the provisions contained in such Articles, Sections, Exhibits, Attachments, Phases or Tasks.

ARTICLE 18.00 - ENTIRE AGREEMENT

This Agreement, including referenced Exhibits and Attachments hereto, constitute the entire Agreement between the parties hereto and shall supersede, replace and nullify any and all prior agreements or understandings, written or oral, relating to the matters set forth herein, and any such prior agreements or understandings shall have no force or effect

on this Agreement.

The following listed documents, which are referred to hereinbefore, are attached to and are acknowledged, understood and agreed to be an integral part of this Agreement:

- (1) EXHIBIT "A" entitled "Scope of Professional Services", dated _____, 2020
- (2) ATTACHMENT "A" Scope of Services
- (3) EXHIBIT "B" entitled "Compensation and Method of Payment" dated _____, 2020.
- (4) ATTACHMENT "B" Fee Schedule
- (5) EXHIBIT "C" entitled "Insurance", dated _____, 2020.
- (6) EXHIBIT "D" entitled " _ Local Agency Program Federal-Aid Terms for Professional Services Contracts (FDOT Form 375-040-84)".
- (7) EXHIBIT "E" entitled " _ DBE Package Information (FDOT Form 275-030-11)".
- (8) ATTACHMENT "C" Engineering Fee Estimate
- (9) ATTACHMENT "D" Lab Testing Estimate
- (10) ATTACHMENT "E" Project Schedule

ARTICLE 19.00 - NOTICES AND ADDRESS OF RECORD

19.01 NOTICES BY CONSULTANT TO TOWN

All notices hereunder from the Consultant to the Town shall be in writing and shall be given by US first class mail service, postage prepaid, addressed to: Town of Fort Myers Beach, 2525 Estero Boulevard, Fort Myers Beach, Florida 33931

19.02 NOTICES BY TOWN TO CONSULTANT

All notices hereunder from the Town to the Consultant shall be in writing and shall be given by U.S. first class mail service, postage prepaid, addressed to:

AECOM Technical Services, Inc.

(Consultant's Business Name)

4415 Metro Parkway, Suite 404

(Street/ P.O. Box)

Fort Myers

FL

33916

(City)

(State)

(Zip Code)

Telephone Number: _____

Fax Number: _____

ATTENTION: _____

Project Director

19.03 CHANGE OF ADDRESS OF RECORD

Either party may change its address of record by written notice to the other party given in accordance with the

ARTICLE 20.00 - ACCEPTANCE. Acceptance of this Agreement shall be indicated by the signature of the duly authorized representative of the hereinabove named parties in the space provided hereinafter and being attested and witnessed as indicated.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Agreement effective the day and year first written above.

TOWN OF FORT MYERS BEACH

ATTEST:

By: _____
Roger T. Hernstadt, Town Manager

By: _____
Amy Baker, Town Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

BY: _____
Town Attorney

PROVIDER: AECOM Technical Services, Inc.
Printed name of organization

BY: _____
Signature

Witness Signature

Printed name of person signing

Printed name of Witness

Title (printed)

EXHIBIT "A"

TO THE SERVICE PROVIDER CONTRACT DATED THIS _____ day of _____,
2021 BETWEEN THE TOWN AND (AECOM TECHNICAL SERVICES, INC.), PROVIDER.

1. SCOPE OF SERVICES: The Provider shall perform the following services under this Agreement:

See "Attachment A – Scope of Services"

ATTACHMENT A – SCOPE OF SERVICES

Town of Fort Myers Beach CEI Services – Old San Carlos Blvd. and Estero Blvd. Signalization

Procurement of Materials Phase:

- a) Scheduling, conduct, providing agenda and document a materials procurement kick-off coordination meeting with Town staff, Engineer of Record and Contractor.
- b) Scheduling, conduct, providing agenda and document monthly procurement progress meetings.
- c) Set-up and maintain Microsoft Teams share site for shop drawing/submittal sharing.
- d) Establish shop drawing/submittal tracking spreadsheet.
- e) Provide initial/cursory review of shop drawing/submittal meetings for compliance project submittal requirements.
- f) Facilitate the review of shop drawings/submittals. The design engineer (EOR) will review product shop drawings/submittals. AECOM shall coordinate the review between the CEI and the EOR. Response to shop drawings/submittals shall be within seven (7) calendar days from the receipt of the electronic submission. Approvals and rejections shall be submitted in writing, electronically. If a submittal is rejected, the reasons for the rejection shall be clearly noted. AECOM shall also ensure that documents of compliance with Buy America requirements is obtained from the Contractor prior to the approval of the submittal when required.
- g) Review corrected shop drawing/submittals as necessary and distribute accepted/ approved documents to all stakeholders.

Construction Contract Administration Phase:

- a) Conduct regular progress meetings – Progress meetings during the construction phase are anticipated to take place once every two weeks. At the Town's discretion, progress meeting schedule may be amended. AECOM will be responsible for scheduling the meetings, conducting the meetings, providing agenda and documenting the meeting in the form of meeting minutes and sign-in sheet. A representative from the Town, the Contractor and AECOM shall be present at all progress meetings.
- b) Prepare for and attend any FDOT or FHWA inspections or audits.
- c) Prepare and distribute an Emergency Contact List for both CEI and Contractor staff to Town Public Works, Town Fire Department and Town Police Department.
- d) Maintain project records and respond to public inquiries and complaints. Distribute copies of correspondence to the Town and other project stakeholders as applicable.
- e) Review schedules submitted by the contractor for appropriate durations, completion dates, logical sequence, MOT phasing, appropriate milestones included, production rates, adequate breakdown, and critical activities.
- f) Identify and track weather and holiday delays and any schedule impacts.
- g) Record and respond to Requests for Correction (RFCs), Requests for Information (RFIs), and Requests for Modification (RFMs) from the Contractor during construction and provide recommendations for resolution. Coordinate with the Engineer of Record as appropriate, if applicable. All RFIs shall be responded in writing within seven (7) calendar days of receipt of electronic submission; however, AECOM will expedite this process to the maximum extent practical

especially when the RFI pertains to a critical task item. All responses shall be submitted electronically.

- h)** Monitor Contractor's quality control program to assure proper documentation and testing of materials is occurring as defined in the contract documents. See Section 105 of FDOT's Standard Specifications. Prepare a Final Materials and Tests Certification to be submitted to the Town with the Final Records.
- i)** Track field changes to the plans and/or revisions and obtain approval by the Town. Changes to the plans will be documented on the final As-Builts and provided to the Town at project closeout.
- j)** Providing an engineer's summary letter on a monthly basis and inclusion of all daily reports during the month. The summary letter shall include basic project information such as elapsed time, percentage complete based on time and money spent, current amount earned (by the Contractor) and the general construction activity summary over the past month.
- k)** Manage project permits including submitting construction commencement notifications and certifications when required.
- l)** Perform periodic field visits by the project manager as needed to resolve Requests for Information (RFI) from the Contractor or other project issues.
- m)** Facilitate the review of shop drawings. The design engineer (EOR) will review product shop drawings and submittals. AECOM shall coordinate the review between the CEI and the EOR. Response to shop drawing and submittals shall be within seven (7) calendar days from the receipt of the electronic submission. Approvals and rejections shall be submitted in writing, electronically. If a submittal is rejected, the reasons for the rejection shall be clearly noted. AECOM shall also ensure that documents of compliance with Buy America requirements is obtained from the Contractor prior to the approval of the submittal when required.
- n)** Maintain submittal log, RFI, RFM and RFC log.
- o)** Complete daily inspection reports with associated photos, truck tickets, material verification and other LAP required documents on a daily basis. These documents shall be provided to the Town on a monthly basis.
- p)** Review and approve Proctor/LBR reports and review of density test reports. CEI shall be present for all onsite testing and sampling.
- q)** Review Change Order Requests supplied by the Contractor and recommendation of approval or rejection to the Town. AECOM shall sign all approved Change Orders. AECOM shall also facilitate approval of all Change Order by the FDOT's representative.
- r)** Review applications for payment from the Contractor. AECOM shall respond in writing regarding any deficiencies preventing a pay application from being deemed complete or accurate within seven (7) calendar days of receipt of the signed pay application from the Contractor. AECOM shall gather the required documents (density reports, schedule updates, material delivery tickets, lien releases, etc.) from the Contractor. Once all information has been obtained and the CEI has verified all quantities, AECOM shall sign the application recommending payment and submit to the Town.
- s)** Attend walkthrough for Substantial and Final Completion and generate and track a punch-list of outstanding items to be resolved.
- t)** Upon satisfactory completion of the project, submit written certification of compliance to the Town.
- u)** Process final estimate, provide all records, and submit all closeout forms.
- v)** Process permit closeout documentation if applicable.

- w) Prepare final warranty documentation for the Town's records and tracking.
- x) Issue Certificate of Completion documents signed and sealed by a Florida Licensed Professional Engineer.
- y) The CEI shall perform any duties as required by them on a LAP project to comply with FDOT LAP requirements.

Construction Inspection Services:

- a) Provide effective and qualified inspectors to perform construction inspection. Inspectors must be certified in FDOT's Asphalt Roadway Paving Inspection, Class 1 Concrete Technician, Soils and Aggregate Technician, Earthwork Technician, Nuclear Gauge Trained and Proficient, and SWPPP certified.
- b) Provide verification testing per FDOT's Standard Specs July 2020 edition. Monitor the Quality Control testing provided by the Contractor. Obtain and review certifications of material submitted by the Contractor.
- c) Observe, measure, and record all quantities for payment.
- d) Prepare accurate daily reports of construction, material reports, and logbooks to document the project progress according to the contract requirements. Records shall be kept on allowable FDOT formats.
- e) Daily reports shall include the following information:
 - a. Record of the contractors on site
 - b. Their personnel (number and classification)
 - c. Equipment (number, type/size)
 - d. Location and work performed by each contractor
 - e. Orders given to contractor
 - f. Notable events
 - g. Accidents
 - h. Weather and temperature
 - i. Days charged
 - j. Equipment arriving or leaving, idle equipment
 - k. Other relevant details
- f) Monitor MOT daily, at a minimum, and notify contractor of deficiencies immediately. Document project traffic control on FDOT approved forms and distribute as required.
- g) Monitor site for general safety, pedestrian and public access through the site and ADA requirements.
- h) Inspect daily erosion control items for conformance to the plans as well as effectiveness in the field.
- i) Coordinate with the business owners within the project limits.

Resident Compliance Specialist:

AECOM will furnish the services necessary to administer and coordinate EEO/LAP tasks and to adhere to current Town of Fort Myers Beach, Florida Department of Transportation, and Federal requirements. These tasks shall include the following, but are not limited to:

- a) EEO Administration
- b) LAP Administration
- c) Record keeping and contract status reporting
- d) Notify Town prior to withholding any monthly payments
- e) Site EEO/LAP visits

- f) Complete monthly wage verification interviews, truck driver interviews and EEO project bulletin board inspection
- g) Review Contractor monthly reports (compliance with contract plans, EEO compliance, previous disbursement to subs)
- h) Review and approve certified payrolls for the prime contractor and subcontractors on a weekly basis. Notify Contractor of late payrolls.
- i) Upload of all required documents to LAPIT; and provide any other CEI responsibilities to conform to LAP requirements.

Laboratory Services by Ardaman & Associates, Inc.:

- a) Provide construction materials lab testing as needed. Testing services may include:
Standard/Modified Proctors, LBR's, Asphalt Extraction/Gradation and Concrete Cylinder Breaks.

END OF ATTACHMENT A

EXHIBIT "B"

TO THE SERVICE PROVIDER CONTRACT DATED THIS _____ day of _____,
2021 BETWEEN THE TOWN AND (AECOM TECHNICAL SERVICES, INC), PROVIDER.

COMPENSATION AND METHOD OF PAYMENT

- 1, The Town will pay the Provider as follows for all services listed in Exhibit "A":
 - See "Attachment B- Fee Schedule"
2. Provider will receive reimbursement for out-of-pocket expenses from the Town as follows:

ATTACHMENT B – FEE SCHEDULE

1.0 PURPOSE:

This attachment defines the method and limits of compensation to be made to AECOM for the services described in Attachment A (Scope of Services) and method by which payments will be made.

2.0 COMPENSATION:

For satisfactory completion of all services detailed in Attachment A (Scope of Services) of this contract, the Town of Fort Myers Beach will pay AECOM a Total Maximum Limiting Amount not to exceed \$75,572.82. It is agreed that this amount will be the limit of all compensation due AECOM for completion of the services detailed in Attachment A.

The total maximum limiting amount for FIN 444923-1-68-01 is \$75,572.82.

Therefore, it is agreed that AECOM will not be obligated to perform services nor incur costs which would result in exceeding the funding currently approved, nor will the Town be obligated to reimburse AECOM for costs to make fee payments in excess of currently established funding. The Town will provide written authorization when subsequent appropriations are available for this contract.

Note: The man-hours and fee established herein does not anticipate the Contractor submitting any claims or for the CEI to resolve any major disputes which would require additional CEI Senior Project Engineer and CEI Project Administrator time.

The Total Maximum Limiting Amount shall be authorized by the Town of Fort Myers Beach in the OWNERS written notice to AECOM to commence work.

3.0 Summary of Compensation

The Total Maximum Limiting Amount will include the elements as estimated and defined in Table 1 below:

Table 1 Compensation Elements	
PRIME CONSULTANT: AECOM Technical Services, Inc.	Contract #20-26-PW
Salary Related Costs including Straight Time, Overtime, Overhead, Operating Margin, Expenses & FCCM (Limiting Amount) (Fixed Contract Rates [Loaded] for each class)	FIN 444923-1-68-01 - \$74,297.82
Laboratory Materials Testing Services (Estimated)	FIN 444923-1-68-01 - \$1,275.00

3.1 Details of Compensation

For the following elements, which are established as limiting amounts, the Town will compensate AECOM for all reasonable, allocable and allowable costs incurred in the categories defined below. The reasonableness, allocability and allow ability of compensation sought under this contract is expressly made subject to the terms of this contract; Federal Acquisition Regulations; Office of Management and Budget Circulars A-21, A-87, A-102, A-1 10; and any pertinent Federal and State Law.

Salary Related Costs including Straight Time, Overtime, Overhead, Operating Margin, Expenses & FCCM (Limiting Amount)

Subject to the established limiting amount, AECOM will receive progress payments for direct salaries and wages for time expended by personnel in the performance of authorized work during the billing period at the rates specified in Table 2.

4.0 COMPENSATION RATES:

The following tables are provided for definition of contractual rates.

Table 2 LOADED BILLING RATES No Multipliers will be added to the following rates.			
Consultant	Classification	Hourly Billing Rate	Premium Overtime Hourly Rate
AECOM Technical Services, Inc.	CEI Senior Project Engineer	\$216.19	N/A
	CEI Project Administrator	\$171.69	N/A
	CEI Senior Inspector	\$88.00	\$17.87
	CEI Inspector	\$57.29	\$11.63
	CEI Resident Compliance Specialist	\$65.88	N/A

The above rates include allowances for salaries, overhead, operating margin, direct expenses and FCCM if applicable.

5.0 MANHOUR ESTIMATE SUMMARY

Position Classification	Man-Hours
CEI Senior Project Engineer	26
CEI Project Administrator	128
CEI Senior Inspector	424
CEI Inspector	0
CEI Resident Compliance Specialist	136

*See Attachment C for the detailed fee schedule with man-hour breakdown by classification and task. See also Attachment D for the lab testing estimate.

END OF ATTACHMENT B

EXHIBIT "C"

TO THE SERVICE PROVIDER CONTRACT DATED THIS _____ day of _____,
2021 BETWEEN THE TOWN AND (AECOM TECHNICAL SERVICES, INC) PROVIDER.

2. **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”

Local Agency Program Federal-Aid Terms for Professional Services Contracts (FDOT Form 375-040-84)
included on following pages.

**LOCAL AGENCY PROGRAM FEDERAL-AID TERMS
For PROFESSIONAL SERVICES CONTRACTS**

375-040-84
PROGRAM MANAGEMENT
12/19
Page 1 of 3

TERMS FOR FEDERAL AID CONTRACTS (APPENDIX II):

The following terms apply to all contracts in which it is indicated that the services involve the expenditure of federal funds:

- A. It is understood and agreed that all rights of the Local Agency relating to inspection, review, approval, patents, copyrights, and audit of the work, tracing, plans, specifications, maps, data, and cost records relating to this Agreement shall also be reserved and held by authorized representatives of the United States of America.
- B. All tracings, plans, specifications, maps, computer files and/or reports prepared or obtained under this Agreement, as well as all data collected, together with summaries and charts derived therefrom, will be considered works made for hire and will become the property of the Agency upon completion or termination without restriction or limitation on their use and will be made available, upon request, to the Agency at any time during the performance of such services and/or completion or termination of this Agreement. Upon delivery to the Agency of said document(s), the Agency will become the custodian thereof in accordance with Chapter 119, Florida Statutes. The Consultant will not copyright any material and products or patent any invention developed under this agreement. The Agency will have the right to visit the site for inspection of the work and the products of the Consultant at any time.
- C. It is understood and agreed that, in order to permit federal participation, no supplemental agreement of any nature may be entered into by the parties hereto with regard to the work to be performed hereunder without the approval of the U.S. Department of Transportation, anything to the contrary in this Agreement notwithstanding.
- D. The consultant shall provide access by the Florida Department of Transportation (recipient), the Agency (subrecipient), the Federal Highway Administration, the U.S. Department of Transportation's Inspector General, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the consultant which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.
- E. Compliance with Regulations: The Consultant shall comply with the Regulations: relative to nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.
- F. Nondiscrimination: The Consultant, with regard to the work performed during the contract, shall not discriminate on the basis of race, color, national origin, sex, age, disability, religion or family status in the selection and retention of subcontractors, including procurements of material and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- G. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations made by the Consultant, either by competitive bidding or negotiation for work to be performed under a subcontract, including procurements of materials and leases of equipment, each potential subcontractor or supplier shall be notified by the Consultant of the Consultant's obligations under this contract and the Regulations relative to nondiscrimination on the basis of race, color, national origin, sex, age, disability, religion or family status.
- H. Information and Reports: The Consultant will provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Local Agency, Florida Department of Transportation, Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, and/or Federal Motor Carrier Safety Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the Local Agency, Florida Department of Transportation, Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, and/or the Federal Motor Carrier Safety Administration as appropriate, and shall set forth what efforts it has made to obtain the information.
- I. Sanctions for Noncompliance: In the event of the Consultant's noncompliance with the nondiscrimination provisions of this contract, the Local Agency shall impose such contract sanctions as it or the Florida Department of Transportation, Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, and/or Federal Motor Carrier Safety Administration may determine to be appropriate, including, but not limited to,
 - 1. withholding of payments to the Consultant under the contract until the Consultant complies and/or
 - 2. cancellation, termination or suspension of the contract, in whole or in part.
- J. Incorporation or Provisions: The Consultant will include the provisions of Paragraph C through K in every subcontract, including procurements of materials and leases of equipment unless exempt by the Regulations, order, or instructions

**LOCAL AGENCY PROGRAM FEDERAL-AID TERMS
For PROFESSIONAL SERVICES CONTRACTS**

375-040-84
PROGRAM MANAGEMENT
12/19
Page 2 of 3

issued pursuant thereto. The Consultant shall take such action with respect to any subcontract or procurement as the Local Agency, Florida Department of Transportation, Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, and/or the Federal Motor Carrier Safety Administration may direct as a means of enforcing such provisions, including sanctions for noncompliance. In the event a Consultant becomes involved in, or is threatened with, litigation with a subconsultant or supplier as a result of such direction, the Consultant may request the Local Agency to enter into such litigation to protect the interests of the Local Agency, and, in addition, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

- K. Compliance with Nondiscrimination Statutes and Authorities: Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21; The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects); Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex); Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27; The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age); Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex); The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not); Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 -- 12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38; The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex); Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations; Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100); Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).
- L. Interest of Members of Congress: No member of or delegate to the Congress of the United States will be admitted to any share or part of this contract or to any benefit arising therefrom.
- M. Interest of Public Officials: No member, officer, or employee of the public body or of a local public body during his tenure or for one year thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof. For purposes of this provision, public body shall include municipalities and other political subdivisions of States; and public corporations, boards, and commissions established under the laws of any State.
- N. Participation by Disadvantaged Business Enterprises: The Consultant shall agree to abide by the following statement from 49 CFR 26.13(b). This statement shall be included in all subsequent agreements between the Consultant and any subconsultant or contractor.
1. The Consultant, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of this contract, which may result in termination of this contract or other such remedy as the recipient deems appropriate.
- O. It is mutually understood and agreed that the willful falsification, distortion or misrepresentation with respect to any facts related to the project(s) described in this Agreement is a violation of the Federal Law. Accordingly, United States Code, Title 18, Section 1020, is hereby incorporated by reference and made a part of this Agreement.
- P. It is understood and agreed that if the Consultant at any time learns that the certification it provided the Local Agency in compliance with 49 CFR, Section 26.51, was erroneous when submitted or has become erroneous by reason of changed circumstances, the Consultant shall provide immediate written notice to the Local Agency. It is further agreed that the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction" as set forth in 49 CFR, Section 29.510, shall be included by the Consultant in all lower tier covered transactions and in all aforementioned federal regulation.
- Q. The Local Agency hereby certifies that neither the consultant nor the consultant's representative has been required by the Local Agency, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this contract, to

**LOCAL AGENCY PROGRAM FEDERAL-AID TERMS
For PROFESSIONAL SERVICES CONTRACTS**

375-040-84
PROGRAM MANAGEMENT
12/19
Page 3 of 3

1. employ or retain, or agree to employ or retain, any firm or person, or
2. pay, or agree to pay, to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind;

The Local Agency further acknowledges that this agreement will be furnished to a federal agency, in connection with this contract involving participation of Federal-Aid funds, and is subject to applicable State and Federal Laws, both criminal and civil.

R. The Consultant hereby certifies that it has not:

1. employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for the above contractor) to solicit or secure this contract;
2. agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out this contract; or
3. paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for the above contractor) any fee contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the contract.

The consultant further acknowledges that this agreement will be furnished to the Local Agency, the State of Florida Department of Transportation and a federal agency in connection with this contract involving participation of Federal-Aid funds, and is subject to applicable State and Federal Laws, both criminal and civil.

- S. The Consultant shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Contractor during the term of the Contract and shall expressly require any subcontractors performing work or providing services pursuant to the Contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the Contract term.

EXHIBIT "E"

DBE Package Information (FDOT Form 275-030-11) included on following pages.

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
DBE BID PACKAGE INFORMATION

275-030-11
EQUAL OPPORTUNITY OFFICE
09/19
Page 1 of 2

DBE Utilization

The Department began its DBE race neutral program January 1, 2000. **Contract specific goals are not placed on Federal/State contracts;** however, the Department has an overall 10.65% DBE goal it must achieve. In order to assist contractors in determining their DBE commitment level, the Department has reviewed the estimates for this letting.

As you prepare your bid, please monitor potential or anticipated DBE utilization for contracts. When the low bidder executes the contract with the Department, information will be requested of the contractor's DBE participation for the project. While the utilization is not mandatory in order to be awarded the project, continuing utilization of DBE firms on contracts supports the success of Florida's DBE Program, and supports contractors' Equal Employment Opportunity and DBE Affirmative Action Programs.

Any project listed as 0% DBE availability does not mean that a DBE may not be used on that project. A 0% DBE availability may have been established due to any of the following reasons: limited identified subcontracting opportunities, minimal contract days, and/or small contract dollar amount. Contractors are encouraged to identify any opportunities to subcontract to DBE's.

Please contact the Equal Opportunity Office at (850) 414-4747 if you have any questions regarding this information.

DBE Reporting

If you are the prime contractor on a project, enter your DBE participation in the Equal Opportunity Compliance system prior to the pre-construction or pre-work conference for all federal and state funded projects. This **will not** become a mandatory part of the contract. It will assist the Department in tracking and reporting planned or estimated DBE utilization. During the contract, the prime contractor is required to report actual payments to DBE and MBE subcontractors through the web-based Equal Opportunity Compliance (EOC) system.

All DBE payments must be reported whether or not you initially planned to utilize the company. In order for our race neutral DBE Program to be successful, your cooperation is imperative. If you have any questions, please contact EOOHelp@dot.state.fl.us.

Bid Opportunity List

The Federal DBE Program requires States to maintain a database of all firms that are participating or attempting to participate on FDOT-assisted contracts. The list must include all firms that bid on prime contracts or bid or quote subcontracts on FDOT-assisted projects, including both **DBE's and non-DBEs**.

Please complete the Bidders Opportunity List through the Equal Opportunity Compliance system within 3 business days of submission of the bid or proposal for ALL subcontractors or sub-consultants who quoted to you for specific project for this letting. The web address to the Equal Opportunity Compliance system is: <https://www.fdot.gov/equalopportunity/eoc.shtm>.

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
DBE BID PACKAGE INFORMATION

275-030-11
EQUAL OPPORTUNITY OFFICE
09/19
Page 2 of 2

DBE/AA Plans

Contractors bidding on FDOT contracts are to have an approved DBE Affirmative Action Plan (FDOT Form 275-030-11B) on file with the FDOT Equal Opportunity Office before execution of a contract. DBE/AA Plans must be received with the contractors bid or received by the Equal Opportunity Office prior to the award of the contract.

Plans are approved by the Equal Opportunity Office in accordance with Ch. 14-78, Florida Administrative Code. Plans that do not meet these mandatory requirements may not be approved. Approvals are for a (3) three year period and should be updated at anytime there is a change in the company's DBE Liaison Officer and/or President. Contractors may evidence adoption of the DBE/AA Policy and Plan and/or a change in the designated DBE Liaison officer as follows:

- Print the first page of the document on company stationery ("letterhead") that indicates the company's name, mailing address, phone number, etc.
- Print the company's name in the "____" space; next to "Date" print the month/day/year the policy is being signed; record the signature of the company's Chief Executive Officer, President or Chairperson in the space next to "by" and print the full first and last name and position title of the official signing the policy.
- Print the DBE Liaison's full name, email address, business mailing address and phone number the bottom of email.

E-mail the completed and signed DBE AA Plan to: **eeoforms@dot.state.fl.us.**

The Department will review the policy, update department records and issue a notification of approval or disapproval; a copy of the submitted plan will not be returned to the contractor.

ATTACHMENT C- ENGINEERING FEE ESTIMATE

ATTACHMENT C- ENGINEERING FEE ESTIMATE

ENGINEERING FEE ESTIMATE FOR OLD SAN CARLOS BLVD. AND ESTERO BLVD. SIGNALIZATION
TOWN OF FORT MYERS BEACH

Client: Town of Fort Myers Beach
Project Manager: Crystal Gorman, AECOM
Date: January 18, 2021
Project/Task Description: Construction Engineering and Inspection for Old San Carlos Blvd. and Estero Blvd. Signalization

ACTIVITY		PROFESSIONAL CLASSIFICATION AND HOURLY RATE																Total Manhours for Task	Total Labor Cost for Task
		Senior Project Engineer	Project Administrator	Senior Inspector	Senior Inspector Premium OT	Inspector	Inspector Premium OT	Asphalt Plant Inspector	Resident Compliance Specialist	Sr. Prof. Surveyor & Mapper	Prof. Surveyor	Survey Analyst	Survey Administration	3-Man Survey Crew (per day)	Lab Testing				
TASK	DESCRIPTION	\$216.19	\$171.69	\$88.00	\$17.87	\$57.29	\$11.63	\$0.00	\$65.88	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00					
A.1	FIN 444923-1-68-01	26	128	424		0		0	136	0.0	0.0	0.0	0.00	0.0	\$1,275.00				
A.2	Premium Overtime				24		0												
A.3																			
A.4																			
		SubTotal for Task A. Construction Engineering and Inspection Services																738	\$75,572.82
Total Hours by Professional Classification for all Tasks		26	128	424	24	0	0	0	136	0.0	0	0	0.0	0		0	0	0	
Total Labor Cost by Professional Classification for all Tasks		\$5,620.94	\$21,976.32	\$37,312.00	\$428.88	\$0.00	\$0.00	\$0.00	\$8,959.68	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$1,275.00	\$0.00	\$0.00	\$0.00	
Note: This is a limiting amount T&M project assignment. In the event the limiting amount cap is reached due to circumstances beyond the consultant’s control, a change order will be processed to add additional funding to the contract. If no supplemental funding is available, the Consultant is not obligated to continue work per the contract and scope of services.																			
TOTAL FEE FOR ALL TASKS (NOT-TO-EXCEED)																\$75,572.82			

Fully Loaded Rates Analysis				Employee	Position	Raw Rate	Avg. Raw Rate	Multiplier	Loaded Rate
Audit and OM data (field)				C. Gorman	Senior PE	\$87.78		2.4629	\$216.19
OH Rate				K. Riddle	PA	\$69.71		2.4629	\$171.69
FCCM				D. Smith	Sr. Inspector	\$35.73		2.4629	\$88.00
Expenses									
Proposed Operating Margin				B. Ballinger	Inspector	\$23.26		2.4629	\$57.29
CDAF				T. Destoppelaire	RCS	\$26.75		2.4629	\$65.88

CONSULTANT CEI FIRM ESTIMATED STAFFING (AECOM)

FIRM NAME	AECOM Technical Services, Inc.
FINANCIAL PROJECT IDs	444923-1-68-01
PROJECT NAME/From/To	Old San Carlos Blvd. and Estero Blvd. Signalization
COUNTY	Lee - Town of Fort Myers Beach
DATE PREPARED	1/18/2021

Item No.	Personnel Classifications	245 days procurement/construction + 30 day to final acceptance = 275 days = 9 months + CEI pre-construction and post-construction activities														TOTAL		Loaded Rate	Subtotal	Prem. OT rate	Subtotal
		2021							2022												
		Feb 1	Mar 2	Apr 3	May 4	June 5	July 6	Aug 7	Sept 8	Oct 9	Nov 10	Dec 11	Jan 12	Feb 13	Mar 14	Man Hours					
1	Project Manager/CEI Senior Project Engineer (PT)		4.0	2.0	2.0	2.0	2.0	4.0	4.0	4.0	2.0					26.00	\$ 216.19	\$ 5,620.94			
2	CEI Project Administrator (PT)		8.0	8.0	8.0	8.0	8.0	16.0	32.0	32.0	8.0					128.00	\$ 171.69	\$ 21,976.32			
3	CEI Sr. Inspector (FT)							88.0	176.0	160.0						424.00	\$ 88.00	\$ 37,312.00	\$ 17.87	\$ 428.88	
	CEI Inspector (PT)															0.00	\$ 57.29	\$ -	\$ 11.63	\$ -	
4	CEI Contract Support/Resident Compliance Specialist (PT)		8.0	8.0	8.0	8.0	8.0	16.0	32.0	32.0	16.0					136.00	\$ 65.88	\$ 8,959.68			
5	CEI Asphalt Plant Inspector (PT)															0.00	\$ -	\$ -			
6	Sr. Professional Surveyor & Mapper															0.00	\$ -	\$ -			
7	Professional Surveyor (in hours)															0.00	\$ -	\$ -			
8	Survey Analyst (in hours)															0.00	\$ -	\$ -			
9	Survey Administration															0.00	\$ -	\$ -			
	3-Person Survey Crew (in crew days)															0.00	\$ -	\$ -			
	TOTAL	0	20	18	18	18	18	124	244	228	26	0			0	714	714				

*used AECOM 2.4629 multiplier

Assumptions:

Award 2/1/21

Pre-Con early March 2021

NTP and Procurement of Materials start March 1, 2021

168 days duration for Procurement of Materials phase

77 days duration for Construction phase start August 16, 2021

Substantial Completion in early October 2021 (49 Days)

Final Acceptance in early November 2021 (28 Days)

CEI closeout in November 2021

\$494,172.50 Construction Cost

\$ 74,297.82

\$ 1,275.00 VT Materials Lab Testing

\$ 75,572.82 Grand Total

ATTACHMENT D- LAB TESTING ESTIMATE

Laboratory Materials Testing Summary				
Description	Unit	Quantity	Unit Price	Total
Concrete Curing /Strength Testing	Per Cylinder	24	\$ 24.00	\$ 576.00
Standard Proctor	Each	1	\$ 95.00	\$ 95.00
Bitumen Extraction & Aggerate Gradation	Each	2	\$ 191.00	\$ 382.00
Density Determiniation of Cored Specimen	Each	6	\$ 37.00	\$ 222.00
TOTAL				\$ 1,275.00



Ardaman & Associates, Inc.

Geotechnical, Environmental and
Materials Consultants

January 14, 2021
Ardaman Proposal 21-006

AECOM

4415 Metro Parkway, Suite 404
Fort Myers, FL 33916

Attention: Mr. Keith Riddle
Via E-mail: keith.riddle@aecom.com

Subject: Fee Schedule Proposal for QA/Materials Testing Services
Proposed Project: CEI for Old San Carlos Blvd. & Estero Blvd Signalization
Fort Myers Beach, Lee County, Florida

Dear Mr. Riddle:

Ardaman & Associates, Inc. (Ardaman) is pleased to submit this fee schedule proposal for quality assurance/materials testing services for the proposed CEI for Old San Carlos Blvd. & Estero Blvd Signalization Fort Myers Beach, Lee County, Florida.

The actual cost of the testing/inspection services will be a function of the quantities of work performed according to the unit rates presented on the attached fee schedule.

If our fee schedule meets with your approval, please return a copy of the attached Project/Proposal Acceptance form complete with client name and signature to this office as our authorization to proceed. The party whose signature appears on the acceptance form will be invoiced for our services. If this proposal meets with your approval, please return a copy of the attached Project/Proposal Acceptance form complete with client name and signature to this office as our authorization to proceed. The party whose signature appears on the acceptance form will be invoiced for our services.

Very truly yours,

ARDAMAN & ASSOCIATES, INC.

Florida Certificate of Authorization No. 00005950

Jesse Medina
CMT Coordinator

Ahsan Ahsanuzzaman, P.E.
Geotechnical Engineer IV

JM:AA

Attachments:
Project/Proposal Acceptance Form/General Conditions

2021 ARDAMAN & ASSOCIATES, INC., FORT MYERS – FEE SCHEDULE **
CONSTRUCTION MATERIALS TESTING AND INSPECTION

CONCRETE SAMPLING AND TESTING

Trip Charge (up to 30 miles from our office in Lee or Collier counties)	per trip	\$ 54.00
Test Cylinders-includes time on site (up to ½ hr.) casting four cylinders and performing one slump test per set and temperature measurement, and reporting of compressive strength. Test cylinders will be left on site during the initial cure phase at a location provided by the contractor.	per set	126.00
Additional Cylinders	per cylinder	19.00
Concrete Field Technician Standby Time (in excess of 1/4 hr. per test)	per hour or fraction	54.00
Curing and/or strength testing cylinders made by others delivered to our laboratory (ASTM C-39) (minimum 3 cylinders)	per cylinder	24.00
Continuous monitoring of concrete placement and/or extra slump and temperature tests (additional test fees apply for extra slumps and air)	per hour	54.00
Extra Slump Tests (ASTM C-143)	each	19.00
Air Entrainment (ASTM C-231)	each	19.00
Unit Weight	each	19.00
Grout Prisms (set of 4), Compressive Strength Test	per set	86.00

SITE PREPARATION PROCEDURES, INSPECTION, SAMPLING AND TESTING SERVICES

Trip Charge (up to 30 miles from our office in Lee or Collier counties)	per trip	54.00
In-situ Density Tests, Nuclear Method (minimum of four per trip)	per test	19.00
Soils Technician Standby Time (in excess of 1/4 hr. per test)	per hour or fraction	54.00
Soils Technician Time sampling of natural or fill materials for lab testing, and/or clearing and grubbing or demucking observations	per hour	54.00

SOIL AND AGGREGATE LABORATORY TESTING (sampling charge not included)

Standard (ASTM D-689) or Modified (ASTM D-1557) Proctor	each	95.00
Moisture Content (ASTM D-2216)	each	15.25
Percent Fines (ASTM D-1140)	each	36.75
Organic Content (AASHTO T-267)	each	35.25
Sieve Analysis (ASTM D-421, D-422)	each	55.00
Limerock Bearing Ratio (FM5-515)	each	295.00
Total Carbonates (FM5-514)	per test	130.00
Deleterious Substances for RCA Base	per test	21.50

ASPHALTIC CONCRETE TESTING (sampling charge not included)

Bitumen Extraction and Aggregate Gradation	each	191.00
Density Determination of Cored Specimens	per test	37.00

STRUCTURAL STEEL

Visual Inspection of Welded or Bolted Connections by Inspector (min. 4 hrs.)	per hour*	87.00
AWS Certified Weld Inspector (min. of 6 hrs.)	per hour*	110.00
Subconsultant Services available for non-destructive evaluation (NDE)		cost +12%



2021 ARDAMAN & ASSOCIATES, INC., FORT MYERS – FEE SCHEDULE **
CONSTRUCTION MATERIALS TESTING AND INSPECTION**ENGINEERING AND TECHNICAL SUPPORT**

Unit fees for the above services include our costs for engineer's review and reporting and mailing.

Trip charge is portal to portal Ardaman office at \$54.00 per hour

OVERTIME AND HOLIDAY

Hourly rates marked thus * are portal to portal Ardaman office.

Weekend and holiday work and work in excess of 8 hours per day or before 7 AM or after 5 PM will be charged at 1.5 times the standard fee.

SUBCONTRACT SERVICES

cost +12%

TERMS: All invoices are due and payable upon receipt unless other arrangements have been made previously. A finance charge of 1.5% per month, which is an annual interest rate of 18%, will be paid on all invoices not paid within 30 days. Any attorney's fees or other costs incurred in collecting any delinquent amount shall be paid by the Client.

**** These prices are in effect for work completed through December 31, 2021. December 31, 2021. Services performed after 2021 will be billed at the corresponding Fee Schedule for the year services are performed.**



ATTACHMENTS



PROPOSAL/PROJECT ACCEPTANCE AND AGREEMENT

PROJECT INFORMATION:

Client Name: _____
Project Name: Proposed Project: CEI for Old San Carlos Blvd. & Estero Blvd Signalization
Project Location: Fort Myers Beach, Lee County, Florida
Proposal Number and Date: 21-006 – January 14, 2021
Description of Services: QA/Materials Testing
Estimated Fee: to be invoiced in accordance with attached unit rates for actual services rendered

PROPERTY OWNER IDENTIFICATION:

Name: _____
Property Identification Number: _____
Address: _____
City/State: _____ Zip Code: _____ Phone: _____
Attention: _____ Title: _____

SPECIAL INSTRUCTIONS:

PAYMENT TERMS:

Payment shall be due within 30 days after date of each periodic invoice. Interest at the rate of 18% per annum (or the highest rate allowable by law) shall accrue on all amounts not paid within 30 days after date of invoice. All attorney fees and expenses associated with collection of past due invoices will be paid by Client. Failure to timely pay any invoice shall constitute a waiver of any and all claims arising from or related to Ardaman & Associates, Inc.'s services, including but not limited to the services described in this Proposal.

PROPOSAL ACCEPTANCE:

By accepting this Proposal, the Terms and Conditions of this Proposal, including the Terms on this page, and Ardaman & Associates, Inc.'s General Conditions appearing on the following page of this Proposal, are incorporated herein by reference. In the event this Proposal Acceptance was received by facsimile, Client hereby confirms that the above-described Proposal, the Terms and Conditions of this Proposal, including the Terms on this page, and Ardaman & Associates, Inc.'s General Conditions have been made available and are incorporated in this agreement.

Accepted this _____ day of _____, 2021.

(Print or type individual, firm or corporate body name)

(Signature of authorized representative)

(Print or type name of authorized representative and title)

BILLING ADDRESS OF SIGNEE (include phone and fax number: _____

Phone: _____

Fax: _____

GENERAL CONDITIONS – FLORIDA

Parties And Scope Of Work – Ardaman & Associates, Inc. (hereinafter referred to as “A&A”) shall include said company, its division, subsidiary, parent or affiliate performing the Work. “Work” means the specific services to be performed by A&A as set forth in A&A’s proposal as well as any additional services requested or accepted by Client. “Client” refers to the person or business entity ordering the Work to be done by A&A. If the Client is ordering the Work on behalf of a third party, the Client represents and warrants that the Client is the duly authorized agent of said third party for the purpose of ordering and directing said Work. In the event Client is not the authorized agent of said third party, Client shall be individually liable hereunder. Further, Client shall disclose any such agency relationship to A&A in writing before the commencement of A&A’s Work hereunder. Client agrees that A&A’s professional duties are specifically limited to the Work as set forth in A&A’s proposal. The Client assumes sole responsibility for determining whether the quantity and the nature of the Work ordered by the Client is adequate and sufficient for the Client’s intended purpose. A&A’s Work is for the exclusive use of Client, and its properly disclosed principal. In no event shall A&A have any duty or obligation to any third party. Directing A&A to proceed with the Work shall constitute acceptance of the terms of A&A’s proposal and these General Conditions.

On-Call Services – In the event A&A is retained to perform construction materials testing (“CMT”), including but not limited to proctor and soil density tests, concrete tests, etc., on an On-Call basis such that A&A is not retained to perform continuous observations of construction, Client assumes sole responsibility for determining the location and frequency of sampling and testing. In such On-Call testing, A&A’s test results are only representative of conditions at the test location and elevation, and different conditions may exist at other locations and other elevations. Furthermore, in the event Client fails to properly determine the location or frequency of sampling and testing, under no circumstances will A&A assume that duty by performing its CMT services.

Right-of-Entry – Unless otherwise agreed, Client will furnish right-of-entry on the property for A&A to make the planned borings, surveys, and/or explorations. A&A will take reasonable precautions to minimize damage to the property caused by its equipment and sampling procedures, but the cost of restoration or damage which may result from the planned operations is not included in the contracted amount.

Damage to Existing Man-made Objects – It shall be the responsibility of the Client to disclose the presence and accurate location of all hidden or obscure man-made objects relative to field tests, sampling, or boring locations. Client waives any claim against A&A arising from any damage to existing man-made objects. In addition, Client shall defend, indemnify and hold A&A harmless from any third party claim arising from damage to existing man-made objects.

Limitation of Liability – A&A shall perform services for Client in a professional manner, using that degree of care and skill ordinarily exercised by and consistent with the standards of competent consultants practicing in the same or a similar locality as the project. In the event any portion of the services fails to comply with this obligation and A&A is promptly notified in writing prior to one year after completion of such portion of the services, A&A will re-perform such portion of the services, or if re-performance is impracticable, A&A will refund the amount of compensation paid to A&A for such portion of the services. In no event shall A&A be liable for any special, indirect, incidental, or consequential damages. The remedies set forth herein are exclusive and the total liability of A&A whether in contract, tort (including negligence whether sole or concurrent), or otherwise arising out of, connected with or resulting from any and all services provided by A&A, including but not limited to the Work, shall not exceed the total fees paid by Client or \$50,000.00, whichever is greater. Client may, upon written request received within five days of Client’s acceptance hereof, increase the limit of A&A’s liability by agreeing to pay A&A an additional sum as agreed in writing prior to the commencement of A&A’s services. This charge is not to be construed as being a charge for insurance of any type, but is increased consideration for the greater liability involved. A&A’s individual professionals, employees, and agents are third party beneficiaries to these General Conditions.

PURSUANT TO §558.0035, FLORIDA STATUTES, CONSULTANT’S INDIVIDUAL EMPLOYEES AND/OR AGENTS MAY NOT BE HELD INDIVIDUALLY LIABLE FOR NEGLIGENCE ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM THEIR SERVICES PROVIDED PURSUANT TO THIS AGREEMENT.

Sampling or Testing Location – Unless specifically stated to the contrary, the unit fees included in this proposal do not include costs associated with professional land surveying of the site or the accurate horizontal and vertical locations of tests. Field tests or boring locations described in our report or shown on our sketches are based on specific information furnished to us by others or estimates made in the field by our technicians. Such dimensions, depths or elevations should be considered as approximations unless otherwise stated in the report.

Sample Handling and Retention – Generally test samples or specimens are consumed and/or substantially altered during the conduct of tests and A&A, at its sole discretion, will dispose (subject to the following) of any remaining residue immediately upon completion of test unless required in writing by the Client to store or otherwise handle the samples. (a) NON HAZARDOUS SAMPLES: At Client’s written request, A&A will maintain preservable test samples and specimens or the residue therefrom for thirty (30) days after submission of A&A’s report to Client free of storage charges. After the initial 30 days and upon written request, A&A will retain test specimens or samples for a mutually acceptable storage charge and period of time. (b) HAZARDOUS OR POTENTIALLY HAZARDOUS SAMPLES: In the event that samples contain substances or constituents hazardous or detrimental to human health, safety or the environment as defined by federal, state or local statutes, regulations, or ordinances (“Hazardous Substances” and “Hazardous Constituents”, respectively), A&A will, after completion of testing and at Client’s expense: (i) return such samples to Client; (ii) using a manifest signed by Client as generator, will have such samples transported to a location selected by Client for final disposal. Client agrees to pay all costs associated with the storage, transport, and disposal of such samples. Client recognizes and agrees that A&A is acting as a bailee and at no time does A&A assume title of said waste.

Discovery of Unanticipated Hazardous Materials – Hazardous materials or certain types of hazardous materials may exist at a site where there is no reason to believe they could or should be present. A&A and Client agree that the discovery of unanticipated hazardous materials constitutes a changed condition mandating a renegotiation of the scope of work or termination of services. A&A and Client also agree that the discovery of unanticipated hazardous materials may make it necessary for A&A to take immediate measures to protect health and safety. A&A agrees to notify Client as soon as practicable should unanticipated hazardous materials or suspected hazardous materials be encountered. Client encourages A&A to take any and all measures that, in A&A’s professional opinion, are justified to preserve and protect the health and safety of A&A’s personnel and the public. Client agrees to compensate A&A for the additional cost of working to protect employees’ and the public’s health and safety. In addition, Client waives any claim against A&A arising from A&A’s discovery of unanticipated hazardous materials or suspected hazardous materials.

Indemnification – Client agrees to defend, indemnify and save harmless A&A from all claims, including negligence claims, suits, losses, personal injuries, death and property liability resulting from the actions or inactions of Client, Client’s contractors, representatives, agents and employees.

Legal Jurisdiction – The parties agree that any litigation shall only be brought in a court of competent jurisdiction located in Orlando, Orange County, Florida. All causes of action, including but not limited to actions for indemnification and contribution, arising out of A&A’s Work shall be deemed to have accrued and the applicable statutes of limitation shall commence to run not later than the date of issuance of A&A’s final invoice for the Work. Each of the parties hereto irrevocably waives any and all right to trial by jury in any legal proceeding arising out of or relating to this agreement.

Force Majeure – A&A shall not be held responsible for any delay or failure in performance caused by fire, flood, explosion, war, strike, embargo, government requirement, civil or military authority, acts of God, act or omission of subcontractors, carrier, clients or other similar causes beyond its control.

Drafting and Severability – This Agreement has been drafted by all Parties hereto and shall not be construed against one Party or in favor of any other Party. In the event that any provision of this Agreement is held invalid, the remainder of this Agreement shall be fully enforceable.

ATTACHMENT E – PROJECT SCHEDULE

Task	Start Date	End Date
Award	February 16, 2021	February 16, 2021
Pre-Construction Meeting	February 22, 2021	February 22, 2021
Construction Notice to Proceed	March 1, 2021	March 1, 2021
Materials Procurement Phase	March 1, 2021	August 15, 2021
Construction Phase/Inspection	August 16, 2021	October 31, 2021
Substantial Completion	August 16, 2021	October 4, 2021
Final Acceptance	October 5, 2021	October 31, 2021
Deadline for submittal of CEI closeout package	November 30, 2021	November 30, 2021

*These dates are tentative for estimating purposes and are subject to change.

END OF ATTACHMENT E

1. **Requested Motion:**

Meeting Date: February 1, 2021

Approval of the acquisition of the Towns Pension Plan from Mass Mutual to Envestnet Retirement Solutions (ERS)

Why the action is necessary:

To inform Council of this change and new ageement which is attached.

What the action accomplishes:

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

None

4. **Submitter of Information:**

Roger Hernstadt, Town
Manager

5. **Background:**

Massachusetts Mutual Life Insurance Company (MassMutual) was acquired by Great West Life & Annuity Insurance Company which operates as Envestnet Retirement Solutions, LLC (ERS). The Town's Financial Advisor will continue to be Kevin O'Fee and the Envestnet Retirement Client Service Manager will continue to be Martin Standrowicz. These representatives will be meeting with Town administrative staff soon in person or by Zoom.

Attachments:

1. Envestnet Pension Plan

Financial Impact:

None

6. **Alternative Action**

None

7. **Management Recommendations:**

Management recommends Approval of the Envestnet Retirement Solutions Pension Plan Agreement for the Town of Fort Myers Beach

8. **Recommended Approval:**

Walter Pierce, Finance Director
John R Herin Jr, Town Attorney
Amy Baker, Town Clerk
Roger Hernstadt, Town Manager

Created/Initiated - 1/26/2021
Approved - 1/26/2021
Approved - 1/27/2021
Final Approval - 1/27/2021



INVESTMENT ADVISORY AGREEMENT

This Advisory Agreement is made and entered into by and between Envestnet Retirement Solutions, LLC ("ERS") and the Plan Sponsor listed below.

This agreement is effective as of the _____ day of _____, 20_____.

RETIREMENT PLAN INFORMATION

Plan Name: The Town of Fort Myers Beach Pension Plan
Plan Sponsor: Town of Fort Myers Beach
Name: Walter Pierce Title: Director of Finance
Phone Number: 239-765-0202 ext. 1207 Email: walter.pierce@fmbgov.com
Address: 2525 Estero Boulevard
City: Fort Myers Beach State: FL Zip Code: 33931

FINANCIAL ADVISOR INFORMATION

Name: Kevin O'Fee Email: kevin.o'fee@edwardjones.com
Phone Number: 239-394-2412

Please select services (Required):

- ☐ 3(21) Fund Line-Up Services. Plan Sponsor hereby appoints ERS as an "investment adviser" (as defined in Section 3(21)(A)(ii) of ERISA) with respect to the performance of 3(21) Services as described in Exhibit A. The 3(21) Services are called the "Non-Discretionary Fiduciary Services" in this Agreement.
- ☒ 3(38) Fund Line-Up Services. Plan Sponsor hereby appoints ERS as an "investment manager" (as defined in Section 3(38) of ERISA) with respect to the performance of the Fund Line-Up Services as described in the 3(38) Services of Exhibit A. The 3(38) Services are called the "Discretionary Fiduciary Services" in this Agreement.

Plan Sponsor acknowledges receipt of, and agreement to, the contents of the documents (also available on the ERS website):

- ☐ Terms & Conditions
- ☐ Investment Policy Statement
- ☐ Revenue Policy Statement
- ☐ Investment Evaluation Criteria & Investment Categories
- ☐ Current form 408(b)(2)

ADDITIONAL TERMS, CONDITIONS AND ACKNOWLEDGMENTS

Plan Sponsor agrees to the following terms and conditions:

1. ERS Fiduciary Services

- (a) **For 3(21) Investment Advice Only:** ERS accepts the foregoing appointment and agrees that in performing the Non-Discretionary Fiduciary Services it will be acting as a "fiduciary" under ERISA and as an "investment adviser" (as defined in Section 3(21)(A)(ii) of ERISA) and shall act with the care, skill, prudence and diligence

ERS has no discretion to interpret the Plan documents, to determine eligibility or participation under the Plan to provide participant disclosures or communications, or to take any other action with respect to the management, administration or any other aspect of the Plan. At no time shall ERS have custody or physical control over the Plan's assets.

- (e) The Plan Sponsor is responsible for selecting the Plan provider. In performing Fiduciary Services, ERS will be limited to the investment options available through the Massachusetts Mutual Life Insurance Company ("MassMutual") platform.
- (f) Plan Sponsor is responsible for determining the proper share class to utilize for the Plan. Mutual Funds may offer more than one "class" of shares. Each class represents the same interest in the mutual fund's portfolio; however, the plan advisor may be compensated differently depending on what classes of shares are chosen. ERS does not make recommendations on the class of shares utilized and therefore, shall utilize the share classes provided by the Plan in its fund recommendations.
- (g) ERS does not provide legal or tax advice or vote shareholder proxies.
- (h) As part of the services, ERS may provide Plan Sponsor with online access to web-based reports, service requests and information. The access and use of the web-based reports, service requests and information is referred to as the "Online Materials and Online Services" and is a separate and distinct service from the services set forth herein and in Exhibit A attached hereto. Use of the Online Materials and Online Services is governed by the Terms and Conditions, as described on the ERS website.

3. Fees

- (a) The fees for the services of ERS under this Agreement are incorporated in the bundled fee payable to MassMutual as the Plan's recordkeeper, and neither the Plan nor the Plan Sponsor will have any liability for additional fees payable to ERS with respect to this Agreement. The amount of ERS' fees is determined by the total assets of all Plans serviced through MassMutual by ERS. The fees for 3(21) Non-Discretionary Services can range from .75 basis points to 1.25 basis points and the fees for 3(38) Discretionary Services can range from 1.0 basis points to 1.5 basis points. Plan Sponsor hereby authorizes recordkeeper to pay the applicable fees for fiduciary services to ERS. While certain assets (as described herein) may be excluded from the Fiduciary Services, the Program Fees shown above will be applied to the full value of all assets in the applicable Plan, as the Plan Sponsor shall receive ancillary administrative benefits such as reporting and analytics on all Plan assets. Plan Sponsor acknowledges these fees, and authorizes the payment of these fees to ERS as reasonable compensation for the services provided by ERS.
- (b) Unless agreed to by the parties, ERS will not receive any other compensation, direct or indirect, for its services under this Agreement or, if ERS or an affiliate receives any other compensation for such services, ERS or the affiliate will offset that compensation against stated fees.

4. Representations, Warranties and Covenants of Plan Sponsor

Plan Sponsor represents, warrants and covenants to ERS as follows:

- (a) It is the "named fiduciary" for the control or management of the assets of the Plan, and for the selection and monitoring of service providers for the Plan, in accordance with the requirements of ERISA.
- (b) The person signing the Agreement on behalf of the Plan Sponsor has all necessary authority to do so.
- (c) The execution of this Agreement and the performance thereof is within the scope of the investment authority authorized by the governing instrument and/or applicable laws. If Plan Sponsor is a corporation, the signatory on behalf of Plan Sponsor represents that the execution of the Agreement has been duly authorized by

- (a) ERS is an investment advisor registered under the Advisers Act of 1940. ERS has made all notice filings and paid all fees, if any, under applicable state securities laws as its current activities require it to make or pay. ERS will obtain or maintain all such registrations, file all such notices and pay all such fees, if any, for as long as required under applicable law. ERS will promptly notify Plan Sponsor if it does not continue to be registered as an investment advisor with the Securities and Exchange Commission (the "SEC").
- (b) ERS will comply with all of the federal and state securities laws and rules that are applicable to ERS by virtue of the activities contemplated by this Agreement.
- (c) ERS has the full power and authority to execute and perform this Agreement, and the execution and performance of this Agreement by ERS will not violate any law or agreement to which ERS is a party or by which it is otherwise bound. When executed by a duly authorized officer, this Agreement will be enforceable against ERS in accordance with its terms.
- (d) ERS has delivered to Plan Sponsor a copy of its current Form ADV Part 2A and 2B. As of the date hereof, all amendments to Form ADV which are legally required have been made and filed with the SEC. ERS will furnish Plan Sponsor promptly with any amendments to Part 2A of ERS's Form ADV.
- (e) In fulfilling its obligations hereunder, including, but not limited to, providing the Online Materials and Online Services, ERS will not infringe upon the intellectual property rights of any third party. Notwithstanding the above, ERS makes no representation and provides no warranty that any materials provided to ERS by a third-party provider for inclusion will not infringe upon the intellectual property rights of any third party.
- (f) It will disclose all information related to this Agreement and any compensation or fees received under the Agreement that is reasonably requested by Plan Sponsor in order to enable Plan Sponsor to comply with the reporting and disclosure requirements of Title I of ERISA and the regulations, forms and schedules issued thereunder.

6. Relationship Not Exclusive

Plan Sponsor understands that ERS and its affiliates may perform, among other things, retirement plan investment consulting, retirement plan fiduciary consulting, retirement plan design consulting, plan administration and record keeping services, and portfolio management services for other clients. Plan Sponsor recognizes that ERS or its affiliates may give advice and take action in the performance of its duties for such other clients (including those who may have similar retirement plan arrangements as Plan Sponsor) that may differ from advice given, or in the timing and nature of action taken, with respect to Plan Sponsor. Nothing in this Agreement shall be deemed to impose on ERS, or any of its affiliates, any obligation to advise Plan Sponsor with respect to the Plan, including the services under this Agreement, in the same manner as it may advise any of its other clients. Plan Sponsor also acknowledges that ERS and its affiliates may, by reason of its other such activities as described above, from time to time acquire confidential information. Plan Sponsor acknowledges and agrees that ERS is unable to divulge to the Plan Sponsor or any other party, or to act upon, any such confidential information with respect to its performance of this Agreement.

7. Disclosure of Information

- (a) Plan Sponsor and ERS each agree that with respect to any confidential information or documents that are furnished by the other party hereto, such information shall be kept in strict confidence and shall not be used, directly or indirectly, for any purpose other than that for which it was furnished. The foregoing notwithstanding, such confidential information shall not include any information that (i) was known to the recipient at the time it received the information; (ii) was or became publicly known through no wrongful act of the recipient; (iii) was received from a third party without similar restrictions and without breach of this agreement; (iv) was developed independently by the recipient; or (v) was approved for release by written authorization of a party authorized to disclose such information.

Indemnified Parties") harmless from any and all liabilities and claims, including but not limited to damages, court costs, reasonable legal fees and costs of investigation, (collectively, "Losses") which arise directly from ERS's breach of its fiduciary duty, intentional misconduct or gross negligence with respect to Fiduciary Services hereunder; provided, however, in no event shall ERS be liable for any indirect, special consequential or exemplary damages with respect to its services provided.

- (c) The Plan Sponsor will indemnify, defend and hold ERS and its affiliates, members, directors, officers, shareholders, employees, representatives, agents, attorneys, successors and assigns (collectively, the "ERS Indemnified Parties") harmless from and against any and all Losses arising from, out of or related to the Fiduciary Services or the performance of ministerial or administrative support services hereunder; provided, however, that the Plan Sponsor will not be liable to indemnify, defend and hold any ERS Indemnified Party harmless to the extent such Losses arise directly from ERS's (i) material breach of an ERS obligation under this Agreement that has a material adverse effect on the Plan, (ii) gross negligence or willful misconduct in connection with the performance of the Fiduciary Services or the performance of ministerial or administrative support services hereunder, or (iii) breach of its ERISA fiduciary duties in connection with the performance of the Fiduciary Services hereunder.
- (d) Plan Sponsor acknowledges that ERS makes no guarantee of profit nor offers any protection against loss of principal on any investment and that all purchases and sales of mutual funds or other securities shall be solely for the account and risk of the Plan.
- (e) If either party asserts a claim with respect to which it is entitled to indemnification under this Section, such indemnified party shall promptly notify the indemnifying party in writing of the claim giving rise to indemnification under this Agreement; (ii) grant the indemnifying party, at the indemnifying party's request, control of the defense and/or settlement of any claim, lawsuit or proceeding; and (iii) reasonably cooperate with the indemnifying party with respect to the indemnifying party's defense and/or settlement efforts. The parties agree that no claim asserted by a third party for which indemnification from an indemnifying party is sought shall be settled without first obtaining the written consent of the indemnifying party, which consent shall not be unreasonably withheld.

11. Notices

Except as provided for in Section 21, all notices and other communications hereunder shall be in writing, delivered to the addresses set forth below, and shall be deemed to have been duly given: (i) if sent via facsimile, then upon the date and time of actual receipt; (ii) if mailed first-class, registered or certified mail, return receipt requested, postage prepaid, then upon the date and time return receipt delivery is attempted by the U. S. Postal Service; (iii) if delivered by courier for hand-delivery, then upon the date and time of actual delivery; or (iv) if delivered by overnight U.S. or private mail service, then upon the date and time of actual delivery (with or without recipient signature) by the U.S. Postal Service or private delivery service company, as applicable.

TO PLAN SPONSOR (If different from above):

TO ERS:

Envestnet Retirement Solutions
 35 E. Wacker Drive, Suite 2400

15. Severability

If any provision of this Agreement is held to be invalid, void or unenforceable by reason of any law, rule, administrative order or judicial decision, that determination shall not affect the validity of the remaining provisions of this Agreement.

16. Assignment

This Agreement may not be assigned by either party without the consent of the other party, except that ERS may assign this Agreement by using a "negative consent" process whereby Plan Sponsor has no less than 30 days to respond to a notice of intended assignment. Plan Sponsor acknowledges that it has been notified that ERS is a majority owned subsidiary of Envestnet, Inc. and that ERS may undergo a corporate restructuring whereby ERS shall become a wholly owned subsidiary of Envestnet, Inc. While the servicing and pricing will not change as a result of this restructuring, it could technically be considered an assignment under the Investment Advisers Act of 1940 and therefore, Plan Sponsor hereby consents in advance to any such assignment to Envestnet, Inc.

17. Force Majeure

None of the parties shall be held responsible for any delay or failure to perform any part of this Agreement to the extent such delay or failure results from any cause beyond its control and without the fault or negligence of the party claiming excusable delay, such as acts of God, acts of war or terrorism, extraordinary acts of the United States of America or any state, territory or political subdivision thereof, fires, storms, floods, epidemics, riots, work stoppages, strikes (work stoppages and/or strikes of any of the parties to this agreement are specifically excluded from the language of this section), embargoes, computer viruses, unauthorized access, systems failure, failure or technical difficulties with software, hardware or other equipment, downtime for hardware and software maintenance, unusual volumes of traffic, failure of communications lines, telephone or other interconnect problems, theft, government restrictions, exchange or market rulings, extreme market volumes or volatility, suspension of trading (whether declared or undeclared), failure of utility services, adverse weather or events of nature.

18. Waiver

Either party's failure to enforce any provision or provisions of this Agreement shall not in any way be construed as a waiver of any such provision or provisions as to future violations thereof, nor prevent that party thereafter from enforcing each and every other provision of this Agreement. The rights granted the parties herein are cumulative and the waiver by a party of any single remedy shall not constitute a waiver of such party's right to assert all other legal remedies available to him or it under the circumstances.

19. Waiver of Limitation

Nothing in this Agreement shall in any way constitute a waiver or limitation of any rights which Plan Sponsor or Plan or any other party may have under ERISA or federal or state securities laws.

20. Form 408(b)(2)

Plan Sponsor has received all current disclosures required by the regulations promulgated under Section 408(b)(2) of ERISA for the services provided and has determined that such disclosures satisfy ERS's obligations under such regulations.

21. Electronic Receipt of Documents



IN WITNESS WHEREOF, the parties, by their duly authorized representatives, have executed this Agreement as of the day and year first above written:

Plan Sponsor*:

Signature:

Name:

Title:

A handwritten signature in blue ink, appearing to read "Walter Pierce", written over a horizontal line.

Walter Pierce

Director of Finance

Investnet Retirement Solutions, LLC:

Signature: _____

Name: _____

Title: _____

*The Plan Sponsor is signing this Agreement both as the employer that sponsors the Plan and as the fiduciary responsible for selecting the Plan's investments and engaging its service providers.

to the investment options available through the MassMutual platform and will have no responsibility for selecting the investment options included in the MassMutual platform. In performing the Discretionary Fiduciary Services, ERS will act as a fiduciary under ERISA and will serve as an "investment manager" as defined in Section 3(38) of ERISA. ERS does not provide portfolio asset allocation advice under this service.

ERS will retain final decision-making authority with respect to removing and/or replacing investments in the core lineup, and the RPF will not have responsibility to communicate instructions to any third-party, including the plan's recordkeeper, custodian and/or third-party administrator.

January 25, 2021

Dear Valued Vendor of The Town of Fort Myers Beach

If you are in receipt of this Letter, please except our sincere thanks for your valued service that you or your company provides to the Town of Fort Myers Beach. We very much appreciate the service and or products that you provide that benefit this community.

As the Town's new Director of Finance, I want to assure you of my serious commitment toward the processing of your invoices and payments in a timely manner. It has come to my attention quickly since my arrival, that there is significant room for improvement in the processing of your invoices, paperwork, and ultimate payment to you. The finance staff as well as Town department staff are well aware of my desire to reduce the timing of this process. However, I am going to be asking for your help as well.

I will personally be reviewing all payment requests where payment for whatever reason is not paid within a reasonable amount of time. Our purchasing documents will ultimately include language about the timeliness of sending invoices that match already existing purchase orders setup within our financial software system. I am asking all **Vendors to send all invoices to: Invoices@fmbgov.com** to ensure timely payment. I am also requesting that Vendors who submit more than five invoices a month toward an open Purchase order provide a monthly list to the Finance Department of all their outstanding invoices. We need for Vendors to process checks quickly so that we can provide proper documentation for reimbursement to agencies like the State and County that require proof of payment before processing reimbursements to the Town. ***I am finally asking Vendors who have concerns with the processing of payments of any kind to immediately contact me directly without delay.*** Accountability is at my level. Also, In July, I will be sending another Letter to all Vendors with deadlines with respect to submitting all invoices for payment that coincide with the close out process of our fiscal year. I realize that these deadlines will be new to you and cause some changes to your internal bookkeeping.

Finally, we understand how it affects you financially when payments for whatever reason are not processed in a timely manner by the Town. ***However, it also effects the Town.*** Accurate monthly financial information needs to be provided to Town officials, so that they have the best financial information to make sound financial decisions. Having payments to vendors processed more effectively and efficiently will greatly assist all concerned in providing more accurate financial information not only to Town Council but to the Community as well.

It is for the reasons outlined above, that I am asking for your help and commitment in making our payment process flow better. I am equally receptive to your ideas beyond what has already been addressed in this Letter. **Please feel free to contact me at 239-765-0202 ext. 1207.**

Sincerely,



Walter Pierce
Director of Finance

cc: Roger Hernstadt

1. Requested Motion:

Meeting Date: February 1, 2021

Approval of the acquisition of the Towns Deferred Compensation Plan from Mass Mutual to Envestnet Retirement Solutions (ERS)

Why the action is necessary:

To inform Council of this change and new agreement which is attached.

What the action accomplishes:

Approve Agreement

2. Agenda:

ADMINISTRATIVE AGENDA

3. Requirement/Purpose:

None

4. Submitter of Information:

Roger Hernstadt, Town
Manager

5. Background:

Massachusetts Mutual Life Insurance Company (MassMutual) was acquired by Great West Life & Annuity Insurance Company which operates as Envestnet Retirement Solutions, LLC (ERS). The Town's Financial Advisor will continue to be Kevin O'Fee and the Envestnet Retirement Client Service Manager will continue to be Martin Standrowicz. These representatives will be meeting with Town administrative staff soon in person or by zoom.

Attachments:

1. Envestnet Deferred Compensation Plan

Financial Impact:

None

6. Alternative Action

None

7. Management Recommendations:

Management Recommends Approval of Envestnet Retirement Solutions (ERS) Deferred Compensation Plan Agreement for the Town of Fort Myers Beach

8. Recommended Approval:

Walter Pierce, Finance Director
Walter Pierce, Finance Director
John R Herin Jr, Town Attorney
Amy Baker, Town Clerk
Roger Hernstadt, Town Manager

Created/Initiated - 1/26/2021
Approved - 1/26/2021
Approved - 1/26/2021
Approved - 1/27/2021
Final Approval - 1/27/2021



INVESTMENT ADVISORY AGREEMENT

This Advisory Agreement is made and entered into by and between Envestnet Retirement Solutions, LLC ("ERS") and the Plan Sponsor listed below.

This agreement is effective as of the _____ day of _____, 20____.

RETIREMENT PLAN INFORMATION

Plan Name: Town of Ft Myers Beach Deferred Compensation Plan
Plan Sponsor: Town of Fort Myers Beach
Name: Walter Pierce Title: Director of Finance
Phone Number: 239-765-0202 ext. 1207 Email: walter.pierce@fmbgov.com
Address: 2525 Estero Boulevard
City: Fort Myers Beach State: FL Zip Code: 33931

FINANCIAL ADVISOR INFORMATION

Name: Kevin O'Fee Email: kevin.o'fee@edwardjones.com
Phone Number: 239-394-2412

Please select services (Required):

- ☐ 3(21) Fund Line-Up Services. Plan Sponsor hereby appoints ERS as an "investment adviser" (as defined in Section 3(21)(A)(ii) of ERISA) with respect to the performance of 3(21) Services as described in Exhibit A. The 3(21) Services are called the "Non-Discretionary Fiduciary Services" in this Agreement.
- ☒ 3(38) Fund Line-Up Services. Plan Sponsor hereby appoints ERS as an "investment manager" (as defined in Section 3(38) of ERISA) with respect to the performance of the Fund Line-Up Services as described in the 3(38) Services of Exhibit A. The 3(38) Services are called the "Discretionary Fiduciary Services" in this Agreement.

Plan Sponsor acknowledges receipt of, and agreement to, the contents of the documents (also available on the ERS website):

- ☐ Terms & Conditions
- ☐ Investment Policy Statement
- ☐ Revenue Policy Statement
- ☐ Investment Evaluation Criteria & Investment Categories
- ☐ Current form 408(b)(2)

ADDITIONAL TERMS, CONDITIONS AND ACKNOWLEDGMENTS

Plan Sponsor agrees to the following terms and conditions:

1. ERS Fiduciary Services

- (a) **For 3(21) Investment Advice Only:** ERS accepts the foregoing appointment and agrees that in performing the Non-Discretionary Fiduciary Services it will be acting as a "fiduciary" under ERISA and as an "investment adviser" (as defined in Section 3(21)(A)(ii) of ERISA) and shall act with the care, skill, prudence and diligence

under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims.

- (b) **For 3(38) Investment Management Only:** ERS accepts the foregoing appointment and agrees that in performing the Discretionary Fiduciary Services it will be acting as a “fiduciary” under ERISA and as an “investment manager” (as defined in Section 3(38) of ERISA) and shall act with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims.
- (c) Plan Sponsor acknowledges that ERS has no responsibility to provide any services related to the following types of assets: employer securities; real estate (except for real estate funds and publicly traded REITs); self-directed brokerage accounts; participant loans; non-publicly traded partnership interests; other non-publicly traded securities (other than collective trusts, unitized models and similar vehicles); other hard-to-value securities or assets; or other non-standard investment options.
- (d) **If the Plan Sponsor selects the 3(21) Fund Line-Up Services and appoints ERS as an “investment adviser” (as defined in Section 3(21)(A)(ii) of ERISA):** The Plan Sponsor shall be responsible for directing the Plan’s recordkeeper, custodian and/or third party administrator to act in accordance with this Agreement, including directing the Plan provider to implement trades as recommended by ERS and authorizing the Plan recordkeeper to debit and remit the payment of fees to ERS and authorizing ERS to obtain Plan data from the applicable Plan recordkeeper.
- (e) **If the Plan Sponsor selects the 3(38) Fund Line-Up Services and appoints ERS as an “investment manager” (as defined in Section 3(38) of ERISA):** The Plan Sponsor agrees that its acceptance of the terms of this Agreement constitutes the Plan Sponsor’s authorization of ERS to determine, on a discretionary basis, the investment options under the criteria set for in the investment policy statement (the “IPS”) as described in Exhibit A, and to instruct the Plan’s recordkeeper to add, remove and/or replace the Plan’s investment options as determined by ERS within the criteria set for in the IPS.

2. Limitations on Function

- (a) **For 3(21) Investment Advice Only:** Where the Plan Sponsor selects the 3(21) Fund Line-Up Services, ERS shall not trade or otherwise exercise investment discretion over Plan assets. Plan Sponsor will retain final decision-making authority with respect to removing and/or replacing Plan investments, other than the investment recommendation provided to Plan Sponsor, ERS will not have any further responsibility to communicate instructions to any third-party, including the Plan’s recordkeeper, custodian, and/or third-party administrator. ERS will not be liable if Plan Sponsor does not follow the recommendations made by ERS.
- (b) ERS assumes only the specific and limited fiduciary responsibility and liability attendant to the Non-Discretionary Fiduciary Services or the Discretionary Fiduciary Services (together the “Fiduciary Services”) as set forth in this Agreement and will not be considered a fiduciary of the Plan for any other purpose. ERS shall discharge its duties and obligations hereunder in accordance with the standard of care applicable under ERISA, regardless of whether the Plan is subject to Title I of ERISA. In addition, if the Plan is not subject to Title I of ERISA, the parties agree that, for all purposes under this Agreement, the applicable ERISA standard of care (including relevant governmental regulations and judicial precedent) shall be the sole governing standard of care applicable to ERS and the Fiduciary Services regardless of any state law that may apply to the Plan or the Plan Sponsor.
- (c) In performing ministerial or administrative support services from time to time, on an ad hoc basis, in furtherance of and incidental to rendering the Fiduciary Services, ERS is not acting as a fiduciary of the Plan as defined in the ERISA.
- (d) In performing both ministerial or administrative support services and the Fiduciary Services, ERS does not act as, nor has ERS agreed to assume the duties of, a trustee or the “Plan Administrator,” as defined in ERISA, and

ERS has no discretion to interpret the Plan documents, to determine eligibility or participation under the Plan to provide participant disclosures or communications, or to take any other action with respect to the management, administration or any other aspect of the Plan. At no time shall ERS have custody or physical control over the Plan's assets.

- (e) The Plan Sponsor is responsible for selecting the Plan provider. In performing Fiduciary Services, ERS will be limited to the investment options available through the Massachusetts Mutual Life Insurance Company ("MassMutual") platform.
- (f) Plan Sponsor is responsible for determining the proper share class to utilize for the Plan. Mutual Funds may offer more than one "class" of shares. Each class represents the same interest in the mutual fund's portfolio; however, the plan advisor may be compensated differently depending on what classes of shares are chosen. ERS does not make recommendations on the class of shares utilized and therefore, shall utilize the share classes provided by the Plan in its fund recommendations.
- (g) ERS does not provide legal or tax advice or vote shareholder proxies.
- (h) As part of the services, ERS may provide Plan Sponsor with online access to web-based reports, service requests and information. The access and use of the web-based reports, service requests and information is referred to as the "Online Materials and Online Services" and is a separate and distinct service from the services set forth herein and in Exhibit A attached hereto. Use of the Online Materials and Online Services is governed by the Terms and Conditions, as described on the ERS website.

3. Fees

- (a) The fees for the services of ERS under this Agreement are incorporated in the bundled fee payable to MassMutual as the Plan's recordkeeper, and neither the Plan nor the Plan Sponsor will have any liability for additional fees payable to ERS with respect to this Agreement. The amount of ERS' fees is determined by the total assets of all Plans serviced through MassMutual by ERS. The fees for 3(21) Non-Discretionary Services can range from .75 basis points to 1.25 basis points and the fees for 3(38) Discretionary Services can range from 1.0 basis points to 1.5 basis points. Plan Sponsor hereby authorizes recordkeeper to pay the applicable fees for fiduciary services to ERS. While certain assets (as described herein) may be excluded from the Fiduciary Services, the Program Fees shown above will be applied to the full value of all assets in the applicable Plan, as the Plan Sponsor shall receive ancillary administrative benefits such as reporting and analytics on all Plan assets. Plan Sponsor acknowledges these fees, and authorizes the payment of these fees to ERS as reasonable compensation for the services provided by ERS.
- (b) Unless agreed to by the parties, ERS will not receive any other compensation, direct or indirect, for its services under this Agreement or, if ERS or an affiliate receives any other compensation for such services, ERS or the affiliate will offset that compensation against stated fees.

4. Representations, Warranties and Covenants of Plan Sponsor

Plan Sponsor represents, warrants and covenants to ERS as follows:

- (a) It is the "named fiduciary" for the control or management of the assets of the Plan, and for the selection and monitoring of service providers for the Plan, in accordance with the requirements of ERISA.
- (b) The person signing the Agreement on behalf of the Plan Sponsor has all necessary authority to do so.
- (c) The execution of this Agreement and the performance thereof is within the scope of the investment authority authorized by the governing instrument and/or applicable laws. If Plan Sponsor is a corporation, the signatory on behalf of Plan Sponsor represents that the execution of the Agreement has been duly authorized by

appropriate corporate action and agrees to provide such supporting documentation as may be reasonably required by ERS.

- (d) Upon request, Plan Sponsor shall deliver to ERS true and accurate copies of the governing plan documents including, without limitation, any and all amendments thereto, and shall timely provide ERS with copies of any subsequent amendments or restatements of those documents.
- (e) Plan Sponsor will comply with all of the federal and state securities laws and rules that are applicable to Plan Sponsor by virtue of the activities contemplated by this Agreement.
- (f) Fiduciary Authority. The Plan Sponsor has the authority to designate investment alternatives under the Plan and the related trust, and to enter into an Agreement with third parties to assist in these and related duties.
- (g) Plan Sponsor has received and reviewed a copy of ERS's Form ADV Part 2A and 2B and the ERS privacy policy, which contains an explanation of ERS's policies and procedures that address actual or potential conflicts of interest or that are designed to prevent either the compensation or relationships from adversely affecting the provision of services to the Plan and how such policies or procedures address such conflicts of interest or prevent an adverse effect on the provision of services.
- (h) The Plan and related trust permit payment of fees out of Plan assets. Plan Sponsor has evaluated the fees to be paid to ERS (set forth in Section 3) and has determined that the Fees charged by ERS are reasonable compensation for the services to be performed by ERS and constitute permissible expenses of the Plan.
- (i) Plan Sponsor acknowledges that ERS is entitled to rely upon all information provided to ERS, whether financial or otherwise, by Plan Sponsor or other parties. Plan Sponsor represents that all such financial and other information provided to ERS by Client or its designees is true, correct and complete in all material respects. Plan Sponsor agrees to promptly notify ERS in writing of any material change in the financial and other information provided to ERS and to promptly provide any such additional information as may be reasonably requested by ERS.
- (j) Plan Sponsor acknowledges that use of the Online Materials and Online Services is governed by the Terms and Conditions described on the ERS website. Plan Sponsor may direct ERS to administer instructions through the promotion of various "service requests" through the Online Materials and Online Services. By administering directions to ERS, Plan Sponsor is representing that Plan Sponsor has the authority to direct ERS to perform the requested services. Upon reasonable notice, Plan Sponsor agrees to provide such documentation as reasonably necessary to demonstrate that Plan Sponsor has the authority described within this section.
- (k) If Discretionary Fiduciary Services are selected above, Plan Sponsor will: (i) maintain, at its own expense, a fidelity bond as necessary to comply with Section 412 of ERISA; (ii) name ERS as an insured on the fidelity bond; and (iii) provide ERS with evidence of such insurance on written request. Plan Sponsor will promptly notify ERS upon receipt of any notice of material change, cancellation, or non-renewal of the party's insurance coverage, or a reduction of such coverage.
- (l) If Discretionary Fiduciary Services are selected above, Plan Sponsor has the authority to, and by this Agreement does, authorize and direct ERS to determine, on a discretionary basis, the Plan's investment options based on the criteria set forth in the IPS as described in Exhibit A, and Plan Sponsor further authorizes and directs ERS to instruct MassMutual, as the Plan's recordkeeper, to add, remove and/or replace the Plan's investment options as determined by ERS within the criteria set forth in the IPS.

5. Representations, Warranties and Covenants of ERS

ERS represents, warrants and covenants to Plan Sponsor as follows:

- (a) ERS is an investment advisor registered under the Advisers Act of 1940. ERS has made all notice filings and paid all fees, if any, under applicable state securities laws as its current activities require it to make or pay. ERS will obtain or maintain all such registrations, file all such notices and pay all such fees, if any, for as long as required under applicable law. ERS will promptly notify Plan Sponsor if it does not continue to be registered as an investment advisor with the Securities and Exchange Commission (the "SEC").
- (b) ERS will comply with all of the federal and state securities laws and rules that are applicable to ERS by virtue of the activities contemplated by this Agreement.
- (c) ERS has the full power and authority to execute and perform this Agreement, and the execution and performance of this Agreement by ERS will not violate any law or agreement to which ERS is a party or by which it is otherwise bound. When executed by a duly authorized officer, this Agreement will be enforceable against ERS in accordance with its terms.
- (d) ERS has delivered to Plan Sponsor a copy of its current Form ADV Part 2A and 2B. As of the date hereof, all amendments to Form ADV which are legally required have been made and filed with the SEC. ERS will furnish Plan Sponsor promptly with any amendments to Part 2A of ERS's Form ADV.
- (e) In fulfilling its obligations hereunder, including, but not limited to, providing the Online Materials and Online Services, ERS will not infringe upon the intellectual property rights of any third party. Notwithstanding the above, ERS makes no representation and provides no warranty that any materials provided to ERS by a third-party provider for inclusion will not infringe upon the intellectual property rights of any third party.
- (f) It will disclose all information related to this Agreement and any compensation or fees received under the Agreement that is reasonably requested by Plan Sponsor in order to enable Plan Sponsor to comply with the reporting and disclosure requirements of Title I of ERISA and the regulations, forms and schedules issued thereunder.

6. Relationship Not Exclusive

Plan Sponsor understands that ERS and its affiliates may perform, among other things, retirement plan investment consulting, retirement plan fiduciary consulting, retirement plan design consulting, plan administration and record keeping services, and portfolio management services for other clients. Plan Sponsor recognizes that ERS or its affiliates may give advice and take action in the performance of its duties for such other clients (including those who may have similar retirement plan arrangements as Plan Sponsor) that may differ from advice given, or in the timing and nature of action taken, with respect to Plan Sponsor. Nothing in this Agreement shall be deemed to impose on ERS, or any of its affiliates, any obligation to advise Plan Sponsor with respect to the Plan, including the services under this Agreement, in the same manner as it may advise any of its other clients. Plan Sponsor also acknowledges that ERS and its affiliates may, by reason of its other such activities as described above, from time to time acquire confidential information. Plan Sponsor acknowledges and agrees that ERS is unable to divulge to the Plan Sponsor or any other party, or to act upon, any such confidential information with respect to its performance of this Agreement.

7. Disclosure of Information

- (a) Plan Sponsor and ERS each agree that with respect to any confidential information or documents that are furnished by the other party hereto, such information shall be kept in strict confidence and shall not be used, directly or indirectly, for any purpose other than that for which it was furnished. The foregoing notwithstanding, such confidential information shall not include any information that (i) was known to the recipient at the time it received the information; (ii) was or became publicly known through no wrongful act of the recipient; (iii) was received from a third party without similar restrictions and without breach of this agreement; (iv) was developed independently by the recipient; or (v) was approved for release by written authorization of a party authorized to disclose such information.

- (b) The parties shall establish and maintain safeguards against the unauthorized access, destruction, loss, or alteration of such confidential information in their control which are no less rigorous than those maintained by a party for its own information of a similar nature.
- (c) Neither ERS nor Plan Sponsor will utilize the names or marks in any way without the other's written consent, such as, but not limited to, use of a party's logo or use of a party's name in press releases. Under no circumstances shall either party employ the other's name in such a manner as to create the impression that the relationship created or intended between them is anything other than what is described in this Agreement.
- (d) The foregoing notwithstanding, either party may use or disclose the other party's confidential information to the extent such use or disclosure is required by applicable law, regulation, or court order; provided, however, that, prior to any such disclosure, the disclosing party shall notify the other party and provide the other party an opportunity, if possible, to prevent disclosure, which may include seeking a protective order. The disclosing party will cooperate in any such proceeding.
- (e) Subject to ERS' compliance with the other applicable provisions of this Agreement, ERS may compile, distribute and otherwise use Aggregated Data (defined below) derived from the ERS Platform and ERS Services. "Aggregated Data" shall mean: (i) data aggregated with similar data of ERS' other customers that is compiled as a result of use of the ERS Platform which is of a general, non-identifiable nature and in no cases containing or capable of identifying personally identifiable information or information which may identify advisor, an advisor representative, a client of advisor; and (ii) data regarding the broker-dealer used for the clearing of, and the aggregate totals in, any particular mutual funds/ETFs.

8. Regulation S-P

The parties acknowledge that financial institutions are subject to certain laws and regulations regarding the privacy and protection of consumer information, and that any receipt or use of personal information by the parties is also subject to compliance with such laws and regulations. In accordance, the parties agree that any Nonpublic Personal Information, as defined in Section 248.3(t) of Regulation S-P, received from either party shall be subject to the limitations on redisclosure and reuse set forth in Section 248.11 of such Regulation. In addition, the parties acknowledge that they have adopted policies and procedures that address administrative, technical and physical safeguards that are reasonably designed to insure the security and confidentiality of the information, protecting against any anticipated threats or unauthorized access to or use of such information.

9. Termination

This Agreement shall continue in force until terminated by either party upon no less than 30 days prior written notice. The provisions of Sections 7, 8, 9, 10, 12 and 13 shall survive the termination of this Agreement. The termination of this Agreement shall have no effect any recordkeeping or administrative services agreement between the Plan Sponsor and the recordkeeper. However, if such recordkeeping or administrative services agreement between the Plan Sponsor and the recordkeeper terminates, then this Investment Advisory Agreement shall also terminate. This Agreement shall also automatically terminate in the event that the separate Master Services Agreement between ERS and the recordkeeper terminates.

10. Indemnifications

- (a) Except as provided by ERISA and this Agreement, ERS will not be liable for the acts or omissions of any other person in respect of the Plan and its Participants, including, but not limited to, any acts or omissions of the Plan Sponsor, MassMutual or other service provider.
- (b) ERS agrees to indemnify and hold Plan Sponsor and its affiliates, members, directors, officers, shareholders, employees, representatives, agents, attorneys, successors and assigns (collectively, the "Plan Sponsor

Indemnified Parties") harmless from any and all liabilities and claims, including but not limited to damages, court costs, reasonable legal fees and costs of investigation, (collectively, "Losses") which arise directly from ERS's breach of its fiduciary duty, intentional misconduct or gross negligence with respect to Fiduciary Services hereunder; provided, however, in no event shall ERS be liable for any indirect, special consequential or exemplary damages with respect to its services provided.

- (c) The Plan Sponsor will indemnify, defend and hold ERS and its affiliates, members, directors, officers, shareholders, employees, representatives, agents, attorneys, successors and assigns (collectively, the "ERS Indemnified Parties") harmless from and against any and all Losses arising from, out of or related to the Fiduciary Services or the performance of ministerial or administrative support services hereunder; provided, however, that the Plan Sponsor will not be liable to indemnify, defend and hold any ERS Indemnified Party harmless to the extent such Losses arise directly from ERS's (i) material breach of an ERS obligation under this Agreement that has a material adverse effect on the Plan, (ii) gross negligence or willful misconduct in connection with the performance of the Fiduciary Services or the performance of ministerial or administrative support services hereunder, or (iii) breach of its ERISA fiduciary duties in connection with the performance of the Fiduciary Services hereunder.
- (d) Plan Sponsor acknowledges that ERS makes no guarantee of profit nor offers any protection against loss of principal on any investment and that all purchases and sales of mutual funds or other securities shall be solely for the account and risk of the Plan.
- (e) If either party asserts a claim with respect to which it is entitled to indemnification under this Section, such indemnified party shall promptly notify the indemnifying party in writing of the claim giving rise to indemnification under this Agreement; (ii) grant the indemnifying party, at the indemnifying party's request, control of the defense and/or settlement of any claim, lawsuit or proceeding; and (iii) reasonably cooperate with the indemnifying party with respect to the indemnifying party's defense and/or settlement efforts. The parties agree that no claim asserted by a third party for which indemnification from an indemnifying party is sought shall be settled without first obtaining the written consent of the indemnifying party, which consent shall not be unreasonably withheld.

11. Notices

Except as provided for in Section 21, all notices and other communications hereunder shall be in writing, delivered to the addresses set forth below, and shall be deemed to have been duly given: (i) if sent via facsimile, then upon the date and time of actual receipt; (ii) if mailed first-class, registered or certified mail, return receipt requested, postage prepaid, then upon the date and time return receipt delivery is attempted by the U. S. Postal Service; (iii) if delivered by courier for hand-delivery, then upon the date and time of actual delivery; or (iv) if delivered by overnight U.S. or private mail service, then upon the date and time of actual delivery (with or without recipient signature) by the U.S. Postal Service or private delivery service company, as applicable.

TO PLAN SPONSOR (If different from above):

TO ERS:

Investnet Retirement Solutions
 35 E. Wacker Drive, Suite 2400

Chicago, Illinois 60601
Attention: General Counsel
Facsimile Number: (312) 827-2801

Either party may, by notice to the other, change its address for receiving such notices by giving notice to the other party in the manner provided by this Section.

12. Governing Law

This Agreement and the interpretation and application of the provisions hereof shall be governed and construed in accordance with the laws of Illinois, without giving effect to its choice of law provisions.

13. Arbitration Agreement

To the extent permitted by law, all controversies between Plan Sponsor and ERS, which may arise out of or relate to any of the services provided by ERS under this Agreement, or the construction, performance or breach of this or any other agreement between ERS and Plan Sponsor, whether entered into prior to, on or subsequent to the date hereof, shall be settled by binding arbitration in Chicago, Illinois, under the Commercial Arbitration Rules of the American Arbitration Association. Judgment upon any award rendered by the arbitrator(s) shall be final, and may be entered into any court having jurisdiction.

14. Entire Agreement; Amendment

- (a) This Agreement, including the attached Exhibits, constitutes the entire understanding between the parties relating to the subject matter contained herein and merges and supersedes all prior discussions and writings between them.
- (b) Amendment Process. The Agreement may also be modified, including without limitation the services to be provided by ERS or the fees charged by ERS, in the manner set forth herein and consistent with the procedure described in Department of Labor Advisory Opinion 97-16A.
 - (i) ERS may propose to increase or otherwise change the fees charged, to change the services provided or otherwise modify this Agreement by giving Plan Sponsor reasonable advance notice of the proposed change. The notice shall be given in the manner described in this Agreement. The notice will (1) explain the proposed modification of the fees, services or other provisions; (2) fully disclose any resulting changes in the fees to be charged as a result of any proposed change in the services or other changes to this Agreement; (3) identify the effective date of the change; (4) explain Plan Sponsor's right to reject the change or terminate this Agreement; and (5) state that pursuant to the provisions of this Agreement, if Plan Sponsor fails to object to the proposed change(s) before the date on which the change(s) become effective Plan Sponsor will be deemed to have consented to the proposed change(s).
 - (ii) If Plan Sponsor objects to any change to this Agreement proposed by ERS, ERS shall not be authorized to make the proposed change. In that event Plan Sponsor shall have an additional sixty (60) days from the proposed effective date (or such additional time beyond 60 days as may be agreed by ERS) to locate a service provider in place and instead of ERS. If at the end of such additional sixty (60) day period (or such additional time period as agreed by ERS), the parties have not reached Agreement on the proposed changes, this Agreement shall automatically terminate.
- (c) Except for the process specifically described above, neither party shall be bound by any conditions, warrant, or representation other than as expressly stated in this Agreement or subsequently set forth in a signed amendment by both parties.

15. Severability

If any provision of this Agreement is held to be invalid, void or unenforceable by reason of any law, rule, administrative order or judicial decision, that determination shall not affect the validity of the remaining provisions of this Agreement.

16. Assignment

This Agreement may not be assigned by either party without the consent of the other party, except that ERS may assign this Agreement by using a "negative consent" process whereby Plan Sponsor has no less than 30 days to respond to a notice of intended assignment. Plan Sponsor acknowledges that it has been notified that ERS is a majority owned subsidiary of Envestnet, Inc. and that ERS may undergo a corporate restructuring whereby ERS shall become a wholly owned subsidiary of Envestnet, Inc. While the servicing and pricing will not change as a result of this restructuring, it could technically be considered an assignment under the Investment Advisers Act of 1940 and therefore, Plan Sponsor hereby consents in advance to any such assignment to Envestnet, Inc.

17. Force Majeure

None of the parties shall be held responsible for any delay or failure to perform any part of this Agreement to the extent such delay or failure results from any cause beyond its control and without the fault or negligence of the party claiming excusable delay, such as acts of God, acts of war or terrorism, extraordinary acts of the United States of America or any state, territory or political subdivision thereof, fires, storms, floods, epidemics, riots, work stoppages, strikes (work stoppages and/or strikes of any of the parties to this agreement are specifically excluded from the language of this section), embargoes, computer viruses, unauthorized access, systems failure, failure or technical difficulties with software, hardware or other equipment, downtime for hardware and software maintenance, unusual volumes of traffic, failure of communications lines, telephone or other interconnect problems, theft, government restrictions, exchange or market rulings, extreme market volumes or volatility, suspension of trading (whether declared or undeclared), failure of utility services, adverse weather or events of nature.

18. Waiver

Either party's failure to enforce any provision or provisions of this Agreement shall not in any way be construed as a waiver of any such provision or provisions as to future violations thereof, nor prevent that party thereafter from enforcing each and every other provision of this Agreement. The rights granted the parties herein are cumulative and the waiver by a party of any single remedy shall not constitute a waiver of such party's right to assert all other legal remedies available to him or it under the circumstances.

19. Waiver of Limitation

Nothing in this Agreement shall in any way constitute a waiver or limitation of any rights which Plan Sponsor or Plan or any other party may have under ERISA or federal or state securities laws.

20. Form 408(b)(2)

Plan Sponsor has received all current disclosures required by the regulations promulgated under Section 408(b)(2) of ERISA for the services provided and has determined that such disclosures satisfy ERS's obligations under such regulations.

21. Electronic Receipt of Documents

By signing below, Plan Sponsor hereby agrees that ERS may deliver the Fiduciary Services, provide notices, communication, reports and any ERS disclosure documents to Plan Sponsor and appointed Plan advisor through the e-mail addresses provided below. Plan Sponsor is responsible for updating ERS with any Plan advisor changes or updates. Plan Sponsor is able to receive electronic communications and agrees that such electronic communications (unless e-mail is returned as undeliverable) shall constitute delivery. Plan Sponsor agrees to promptly notify ERS of any need to update the e-mail provided below and until Plan Sponsor has updated its e-mail address, ERS may utilize and rely on the contact information provided below for the delivery of such communications reports and other documents.



IN WITNESS WHEREOF, the parties, by their duly authorized representatives, have executed this Agreement as of the day and year first above written:

Plan Sponsor*:

Signature:

Name:

Title:

A handwritten signature in blue ink, appearing to read "Walter Pierce", written over a horizontal line.

Walter Pierce

Director of Finance

Envestnet Retirement Solutions, LLC:

Signature: _____

Name: _____

Title: _____

*The Plan Sponsor is signing this Agreement both as the employer that sponsors the Plan and as the fiduciary responsible for selecting the Plan's investments and engaging its service providers.

EXHIBIT A
3(21) SERVICES DESCRIPTION

ERS is being retained to perform the following services:

ERS will provide the responsible plan fiduciary ("RPF") (or an authorized delegate thereof) an investment policy statement (the "IPS") template, available on the ERS website. RPF acknowledges that it has adopted the IPS.

Fund Line-Up Services

The IPS will set forth the methodology used to determine the Approved Fund or Approved List of Funds to be offered to Plan participants with a goal of providing a menu of investments that will allow for the creation of well-diversified portfolios designed to provide for long-term appreciation and capital preservation through a mix of equity and fixed income exposures. If ERS's due diligence methodology changes, such changes shall be stated in the Quarterly Monitoring Report and shall make a copy of the most recent IPS methodology available on the ERS website and upon request from Plan Sponsor.

ERS will perform the following services, which constitute the Non-Discretionary Fiduciary Services: ERS will cross-reference Plan investment option information with ERS's methodology, but no less frequent than quarterly, other than retirement income products, in order to determine the appropriateness of Plan investment options. ERS will provide a quarterly electronic communication to Plan Sponsor that confirms that the Plan investment option review resulted in either (1) a recommendation to maintain the existing Plan investment options, or (2) a SCORE report that contains a recommendation to replace one or more of the Plan investment options with an alternative investment (the "Select List").

Other than the investment recommendation provided to Plan Sponsor, ERS will not have any further responsibility to communicate instructions to any third-party, including the Plan's recordkeeper, custodian, and/or third-party administrator. ERS will not be liable if Plan Sponsor does not follow the recommendations made by ERS. ERS does not provide portfolio asset allocation advice under this service.

For the avoidance of doubt, in performing the Non-Discretionary Fiduciary Services, ERS will be limited to the investment options available through the MassMutual platform chosen.

3(38) SERVICES DESCRIPTION

ERS is being retained to perform the following services:

ERS will provide the RPF (or an authorized delegate thereof) an IPS template according to which ERS shall provide advisory services, available on the ERS website. RPF acknowledges that it has adopted the IPS.

Fund Line-Up Services

The IPS will set forth the methodology used to determine the Approved Fund or Approved List of Funds to be offered to Plan participants with a goal of providing a menu of investments that will allow for the creation of well-diversified portfolios designed to provide for long-term appreciation and capital preservation through a mix of equity and fixed income exposures. If ERS's due diligence methodology changes, such changes shall be stated in the Quarterly Monitoring Report and shall make a copy of the most recent IPS methodology available upon request from Plan Sponsor.

ERS will perform the following services, which constitute the Discretionary Fiduciary Services: ERS will review the investment options available through the plan and will notify MassMutual as to ERS's instructions to add, remove and/or replace specific "core" investment options to be offered to plan participants that meet the criteria set forth in the IPS. ERS will monitor the core investment options and, on a regular basis, provide instructions to MassMutual to remove and/or replace investments that no longer meet the IPS criteria. For the avoidance of doubt, in performing the Discretionary Fiduciary Services, ERS will be limited

to the investment options available through the MassMutual platform and will have no responsibility for selecting the investment options included in the MassMutual platform. In performing the Discretionary Fiduciary Services, ERS will act as a fiduciary under ERISA and will serve as an "investment manager" as defined in Section 3(38) of ERISA. ERS does not provide portfolio asset allocation advice under this service.

ERS will retain final decision-making authority with respect to removing and/or replacing investments in the core lineup, and the RPF will not have responsibility to communicate instructions to any third-party, including the plan's recordkeeper, custodian and/or third-party administrator.

1. **Requested Motion:**

Meeting Date: February 1, 2021

Discussion on the next step in the implementation of the Nuisance Abatement Board

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

4. **Submitter of Information:**

5. **Background:**

The Clerk's office has received eight applications from individuals interested in being appointed to the Nuisance Abatement Board.

Anita Cereceda, Jan Fleming, Tre Gillette, Charles Meador, Jane Plummer, Monica Schmucker, Dawn Thomas and Karen Woodson.

The Town Attorney has provided some attached guidance on this matter.

Attachments:

1. RE_ NAB Applicants
2. Advisory Legal Opinion - Dual Office Holding zoning bd._bd-C3 (002)

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

Amy Baker, Town Clerk
Amy Baker, Town Clerk
John R Herin Jr, Town Attorney
Amy Baker, Town Clerk
Roger Hernstadt, Town Manager

Created/Initiated - 1/26/2021
Approved - 1/27/2021
Approved - 1/27/2021
Approved - 1/27/2021
Final Approval - 1/27/2021

From: [Herin, John R.](#)
To: [Amy Baker](#)
Cc: [Jason Freeman](#); [Roger Hernstadt](#)
Subject: RE: NAB Applicants
Date: Thursday, January 21, 2021 5:17:22 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)
[image007.png](#)
[Advisory Legal Opinion - Dual Office Holding, zoning bd. bd-C3.pdf](#)

Mayor & Council – please be aware that the Florida Constitution prohibits “dual office holding”. The courts and the Attorney General of Florida have interpreted this prohibition to mean a person cannot simultaneously hold more than one "office" under the government of the state, counties and **municipalities**. Whether or not a particular position constitutes an “office” has been interpreted to depend upon the actual powers granted to the position at issue. In other words, if the position at issue vests an individual with official powers in their own right, as opposed to merely exercising certain powers as agents of governmental officers, the position is an “office.”

In that regard the Attorney General has issued a number of opinions regarding when a position may be considered an "office." Based upon its review of the particular powers of a position and the language of the statute, charter or ordinance creating the position, the following opinions discuss positions which the AG considered to be "offices" for purposes of dual office holding: Attorney General Opinions 69-2 (chief of police); 70-13 (city attorney); 72-101 (Florida Barbers' Sanitary Commission member); 76-241 (Florida Human Relations Commission); 80-97 (city manager, chief of a municipal fire department, architectural review board member and city inspection superintendent); 81-61, 97-37, 05-29 and 09-48 (code enforcement board member); 84-25, 85-21, and 06-13 (board of adjustment board member); 86-11 (city administrator); 86-105 (member of a municipal building board of appeals); 91-79 (State Board of Community Colleges); 90-45, 02-49, 03-27, 04-05 and 05-15 (pension board); 93-27 (commissioner of the Southeast Interstate Low-Level Radioactive Waste Management Compact); 96-95 (governing board of Alternative Education Institute, a nonprofit corporation within the Department of Education); 96-48 (city clerk in charge of elections); 98-36 (city water resources advisory board); 97-04, and 98-36 (community redevelopment agency board); 99-34 (state fair authority); 00-72 (community alliance members); 04-07 (building official); 05-29 (value adjustment board special magistrate), 06-13 (**city planning board**); 08-45 (Florida New Motor Vehicle Arbitration Board; Workforce Florida); and 09-48 (housing finance board; city downtown development board).

Many, if not most, of the above listed positions derive their powers through state and then local government legislative enactments. The same is true with regard to the Town’s Nuisance Abatement Board; the individual members will be vested with specific powers granted through state and then Town adopted legislation. Therefore, one can safely conclude that members of the Town’s Nuisance Abatement Board will hold an “office” as that term is used in the Florida Constitution. Accordingly, members of the Nuisance Abatement Board cannot be members of another Town board that exercises substantive powers (not merely advisory), and therefore, also qualifies as an

“office.” An example of another board that constitutes an “office” is a city planning board discussed in AGO 06-13 attached hereto.

Please feel free to contact me if you have any questions.

John R. Herin, Jr.

Partner

Florida Bar Board Certified in City, County
and Local Government Law

Fox Rothschild LLP

2 South Biscayne Boulevard
One Biscayne Tower, Suite 2750
Miami, FL 33131

(305) 442-6544 – direct

(305) 409-0107 – mobile

(305) 442-6541 – fax

JHerin@foxrothschild.com

www.foxrothschild.com

From: Amy Baker <Amy@fmbgov.com>

Sent: Thursday, January 21, 2021 2:39 PM

To: Council <Council@fmbgov.com>

Cc: Herin, John R. <JHerin@foxrothschild.com>; Jason Freeman <JasonF@fmbgov.com>

Subject: [EXT] NAB Applicants

Council,

The applications of the 8 Nuisance Abatement applicants we have received to date are attached.



Amy Baker

Town Clerk

Town of Fort Myers Beach

2525 Estero Boulevard

Fort Myers Beach, FL. 33931

Phone: (239) 765-0202 ext.1402



Think Green. Please print this e-mail only if necessary.

Please Note: Florida has very broad public records laws. Most written communications to and from Fort Myers Beach officials regarding Town business are public records available to the public and media upon request. Your email communications 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.

This email contains information that may be confidential and/or privileged. If you are not the intended recipient, or the employee or agent authorized to receive for the intended recipient, you may not copy, disclose or use any contents in this email. If you have received this email in error, please immediately notify the sender at Fox Rothschild LLP by replying to this email and delete the original and reply emails. Thank you.

□

□

□ 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.

Florida Attorney General Advisory Legal Opinion

Number: AGO 2006-13

Date: April 19, 2006

Subject: Dual Office Holding, zoning bd./bd. of adjustment

Ms. Gail L. Gowdy
215 Ash Avenue
Melbourne Beach, Florida 32951

RE: DUAL OFFICEHOLDING - MUNICIPALITIES - PLANNING AND ZONING BOARD - BOARD OF ADJUSTMENT - OFFICERS - ADVISORY BODIES - whether simultaneous service on municipal boards violates constitutional dual officeholding prohibition. Art. II, s. 5, Fla. Const. ss. 163.3161 and 163.3174, Fla. Stat.

Dear Ms. Gowdy:

You have asked for my opinion on substantially the following question:

Does simultaneous service on the Melbourne Beach Planning and Zoning Board and the Board of Adjustment violate the dual officeholding prohibition in Article II, section 5(a), Florida Constitution?

According to your letter, you have been appointed to serve on two boards for the Town of Melbourne Beach: the Planning and Zoning Board and the Board of Adjustment. Recent discussions have raised questions about whether your service on these two boards may be contrary to the constitutional dual officeholding prohibition.

Article II, section 5(a), Florida Constitution, states that:

"No person holding any office of emolument under any foreign government, or civil office of emolument under the United States or any other state, shall hold any office of honor or of emolument under the government of this state. No person shall hold at the same time more than one office under the government of the state and the counties and municipalities therein, except that a notary public or military officer may hold another office, and any officer may be a member of a constitution revision commission, taxation and budget reform commission, constitutional convention, or statutory body having only advisory powers."

The terms "office" and "officer" are not defined for purposes of this constitutional provision. Opinions of the Florida Supreme Court and the Attorney General's Office, however, have focused on the nature of the powers and duties of a particular position to determine whether it is an "office" or an "employment" that would fall outside the scope of the prohibition. As the Florida Supreme Court has stated:

1. **Requested Motion:**

Meeting Date: February 1, 2021

Town Council recommendations to Lee County of two locations for a scaled down, single arch replica of the original arches previously located on San Carlos Island.

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

4. **Submitter of Information:**

5. **Background:**

The Fort Myers Beach Town Council supports the collaboration of Lee County Board of County Commissioners and Restore Fort Myers Beach Arches, Inc. for the placement of a scaled down, single arch reminiscent of the original 1917 arches which were the "*gateway to Fort Myers Beach*". Attached are two possible locations for the arch, both located on Lee County property. The goal today is for the Council to make a recommendation to the Lee County Board of County Commissioners, via letter, as to the Town Council's preference for best possible locations.

Attachments:

1. Archway Commemoration at Bowditch (Location D)
2. Archway Commemoration at Lynn Hall (Location A)

Financial Impact:

None

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

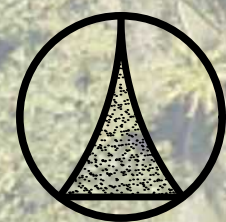
Amy Baker, Town Clerk
John R Herin Jr, Town Attorney
Amy Baker, Town Clerk
Roger Hernstadt, Town Manager

Created/Initiated - 1/25/2021
Approved - 1/26/2021
Approved - 1/27/2021
Final Approval - 1/27/2021

ARCHWAY COMMEMORATION AT BOWDITCH

- LOCATION D -

Lee County Parks & Recreation
(December 2020)



0' 125'

Archway
Footprint
(20')

Existing
Restroom
Buildings

Existing Tram/
Trolley Stop

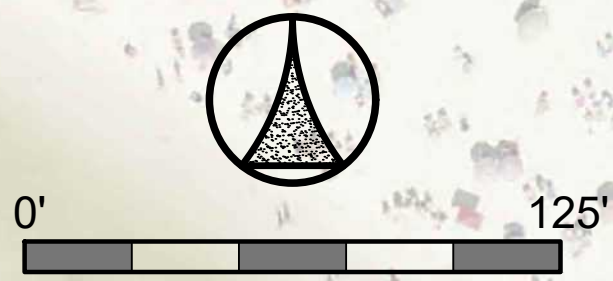
Existing
Pavilion

Property
Line

Estero Blvd.

ARCHWAY COMMEMORATION AT LYNN HALL

- LOCATION A -
Lee County Parks & Recreation
(December 2020)



Existing
Pavilion

Archway
Footprint
(20')

Existing
Restroom
Building

Estero Blvd.

Property
Line

Times
Square

1. **Requested Motion:**

Meeting Date: February 1, 2021

Big Carlos Pass Bridge discussion regarding a joint effort with the City of Bonita Springs

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

COUNCILMEMBERS ITEMS AND
REPORTS

3. **Requirement/Purpose:**

4. **Submitter of Information:**

5. **Background:**

Attachments:

1. Presentation - January 6, 2021 Bonita Springs City Council

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

Amy Baker, Town Clerk

Created/Initiated - 1/27/2021

BONITA SPRINGS CITY COUNCIL	GREEN SHEET:	21-01-011 ADDENDUM
AGENDA ITEM SUMMARY		
REQUESTED MOTION: Discussion regarding upcoming public hearing on the PD&E study for the Big Carlos Pass Bridge.		
MEETING DATE: 1/6/2021		
AGENDA:	REQUIREMENT/PURPOSE: (Specify)	REQUESTOR OF INFORMATION:
☐ PRESENTATIONS	☐ STATUTE	Chris Corrie Council Member, District 4
☐ CONSENT	☐ ORDINANCE	
☐ PUBLIC HEARING	☐ ADMIN. CODE	
☒ MAYOR AND COUNCIL MEMBER ITEMS	☐ OTHER	
☐ MAYOR AND COUNCIL MEMBER'S REPORTS		
☐ CITY ATTORNEY ITEMS		
☐ CITY MANAGER ITEMS		
BACKGROUND:		
On January 28, 2021, the Lee County Department of Transportation will hold a public hearing on the Project Development and Environment (PD&E) Study to assess improvements to the Big Carlos Pass Bridge on Estero Boulevard (County Road 865). Lee County DOT will present the preferred build alternative and the no-build rehabilitation alternative at the public hearing. The hearing will take place at the Bay Oaks Recreation Center and will also be viewable online. I would like to discuss with Council the potential impacts of this project and whether the Council would like to state its position at the public hearing in January. I understand the previous Council discussed this in December of 2018, and the following attachments are provided for your reference: 1. Addendum from City Council's 12/5/2018 meeting, including: a. Green sheet 18-12-411 b. Lee County BOCC December 4, 2018 Workshop Agenda c. Power point presentation dated December 4, 2018 d. Letter from Town of Fort Myers Beach Council to BOCC dated December 3, 2018 2. Letter from Bonita Springs City Council to the Lee County Board of County Commissioners dated 12/7/2018 3. Addendum from City Council's 12/19/2018 meeting, including: a. Green sheet 18-12-426 b. Written remarks by Amy Quaremba from the December 18th BOCC meeting		
IS THIS RELATED TO A STRATEGIC PLAN OBJECTIVE? ☒ YES ☐ NO IF YES, WHICH STRATEGIC OBJECTIVE? #5 Community Aesthetics; #6 Strengthen/Enhance Council Relations		
STAFF RECOMMENDATIONS: Council's pleasure.		
REVIEWED BY:		COUNCIL ACTION:
City Manager:	<u>Arleen Hunter</u>	☐ APPROVED
City Attorney:	<u>Derek Rooney</u>	☐ DENIED
City Clerk:	<u>Debra Filipek</u>	☐ DEFERRED
Department Director:	_____	☐ OTHER: _____

Memorandum

TO: Mayor and City Council

FROM: Debra Filipek, City Clerk

RE: Addendum - December 5, 2018 City Council Meeting

DATE: December 4, 2018

Agenda Item

VIII. Mayor and Council Member Items: ADDITIONAL ITEM:
Discussion on Big Carlos Bridge Project. Attached BOCC
December 4, 2018 Workshop Agenda, Big Carlos Bridge
Project Development and Environmental Study Powerpoint,
and letter from Town of Fort Myers Beach dated December 3,
2018 on low span alternatives requested. (Quaremba;
Greensheet No. 18-12-411)

DAF
Attachments

cc: Arleen Hunter, City Manager
Matt Feeney, Assistant City Manager
Carly Sanseverino, Staff Attorney
Lora Taylor, Communications Director
John Dulmer, Community Development Director
Anne Wright, Finance Director
Nicole Perino, Parks & Recreation Director
Tony Backhurst, Neighborhood Services Manager

AGENDA ITEM SUMMARY

REQUESTED MOTION: Discussion on the Big Carlos Bridge Project Development and Environmental (PD&E) Study.

MEETING DATE: December 5, 2018 ADDENDUM

AGENDA:		REQUIREMENT/PURPOSE: (Specify)	REQUESTOR OF INFORMATION:
☐	PRESENTATIONS	STATUTE	Amy Quaremba Councilwoman, District 1
☐	CONSENT	ORDINANCE	
☐	PUBLIC HEARING	ADMIN. CODE	
☒	MAYOR AND COUNCIL MEMBER ITEMS	OTHER	
☐	MAYOR AND COUNCIL MEMBER'S REPORTS		
☐	CITY ATTORNEY		
☐	CITY MANAGER		

BACKGROUND:

On December 4, 2018 the Lee County Board of County Commissioners held a workshop on the Big Carlos Bridge Project Development and Environmental (PD&E) study. The workshop provided the County Commissioners with the staff recommendation on the proposed alternative. Lee County staff is recommending the 60-foot vertical clearance fixed span alternative as the replacement option for the Big Carlos Pass Bridge. The meeting agenda and staff prepared presentation is attached for City Council review.

The Town of Ft. Myers Beach discussed the Big Carlos Bridge Project at their regular meeting on December 3, 2018 and authorized their Mayor to provide a letter to the Lee County Commissioners stating their concerns with the proposed alternative. A copy of the letter is attached for Council review.

I have previously discussed with City Council concerns from residents regarding the proposed study for the Big Carlos Bridge project and would like to have an opportunity for City Council to have a thoughtful discussion regarding our collective position on this project and the impacts it may have on our community. Additionally, I would like to address how we can cooperatively communicate our concerns and comments to the other governing agencies with respect to this project.

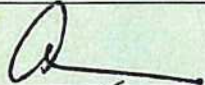
Attachments: Lee County BOCC December 4, 2018 Workshop Agenda
Powerpoint presentation dated December 4, 2018
Letter dated December 3, 2018 from the Town of Fort Myers Beach Council

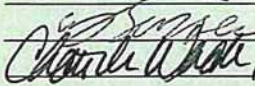
IS THIS RELATED TO A STRATEGIC PLAN OBJECTIVE? ☒ YES ☐ NO

IF YES, WHICH STRATEGIC OBJECTIVE? #5 Community Aesthetics and Strengthen and #6 Enhance Council Relations

STAFF RECOMMENDATIONS: Council's pleasure

REVIEWED BY:

City Manager: 

City Attorney: 

City Clerk: 

Department Director: _____

COUNCIL ACTION:

☐ **APPROVED**
☐ **DENIED**
☐ **DEFERRED**
☐ **OTHER**



Town of Fort Myers Beach

Tracey Gore
Mayor

Joanne Shamp
Vice Mayor

Bruce Butcher
Council Member

Anita Cereceda
Council Member

Dennis Boback
Council Member

December 3, 2018

Larry Kiker, Chairperson and Honorable Members of the
Lee County Board of County Commissioners
2120 Main Street
Fort Myers, Florida 33901

Re: Big Carlos Bridge Project – Low Span Alternatives Requested

Dear Chairperson Kiker and Commissioners,

At the December 3, 2018 meeting of the Town of Fort Myers Beach Town Council, Council unanimously authorized this letter to the Lee County Commission.

On behalf of Fort Myers Beach we are formally expressing the Council's support for either rehabilitating the existing bridge or constructing a new low drawbridge. This Council, as do the many Town residents being negatively affected by the proposed 60-foot fixed-span bridge, does not support the high project alternative.

We also must express our disappointment at receiving so little advance notice of the Commission workshop at which the staff recommendation for the 60-foot bridge will be presented. Receiving notice of the meeting just last Friday, November 30, 2018 does not permit many affected residents to attend or express their opinions on the project.

Fortunately, Council Member Bruce Butcher is available and will attend the workshop. We are hopeful the Commission will allow Councilor Butcher and public to present their opinions and/or concerns.

On behalf of the Town Council of Fort Myers Beach, and our residents, thank you for your consideration.

Sincerely,

Tracey Gore, Mayor

cc: Council Members Shamp, Cereceda, Boback, Butcher
Town Manager Hernstadt



9101 Bonita Beach Road
Bonita Springs, FL 34135
Tel (239) 949-6262
Fax (239) 949-6239
www.cityofbonitasprings.org

Peter Simmons
Mayor

Amy Quaremba
Council Member
District One

Greg DeWitt
Council Member
District Two

Laura Carr
Council Member
District Three

Peter R. O'Flinn
Council Member
District Four

Michael Gibson
Council Member
District Five

Fred Forbes, AIA
Council Member
District Six

Arleen M. Hunter
City Manager
(239) 949-6267

Derek P. Rooney
City Attorney
(239) 949-6254

City Clerk
(239) 949-6248

Public Works
(239) 949-6246

Neighborhood Services
(239) 949-6257

Parks & Recreation
(239) 992-2556

Community Development
(239) 444-6150

December 7, 2018

The Honorable Larry Kiker
Lee County Board of County Commissioners
P.O. Box 399
Fort Myers, FL 33902-0399

RE: Big Carlos Bridge Project Development and Environmental Study

Dear Chairman Kiker and Lee County Commissioners,

The Bonita Springs City Council, at their most recent meeting, voted unanimously to address the Board of County Commissioners reflecting on the workshop held on December 4th at which the Big Carlos Bridge Project Development and Environmental Study PowerPoint was presented. At this meeting the County staff recommended the high span option as the preferred alternative. A final vote on a selected alternative is currently scheduled for your December 18th meeting.

The information presented at the workshop is complex, and the ultimate selection merits a thoughtful process. The staff's direction was to consider Safety; Eligibility for state and federal funding; Usability including ADA Compliance; and lastly Construction, Operations and Maintenance Cost. The two leading alternatives, high span and low span bascule, each satisfy the first three criterion.

While we do not dispute a cost difference, we recognize that alternative standard financial methods may affect the magnitude of this delta. As discussed at your workshop, there are policy issues that are the purview of the Board that may be addressed. We submit there is a critical criterion that requires careful consideration. That is compatibility with the nature and character of the Bonita Beach Corridor.

The decision question then becomes whether the cost difference is worth considering in order to reflect a compatibility with the existing built environment, enhancing the neighborhood and community character thereby complimenting the urban and natural environment through human scale. These ideas represent the community's vision as set forth in our comprehensive plan. The Bonita Springs City Council agrees that the lower span bridge satisfies this compatibility criterion while the high span alternative would not.

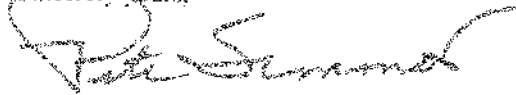
The City of Bonita Springs City Council asks you to please defer the vote regarding this matter until such time that allows for additional analysis to be performed and a thoughtful discussion be had by all parties that will be affected by the outcome. The Council would not be dutifully representing our citizens if we did not express concern about a decision that carries numerous implications affecting our community's character and vision. Irrespective of which option is

The Honorable Larry Kiker
December 7, 2018
Page 2

selected, the infrastructure will be a part of the City of Bonita Springs for a long time, and therefore, it is not unreasonable to ask to be included in this discussion more directly.

We are respectfully urging that the Commission defer their decision on December 18th, thereby allowing more time for an appropriate analysis – specifically present-day cost as opposed to a projected cost, inclusive of inflation, over 75 years – to be provided to the affected entities, and open dialogue about the compatibility concerns expressed by our residents.

Sincerely yours,



Peter Simmons
Mayor

Signed on behalf of the City of Bonita Springs Council

cc: Bonita Springs City Council
Roger Desjarlais, Lee County Manager
Arleen Hunter, City Manager
Matt Feeney, Assistant City Manager
Dereck Rooney, City Attorney
Debbie Filipek, City Clerk

Memorandum

TO: Mayor and City Council

FROM: Charlen Wade, Deputy City Clerk

RE: Addendum - December 19, 2018 City Council Meeting

DATE: December 18, 2018

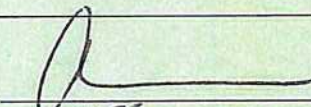
Agenda Item

- VI. Consent Agenda: Approve quote for Ajax Paving Industries of Florida, LLC, to demo and pave the Bernwood Parkway and Old 41 Road railroad crossing approaches. (Greensheet No. 18-12-427)
- VIII. Mayor and Council Member Items: Discussion on the Big Carlos Bridge Project Development and Environmental (PD&E) Study. (Quaremba; Greensheet No. 18-12-426)

DAF

Attachments

cc: Arleen Hunter, City Manager
Matt Feeney, Assistant City Manager
Carly Sanseverino, Staff Attorney
Lora Taylor, Communications Director
John Dulmer, Community Development Director
Anne Wright, Finance Director
Nicole Perino, Parks & Recreation Director
Tony Backhurst, Neighborhood Services Manager

BONITA SPRINGS CITY COUNCIL		GREEN SHEET:	18-12-426
AGENDA ITEM SUMMARY			
REQUESTED MOTION: Discussion on the Big Carlos Bridge Project Development and Environmental (PD&E) Study.			
MEETING DATE: ADDENDUM: 12/19/18			
AGENDA:		REQUIREMENT/PURPOSE: (Specify)	REQUESTOR OF INFORMATION:
☐	PRESENTATIONS	☐	Amy Quaremba Councilmember, District 1
☐	CONSENT	☐	
☐	PUBLIC HEARING	☐	
☒	MAYOR AND COUNCIL MEMBER ITEMS	☐	
☐	MAYOR AND COUNCIL MEMBER'S REPORTS	☐	
☐	CITY ATTORNEY	☐	
☐	CITY MANAGER	☐	
BACKGROUND:			
On December 5, 2018, City Council discussed the Big Carlos Bridge Project Development and Environmental (PD&E) Study and elected to send a letter to the Lee County Board of County Commissioners stating our concerns with the recommended alternative and requested the BoCC delay any official action at the December 18, 2018 meeting. I would like to provide Council with an update as I attended the County Commission meeting. Attached, please find a copy of the remarks I provided at the meeting as well as my summarized analytic results on the cost of the proposed alternatives.			
IS THIS RELATED TO A STRATEGIC PLAN OBJECTIVE? ☒ YES ☐ NO IF YES, WHICH STRATEGIC OBJECTIVE? #4 Community Aesthetics			
STAFF RECOMMENDATIONS: Council's pleasure.			
REVIEWED BY: City Manager: City Attorney: City Clerk: Department Director:    			
COUNCIL ACTION:			
☐ APPROVED ☐ DENIED ☐ DEFERRED ☐ OTHER			

December 18 BOCC Meeting

Chairman Kiker and fellow County Commissioners

The Bonita Springs Council has recently taken a position on the proposed Big Carlos Bridge replacement choice. A letter was drafted and sent to you asking for a delay in the decision process so that our community residents and city council concerns could be addressed.

At the Dec 3 BOCC workshop County staff recommended a high span fix bridge alternative. It appeared that the primary decision choice criterion was long term costs differentials. The magnitude of these cost differences would be significantly diminished if a standard and more conventional present value analysis was followed rather than the future value analysis used. Chairman Kiker in fact asked for such a calculation. It is likely that we will hear such figures presented later in your meeting.

My own present value analysis found the delta between the 60-foot fixed alternative and the 20-foot bascule alternative was slightly less than \$20mm vs the approximately \$80mm presented at the workshop using future value.

In addition, Bonita residents have expressed concern that other decision criteria should be fully vetted. To just highlight a few, such criteria include compatibility with the Bonita Vision Plan, limitation on navigation for the fixed span vs. none on draw bridge, loss of property value for residents in the view corridor, potential operation cost savings through automation, wind velocity effect on the taller structure, and the effect on Lovers Key, Black Island unspoiled nature.

Such issues are policy considerations within the purview of the Lee County Commission Board. They come into play once the perceived disproportionate cost is dampened through the standard present value process of comparing a stream of costs between alternative investments.

Bonita Council has special concern that the announced preferred choice will alter the character of the beach corridor and the vision, Bonita citizens have supported and recorded in our comprehensive plan. We advocate for

an alternative that is compatible with the nature and character of the Bonita Beach Corridor.

The decision question becomes whether the cost difference is worth considering in order to support compatibility with the existing built environment, enhancing the neighborhood and community character thereby complimenting the urban and natural environmental through human scale infrastructure. These ideas represent Bonita's vision as set forth in our comprehensive plan.

The current bridge, a 24 feet tall draw bridge design, contrasts with the proposed 60-foot fixed span of the staff's recommendation. This conflicts with Bonita's expressed preference to maintain and develop a human scale community of village charm. The Bonita Spring Council agrees with residents that the lower span bridge satisfies this compatibility criterion while the high span alternative would not.

Unfortunately, the timing of the preferred alternative announcement leaves little time for Council to make their case. It is important that our citizens' voice is heard as well.

The City of Bonita Springs City Council therefore asks you to defer the vote regarding this matter until such time that allows for additional analysis to be performed and a thoughtful dialogue be had by all parties affected by the outcome. The Council would not be dutifully representing our citizens if we did not express concern about a decision that carries such implications affecting our community's character and vision. The infrastructure option selected will be a part of the City of Bonita Springs for a long time to come, and therefore, it is not unreasonable to ask to be included in this discussion.

Thank you for your time and consideration of these viewpoints.

Amy Quaremba

Bonita City Council, District 1

FYI

To summarize the analytic results:

Starting with the Lee county numbers (from PowerPoint Workshop Presentation) using 4 % inflation i.e. future value of stream of figure aggregated.

20' bascule \$167,603,000 all in cost
60 ' fixed 87,771,000

Cost Difference using future value: \$79.8 MM

The figures for Net Present Value using 4 % inflation for O&M and discount of 4 %

NPV (M&O)	NPV (Cost, Design, CEI)	TOTAL
20'		
13,218,019	52,250,184	65,468,203
60'		
4,454,245	41,434,621	45,888,866

NPV COST DIFFERENCE IS 19,579,337 = \$19.6MM
CONSIDERABLY DIFFERENT FROM THE \$80MM FUTURE VALUE FIGURE ABOVE

Interestingly if one uses the M&O cost inflation suggested at the workshop of 2.6 % with 4 percent discount then the numbers become

NPV (M&O)	NPV (Cost, Design, CEI)	TOTAL
20'		
7,985,617	52,250,184	60,235,801
60'		
2,804,928	41,434,621	44,239,549
NPV COST DIFFERENCE IS		15,996,252 = \$16MM

Calculating Annual Costs:

Dividing the cost differences by the 75-year life span results in

\$213K - \$261K annual cost range using NPV

Compared to \$1.064 mm using future value.